DISCIPLINARY COMMITTEE FOR
THE INDEPENDENT REGULATORY BOARD FOR AUDITORS

In the matter between:

INDEPENDENT REGULATORY BOARD FOR AUDITORS Complainant

and

TWALIZIDANGA MGCINISIHLALO JORDAN Respondent

DECISION ON SANCTION

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Introduction

1 On 5 October 2020, the Disciplinary Committee of the Independent Regulatory Board for Auditors ("the Committee" and "the Board" or "the IRBA") found the respondent guilty on five charges of misconduct. On 21 and 22 November 2020, the Committee heard evidence in aggravation and mitigation of sanction. On 23 November 2020, the Committee heard oral argument from the parties. The parties filed witness statements and written argument prior to the hearing, including rebuttal argument filed on behalf of the respondent.

2 On the basis of the evidence and argument, the Committee must determine an appropriate sanction.

3 Section 51(3) of the Audit Profession Act No. 26 of 2005 governs the sanctions which may be imposed on a registered auditor found guilty of improper conduct as follows:

> *"(3) (a) If the registered auditor charged is found guilty of improper conduct, or if the registered auditor admits to the charge the disciplinary committee must either -*
>
> *(i) caution or reprimand the registered auditor;*
>
> *(ii) impose on the registered auditor a fine not exceeding the amount calculated according to the ratio for five year's imprisonment prescribed in terms of the Adjustment of Fines Act, 1991 [Act No. 10) of 1991;*[1]
>
> *(iii) suspend the right to practice as a registered auditor for a specific period; or*
>
> *(iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6.*
>
> *(b) The disciplinary committee may impose more than one of the sanctions referred to in paragraph (1)."*

[1] This translates to an amount of R200 000 and, before 2013, to an amount of R100000.

4 Rule 8.1 of the new Disciplinary rules[2] essentially repeats these provisions and provides further in rule 8.2 that:

> *"The sentence under 8.1 may be suspended for a specific period and/or made subject to any lawful conditions set in the sentence."*

5 We first summarise the evidence that was led and then provide our analysis regarding the appropriate sanction.

6 Before doing so, we point out that the respondent's attorneys have requested on his behalf that he be informed of the sanction before the end of year break, which is imminent. These reasons have therefore been prepared under time pressure and are more truncated than they might otherwise have been.[3]

The evidence in aggravation

7 The pro forma complainant led the evidence of two witnesses, Ms Linda De Beer (who had also testified in the merits stage of the hearing) and Mr Desmond Lockey.

8 The witness statement of the Board's third witness, Ms Zine Mshengu was, by agreement, accepted in the form of her witness statement without the need for her to give any oral evidence.

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2 Contained in GN69 in GG30004 dated 29 June 2007 and effective from 7 June 2007.

3 At the hearing it was agreed that the Committee would not be bound by the 30-day statutory period for handing down the decision. The respondent's attorneys subsequently enquired as to the possibility of providing the decision first and the reasons later. However, the Committee's practice is to give reasons simultaneously with the decision and does not wish to depart from that.

Ms Mshengu

9 Ms Mshengu is a chartered accountant and certified information systems auditor with a Master's Degree in Science, majoring in financial sector management from the University of London. She is currently employed by the Prudential Authority as Divisional Head: Industry Technical Support, which role includes overseeing the Accounting and Auditing Technical Support Unit. Her division operates within the Policy, Statistics and Industry Support Department of the Prudential Authority. The Prudential Authority is established in terms of section 32 of the Financial Sector Regulation Act No. 9 of 2017 as a juristic entity operating within the administration of the South African Reserve Bank. In terms of section 34, its functions include regulating and supervising, in accordance with financial sector laws, financial institutions that provide financial products, in cooperation with the South African Reserve Bank and other regulatory authorities.

10 She testified as to the responsibilities of a bank auditor within the statutory framework for the regulation of the financial sector. The Prudential Authority must approve the appointment of an auditor to a bank. Only one auditor is appointed for a regulated institution and that auditor takes ultimate responsibility for the statutory and regulatory audit of the financial institution. In her view, an auditor approved by the Prudential Authority to act as auditor at a bank may be viewed as an extension of the Prudential Authority's supervisory mandate. The Banks Act also provides for the withdrawal of the approval of an

auditor in certain circumstances.[4] The thrust of her evidence was to demonstrate the important role of an approved bank auditor in the context of the regulation of the financial sector and the maintenance of its stability.

Ms L De Beer

11 Ms De Beer provided both written and oral evidence. Her qualifications are dealt with in the decision on the merits.[5]

12 In addition to her expertise recorded at the time of testifying in the merits hearing she has, with effect from 1 April 2020, been appointed as the chairperson of the International Public Interest Oversight Board, which is the global independent oversight body that seeks to improve the quality and public interest focus of the international audit and assurance standards, as well as the ethical standards formulated by the standard setting boards, namely the International Accounting and Assurance Standards Board and the International Ethics Board for Accountants, respectively. She has also been appointed to the board of Tongaat Hulett as part of its turnaround plan where she chairs the audit committee as well as the Board legal committee.

13 She dealt with the risks associated with the business model of African Bank as a lender in the unsecured loans and credit card market aimed at lower income earners. The Bank did not have a transactional banking service offering where it could attract deposits from the retail and corporate markets which constitute a lower cost source of funding for banks. This meant that African Bank was

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4 Section 61(3)(b) of the Banks Act No. 94 of 1990.

5 At para 61 pp 71 – 72,

reliant on obtaining funding from other financial institutions or through corporate bonds at a higher interest rate. When there are economic difficulties that raise concerns around the creditworthiness of the Bank's debtors, the risk arises that funders might be unwilling to renew funding facilities. In her view, these risks were known to the respondent but not adequately or appropriately addressed by him in the audit.

14 She commented on the charges in respect of which the respondent was found guilty. In respect of each charge she identified her areas of particular concern.

15 In relation to the first charge, she highlighted –

15.1 his failure to comply with the auditing standards and his disregard for IFRS requirements;

15.2 the fact that, because lending is the core business of the bank, impairments lie at the heart of a bank audit because that will determine whether the bank's loan book is correctly valued;

15.3 the impairment shortfall in relation to charge 1 was many multiples of audit materiality in circumstances where audit materiality is a well developed, tested and mature tool to guide the auditor as to the level of misstatements that may and may not be accepted;

15.4 the conduct of the respondent included not only shortcomings in relation to documentation of audit work but also the failure to obtain sufficient appropriate audit evidence. This was "extremely

concerning" where the valuation of the debtor's book was in question;

15.5 in relation to the Stangen IBNR, the technical opinion that was obtained from Mr Derwin to establish whether it could be used as part of the gap was clearly misunderstood and there was no indication that an interaction or discussion with Derwin, as an IFRS specialist, took place to understand fully the implications of his opinion;

15.6 the auditor's failure to perform the necessary audit work to confirm management's justification for filling the gap reflected a failure to apply judgment and professional scepticism.

16 In relation to charge 2, she made the following observations:

16.1 it was clear from Deloitte's own calculations that the order of magnitude of the error pertaining to this charge was R637 million, an amount significantly above audit materiality;

16.2 the Committee found that the auditor's approach did not withstand a reality check when tested against the probability of default for the loan buckets in question – this is precisely what an auditor is required to do, namely apply his mind based on his knowledge of his client and the industry in order to ensure that management assumptions, and his decision to accept these, make sense and can be defended;

16.3 this reflected a lapse in professional judgment and professional scepticism;

16.4 the audit work required pursuant to the technical opinion obtained from Ms Ranchod was not done, again resulting in a material under-provision of impairments and a material overstatement of assets and understatement of the loss.

17 In relation to charge 3, she pointed out, amongst other things, the following:

17.1 the original effective interest rate was not used in compliance with the requirement of IAS39, which was the pivotal standard for impairment provisioning and the key element in the formula to be applied to the impairment calculation;

17.2 the relevant standards pertaining to quality control and, in particular, how an expert is briefed for purposes of providing an opinion and how their advice is understood, confirmed and applied, was not complied with;

17.3 the manner in which African Bank applied the original effective interest rate was in any event not in line with the opinion; and

17.4 no audit work was done to assess the correctness of the original effective interest rate applied by management.

18 In relation to charge 6 and the finding of guilty on the documentation element of the charge, she testified that it was a problem to have working papers elsewhere in the group's work files – it was a grave concern that the audit

documentation was only in the component audit file and not in the African Bank audit file.

19 To the extent that she testified that the work performed by the component auditor, Mr Bierman, was insufficient and inappropriate, the Committee disregards this evidence as it is inconsistent with the Committee's finding on the merits.

20 In relation to charge 9, Ms De Beer emphasised:

20.1 the fact that the problem of the discounting of *in duplum* loans at a zero percent interest rate was left unaddressed and uncorrected for several years in a row;

20.2 there was a failure to quantify fully or at all in some instances, the extent of the misstatement arising from the *in duplum* error;

20.3 there was no audit evidence to support a set-off argument;

20.4 the lack of audit work and audit evidence from 2009 to 2012 on a matter known to the auditor was a fatal flaw and an unacceptable omission;

20.5 speaking more generally in relation to the seriousness and impact of the improper conduct, she was critical of the notion that the transgressions were only of a technical nature;

20.6 in relation to each of the charges the guilty findings were individually significant in their own right and, when considered collectively, it becomes clear that the technical failures were pervasive;

20.7 auditing is in itself a technical qualification and a technical process and when an auditor fails correctly, faithfully or comprehensively to apply technical standards, the auditor has failed in his or her area of expertise.

21 She considered the audit failures from a banking perspective, the JSE listings requirements perspective, the audit committee perspective and the investor and public interest perspective. From all of these perspectives, there is a particular need for accurate and reliable financial statements and accurate and reliable audit work in respect of those financial statements.

22 It was her opinion, on the basis of the foregoing evidence, that it would be a risk to the public and the profession if the respondent was allowed to continue to practise as an auditor.

23 Her oral evidence confirmed and adumbrated upon the evidence in her written witness statement.

24 Ms de Beer was cross examined regarding, amongst others, the following:

24.1 whether it was her view that the fact that the respondent did not work alone was entirely irrelevant for purposes of sanction – Ms De Beer responded that, for her, it was not irrelevant; there are many people in a financial reporting process, but separate processes must be

followed against other people involved; she battled to see it as mitigating when he did not do his job properly;

24.2 the fact that in other jurisdictions, often both the firm and the partner are charged in one proceeding - she conceded this;

24.3 the fact that the auditing profession is finding it increasingly difficult to attract and retain auditors because of increased regulation, increased risk, increased disciplinary action and litigation, and that what happened in this case was demonstrative of the problem – she did not accept the latter component of the proposition;

24.4 the quantum of the misstatements in respect of which the respondent was found guilty was substantially less than what was originally alleged in the charge sheet – she insisted that the errors were still well in excess of materiality;

24.5 reverting to the question of the profession becoming unattractive, she accepted that "*there is a lot of regulation and if it goes wrong, there is liability"* and that was unattractive; however, "*the auditing profession is also unattractive and becomes a dinosaur if people are not held accountable for unfortunately not doing what they are supposed to as an auditor … That is much worse because ultimately that will wipe out the profession;"*

24.6 it was put to her that, as pointed out in her book,[6] where there is a corporate failure this invariably is the result of many factors including the wrongful conduct of a range of actors; therefore it was inappropriate for her to have "drawn a line between" the respondent's failure and the collapse of the bank – she said that this was not her evidence; her view was that "*the collapse of the bank was caused by very many things that went wrong, including an inappropriate audit opinion"* which *"played a role"*;

24.7 it was pointed out that the experts had agreed in the merits hearing that even if the full R6.5 Bn had been processed as an additional impairment, the Bank would still have been solvent, with the consequence that the lesser impairment of R1.742 Bn forming the basis of the Committee's ultimate finding would not have rendered the Bank insolvent – Ms de Beer was not in a position to comment on the numbers being put to her;

24.8 Ms de Beer was taken through the sequence of events involved in African Bank's decline to make the point that what happened was that the Bank was the victim of a loss of market confidence, not faulty audit work – she accepted the negative impact of this and a number of other factors; however she was still of the view that if the auditors had, right at the beginning in 2009 or 2010, dealt with *in duplum* appropriately and actually qualified their audit opinion or forced the Bank to increase its impairments, it is speculation, but it

[6] Presumably a reference to Mervyn King, Linda de Beer *The Auditor: Quo Vadis?* 1st Edition.

may have made a difference; ultimately her response was that *"the audit opinion that was inappropriate played a role in getting inappropriate information to the market and that gave the impression that it was accurate or fairly stated and it was not, by Deloitte's own admission, because [they] restated it in the following year and all of that information had an impact"*;

24.9 it was put to her that in her own witness statement she had only put it as high as saying *"[a]n early warning from the auditor, unwilling to sign off on, for example, material misstatements on in duplum, under- provision of impairments, or an overstatement of the Ellerines loan, might have changed that path"* – in her oral evidence, however, she said *"It is very very probable that it would have changed the path"*;

24.10 it was pointed out to her that an error in relation to the impairment of the Ellerines loan was not proven against the respondent – she conceded this but did not agree with the Committee's finding.

Mr D Lockey

25 Mr Lockey began his career as a teacher and served for many years as a member of parliament. He joined the private sector in 2003 and served and continues to serve as a director of a number of companies.

26 He is currently the chairperson, non-executive director and shareholder in Hlumisa Investment Holdings (RF) Limited ("Hlumisa"). He is also a shareholder in Eyomhlaba Investment Holdings (RF) Limited ("Eyomhlaba").

Hlumisa and Eyomhlaba are investment vehicles created by ABIL in 2005 and 2008 respectively to warehouse ABIL ordinary shares acquired for the benefit of some 13,000 individual black investors. The shares were initially offered at a discount to the listed price to these two companies subject to a tie-in until 31 December 2015, aimed at ensuring that there was BEE compliance sufficient to retain a banking licence.

27 Evidence was given in considerable detail as to the fortunes or, more accurately, misfortunes of the BEE[7] scheme preceding and following the collapse of African Bank and it being placed in curatorship. Mr Lockey gave evidence about the extent of the losses, the difficulties created by the fact that they were locked in and unable to dispose of their shareholding and his view that the respondent's conduct played a role in the losses suffered by the BEE shareholders.

28 His evidence also canvassed litigation brought by Hlumisa and Eyomhlaba against the directors of ABIL and against Deloitte as defendants for recovery of the losses. The particulars of claim were included as an annexure to his witness statement.

29 In Mr Lockey's view the respondent is a risk to the public and should not be allowed to continue to practise as an auditor.

30 Much of the cross examination of Mr Lockey focussed on the causal connection which Mr Lockey sought to establish between the conduct of Deloitte and the

[7] Black economic empowerment.

directors of African Bank and the losses suffered by Hlumisa and Eyomhlaba and their shareholders. The litigation that is pending in this regard has, to date, involved an exception to the particulars of claim having successfully been taken by Deloitte and the directors of African Bank. The High Court's upholding of the exception has been confirmed by the Supreme Court of Appeal on appeal and the matter is currently on appeal to the Constitutional Court.

31 Mr Lockey's evidence is helpful insofar as it illustrates the point that the investing public is reliant on accurate financial statements and the assurance provided by auditors of that accuracy. However, the causal connection sought to be established between the conduct of the respondent and the losses suffered by the two companies is not something that the Committee should enquire into. The pro forma complainant in fact disavowed any attempt to establish such a causal connection as a component of his case in relation to the appropriate sanction.

Evidence in mitigation

32 In addition to giving evidence himself, the respondent called three witnesses in mitigation of sanction. These were Mr Peter Chidgey, who also testified in the merits hearing, Mr Lwazi Bam and Ms Vuyolwethu Lusu.

Mr Chidgey

33 Mr Chidgey's qualifications are dealt with in the merits decision.[8] Mr Chidgey provided a witness statement and also gave oral evidence at the sanction hearing. Mr Chidgey began with the following observations:

33.1 the five charges on which the respondent was found not guilty included matters that were more egregious than the five on which he was found guilty. In particular, dishonesty is an issue which is far more serious than "technical and operational deficiencies". Dishonesty speaks to the character of the auditor and compromises his ability to fulfil the role. The going concern charges, had he been found guilty on them, would have suggested that the respondent had acted in disregard to known users of the financial statements.

33.2 The respondent was not solely culpable for all of the failings noted in the findings in that International Standard on Quality Control 1 (ISQC1) : *Quality control for firms that perform audits and reviews of financial statements and other assurance and related services engagements* sets out a framework in which both the firm and the partner have a responsibility to each other in the carrying out of the audit. The firm is required to provide adequate resources to carry out the audit, both in terms of number and ability of staff. Because of time constraints, the engagement partner is dependent on the senior members of the team performing the responsibilities they have been

[8] Paras 68 – 70 on pp 74-75.

allocated. Their doing this properly is in turn dependent on the firm policies with regard to recruitment, training and ongoing appraisal.

33.3 There is an acknowledgement in the auditing standards that an audit may be an extremely complex process, such as the present audit, where one individual partner cannot hope to be intimately involved in every decision and will be required to rely on firm specialists to conclude on different aspects of the audit. Hence, in many jurisdictions, the firm is also a respondent where misconduct charges are brought. As an example in this regard he referred to the United Kingdom case of *The Financial Reporting Council v PriceWaterhouseCoopers LLP and Bradburn*. This case had many elements in common with the present matter and one of the main findings was a failure of audit work in relation to impairment provisions and the use of an IBNR. Both PWC and the partner were charged and both were found guilty and sentenced to a reprimand and fines. No suspension or exclusion was imposed.

33.4 In his view, at least part of the audit failure in the African Bank case was due to systemic failings on the part of Deloitte as a firm. In this regard a failure on the part of Deloitte was the absence of a thorough review of the underlying evidence as a component of the second partner review process. There must be culpability attached to the firm for not requiring a much more stringent review of the work in a case such as this. All the more so where the risk of evidence in documentation failings was high, because of the tightness of the

deadlines associated with the audit and the additional work required as a result of the rights issue, the number of contentious issues and the slow delivery of information from the Bank.

34 Mr Chidgey also commented on the charges in respect of which the respondent had been found guilty. In relation to charge 1, he considered the following to be mitigating circumstances:

34.1 The process around the opinion from Mr Derwin was not properly documented, despite a request from Mr Crowther to Mr Mavuka, the senior manager responsible for documenting the audit process, to do so;

34.2 The respondent had correctly identified the possibility of double counting in relation to the IBNR but this was not followed up by members of the team that were responsible for doing so;

34.3 Mr Mavuka's work was not backed up by evidence in the audit files which he was responsible for assembling – this was a failure of the audit process by a key member of the audit team on whom the respondent should have been able to rely, making this a firm failing pertaining to quality and the allocation of human resources;

34.4 There was a systemic failure by Deloitte to respond to the pressures the respondent was under in respect of the audit.

35 In relation to charge 2, Mr Chidgey raised the following points in mitigation:

35.1 The nature of the charge changed during the course of the hearing and the Committee's deliberations from a charged based on the wrong impairment point to one based on the inadequacy of the IBNR provision;

35.2 The fact that the Committee supported neither of the 2013 and 2014 approaches indicates the difficulties in applying the principles of IAS39 for both management and auditors;

35.3 The main finding revolved around an aspect of the IBNR calculation incorporated in the model used by Deloitte to assess the IBNR and the use of models - this is a highly complex area which was the subject of differing views and expert evidence;

35.4 The IBNR calculation was assessed by Mr Burra who was the leading expert and had an excellent reputation in the field in South Africa, so some culpability had to be borne by Mr Burra.

36 In relation to charge 3, Mr Chidgey contended that the following factors ought to be taken into account in mitigation:

36.1 Neither Deloitte nor the curator in the 2014 financial statements took the view that this was an error that required a prior year adjustment;

36.2 The respondent was therefore not completely unjustified in continuing to rely on his line of argument, which he held in good faith;

36.3 It was the respondent's inability properly to document on an ongoing basis the reasons for his reliance on the opinion and to ensure that the documentation was in line with what had actually happened in practice, that was the main problem. Had he done so, he would have been able to demonstrate that there was some justification for the view he held.

37 In relation to charge 6, Mr Chidgey pointed out that the charge was limited to the issue of a documentation failure in the context of a group audit. He said that a failure of this nature was, unfortunately, not unusual in group audits. There was no misstatement arising out of the audit work done in this regard.

38 In relation to charge 9, Mr Chidgey contended that the following were mitigating circumstances:

38.1 This was a matter which the respondent did not try to hide – the *in duplum* issue was reported to the audit committee on a number of occasions;

38.2 The respondent met with considerable delaying tactics and avoidance on the part of the Bank;

38.3 Whilst acknowledging that the respondent should have been more assertive, auditors are in a potentially weak situation when they are dependent on client systems to calculate the effect of an error;

38.4 The respondent believed (wrongly) that he had judgemental scope, particularly in 2009 and 2010 to justify allowing this;

38.5 The respondent was instrumental in correcting the *in duplum* error in 2013;

38.6 The charge in respect of 2013 was found not to have been proven;

38.7 There is at least some evidence of the failure of firm level quality control processes in relation to this charge, in that either the error was not brought to the attention of the second partner, or it was allowed by the second partner to persist over a period of four years without any intervention, with the consequence that the firm must bear some responsibility in relation to this charge.

39 In relation to the breaches of the auditing standards, Mr Chidgey made the following points:

39.1 The auditing standards do not constitute a legal code setting out specific requirements and penalties for noncompliance but rather take the form of interdependent sets of guidelines in relation to audit practice;

39.2 Because of their structure, when used in cases such as this one, they tend to exaggerate any failure as one failure can give rise to breaches of multiple standards;

39.3 It may also be argued that there are knock-on effects on standards which apply later in the audit process;

39.4 These multiple breaches may make the findings appear more serious than they actually are.

40 In conclusion, Mr Chidgey contended that whilst the issues in relation to which the respondent was found guilty were serious ones, they were of a technical nature and would not merit as severe a penalty as ones involving moral or ethical turpitude and that, on the basis of what he had said, he believed that the respondent had reduced culpability and that the misconduct did not require the most severe sanction against him.

41 His oral evidence confirmed and adumbrated upon the evidence in his written witness statement.

42 Mr Chidgey was cross examined in relation to the following issues:

42.1 With particular reference to charge 9, involving repeated errors over several years, the pro forma complainant disputed Mr Chidgey's characterisation of the breaches as being technical in nature – Mr Chidgey, in response, contended that although repeated, it could still be something that retained the character of a technical breach; the distinction still remained also that, here, the audit failure could not be said to have gone to the root of the audit in the sense of being a case where no audit was done at all;

42.2 The repetitive nature of the *in duplum* errors, which the pro forma complainant suggested pointed to a serious audit failure – Mr Chidgey responded that, without disagreeing with the findings of the Committee, which he agreed with, the *in duplum* error had to be seen in the context that the loan book had a gross value of R80 Bn;

42.3 The cumulative value of the error reached R2 Bn, something the pro forma complainant suggested deserved the most severe sanction when the auditor failed to correct it, knowing there was noncompliance and which resulted in material misstatements – Mr Chidgey agreed that it was a serious failure but he did not think it required the most severe sanction; looked at in the context of the size of the gross loan book, the amounts involved did not, in his view, go to the heart of the audit;

42.4 In relation to charge 3, the failure to use the correct original effective interest rate was something that had been identified as a risk in each audit year from 2009 onwards and had never been addressed at all – in response Mr Chidgey pointed out that the charge pertained only to 2013; although the Committee disagreed with the grounds in the end, the respondent had grounds which he asserted as a basis for allowing management to proceed on this issue in the manner which they did, based on the opinion which had been provided by Mr Derwin;

42.5 To compare the breaches with dishonesty as a basis for mitigation was a false comparison; the correct comparison was the degree of departure from the conduct of a reasonable auditor – in response Mr Chidgey referred to his experience in the United Kingdom where the cases involving operational issues, particularly for a first offence, did not attract the most severe sanction;

42.6 In South Africa, section 44 of the Auditing Profession Act imposed a statutory injunction making it mandatory for an auditor to comply with the audit standards – in response Mr Chidgey referred to his earlier evidence in relation to the potential accumulation of breaches of audit standards arising out of a single error; in addition, in relation to each breach, although there were several standards found to be infringed, there was only a single conviction on a single offence;

42.7 The seriousness of the infringements was compounded by the fact that a public company was involved that is also a bank, in respect of which an auditor has a duty to the Reserve Bank with regard to the execution of the audit and to ensure that there are no irregularities that are committed – Mr Chidgey asserted that the breaches had to be seen in context, including the context of the findings;

42.8 The fact that the firm and other members of the audit team might have been culpable did not lessen the culpability of the respondent as engagement partner – Mr Chidgey responded along the lines that he was not suggesting a reduction of culpability but rather that it was something that needed to be taken into account in mitigation; it was part of the context in which the failings occurred, which included that the audit was not a simple matter, it was a very complex operation that required a lot of technical judgement, a lot of bringing in of different skills and expertise and was the type of audit which could not be done on the basis that the engagement partner made all of the decisions;

42.9 The pro forma complainant suggested that the responsibility in respect of the engagement partner is absolute so that there is no question of someone else's responsibility being shared with the respondent; he is the person responsible – Mr Chidgey disagreed; the culpability of the engagement partner has to be assessed in the context of ISQC1 which imposes responsibilities on the firm; if the firm let him down, he should not "*bear the brunt for that"*;

42.10 The responsibility rests with the engagement partner to ensure that he is provided with the necessary specialised skills and knowledge to conduct the audit – Mr Chidgey did not disagree with this but used the example of Mr Burra to show that a necessary resource had been brought in but there was still reason to share responsibility with him.

43 The balance of the cross examination focussed largely on the degree of seriousness of the respective charges on which the respondent was convicted, in which the themes already identified resurfaced.

Mr L Bam

44 The respondent called as his next witness in mitigation of sentence, Mr Bam, the Chief Executive Officer of Deloitte Southern Africa and Deloitte Africa. He has also served as chairperson of the South African Institute of Chartered Accountants from July 2017 until October 2019. He has been employed by Deloitte for nearly 27 years after joining the firm in 1994 as a trainee during his university studies. He joined the firm's executive in 2006 and was appointed as

CEO of Deloitte Southern Africa in 2012 and of Deloitte Africa in 2013. He has served on the Deloitte Global Board and on its Risk and Strategy Review Committees.

45 He testified to his own knowledge and experience of the respondent and the respondent's role in the firm, his integrity, his professional reputation and his value to the firm and the profession.

46 The respondent was identified as a potential future leader when he was elected as a partner of the firm in 2007. In 2010 he was included as part of the Global Advisory Council, a group of select potential leaders in the firm from across the world who perform the role of advising the firm's Global Executive Committee on the firm's strategic direction. He was the only one out of some 300 partners of the South African firm who was selected to hold this role. In 2012, he was appointed to the executive of the South African firm as chief strategy officer. Since then, the respondent has led the firm's financial services unit as the business unit leader from 2013 to 2016. The respondent was appointed as Deputy CEO for Deloitte Africa in 2016.

47 The respondent has had a strong focus on quality and the resourcing of audits performed by the financial services team. His client leadership roles include the firm's audits of one of the big four banks as well as African Bank. The firm has never received any complaints regarding the respondent's record which was unblemished before his conviction on the five charges.

48 A significant aspect of the respondent's leadership in the firm is the fact that, to the best of Mr Bam's knowledge, he was the first black African lead

engagement partner in South Africa to sign off on the audit of a bank. He has therefore served as a role model, particularly to aspiring young black professionals. He has played an important role in retaining black professional talent within Deloitte at a time when it and the other big four firms faced particular difficulties in retaining black professionals and when the number of registered auditors in South Africa has remained static and has not kept pace with the economic and policy developments, including extensive additions to the responsibilities and obligations imposed on an auditor. Mr Bam believes that one of the reasons for this phenomenon is the risk of civil and disciplinary liability attaching to audits, which is heightened in the case of public interest entities. In South Africa, where the talent pool is small, and the demand for services great, the lure to work in corporates where the risk is much lower to the individual, is a big factor contributing to the lack of growth in the profession.

49 The respondent has devoted himself completely to the firm, often making large sacrifices of time and effort.

50 As to his personal qualities, Mr Bam testified that he is exceptionally driven. At the same time, he is receptive to feedback from his colleagues to help his development as a leader and a professional. He does sometimes have a tendency to take on too much work and responsibility himself and displays an inability sometimes to slow down and disengage from work. This however is something that Mr Bam testified he should not be faulted for.

51 Given the respondent's being a role model to young professionals, a sanction of deregistration would have a devastating effect on aspiring black

professionals as well as the profession as a whole. It would send the message that those who take on large and demanding assignments are exposed to career-ending sanctions for infractions that involve no dishonesty or want of integrity.

52 Mr Bam spoke of the respondent as a person of integrity, based on his experience of working with him over the years. He spoke of the importance of integrity as a required quality for auditors at Deloitte. Both from a perspective of what he has gone through as a result of the African Bank matter and because of his qualities as a leader and his talent as a professional, the respondent is seen as a valuable individual to the firm. He will learn and improve from the experience that he has gone through. He considers the respondent to be a person who has a lot to offer the firm in future leadership roles. This is something that deregistration would prevent from happening.

53 Mr Bam went on to testify about the personal toll that the prosecution in relation to the African Bank audit and the investigations of the Myburgh Commission had taken on the respondent. Whilst these processes have been underway, he has had to be taken off audits because his competence, skill and integrity has been questioned, particularly due to the charge of dishonesty. Despite this, the respondent has continued to prove himself a valuable member of the firm. He has made himself available for other roles and has taken on responsibilities outside of the audit function. He has performed these tasks well, something which demonstrates his tenacity and determination to provide value to the firm and the profession.

54 The decision on the merits conveyed to Mr Bam that what contributed to the African Bank charges against the respondent, was a failing on the respondent's part to recognise the limits of his capacity in terms of the work that he could physically manage and complete himself. The respondent also placed too much trust in others to execute the audit to the standards he expected of himself. He believes that *"this is a case about a highly talented, driven and competent professional who was over stressed and failed to recognise this at the time … There were management problems in the audit and [the respondent] centralised too much of the work."* He also believed that there was a communication problem in relation to the role and responsibility that each of the other leaders of the audit was performing, resulting in flaws in the process and matters having been left unattended which should have been attended to.

55 Mr Bam accepted that there had been failings by Deloitte as a firm and that it had failed to put sufficient resources in the appropriate documentation and detailed execution of the audit. He accepted the criticisms of the firm in Mr Chidgey's witness statement. He expressed the view that all the blame for the failings that occurred in the African Bank audit should not be placed squarely on the respondent's shoulders. *"It is as much a firm failure as a personal failure that he was stretched to his physical limits on this audit"*.

56 He concluded by expressing his belief that the respondent ought to be given the opportunity to learn and develop from this experience and continue to lead the firm and others into the future with renewed vigour and as a dedicated professional.

57 His oral evidence confirmed and adumbrated upon the evidence in his written witness statement.

58 In cross examination, Mr Bam stated that he was, in referring to the fact that the respondent had been acquitted on the dishonesty charge, not trying to minimise the charges on which he was found guilty. However, he did believe that this warranted a difference in the kind of sanction that should be imposed. He accepted that the charges upon which the respondent had been convicted were serious but did not believe that a fair outcome would be one which ended the respondent's career.

59 The pro forma complainant emphasised the extent of the audit failures underlying the charges upon which the respondent was convicted and suggested that these were not properly being considered by Mr Bam. Mr Bam disputed this. He recognised the extent of the failures, but repeatedly stated that he did not consider the ultimate sanction of deregistration to be justified.

60 It was put to Mr Bam that the respondent was a risk to the public were he to be allowed to continue auditing. Mr Bam did not accept this. However, if the panel found that the respondent was a risk to the public, Mr Bam would accept that finding.

61 It was put to Mr Bam that the charges upon which the respondent was convicted reflected errors on issues that were elementary to a bank auditor. Mr Bam disputed this.

62 It was put to Mr Bam that the firm put in place perfectly adequate and capable resources to assist the respondent, yet he still erred. Mr Bam disagreed.

63 It was put to Mr Bam that the fees charged for the audit in the region of R25 million were disproportionate in the sense that the outcome failed shareholders. Mr Bam testified that this was a legal issue upon which he was uncertain as to what the law prescribed.

64 It was put to Mr Bam that it was not an appropriate solution to the problem of retaining professionals in the profession to become lenient where there had been material breaches in the audit practice. Mr Bam answered that he was not pleading for leniency but considered deregistration inappropriate. He also considered it inappropriate to use one individual as an example to resolve all the problems faced by the profession.

Ms Lusu

65 The next witness to give evidence in mitigation was Ms Lusu. She is a chartered accountant by profession and served her articles at Deloitte in the Financial Institution Services Team from January 2010 to December 2012. After her articles she went on secondment to Deloitte New York from January 2013 to March 2013 and then joined Deloitte as an audit manager in May 2013. She was the lead audit manager on Project Lakeside, being African Bank Investments Limited's rights offer. She has since left Deloitte and is currently employed as the head of finance for Group Cash at a listed commercial bank.

66 She read out her witness statement which was not contested and she was not subject to cross examination.

67 She testified generally in relation to the support that the respondent had given to her throughout her career. This began when she achieved good matric results but her parents were not able to afford her university fees. The respondent put her in touch with the Deloitte recruitment team. From there she went through an interview and assessment process resulting in her being awarded a full scholarship to study towards achieving her goal of becoming a chartered accountant. He was also a source of inspiration to her during her studies even though she did not interact with him much during this period.

68 She considered herself particularly privileged to be able to work with him when she started at Deloitte in the division that he was heading. He set high standards and she did her best to ensure that her work met his expectations. His reputation at the firm was one of being extremely thorough and very intelligent. He taught her the importance of being well prepared and of excellence.

69 The respondent encouraged her when she did not pass on her first attempt at her second qualifying exam. He offered his assistance and went through her exam script with her to show where she had gone wrong. He did this despite his heavy other commitments in the firm at the time.

70 She recalled working with him on the African Bank rights offer. They would often work through the night and on weekends. It was a very tough and demanding period. There were times when she would get into bed at 6am

knowing that she would have to be back at the office by 8am. She was impressed by his consistency, dedication and commitment to doing the best job. There were times when she would leave the office during the early hours in the morning and as she left the building, she would see him sitting in the Boardroom by himself still working hard. He would then be back at the office when she arrived in the morning. She observed that he was "*taking strain and was tired"*.

71 Even after leaving Deloitte, he remains an inspiration to her. She was recently selected as a top performer at her current employer and felt a deep sense of gratitude for the respondent's contribution in this regard.

Mr Jordan

72 The respondent provided a witness statement and also gave oral evidence in mitigation of his sanction.

73 He testified about the impact of the audit on himself and his team because of its sheer complexity, the extent of his responsibilities and those of his team.

74 One of the most complex aspects of the audit was how fluid it was, with nothing cast in stone until the audit was complete. Having made a profit before restatement in 2012, the Bank's fortunes changed dramatically and rapidly. Management had only agreed to pass the necessary additional impairment charges by 18 October 2013, 10 days before the final audit and risk committee meetings and 7 days before a SENS announcement had to be made for

purposes of the rights issue. There were multiple versions and changes in the ACCI's that were presented. There were multiple, fluid workstreams involved.

75 The extent and volume of the work in the 2013 African Bank audit was greater than any other audit which he had ever experienced in his career. He would find himself working with the audit team in the morning, the Bank's management team in the afternoon and finally with Goldman Sachs discussing the rights issue in the evening. Responsibility for the audit with all its complexity and moving parts fell squarely on his shoulders as signing partner. It was exceptionally demanding and challenging. He would frequently have calls late in the evening and sometimes at 2 o'clock in the morning with the New York office of Goldman Sachs, to respond to their queries and concerns.

76 The size of the audit file increased by about 50% in terms of the documentation that was required. New procedures in relation to impairment required working very fast with longer hours than anticipated. Judgment calls were required on his part on a continuous basis with multiple individuals requesting his opinion on a multitude of different topics within the various workstreams almost daily.

77 Another example of tight timeframes leading to pressurised audit work was the scheduling of the final audit and risk committee meetings for 29 October. This resulted in their having to formulate the final report to the audit committee during the course of the weekend of 25 to 27 October 2013 so as to be able to consider it with his partners on Monday 28 October 2013, and then to present it to the audit committee for its consideration on the night before the meeting. It

was clear in the audit and risk committees that the members of those committees did not have a sufficiently challenging mindset.

78 In that respect he ought to have requested the deferral of the audit and risk committee meetings by at least a week to think through the implications of the significant changes that were being made during the course of the audit. This would also have allowed reviews of the working papers and additional consideration of some of the judgment calls that were being made up to the last minute. The difficulty, however, was that Goldman Sachs and the Bank's management had communicated a timeframe around the rights issue to the public, which required the signature of the reporting accountant's reports by 31 October 2013 as a prelude to the rights issue. Moreover, at that time, delaying financial results in order to perform further audit procedures was virtually unheard of. This is no longer the case.

79 Although additional resources were provided to bolster the senior team with additional partner support at the contentious meetings held with management and the SARB, they were still insufficient. He took responsibility for not ensuring that the audit team was better resourced. It would, however, have been difficult to supplement the team midway into the audit because of the time this would have taken to bring new staff members up to speed. Ms Sangoni who was allocated to continue to fulfil the duties of a senior manager, despite having been made partner, did not have the time and capacity to get up to speed fully on the credit impairment section. This meant that the senior manager role on the credit impairment section fell to Mr Brian Mavuka who had dealt with this section in previous years. However, the bulk and complexity of

the credit impairments was significantly larger in 2013 than in previous years and, with hindsight, another experienced senior manager should have been added to assist Mr Mavuka.

80 Another complexity that had unintended consequences was that virtually the same core of the team who worked on the 2013 African Bank audit, was responsible for the 2013 audit of a big four bank, a significant part of which had to be completed in the period September to November 2013. Because they had been working so hard, this team was given leave from 16 December 2013 until early / mid-January 2014. Unfortunately, this holiday period coincided with the 60-day period permitted in terms of Deloitte archiving policy to complete the file after sign-off. The holiday break therefore cut into the time that the team had to get the file in order. This played a role in the documentary shortcomings. He ought to have cancelled the leave to ensure that this important task was fulfilled.

81 He also conceded that he could have managed the audit better, *inter alia* by spending more time ensuring that additional people were responsible for the different workstreams, particularly the one relating to credit impairments. He ought also to have looked deeper into some of the issues and considered them more closely himself and ought to have requested additional time to do that. Ultimately, however, he was the responsible partner for the audit and could not ask another partner to sign-off on the rights issue because this would have been unacceptable to Goldman Sachs.

82 He underestimated the volume and complexity of the work that he would be required to deal with and the toll this would take on him and the team. The team recorded over 10,000 hours for the ABIL and African Bank audit with an additional 4,300 hours on the rights issue. This meant in aggregate some 14,300 hours in comparison with the 8,900 hours spent on the 2012 audit. He could not minimise the impact of exhaustion on his and the team's part as a result of working exceptionally hard over an extended period.

83 Another problem was that the system of quality control and specifically the special review partner was not based on specific guidance on their role. There was also over-reliance on specialists such as Mr Burra. He considered that the Committee's decision reinforced that greater ownership by the engagement partner is required in respect of the work of specialists.

84 A final problem in relation to the audit was the disconnect between Mr Mavuka's team and Mr Burra's team.

85 He gave evidence in relation to the particular charges on which he was found guilty. In doing so he emphasised that he should not be understood to point fingers at others. He accepted ultimate responsibility as engagement partner for what went wrong.

86 In relation to charge 1, the respondent testified as follows:

86.1 Mr Mavuka had a broad responsibility insofar as he performed the role of senior manager for credit impairments as a whole; this resulted in a significant amount of work that he had to do, not being

done; however, the respondent realised now that his oversight of Mr Mavuka and the work he performed was insufficient;

86.2 Mr Mavuka's knowledge and experience was insufficient for the particular complexity and extent of the work that he had to deal with in 2013; again the respondent accepted that the fault was his in not identifying the problem at the time and taking steps to ensure correct resourcing;

86.3 Both he and the firm failed to recognise the need to bolster Mr Mavuka's role with additional personnel;

86.4 From the side of management, there was too much dependence on Mr Nalliah who was overstretched and himself had insufficient support;

86.5 He had brought this and other difficulties to the attention of Mr Kirkinis and Mr Pinnock; Mr Kirkinis had assured him that he would step into the breach but there was still insufficient support from a management perspective.

87 In relation to charge 2, the respondent made the following points:

87.1 The work underlying charge 2 required the audit team to handle various aspects separately from each other; this meant there was no time to sit back and interrogate the results of the various workstreams in a holistic way before the partners meeting on 28 October 2013; for example, Mr Crowther had to perform technical

consultations with Mr Derwin while Mr Mavuka had to deal with the quants aspects with Mr Tenzer and Mr Burra;

87.2 Remote working was a complication in that Mr Brian Botes worked in Durban;

87.3 The failure to integrate the work of the different teams was a failure on the part of the firm as well as on the respondent's part for not ensuring an early opportunity at which the team could all come together at a set time to debate the issues; this failure resulted in the inadequate interrogation and documentation of the reasons for the day count adjustment made by Mr Burra;

87.4 The respondent had considered and reflected deeply on the comment in the merits decision[9] that –

> *"It was unnecessary and inappropriate for the first respondent to seek, during oral evidence and retrospectively, to correct his 2013 final report to the audit committee in a manner that purported to align more closely with his defence."*

87.5 He emphasised that there was nothing untoward in suggesting these changes – after having had the benefit of Mr Cohen's input he perceived a need to bring terminological accuracy to his testimony which was lacking in the table; he wished with the benefit of hindsight to correct what he perceived to be errors in the 2013 audit report to the audit committee. He was not intending to alter or amend a document in the audit file but rather to point out to the

[9] At para 453.

hearing, errors that he had not identified before receiving the benefit of discussions with Mr Cohen;

87.6 In relation to the Committee's analysis around the failure to gather the audit evidence required by Ms Ranchod's consultation, he felt that his accumulated knowledge of the bank and impairment methodology counted against him. The manner in which he worded his comments on the Ranchod opinion were shorthand and not sufficiently clear to someone else reading them;

87.7 Had they not faced the archiving limitations referred to earlier, this was an aspect on which he would have included additional commentary in terms of explaining how it related to the working paper around cash instalment receipts.

88 In relation to charge 3, the respondent pointed out the following:

88.1 The quality of Mr Derwin's technical opinion was substandard but they were not aware of this at the time. He relied on Mr Derwin's opinion because he considered the technical experts to have superior knowledge of IAS39; he did not know why the consultation paper had not been signed and dated by Mr Derwin;

88.2 The opinion was marked as a draft probably because it was never sent to client; the reason for the date of 3 October 2018 that it bore on its face was simply that the document was last saved and printed out on that date when the annexures for his witness statement were prepared;

88.3 He accepted that he ought to have assessed and challenged the opinion;

88.4 He also accepted that he ought to have ensured that the effect of not following the opinion in relation to the in-term cash flows should have been checked and recorded in the overs and unders schedules from 2010 to 2012, as had been done in 2009.

89 In relation to charge 6, the respondent pointed out that he accepted and understood that the documentation ought to have been included in the African Bank working papers and that a conclusion on the impairment of the Ellerines loan and supporting reasoning should have been documented with those working papers. He fully accepted that this was an error on his part and that his review of the African Bank file ought to have picked up this aspect.

90 In relation to charge 9, the respondent pointed out the following:

90.1 He believed that it did not matter if there were underlying mistakes in the assumptions and the reasoning that management used to get to the account balance as long as he thought that the account balance itself was not misstated; he now appreciated that he dealt with the issue incorrectly because he ought to have documented and explained his reasoning in this regard;

90.2 As a team they did interrogate the account balances; their failure however was in not recognising the differences as errors up front and documenting them as such; at the time he believed these differences did not result in a misstatement but he accepted that he

ought to have performed the relevant calculations contemporaneously;

90.3 From a firm perspective, the firm's quality control processes should have picked up the error as well because the erroneous *in duplum* treatment was described in the audit committee documents as well as in presentations to the SARB.

91 The respondent went on to testify about the personal impact of the African Bank curatorship and the subsequent disciplinary process on him. Shortly after the Bank was placed under curatorship, he was told by Mr Pinnock that Mr Winterboer preferred not to have the respondent lead the audit. This had come as a surprise to him, because he had been specifically asked to stay on as engagement partner with the blessing of the SARB.

92 The Myburgh Commission was something which he did not know any other partner of the firm to have been subjected to in terms of the Banks Act. It was difficult dealing with the process when he was no longer the engagement partner.

93 On 12 December 2014, he first received a letter from IRBA indicating that he was being investigated in relation to the 2013 African Bank audit. On 9 December 2016 he learned for the first time, upon receiving the draft charge sheets, that there was an allegation of his being involved in dishonest conduct in relation to the 2013 audit. This allegation *"hit me like a brick wall and caused me untold distress"*. At that stage he was still involved in the audit of a big four bank for its December 2016 year end and throughout the entire Christmas

holidays his mind was consumed with the charges, in particular that of dishonesty.

94 Early in the New Year when the allegations and charges became public knowledge via the media and after discussion with the audit committee chair, he offered to step down from the audit of the big four bank.

95 Stepping down had a very severe and humiliating impact on the respondent. He had to step off all his audits, the largest of which was that of the big four bank.

96 In each instance where he had to interact with clients of the firm, he had to discuss with them and disclose up front that he was the partner who signed off on the African Bank audit and who was being written about negatively in the media. For him this was soul destroying. He could sense the unease with which other professionals treated him and made him second-guess his own competence.

97 In the media coverage of African Bank, the role which he played was often mentioned together with the management wrongs perpetrated in the Steinhoff and VBS Mutual Bank scandals.

98 He had been very proud of the fact that he had been the first African black partner to sign off on the audit of a big four bank. He had hoped that this would encourage aspiring young black professionals to join the profession and to be confident that they could achieve the same. Having been charged with overseeing transformation in Deloitte, something he is passionate about, the

charges had curtailed his career in this regard. He felt that he had let the firm down as well as his partners and colleagues.

99 He expressed the hope that the sanction imposed by the Committee would afford him another opportunity to demonstrate resilience and to use his experience as a force for good for the profession.

100 The effect of the prosecution has been that he withdrew from the organised profession, including the Advisory Council of the Association for the Advancement of Black Accountants of South Africa.

101 At a personal level, he has had to deal with the fact that his young children have grown up with more than half of their lives being clouded by the African Bank process, given that it has taken six years and is still not concluded. The charges have affected his ability to serve as a good role-model for his children. He has had to have difficult conversations with his family about the negative media about him.

102 One of his family members had commented recently that he had cultivated a shield for his emotions in his professional life to deal with what had happened but that this shield had spilled over into his personal life. This most difficult period of his professional life had been damaging to his personal relationships and his general health.

103 The damage to his name as a result of the African Bank controversy was something which would live with him for the rest of his life. This stigma was hurtful for him. His father had been a professor in the accounting department at

Fort Hare University and had been his inspiration. He had been proud to have become the first chartered accountant in his family and his father had also viewed this achievement with pride. Facing the allegations had therefore been a source of humiliation for him and he was saddened that he was unable to explain to his father that he had been found not guilty of dishonesty before his father had passed away.

104 In relation to potential sanctions that he faced, he pointed out the following:

104.1 He was immensely grateful to Deloitte for the support and confidence which they continued to show him and for enabling him to continue in the accounting profession;

104.2 He had used the experience garnered in the African Bank process to become a champion for increased quality of financial services audits in his firm through workshops and personal interactions;

104.3 He is currently 44 years old, thus having 20 or 25 years of professional life left; he still has a passion for auditing and his involvement in managerial functions does not preclude his practising as an auditor; however his prospects of auditing again in the field of specialisation that he preferred was dependent upon the sanction imposed and deregistration would obviously mean that he would never be able to perform the role of auditor again;

104.4 Whilst he accepted the seriousness of the charges on which he had been found guilty, he does not believe that individually or

cumulatively they justify his being excluded from the audit profession;

104.5 In his ten year period of performing audit engagements at partner level, his audits have been subject to inspection four times; he was reviewed twice by IRBA and on both occasions achieved compliant outcomes; he was reviewed twice internally and also achieved compliant outcomes for both these reviews;

104.6 He fully accepts and embraces the importance from a public interest perspective of the role of lead audit partner of a bank;

104.7 When he became Deputy CEO of Deloitte in 2016, he used his position to establish an initiative focussing on the role of the firm and encouraging responsible business; Deloitte aimed to help 10 million African people by 2030 to have better futures through enabling access to free technology and education in maths and science; he is proud to say that thus far they have impacted on the lives of around 200,000 Africans. Aside from driving this initiative he intended to take on further mentoring and coaching roles for entities created through this initiative and to partner them with the firm.

105 The respondent was cross examined regarding the statement he had made during the merits stage of the hearing to the effect that even with the benefit of hindsight he would not have formed a different audit opinion in any of the years in question. In response, the respondent pointed out that this was a statement

submitted in the early part of 2018 and reflected his attitude at the time. He clarified that:

> *"Nothing I say out of this hearing or in my statement submitted for the sanction … is going to retract or change or challenge in any respect, the findings that the Committee has [made]."*

106 He accepted that the effect of the Committee's ruling on the merits was that he had failed shareholders, the JSE and the Reserve Bank. He testified that he had also failed himself and some of the rulings that the Committee had made were, personally, particularly disappointing to him.

107 In cross examination, the respondent was taken through the nature and implications of the findings on the various charges in the decision on the merits. He was also taken through the events marking the rapid demise of African Bank during 2013. It was put to him that in this context, alarm bells ought to have rung in relation to management's attempts to justify the gap that formed the subject matter of charge 1. The respondent disagreed and referred to his having transparently conveyed to the audit committee and to this Disciplinary Committee his state of mind and his conduct during the audit. He was not seeking to "*try and demerit the findings that the Committee has already found*".

108 It was put to the respondent that he vacillated between accepting nominally what the merits decision had found but in truth, contesting it. The respondent disagreed, saying *"I have accepted warts and all the personal and firm criticism … I take utter responsibility for … the decision that the Committee has made."* However, he disputed that the errors forming the subject matter of the charges related to issues that were elementary. He insisted that they were made in the

context of "*hugely complex and judgemental estimations that we needed to make"*.

109 It was suggested to the respondent that he sought to shift blame to other auditors within Deloitte. In response he testified that in respect of each of the charges he was the one who ultimately made decisions and he directed the teams to conduct the audit procedures, and was responsible for the nature and extent of the timing of the audit procedures - he accepted that.

110 In relation to charge 2, and his failure to do the work required in the Ranchod opinion, the respondent interpreted the merits decision as not holding that he failed to do audit work at all but rather that the audit work was inappropriate and did not go to the required level of granularity.

111 It was put to the respondent that in relation to charge 2, he ignored indicators from Mr Burra, Mr Tenzer, Mr Van der Bergh and Mr Raubenheimer that the manner of determining impairments was inappropriate. The respondent considered the finding of the panel to be that he failed adequately to weigh the evidence that a contrary approach was appropriate. The finding was not that he ignored it.

112 In cross examination in relation to charge 9, the respondent generally accepted what was put to him as to the findings of the Committee. He had considered his reliance on the "auditor's range" to be appropriate but that he had "*taken a lot of criticism from the panel in that respect, I accept that"*.

113 In relation to his changes to the 2013 audit report during his evidence, he insisted that *"I was not at the time of the evidence or now trying to justify or change the communication to the audit committee … What I was changing … and I am trying to be [of] assistance to this committee, was [in] rectifying some of the mis-terminologies that were used in 2013."* He believed that the report communicated appropriately what they wanted to communicate to the audit committee i.e. that they were out of line with industry practice. When it was pointed out that his amendment sought to align with his defence, which was ultimately rejected, the respondent testified that he had no intention to try and mislead the Committee.

114 Reference was made to a table depicting the audit standards that had been breached in relation to each of the charges on which he was convicted and it was put to him that this painted a fairly alarming picture. In response he made essentially the same point that had been made by Mr Chidgey in relation to the standards. He did not consider the breaches of the standards to warrant deregistration.

115 The respondent was taken to a table prepared by the pro forma complainant setting out the total extent of the misstatements arising from the errors forming the subject matter of the five charges upon which the respondent was convicted. In response he said that although the amounts were less than the amounts in respect of which he had been charged, he took little comfort from that. However the errors were in relation to highly subjective, highly judgmental and critical areas. Standing in mitigation of his conduct, he said, was the fact that R4 Bn and more adjustments had been made outside of the impairments in

areas like goodwill. These were not inconsequential in terms of the impact on the bank and the group. Further he referred to the role he played in making sure in 2013 that there was a R2.2 Bn impairment in respect of *in duplum*. Further, had he known in the years from 2009 to 2013 that he was in error, he would not have signed off on the audit opinions but would have insisted that management make the requisite adjustments.

116 It was put to the respondent by the pro forma complainant that matters of judgment were not involved but rather the correct application of IAS39 and the correct calculation of the original effective interest rate. These items were elementary. The respondent disagreed.

117 It was put to the respondent that he had failed adequately to deal with management bias and the aggressive approach adopted by management. The respondent disputed this.

118 When cross examined about the impact on the public of material misstatements, the respondent said that he understood this but asserted that investors would not place reliance only on audit opinions and reports.

119 The respondent accepted wholly the Committee's finding that he had failed to meet the challenge presented by the audit insofar as the five charges were concerned, but was distressed at the suggestion that he would be a danger to the public if he were to be allowed to continue to practice. He insisted that he was not a danger to the profession and wishes to continue with his *"first love in his profession … [the] auditing [of] banks."* He believes that he has learned a

lesson from these proceedings and has a positive role to play in the betterment of the profession.

120 The respondent was asked by the Committee whether, at the age of 33, he had not been saddled with too much responsibility in being appointed as engagement partner for African Bank. He considered this not to be the case and referred to the experience that he had already gained at that time. He was asked whether it did not present a difficulty that he had to assert himself against management who were significantly older than him. He did not consider this to be a problem.

121 The committee expressed its concern at the fact that the issues underlying the charges consistently involved understating rather than overstating impairments. This gave an impression of a lack of sufficient ability to stand up to management. The committee needed assurance that this was a problem that he had taken on board and would address in the event that he were to be allowed to continue to practice. He referred to the example of how he had, subsequent to the 2013 audit, when auditing the big four bank referred to, been alert to the issue of management incentives and bonuses and required the provision by management of information about these and, in particular, how the incentives were linked to the outcome of impairments. He used this example to demonstrate that he was willing to assert himself against management in future audits.

Approach to determining an appropriate sanction

122 The question of sanction is considered by the Committee from three perspectives:

122.1 First, the nature of the misconduct of which the auditor has been found guilty;

122.2 Second, the public interest, including the interests of both the auditing profession and the broader public, particularly that part of it which places reliance on the services provided by the auditing profession; and

122.3 Third, the personal and professional circumstances of the auditor and the potential impact on him of the sanction.

123 Both parties were familiar with the approach of the Committee and the evidence and argument which they presented, as summarised above, traversed these three areas of consideration. All of the evidence, tempered where appropriate by the responses under cross-examination, and the evidence of opposing witnesses, has been taken into account by the Committee.

124 We proceed to refer below to the main considerations that impact on the decision-making process in relation to the three areas of enquiry.

The nature of the misconduct

Introductory

125 The nature of the offences of which the respondent has been found guilty, is set out in great detail in the decision on the merits. There is no need to repeat that here. The task of the Committee at this point is rather to determine how those offences are to be characterised from the perspective of an appropriate sanction. Where there was debate about the meaning of the decision on the merits, we choose in the main not to enter into that debate. That decision stands. The reasoning is extensive and it is the Committee's view that its stance is clear.

Acquittal on the dishonesty charge

126 There can be no doubt that it is in the respondent's favour that he was acquitted on the charge of dishonesty. We accept the submission made on behalf of the respondent in argument that ordinarily it is a finding of dishonesty that tends to result in deregistration. Manifestly, the auditing profession cannot function or exist unless the public has the assurance that auditors are honest and are persons of integrity. Further, the public is entitled to expect that where an auditor is dishonest or displays a lack of integrity, the regulator would act to ensure that they were no longer allowed to practice in the profession. The acquittal of the respondent on the dishonesty charge takes the present matter out of that category.

Seriousness of the charges on which there was conviction

127 Having said that, the charges upon which the respondent was convicted were serious ones. This much was common cause amongst all of the witnesses who dealt with the issue, including the respondent himself. Although it is common cause, it is appropriate to delineate the main respects in which each of the charges must be considered to be serious, *inter alia*, because the degree of seriousness was not a matter upon which the Board and the respondent were in agreement.

128 The charges are serious because they all relate to the most significant item on a bank's balance sheet, namely the net advances. If impairments are not determined with a reasonable measure of accuracy, the result is the misstatement of net advances and an inaccurate representation of the value of the bank itself.

129 It is also not correct to characterise the charges upon which the respondent was convicted as being technical or purely technical in nature. As was pointed out by Ms de Beer, auditing is an inherently technical process, guided by a framework of accounting and auditing standards. Where there is a failure properly to apply these, there is a failure at the heart of the auditing function.

130 There was an attempt by Mr Chidgey to suggest that, to be seen in context, the amount of the misstatements emanating from the errors that gave rise to the convictions was low in comparison with the figure for gross advances, which was in the region of some R80 Bn. Ms de Beer disagreed. For her, the appropriate yardstick by which to judge the seriousness of the charges was the

materiality level that was set for the audit. It is this figure which determines whether or not there is a misstatement and it is also the figure upon which the users of the financial statements will rely in assessing and acting on the information in the financial statements. Audit materiality for 2013 was set at R80m for African Bank.[10] The misstatements underlying each of charges 1, 2 and 3 was thus several times materiality. The same essentially applies to the years 2009 to 2011, as appears from the table below.

131 The seriousness of the charges is also apparent when viewed with reference to the amount of the misstatements found by the Committee in respect of each charge. This is depicted in the following table, showing both the income statement and balance sheet impact in each of the years:

	Charge 1	**Charge 2**	**Charge 3**	**Charge 9**	**Income statement impact**	**Bal sheet impact**	**Materiality for year**
FY 2009	N/A	N/A	N/A	R 532 m	R 532 m	R 532m	R 111 m
FY 2010	N/A	N/A	N/A	R 266 m	R 266 m	R 798 m	R 147 m
FY 2011	N/A	N/A	N/A	R 520 m	R 520 m	R 1318m	R 166 m
FY 2012	N/A	N/A	N/A	(R 325 m)	(R 325 m)	R 993m	R 130 m
FY 2013	R 656 m	R 637 m	R 489 m	N/A	R1,782 bn	R 1,782 bn	R 80 m

132 The respondent argued that in considering the quantum of the misstatements found by the Committee, perspective must also be gained by considering the amount of the misstatements with which the respondent was originally charged, which was several times greater than the amount ultimately found. This is so, and is taken into account by the Committee in considering sanction. However,

[10] It was R190 million for ABIL. The misstatements, however, all emanate from the Bank.

it should not draw attention away from the seriousness of the quantum of the misstatements ultimately found to have been proven.

133 The charges are also serious from the perspective that the entity being audited was a Bank operating at a level which had systemic implications when its financial stability came into question. The importance of financial stability in the banking sector to the economy as a whole is a reason for enhanced accuracy and quality of reporting and auditing. This is borne out by the uncontested evidence of Ms Mshengu of the Prudential Authority.

134 The charges are also serious insofar as the audit pertained to a Bank whose business model was inherently risky, bearing in mind that it did not rely on deposits but rather on funding from financial institutions or through corporate bonds at a higher interest rate than would be paid to depositors. Such funders provide funding subject to stringent covenant requirements and when profitability is below expectations or there are structural pressures on the balance sheet in respect of gearing or when there are economic difficulties that raise concerns around the recoverability of the Bank's debtors, the risk arises that the funders may be unwilling to renew funding facilities. That risk, along with the fact that the respondent and his team had themselves recognised the audit as being one involving much greater than normal risk, enhanced the duty of care in relation to the conduct of the audit.

135 In relation to charge 9 the seriousness is inherent in the following aspects of the conviction on that charge:

135.1 It was an offence repeated over many years. It would have been open to IRBA to prosecute a charge in respect of each of those years as a separate instance of misconduct; having dealt with it in a single charge, its cumulative nature enhances its seriousness;

135.2 The repeat nature of the misconduct is more serious on account of the fact that the respondent had an opportunity to reflect in each year subsequent to 2009 whether the approach in the previous year had been correct;

135.3 The fact that the error on the part of management in relation to the *in duplum* issue was identified as far back as 2009, meant that there were substantially more opportunities to force management to correct their erroneous approach; it was only in the fifth financial year that the respondent eventually forced management to deal with the error. By that time the problem had become overwhelming and its quantum had a knock-on effect in the sense that it made it impossible to persuade management to accept proper adjustments in respect of the misstatements of impairment identified in charges 1 to 3.

136 In relation to charge 2, the seriousness is contributed to by the respondent's attempts to correct the final report to the audit committee for 2013 in the course of the hearing. At the sanction hearing the respondent sought to characterise this as simply providing terminological clarification, as explained above in summarising his evidence. The following example of an extract from his testimony in the merits hearing does not seem to bear this out:

"THE RESPONDENT: … So, I have acknowledged the fact that there are errors, I am now trying to explain why that is the case. I am trying to correct the table and I have indicated to you and the Committee where I myself am disappointed in terms of the … interpretation that was done for this table – in constructing this table, apologies."

MR SIMON: The respondent, the second line is called performing loan methodology.

THE RESPONDENT: Yes.

MR SIMON: Is that also wrong?

THE RESPONDENT: It is incorrect in that what needs to be replaced. And that is the error there. The RoR rate which is RR should be EF, it should be the emergence factor …"

Complexity, pressure and judgemental nature of the issues

137 The respondent raised as an issue in mitigation the complexity of the audit and the difficult judgements that were involved. In this regard the Committee makes the following observations:

137.1 It must be acknowledged in mitigation of the respondent's sanction that some of the issues arising in the audit were complex, particularly in relation to charge 2. However, this mitigating circumstance is tempered in some instances by the fact that the respondent was able to point out in prior years or in the report to the audit committee that management's approach was out of keeping with industry or was in conflict with IAS39; this demonstrated that the respondent was able to deal with the complexity but fell short in other respects such as resisting pressure from management to limit impairments;

137.2 The fact that in all of the errors there was a tendency to understate impairments points to there being something other than complexity

at play. Rather, the cause appears to have lain in the failure to apply professional scepticism and, in the case of charge 2, the failure to recognise and deal with management bias.

138 The pressurised circumstances under which the audit was conducted, compounded by the need also to deal with the rights issue and with the mixed messages coming from the Bank's credit and finance departments are accepted by the Committee as a significant mitigating circumstance.

139 The unchallenged evidence about how hard the respondent was working at the time and the long hours, substantiates the difficulty he faced in this regard. It does, however, still point to a failure to push back against management for placing the auditors in this situation, along with a failure on the respondent and the firm's part to plan and resource the audit in a manner appropriate to the circumstances.

Technical experts

140 The respondent pointed out in mitigation that on complex issues, including the appropriate interpretation of IAS39, he placed reliance on the technical experts within the firm. This is so and again the Committee accepts this as a mitigating circumstance.

141 However, the extent to which it is able to do so is limited by the fact that wherever such expert guidance was obtained, the process did not follow the auditing standards. It is the failure to follow the auditing standards in relation to the proper briefing of the expert, confirmation and discussion of the opinion with

him or her, and appropriate execution pursuant to the opinion, that created the very problems that arose in the audit. The auditor has a far broader understanding of the circumstances underlying the audit and is both able and compelled to use that knowledge to ensure that the expert has correctly understood the brief. This is of paramount importance in ensuring that the expert correctly applies his or her expertise.

Adjustments would have been sought

142 The respondent also raised in mitigation that, had he known that he was erring in the respects identified in the charges upon which he was convicted, he would have sought an adjustment from management with the result that there would never have been any misstatement or need to qualify his audit opinion.

143 It seems to the Committee that there is a limit on the extent to which this can be taken into account in mitigation. If an auditor fails to seek the requisite adjustment, then he or she must bear the consequences when a misstatement in the signed and issued financial statements is later revealed. In respect of most of the charges, the auditor was shown to have been aware of the error but it was his very failure to seek the adjustment which resulted in the charge.

No complete audit failure

144 In considering the nature of the offences involved, Mr Chidgey made the important point that this was not a case of a complete audit failure. We agree. There have been other cases before the Disciplinary Committee where, in truth, no audit work was done at all. These have sometimes led to deregistration,

despite there having been no dishonesty. We are not dealing with such a case here. The position was well put by Mr Cameron-Ellis, the main witness for the Board during the merits decision as follows:

> *"The working papers were voluminous. There [was] clearly a structured approach to the entire audit based on a very structured framework… It was a comprehensive file. You are not looking at an auditor who has not audited a particular number. The numbers were properly dealt with in most instances and we have got specific instances where … they were properly documented and listed in my report."*

145 This is a particularly important consideration in assessing the pro forma complainant's assertion that the respondent ought to be deregistered.

The public interest and the interests of the profession

146 African Bank Investments Limited was a company listed on the Johannesburg Stock Exchange, where its shares were traded. The consequences of that are well known. Members of the public trade in the shares without having access to company financial information that the auditor is privy to. This creates a particular duty of care to the public. In this regard, the public includes not only the wealthy, but ordinary and working class members of society whose pensions are invested in pension and provident funds that trade in the shares of listed companies and serve as the repositories of their often meagre retirement savings.

147 As pointed out under the preceding heading, the audit also pertained to a bank of a size significant enough to present a threat to the stability of the financial system when it ran into financial difficulty. This is why the Reserve Bank stepped in by applying for curatorship.

148 It is for this reason, i.e. the link between financial institutions and the stability of the entire economic system, that there are particular regulatory provisions dealing with the audit of banks and specific duties cast upon bank auditors. These circumstances impose an enhanced responsibility on auditors for accuracy and diligence in their conduct as auditors of financial institutions. Failure to modify the financial statements on account of misstatements will, for these systemic reasons, always have enhanced significance with reference to the public interest.

149 Considering the matter more generally, it is impossible to ignore the scrutiny under which the auditing profession has fallen on account of recent significant company and, in some cases, audit failures. In this regard, it must immediately be recognised that the respondent is to a degree the victim of the time it has taken for this matter to be prosecuted (a problem not solely attributable to the Board as the respondent's counsel conceded). He should not therefore, in any way, be scapegoated for the more recent corporate and audit failures.

150 However, it is not as though the auditing profession was not, at the time of the audit, already under a degree of scrutiny. Viewed from a global perspective, problems in the auditing profession go back to, for example, the Enron scandal of 2001, the Parmalat scandal of 2003 and the financial crisis of 2007/2008. This is something which ought to have been borne in mind on the part of the respondent and Deloitte when conducting this and all other public interest audits.

151 A theme of the respondent's case in mitigation was the difficulty which the audit profession is experiencing in attracting and retaining chartered accountants in the auditing profession. This was attributed to both litigation against auditors and disciplinary proceedings against them.

152 Whilst the Committee acknowledges this to be a problem, it does not sit well with the Committee that Deloitte raises this in circumstances where the disciplinary proceedings have been the product of an acknowledged lapse in standards and quality of work on their part. Logically, the threat of disciplinary proceedings is absent where auditors ensure that their affairs are conducted in a manner that ensures that the risk of disciplinary proceedings is eliminated.

153 In addition to this, Ms de Beer's point was well made when she pointed out that a lapse in standards on the part of the auditing profession would present the greatest threat to its existence and utility.

154 We have, nonetheless been mindful of all of the challenges faced by the auditing profession in South Africa in arriving at an appropriate sanction.

Personal circumstances

155 Much of the evidence relevant to the respondent's personal circumstances has been set out in the summary of the evidence of the various witnesses. It is in every respect taken into account in mitigation of his sanction. Both he and the witnesses who testified in mitigation on his behalf raised a number of very important considerations in this regard.

156 Particular mention must be made of the fact that the respondent has had to endure the pall of suspicion that has hung over him throughout the proceedings until his acquittal on the dishonesty charge. This has been accompanied by practical consequences in the form of having to be withdrawn from involvement in any audits during this extended period. Absent that, the sanction in this matter would have been more severe than that which we determine below.

157 An issue which was of some concern to the Committee in relation to the respondent personally, was a sense that the respondent had not fully taken on board the implications of the Committee's findings in its decision on the merits. The pro forma complainant in cross examining him put to him that there was an element of vacillation between accepting the Committee's findings but qualifying that acceptance. The pro forma complainant's point in this regard is not without some substance. A worrying example of this was the following testimony on the part of the respondent whilst under cross examination:

> *"I <u>believe</u> in each one – in each of the years even for charge 9, in each of the circumstances across the charges that <u>I behaved and conducted myself appropriately at the time</u> and it is embarrassing, it is deeply hurtful in revealing that the Committee has found differently.*
>
> *But it is something that I have to take on the chin and I have and it is something that I need to be responsive to, which I hope to do."* (emphasis added)

158 This supports the point made by the pro forma complainant and raises the concern as to whether, were the respondent to be allowed to continue practising as an auditor, the experience he has undergone in this matter would alter his approach. It is a difficult to reconcile the attitude manifested in the above extract with his assertion that he has "learned his lesson" and that he accepts the findings of the Committee without qualification.

159 An issue which the Committee raised with the respondent was whether he had not been assigned responsibility for a bank audit as engagement partner at too early a stage in his career. The respondent disputed this, but the Committee is not convinced. At the time when he assumed the responsibility as engagement partner for African Bank he was 33 years old. At all stages of the successive audits he was having to deal with management, a number of whom were former Deloitte auditors, who were many years his senior. The Committee is not persuaded that this did not play a role in the events which unfolded. What this points to is a need for firms who recognise and advance young talent, to ensure that the necessary coaching and support is put in place to go along with it. In the Committee's view Deloitte failed in this regard. And it is also up to persons in positions like the respondent to recognise and acknowledge when they are in need of help and to ask for it.

160 On the credit side of the respondent's personal balance sheet lies the fact that he is doubtless a very hard-working, committed and determined professional. We also accept and take into account the evidence of his leadership qualities and his role in mentoring and retaining in the profession quality young black professionals.

161 Moreover, he has no previous convictions and he has been the subject matter of a number of successful internal and external reviews. His record preceding his conviction on the charges in these proceedings, has been unblemished. All of these must count in his favour.

Determination of an appropriate sanction

162 A preliminary issue to be considered in relation to an appropriate sanction is the shared culpability of the firm, Deloitte, with that of the respondent. As appears from the evidence of both Mr Chidgey and Mr Bam, Deloitte accepted that there were aspects of the audit failure that were attributable to the firm and not just to the respondent. In addition to this, there were aspects of the audit, such as the way in which technical opinions were dealt with, which suggest that there were, at the time, broader problems within the firm in relation to compliance with the auditing standards and quality control. These circumstances were advanced as a mitigating circumstance to be considered when determining an appropriate sanction for the respondent.

163 The Committee accepts this as a mitigating circumstance. There is, however, a limit on the extent to which it can be accepted because of the unique responsibility which is assumed by the engagement partner in an audit. In this regard, the relevant paragraphs of ISA220 provide as follows:

> *"The engagement partner shall take responsibility for the overall quality on each audit engagement to which that partner is assigned."*[11]
>
> *"The engagement partner shall be satisfied that the engagement team, and any auditor's experts who are not part of the engagement team, collectively have the appropriate competence and capabilities to:*
> *(a) Perform the audit engagement in accordance with professional standards and applicable legal and regulatory requirements; and*
> *(b) Enable an auditor's report that is appropriate in the circumstances to be issued."*[12]
>
> *"The engagement partner shall take responsibility for:*

[11] Para 8.

[12] Para 14.

> *(a) The direction, supervision and performance of the audit engagement in compliance with professional standards and applicable legal and regulatory requirements; and*
> *(b) The auditor's report being appropriate in the circumstances."*[13]
>
> *"On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued."*[14]

164 In this regard the Committee, in the decision on the merits, acknowledged that the respondent did not work alone in the audit and referred to the various human resources that were made available to him. However, the Committee concluded that as engagement partner he alone must bear responsibility ultimately for the quality of the audit.[15]

165 The respondent referred the Committee to the situation in other countries where the prosecution of the firm along with the engagement partner is a regular practice. Two cases in particular were referred to. The first was the case of *Cattles plc and Welcome Financial Services Ltd.* Cattles was a public listed company and operated the principal lending business of the Cattles Group. PricewaterhouseCoopers was the auditor of these two companies for the financial year ended 31 December 2007, while a Mr Bradburn was the engagement partner. The case had many similarities with the present matter. PwC and Mr Bradburn admitted to misconduct in issuing unqualified audit opinions in respect of the 2007 financial statements of Cattles and Welcome Financial Services. There, both PwC and the engagement partner were

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[13] Para 15.

[14] Para 17.

[15] Para 12 on p10 of the merits decision.

charged and the Financial Reporting Council imposed a fine of £3,500,000 on the firm and a fine of £120,000 and a severe reprimand on the engagement partner.[16]

166 The other case was *AmTrust Europe Limited*, which involved the audit of an insurer. BDO LLP was the auditor of these two companies for the financial year ended 31 December 2007, while a Mr Roberts was the engagement partner. There the misconduct related to the audit work in respect of the provision for outstanding claims. The Financial Reporting Council found that there was inadequate documentation of audit evidence in one financial year and, amongst other things, the opinions of independent actuaries were relied on without taking sufficient steps to gain an understanding of, or to evaluate their work, in the following financial year. There the audit firm BDO LLP, was given a financial penalty of £200,000,[17] a reprimand and the implementation of appropriate training programmes while Mr Roberts, the engagement partner, was given a reprimand.

167 These decisions are distinguishable from the present circumstances in at least the following respects:

167.1 There are aspects of the disciplinary regime which are not held in common by South Africa and the United Kingdom.

167.2 Auditors in South Africa would have been aware of the fact that generally, firms have not been prosecuted in disciplinary

[16] Under the sanctions regime there applicable, these amounts were reduced to £2,300,000 and £75,600 respectively after mitigation and a settlement discount were applied.

[17] Discounted for admissions and early disposal to £160,000.

proceedings and engagement partners have been the party selected for prosecution on the basis that they have ultimate responsibility for the execution and quality of the audit.

167.3 In *Cattles* -

167.3.1 the misconduct pertained to the audit in a single financial year;

167.3.2 management was shown to have deliberately concealed and withheld information from the auditors, whereas in this matter, for the 2013 audit, Mr Raubenheimer provided information to the auditors on the basis of which misstatements could have been avoided;

167.3.3 the nature of the audit failures were across a narrower range of components of the audit than they were in this matter; and

167.3.4 the matter was dealt with by way of a settlement agreement.

167.4 In *AmTrust Europe Limited* -

167.4.1 the inadequate audit work did not impact the truth or fairness of the financial statements for the two years in question;

167.4.2 the misconduct in respect of the 2014 financial year was confined to a single case of a documentation failure i.e. an

email exchange that showed that there had been compliance with the Association of British Insurers' Statement of Recommended Practice on Accounting for Insurance Business, had not been placed on the audit file;

167.4.3 the misconduct in respect of the 2015 financial year pertained only to two aspects of the audit -

(a) neither the auditors, nor the expert actuary, gave any detailed consideration to a pricing index that had been relied upon by management to set the estimated loss ratios for a particular product; and

(b) there were insufficient discussions (and documentation thereof) with the actuary to evaluate the adequacy of the actuary's work,

whereas in the present matter the misconduct was across a wider range of audit work and involved five audits over five financial years.

168 As already indicated, in the view of the Committee, it would be wrong not to take into account as a significant mitigating factor for the respondent, the firm's shared culpability. This is not a particularly satisfactory situation in this case because the diminution in responsibility of the respondent is not absorbed in the disciplinary proceedings by the firm as a co-respondent. That, however, is not something that the respondent can be faulted for. It is a situation which needs to be addressed by the IRBA in the future.

169 The Auditing Profession Act provides for the prosecution of firms: the definition of "registered auditor" in section 1 includes "*an individual or firm registered as an auditor with the Regulatory Board."* In truth, Deloitte ought to have been a co-respondent in the proceedings in relation to African Bank, given the extent to which a large number of staff and partners of the firm were, to a greater or lesser degree, also involved in the audit. It may well be that, had Deloitte been prosecuted as a firm, it would, on its own version, have been found guilty and sentenced to an appropriate sanction.

170 The chairperson raised with counsel for the respondent whether the Committee should not, in these circumstances, make a non-binding pronouncement suggesting that Deloitte make a donation of a particular amount to a historically disadvantaged university as a token of recognition of their understanding of what went wrong on their part. Counsel undertook to obtain instructions from Deloitte in this regard and this resulted in a letter from Deloitte received subsequent to the hearing on 24 November 2020 in which the following undertaking was made:

> *"**Deloitte's symbolic contribution**:*
>
> *4. With reference to Mr Dodson's suggestion at the close of proceedings that Deloitte may consider making a symbolic monetary contribution to a previously disadvantaged university, the respondent and Deloitte have given serious consideration to this suggestion, and have asked us to respond as follows:*
>
> *4.1 Deloitte understands and acknowledges that the respondent did not work alone and that the audit work which is being considered is the work of the firm. Deloitte acknowledges that whilst it was not charged in these proceedings, it would be appropriate for the firm to be afforded an opportunity to participate in maintaining the reputation of the auditing profession. By contributing funding to a previously disadvantaged university with an accounting faculty, it will be*

able to assist in the professional education of black African accountants and auditors.

4.2 You will be aware from evidence given during the sanctions hearing that the respondent's late father played a role in in his own auditing career. Given this, Deloitte will make a R500 000 donation to the University of Fort Hare, which is where his father was a Professor in Accountancy. Deloitte will make a further R500 000 donation to the University of Limpopo. Both these universities have accredited auditing degrees, and will benefit from a monetary contribution.

4.3 The respondent himself would also like to play a role in this symbolic contribution, and has offered to run workshops at these universities, on an annual basis and for at least three years. The primary focus of such workshops will be on the public interest role that auditors play in the economy, as well as in society, and to assist in preparing particularly Honours students for the rigours of the profession. As expressed during the sanctions hearing, The respondent would appreciate the opportunity to share the lessons that he has learnt from his audit of African Bank and from this process, and to share these lessons with students in these institutions.

5. Finally, it bears mentioning that this contribution will be made by Deloitte and the respondent, and both agree that these commitments be recorded in the Committee's judgment on sanctions, regardless of the final outcome of the sanctions hearing."

171 This too is taken into account in mitigation of the sanction against the respondent.

172 Also taken into account in mitigation is the point made on behalf of the respondent that there is a pressing need for successful black African role models as leading auditors. The Committee agrees that an appropriate sanction would be one that affords the respondent a pathway back to assuming such a role.

173 As pointed out earlier, the Board sought the deregistration of the respondent as the appropriate sanction. Its stance was motivated on the basis that the audit failures giving rise to the convictions on the five charges were so serious that

the public could not be subjected to the risk of the respondent returning to the profession.

174 By way of alternative relief, the Board sought the suspension of the respondent's right to practice for a period of three years. Attached to this were proposed conditions pertaining to the maintenance of annual continuing professional development requirements and the undertaking by the respondent of refresher training in relation to accounting and auditing standards pertinent to the respondent's intended client base and refresher training on the IRBA Code of Conduct. In addition to that, maximum fines were proposed in respect of each charge in respect of the relief suggested in the alternative.

175 By contrast, the respondent proposed –

175.1 In respect of charges 1, 2 and 3, a severe reprimand and the maximum fine of R200,000 per charge;

175.2 In respect of charge 9, a severe reprimand and the maximum fine of R100,000; and

175.3 In respect of charge 6, a reprimand and a fine of 50% of the maximum fine i.e. R100,000.

176 The Committee does not agree with the pro forma complainant that the offences of which the respondent was convicted are sufficiently serious to warrant deregistration. Nor is the Committee satisfied that a lengthy suspension from practice for a period of three years is appropriate. It may well be that such a sanction, practically speaking, has the effect of a deregistration,

particularly coming after the respondent has been precluded from involvement in audits during the period in which he has faced the charges.

177 At the same time, the Committee does not believe that fines and reprimands alone are a sufficient punishment, having regard to the seriousness of the offences involved.

178 In the Committee's view, an appropriate sanction will be one that, in addition to appropriate fines -

178.1 imposes an additional sanction commensurate with the seriousness of the misconduct;

178.2 takes into account the period when the charges have been pending, during which he has had to take no part in auditing;

178.3 provides the respondent with an opportunity to improve his skill levels in the areas in which he fell short and to prepare himself for a return to his former role, without immediately resuming the levels of responsibility which he previously exercised;

178.4 imposes a period of a year in which the respondent is precluded from acting as engagement partner or signing any audit opinion while he undergoes a reskilling process

179 In the Committee's view this is achieved by imposing -

179.1 the maximum fines in respect of charges 1, 2, 3 and 9;

179.2 half of the maximum fine in respect of charge 6;

179.3 a sanction of two years suspension from practice, but suspended in terms of rule 8.2 for a period of three years on condition that he does not again commit a similar offence during the three years, refrains from signing audit reports and acting as engagement partner for a year and undertakes the required re-skilling during that year.

180 The Committee is of the view that the sentence which it is imposing provides the respondent with an opportunity during a one-year period to re-qualify himself and prove himself ready for resuming the auditing and leadership roles to which he aspires, without the responsibility of acting as engagement partner and signing audit opinions. During that time, he will be able to return to auditing, but not in the leading roles of engagement partner and signing off on audit reports. The presence of a suspended sentence for a three-year period answers the claim of the Board that he presents a risk to the profession.

181 The Committee believes that the respondent has the wherewithal to return to and build upon the roles that he formerly played and to serve a valuable role in the profession for the balance of his career.

182 Both parties accepted that there should be publication of the merits and sanctions decision in various forms. This is provided for in the order below in the form preferred by the Committee.

183 The parties have reached agreement, which the Committee endorses, that they share the costs of the proceedings. This will involve the contribution of an amount of R31,176,618.30 by the respondent to the IRBA.

184 The Disciplinary Committee issues the following finding under rule 7.6 of the Disciplinary Rules, read with section 51(3), (4) and (5) of the Auditing Profession Act and Rule 8 of the Disciplinary Rules, which finding is effective from 1 January 2021:

184.1 The respondent's right to practise is suspended for a period of two years.

184.2 The sentence in paragraph 184.1 is suspended in terms of rule 8.2 for a period of three years, subject to the following conditions:

184.2.1 the respondent does not commit any offence similar to the offences upon which he was convicted in the decision of the Committee dated 5 October 2020, during the said three-year period;

184.2.2 the respondent is precluded for a period of one year from 1 January to 31 December 2021, both from -

(a) appointment as engagement partner, as that term is defined in paragraph 7(a) of ISA 220 Quality Control for an Audit of Financial Statements; and

(b) signing any audit opinion in respect of any audit;

184.2.3 The respondent must during the three-year period of the suspension referred to in this paragraph 184.2, maintain IRBA annual continuing professional development requirements;

184.2.4 The respondent must by no later than 31 December 2021 undertake and complete refresher training on -

(a) accounting and auditing standards pertinent to the intended client base to be audited from 1 January 2022, and

(b) the IRBA code of conduct,

such training to be agreed upon in advance with IRBA, whose agreement to any training proposed by the respondent is not to be unreasonably withheld; and

184.2.5 The respondent must by no later than 31 December 2021 satisfy IRBA as to his compliance with the training requirements in paragraph 184.2.4 (a) and (b).

184.2.6 The sentence referred to in paragraph 184.1 may be imposed in the event of a proven breach of the condition in paragraph 184.2.1, notwithstanding that the date of the conviction of the similar offence is later than 31 December 2023.

184.3 The Respondent is fined as follows:

184.3.1 R 200 000 in respect of Charge 1;

184.3.2 R 200 000 in respect of Charge 2;

184.3.3 R 200 000 in respect of Charge 3;

184.3.4 R 100 000 in respect of Charge 6;

184.3.5 R 100 000 in respect of Charge 9.

184.4 The IRBA is directed to publish[18] -

184.4.1 on its website -

(a) the Committee's full decision on the merits;

(b) this decision on sanction, in full;

(c) the Committee's summary of its decision on the merits;

(d) a fair summary of the decision on sanction, the draft to be prepared by the IRBA and submitted to the chairperson for approval by no later than midday on Thursday 10 December 2020; and

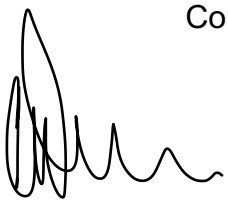
184.4.2 in the IRBA News, the summaries of the decisions on the merits and sanction.

184.5 The Disciplinary Committee endorses the agreement between the parties that the respondent pay a contribution to the costs of the proceedings in an amount of R 31 176 618.30.

184.6 The Disciplinary Committee notes the contribution to be made by Deloitte and the respondent as recorded in the letter from the

[18] The pro forma complainant sought an order in the form of an endorsement by the Committee of the Board's prerogative to publish details of the finding and sanction. This does seem to be more consistent with the wording of section 51(5). However, Disciplinary Rule 8.3 assigns or delegates this function to the Committee and provides that it forms part of the Committee's order.

respondent's attorneys to the chairperson of the Disciplinary Committee dated 25 November 2020.



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Alan Dodson SC

Chairperson

9 December 2020

Committee constituted by Mr Alan Dodson, Mr Akhter Moosa, Ms Rene van Wyk, Mr Lucien Pierce, Mr Suren Sooklal and Mr Horton Griffiths

Legal team for the pro forma complainant:

Attorneys: ENS Africa represented by Mr F Malan, Ms P Rodgers, Ms N Abader and Ms N Coleman

Counsel: Mr S Symon SC

Legal team for respondents:

Attorneys: Webber Wentzel represented by Ms K Gawith and Ms K Wolmarans

Counsel: Mr M van der Nest SC, Mr D Smit and Ms L Zikalala