

**COMPANY DIRECTORS DISQUALIFICATION ACT 1986**

**DISQUALIFICATION UNDERTAKING**

**RE BROWN AND MASON GROUP LIMITED (Company number 01892133) (“BMG”) and BROWN AND MASON LIMITED (Company number 00686405) (“BROWN AND MASON”).**

**CASE 50697: CMA INVESTIGATION INTO THE SUPPLY OF DEMOLITION AND RELATED SERVICES IN THE UNITED KINGDOM**

I, Nicholas Terry Brown, of [REDACTED] hereby undertake to the Competition and Markets Authority (“the CMA”), on the basis set out in the schedule attached to this disqualification undertaking, that in accordance with section 9B of the Company Directors Disqualification Act 1986 (“CDDA 1986”):

I WILL NOT for a period of **7 years**:

- a) be a director of a company, act as a receiver of a company’s property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) I have the leave of the court; or
- b) act as an insolvency practitioner.

Further, I understand that if I act in contravention of the above disqualification undertaking:

- a) I may be prosecuted for a criminal offence (CDDA 1986 section 13); and
- b) I may be personally responsible for all the relevant debts of a company (CDDA 1986 section 15).

The scope and effect of the disqualification undertaking that I hereby give have been explained to me in the CMA’s letter of 24 March 2023.

I am aware that my prompt offer of this undertaking to the CMA has led the CMA to accept a shorter disqualification period than it would have otherwise accepted.

I further confirm and undertake to the CMA that I will use my best endeavours to cooperate with, and assist, the CMA in its director disqualification investigation in relation to Case 50697 and any related proceedings.

The CMA has explained that I may seek legal or professional advice on the effect of this undertaking, and I was given the opportunity to do so before signing the undertaking.


Signed

  
NICHOLAS TERRY BROWN

19 MAY 2023

.....  
Date

Accepted by

  
.....  
**Daniel Barnett**  
Litigation Director  
For the Competition and Markets Authority

19 May 2023

.....  
Date

Note: the period of disqualification commences at the end of **70 days** beginning with the day on which the disqualification undertaking is accepted by the CMA, and that commencement date is **28 July 2023**.



**SCHEDULE TO THE DISQUALIFICATION UNDERTAKING GIVEN BY  
NICHOLAS TERRY BROWN**

Solely for the purpose of the CDDA 1986, and for any other purposes under the provisions of the CDDA 1986 and other legislation consequential to the giving of a disqualification undertaking, I admit the following matters:

**BACKGROUND**

1. Brown and Mason Limited (**'Brown and Mason'**) was incorporated on 14 March 1961.
2. Brown and Mason was a family-owned and run business. During the time periods relevant to the matters described in this undertaking (the **'Relevant Periods'**), Brown and Mason was owned by Brown and Mason Holdings Limited. Throughout the Relevant Periods, and subsequently, I held 25% of the shares in Brown and Mason Holdings Limited, and I was a director of this company from 6 April 1998 until 30 June 2020. The remaining 75% of the shares were held by other members of the Brown family. My father, [REDACTED] was listed as ultimate controlling party in the audited accounts of Brown and Mason Holdings Limited during the Relevant Periods.
3. I commenced working at Brown and Mason in 1991. I was appointed as a director of Brown and Mason on 1 February 1996 and remained in office until 30 June 2020 (shortly before it was put into administration). During the Relevant Periods, I held the positions of Operations Director and subsequently Managing Director from 2015 (replacing my father). After 2015, my father remained a director and held the position of Chairman.
4. I have at all times been an integral part of Brown and Mason's business and its decision-making. In my role as Operations Director, I was responsible for managing the day-to-day operations of the business, running contracts and acting as client liaison. I reported solely to my father, who was Managing Director at that time. I then took on the role of Managing Director of Brown and Mason in 2015.
5. Brown and Mason was put into administration on 21 September 2020. Brown and Mason Group Limited (**'BMG'**), which was incorporated on 5 March 1985, is the economic successor of Brown and Mason. BMG was originally a property/plant hire business and is also owned by Brown and Mason Holdings Limited. I have been a director of BMG at all times from 6 April 1998, alongside my father who acted as a director until 15 April 2020. During the Relevant Periods, and up until January 2020, BMG's audited accounts record that my father was the ultimate controlling party. In January 2020, I became the ultimate controlling party of BMG.

**BREACH OF COMPETITION LAW**

6. As found by the CMA in its Decision issued on 23 March 2023 (the **'Decision'**) and admitted by BMG in settlement of case 50697, Brown and Mason infringed the prohibition imposed by section 2(1) in the Competition Act 1998 (the **'Chapter I**



**Prohibition'**) by participating in the following agreements or concerted practices (together, **'the Admitted Infringements'**).

- 6.1. **Admitted Infringement 3:** Between at least 3 June 2013 and 8 July 2013, Brown and Mason and McGee (as defined in the Decision) infringed the Chapter I Prohibition by participating in an agreement or concerted practice in the form of an arrangement for Brown and Mason to provide McGee with a cover bid in return for a compensation payment. This agreement had, as its object, the prevention, restriction or distortion of competition in relation to the supply of Demolition Services at the Shell Building, Southbank.<sup>1</sup> The contract was awarded to McGee for £18.4 million although, following subsequent additions to the project, it reached the final award value of £21.05 million. The compensation payments received by Brown and Mason amounted to £600,000 excluding VAT.
- 6.2. **Admitted Infringement 6:** Between at least 28 July 2014 and 28 August 2014, Scudder (as defined in the Decision) and Brown and Mason infringed the Chapter I Prohibition by participating in an agreement or concerted practice, which has as its object, the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for the Lots Road Power Station. This took the form of a compensation payment arrangement (without cover bidding). The contract was awarded to Scudder for £9.6 million, and Brown and Mason received £100,000 in compensation excluding VAT.
7. I understand that each of the Admitted Infringements constitutes a separate and freestanding breach of competition law (and do not form part of a single continuous infringement).
8. I accept that:
  - (a) each of the Admitted Infringements had the object of restricting competition;
  - (b) Brown and Mason breached competition law by engaging in the Admitted Infringements; and
  - (c) accordingly, for the reasons set out in the Decision, as admitted by BMG (as the economic successor of Brown and Mason) and summarised above, the first condition for a competition disqualification order is satisfied (namely, that the relevant company of which I was a director committed a breach of competition law).

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<sup>1</sup> This is the case notwithstanding indications in the evidence that Brown and Mason, in spite of this arrangement with McGee, sought to win the contract (see Decision at paragraph 4.33 and below at paragraph 12.1 of this undertaking.)



## MATTERS OF UNFITNESS

9. I accept that I was a director of both Brown and Mason and BMG at the time of the Admitted Infringements as described in paragraphs 6.1 to 6.2 above.
10. During the period in which I was a director of Brown and Mason, Brown and Mason participated in the two infringements described above and detailed in the Decision. The Admitted Infringements took the form of an agreement to provide a cover bid in the case of one infringement and an agreement to fix an element of the tender price in the other, and each resulted in the payment of compensation to Brown and Mason. The infringements concerned contracts valued at over £30.65 million, and the compensation received by Brown and Mason amounted, in aggregate, to £700,000 (excluding VAT). As set out in paragraph 6 above, these infringements have been admitted by BMG.
11. I admit that my conduct as a director of Brown and Mason was such as to make me unfit to be concerned in the management of a company, since my conduct contributed to Brown and Mason's breaches of competition law. As the person with oversight of day-to-day operations of the business, including contract and client relationship management, I accept that Brown and Mason's participation in each of the Admitted Infringements resulted directly from my involvement.
12. In the case of both of the Admitted Infringements, I took a central role in the conduct. As explained below, I met with Brown and Mason's competitors and agreed the cover bidding arrangement in respect of Admitted Infringement 3 and agreed to fix an element of the tender price in respect of Admitted Infringement 6. In both cases, I agreed the amount and terms of the compensation payment and made the arrangements for their payment. My involvement is summarised as follows:
  - 12.1. **Admitted Infringement 3:** I was directly involved in agreeing to provide the cover bid that is the subject of this infringement. As explained in my interview with the CMA, I was contacted by [REDACTED] (McGee) after the submission of initial tender bids for the Shell Building Project at the Southbank, London. I met with [REDACTED] in person and discussed the tender with him. [REDACTED] explained that he wanted the job, provided me with their tender quote and offered to pay Brown and Mason compensation should we agree to submit a quote higher than McGee's. As I explained in my interview with the CMA, I had received high quotes from subcontractors for the job and, following the re-scope of the project, I did not believe that Brown and Mason would succeed in the tender.<sup>2</sup> I therefore accepted his offer of £600,000 in compensation for placing a cover bid (although, in fact, the bid that Brown & Mason submitted at the second stage of the tender process was slightly lower than McGee's<sup>3</sup>). At the time I made this agreement, I had primary responsibility for decision-making within the business as my father (another director of Brown and Mason and BMG) was absent for medical reasons.

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<sup>2</sup> See Decision at paragraph 4.30(a) and footnote 148.

<sup>3</sup> See Decision at paragraphs 4.27 and 4.33.



- 12.2. As I explained in my interview with the CMA, in late 2015, I perceived Brown and Mason to be facing financial difficulty. Recalling my original agreement with ██████████ and knowing that McGee had in fact secured the Shell Building Project following completion of the tender process, I called ██████████ and requested payment of the compensation. I agreed with ██████████ that the payment of the compensation would be split into three amounts spread across a 12-month period, and that each of the invoices would be made against other projects at ██████████ direction, despite the fact that Brown and Mason was not providing services for any of those other projects.
- 12.3. Following consultation with ██████████ I then instructed employees of Brown and Mason to prepare and send three purported invoices to McGee for a total of £600,000 (excluding VAT).<sup>4</sup> I directed them to enter those invoices against fictional services and goods that were not in fact ever supplied by Brown and Mason. By way of example, our 6 May 2016, invoice in the amount of £203,500 (excluding VAT) was made out for the 'supply of second hand trusses for temporary works' at the 'leicester square development'.
- 12.4. **Admitted Infringement 6:** On 14 July 2014, ██████████ (Scudder) sent me a text message requesting a meeting to discuss the upcoming tender for the Lots Road Power Station project. Following receipt of this message, ██████████ and I discussed suitable dates and locations for the meeting. On 28 July 2014, I met ██████████ at the Thistle hotel near Tower Bridge.
- 12.5. As I explained during my interview with the CMA, at that meeting, ██████████ informed me that he wanted the contract and that he would 'buy me off the job'. In other words, he requested that I provide a cover price for him in exchange for a compensation payment, rather than actively compete for the tender.
- 12.6. I refused to participate in a cover bidding process as Brown and Mason wanted to win the contract. However, following further discussion about the client and the tender process, I agreed to a proposal from ██████████ that we would respectively increase the prices of our tenders by a set amount, to be paid to the losing party.<sup>5</sup> My recollection was that the value of the increased price and related compensation payment was £80,000, but I note that the Decision also includes reference to documentary evidence, in the form of invoices and an extract from a notebook belonging to ██████████ (Scudder), that indicate that the agreed increase to the price and the related compensation payment was in fact £100,000.
- 12.7. As I explained in my interview with the CMA, Brown and Mason intended to win the contract and priced the job with this intention.<sup>6</sup> Nevertheless, following Scudder's successful tender for the project, I contacted ██████████ to request the

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<sup>4</sup> The invoices we issued were dated 17 December 2015, 2 May 2016, and 6 May 2016.

<sup>5</sup> See Decision at paragraphs 4.74 and 4.77(a).

<sup>6</sup> See Decision at paragraph 4.75 and footnote 221. I acknowledge that this does not affect the finding that Brown and Mason had participated in a price-fixing arrangement, and, as noted above, BMG has admitted Brown and Mason's participation in the anti-competitive agreement.



compensation due under our agreement.<sup>7</sup> I called [REDACTED] to request that Scudder make payment of the agreed amount, and in June 2016 I sent two text messages to [REDACTED] each asking if we could 'sort an invoice'. These messages were sent to ensure that payments due under this arrangement were made.

- 12.8. Having received [REDACTED]'s agreement to make the payment, I thereafter corresponded with Scudder employees to agree the terms of the invoices before instructing employees within Brown and Mason to prepare and send four purported invoices to Scudder for a total of £100,000 (excluding VAT).<sup>8</sup> Again, I directed them to enter those invoices against fictional services and goods that were not in fact ever supplied by Brown and Mason. By way of example, a 10 November 2015 invoice for the amount of £36,000 (excluding VAT) was made out for the 'Consultancy & Survey works undertaken to enable the removal of plant and equipment at Lewisham House, Lewisham'.
13. As noted above, I held 25% of issued shares in Brown and Mason Holdings Limited, Brown and Mason's majority shareholder, with a further 75% of the shares being held by other members of the Brown family. Accordingly, I had a personal interest in Brown and Mason's financial affairs. Through my shareholding, I stood directly to benefit from the compensation payments received by Brown and Mason.
14. As a result of my actions as described above, I caused Brown and Mason to engage in conduct which created conditions of competition which did not correspond to the normal conditions of the market.
15. I understood at the time that my conduct was wrong.<sup>9</sup> Furthermore, it is clear to me now, and should have been clear to me at the time, given my position as an experienced director, that such interactions between competitors to agree cover bids, fix elements of tender prices and receive compensation payments carried unacceptable risks of infringing competition law.
16. I accept that price fixing (of which cover bidding is one type) is among the most serious forms of competition law breach.
17. I also accept that cover bidding arrangements in conjunction with compensation payment arrangements have been found to be more serious than arrangements where no such inducement is offered.
18. My participation in the Admitted Infringements contributed to Brown and Mason's breaches of competition law and was central to BMG being subject to a penalty of £2,400,000 under section 36(1) of the Competition Act 1998, which BMG has agreed to pay under the settlement agreement with the CMA dated 25 February 2022.

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<sup>7</sup> See Decision at paragraph 4.75.

<sup>8</sup> The invoices were dated 10 November 2015, 22 July 2016, 2 August 2016 and 16 February 2017.

<sup>9</sup> This said, the precise application of competition law to the facts identified in the Decision was not clear to me at the time.