محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2021] QIC (RT) 6

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

30 December 2021

RTFIC0002/2021

BETWEEN:

NIGEL THOMAS HOWARD PERERA

Appellant

v

QATAR FINANCIAL CENTRE
REGULATORY AUTHORITY

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Before:
Sir William Blair, Chairman
Justice Gopal Subramanium
Justice Muna Al-Marzouqi

DECISION

1. This is the Tribunal's decision in respect of an appeal by Mr Nigel Thomas Howard Perera ("the appellant"), against a Decision Notice of the Qatar Financial Centre Regulatory Authority ("QFCRA") dated 5 April 2021. By the Decision Notice, the QFCRA imposed a financial penalty of QAR 273,000 (USD 75,000) and a prohibition from performing a controlled function in the QFC for a period of 3 years.

2. The prohibition does not seek to prevent the appellant from carrying out functions other than controlled functions or being employed by a QFC regulated firm. It is not contended that the appellant's conduct lacked integrity or was reckless.

3. The appellant has been represented *pro bono* on the appeal by Thomas Williams, assisted by Umang Singh and Ahmed Durrani of Sultan Al-Abdulla & Partners. This has been of great assistance to the Tribunal.

The background

4. The appellant has a background in financial services, and in 2011 joined International Financial Services (Qatar) LLC ("IFSQ"). IFSQ was authorised on 28 July 2009 as an insurance intermediary to conduct insurance mediation in or from the QFC. It commenced regulated activities on 3 January 2010. It provided financial advice, mainly to expatriates resident in Qatar. Most of IFSQ's business involved selling long term insurance, protection, and savings products, mainly with an investment component. At the material time, the firm was relatively small, with about 18 staff, mainly in sales.

5. So far as relevant to this appeal, the appellant was Chief Executive Officer ("CEO") of the firm holding a Senior Executive Function ("SEF") from 2 November 2015 to 8 July 2019 and again from 22 August 2019 to 5 April 2020. He also held the Executive Governance Function ("EGF") from 10 February 2016 to 3 October 2020, and was at relevant period in respect of these matters (between May 2016 to March 2018) part of IFSQ's senior management.

6. In May 2016, the QFCRA carried out a Risk Assessment Visit to IFSQ, and identified various issues as to the firm's compliance with the Anti-Money Laundering and Combating of the Financing of Terrorism ("AML/CFT") Rules. To be clear, there is no allegation that IFSQ itself was money laundering. The deficiencies that were identified as needing remediation had to do with IFSQ's compliance with the obligations placed on firms by the AML/CFT Rules in relation to risk assessments, customer due diligence and record keeping. It is not in dispute on this appeal that there were deficiencies.

7. Over the following eighteen months the documents submitted by the parties to this appeal show that there were numerous interchanges between IFSQ as it sought to comply with the QFCRA's requirements, with responses from the QFCRA. In 2017, the firm also set up what was (or was supposed to be) an independent review of compliance. In January 2018, the QFCRA carried out a further Risk Assessment Visit. This exercise was completed in March 2018, concluding that existing failures had not been properly addressed, and that there were additional concerns. It is not in dispute on this appeal that there were deficiencies.

8. An investigation was commenced against IFSQ in May 2018. IFSQ admitted various contraventions. On 9 July 2019, the QFCRA issued a Decision Notice to IFSQ imposing a financial penalty of QAR 364,000 (USD 100,000) and the payment of reasonable costs and expenses of the investigation of QAR 36,400 (USD 10,000). This was in relation to contraventions of the AML/CFT and General Rules, on the basis that IFSQ failed to comply with promises and assurances it made to the Regulatory Authority and did not properly manage its business. The Tribunal understands that the appellant as CEO dealt with these proceedings on behalf of the firm.

The regulatory proceedings against the appellant

9. An investigation was commenced against the appellant in August 2019, and Notice of Proposed Action was given to him on 20 September 2020. This was of course in respect of his own alleged failings, not those of the firm. The appellant maintained that he had not broken any rules. Nevertheless, on 5 April 2021 the QFCRA issued a Decision

Notice in respect of the appellant in the terms set out in paragraph 1 above. On 5 June 2021, he brought this appeal.

10. In addition to material by way of representations, statements of case and submissions in the appeal, the material put before the Tribunal consisted of a witness statement made by the appellant on 8 November 2020 in the course of the QFCRA's investigation, and a substantial agreed e-bundle of documentation including transcripts of interviews conducted in the investigation. The hearing took place on 10 November 2021. The only witness was the appellant himself, who gave oral evidence.

The issues

11. The QFCRA adopts a principles-based system of regulation which applies to all individuals who perform a controlled function. The relevant principles in this appeal (Individual (Assessment, Training and Competency) Rules 2014) during the relevant period relate to alleged breaches by the appellant during May 2016 to March 2018 (the "Relevant Period") of:

    a. Principle 2 (due skill, care and diligence): "The individual must act with due skill, care and diligence"); the QFCRA alleges that the appellant failed to act with due skill care and diligence in remediating the identified AML/CFT failures and the additional AML/CFT failures later identified; this involves consideration of the issue whether the appellant was entitled to delegate to, and rely on, the firm's Money Laundering Reporting Officer, and how far he did so effectively.

    b. Principle 4 (relations with the QFCRA): "The individual must deal with the Regulatory Authority in an open and cooperative manner, and must disclose appropriately to the authority any information that the authority would reasonably expect to be informed of"; the QFCRA alleges that the appellant failed to deal with it in an open and cooperative manner, in that he provided information to it which was incorrect and misleading; as developed before the Tribunal, the allegation is that by editing a report by the independent reviewer

(referred to in these proceedings as Ms A), the appellant gave the impression that the problems had been resolved, when he knew they had not.

12. It is not disputed that Principles 2 and 4 applied to the appellant as CEO of IFSQ during the Relevant Period. The Tribunal refers to the dispute in relation to these as the first and second issues respectively.

13. As noted in paragraph 6 above, the AML/CFT Rules are also applicable in this appeal. These contain provisions of the kind that financial services firms generally have to comply with wherever they are situated. These include rules as to systems and controls, record keeping, and KYC (know your customer) to the extent appropriate for the customer's risk profile. A firm must be able to provide documentary evidence of its compliance with the AML/CFT Obligations (AML/CFT Rule 1.2.6).

14. Senior management obligations are set out in particular in part 2.2.2 of the AML/CFT Rules. It is not in dispute that this applied to the appellant. It provides that:

> "**2.2.2 Particular responsibilities of senior management**
> (1) The senior management of a firm must ensure the following:
> (a) that the firm develops, establishes and maintains effective AML/CFT policies, procedures, systems and controls in accordance with these rules;
> (b) that the firm has adequate screening procedures to ensure high standards when appointing or employing officers or employees;
> (c) that the firm identifies, designs, delivers and maintains an appropriate ongoing AML/CFT training programme for its officers and employees;
> (d) that the firm has an adequately resourced and independent audit function to test (including by sample testing) compliance with, and the effectiveness of, the firm's AML/CFT policies, procedures, systems and controls;
> (e) that regular and timely information is made available to senior management about the management of the firm's money laundering and terrorist financing risks;
> (f) that the firm's money laundering and terrorist financing risk management policies and methodology are appropriately documented, including the firm's application of them;
> (g) that there is at all times an MLRO for the firm who—
> (i) has sufficient seniority, experience and authority; and
> (ii) has an appropriate knowledge and understanding of the legal and regulatory responsibilities of the role, the AML/CFT Law and these rules;
> (iii) has sufficient resources, including appropriate staff and technology to carry out the role in an effective, objective and independent way; and

(iv) has timely, unrestricted access to all information of the firm relevant to AML and CFT, including, for example—

(A) all customer identification documents and all source documents, data and information; and

(B) all other documents, data and information obtained from, or used for, CDD and ongoing monitoring; and

(C) all transaction records; and

(v) has appropriate back-up arrangements to cover absences, including a deputy MLRO to act as MLRO;

(h) that a firm-wide AML/CFT compliance culture is promoted within the firm;

(i) that appropriate measures are taken to ensure that money laundering and terrorist financing risks are taken into account in the day-to-day operation of the firm, including in relation to—

(i) the development of new products; and

(ii) the taking on of new customers; and

(iii) changes in the firm's business profile.

(2) This rule does not limit the particular responsibilities of the senior management of the firm.

The QFCRA's case

15. The QFCRA's case is as follows:

a. In May 2016, QFCRA made a Risk Assessment Visit (the "2016 RAV") to IFSQ and identified twenty-four AML/CFT areas that needed remediation including:

i. IFSQ did not undertake a Business Risk Assessment ("BURA"), and therefore did not adequately and effectively identify the Money Laundering/Terrorist Financing risks it faced;

ii. IFSQ's Threat Assessment Methodology ("TAM") was deficient in numerous areas;

iii. IFSQ failed to know its customers to the extent appropriate for the customer's risk profile because, in contravention of AML/CFTR 1.2.31, IFSQ failed to properly and adequately exercise Customer Due Diligence ("CDD") and obtain Customer Identification Documents ("CID") for its customers; and

iv. IFSQ failed to maintain and provide documentary evidence of its compliance with the Law No. (4) of 2010 on Combating Money Laundering and Terrorism of Financial and AML/CFTR 1.2.6 because

it failed to evidence proper and adequate CID for its customers, that a proper and adequate BURA was undertaken and that a proper and adequate TAM was implemented.

b. In the case of these failures:
    i. On 21 August 2016, the appellant was made personally aware by QFCRA of its concerns in an AML/CFT Risk Mitigation Programme ("RMP") report of the AML/CFT remediation items, as well as its AML/CFT concerns generally at IFSQ. On that day, the appellant signed the Risk Mitigation Program which was received by the QFCRA Supervision team on 23 August 2016.
    ii. In the period August 2016 to November 2017, the appellant made numerous representations and assurances to the QFCRA that these matters were being remediated.

c. The contraventions were in essence that IFSQ's policies and procedures were inadequate to properly identify money laundering risks. For example, IFSQ failed to know its customers to the extent appropriate for the customer's risk profile. The appellant was (or should have been) aware of the inadequate policies and procedures in place.

d. Indeed, he personally onboarded clients during the Relevant Period with deficient AML/CFT documentation.

e. Further, the independent reviewer appointed by the appellant was not truly independent since she had also been engaged to carry out the firm's Q2 compliance report.

f. On 30 November 2017, the appellant represented to the QFCRA that the remediation items were remedied by amending the remediation report by inserting the word "complete" knowing that a number of items had not been addressed or addressed properly.

g. This had not been done. In January 2018, the QFCRA carried out a further RAV (the "2018 RAV") and identified that the concerns were not remediated and that there were further AML/CFT failures.

16. As regards the action it has taken, the QFCRA submits that the financial penalty of QAR 273,000 (USD 75,000) is proportionate being less than imposed on other individuals in similar cases. The prohibition from performing a controlled function in the QFC for a period of 3 years does not seek to prevent the appellant from carrying out any other functions or be employed by a QFC regulated firm. The QFCRA considers that the proposed prohibition is proportionate and justified because:

    a. Controlled functions in the QFC are all senior management or senior risk management roles. They are much narrower than the controlled functions under (for example) the UK FCA's rules in the UK, which cover all financial advisers of any level of seniority.
    b. The penalty imposed is carefully tailored. It does not seek to exclude the appellant from the QFC financial services industry. If the Decision Notice is upheld, he may work as a financial planner or adviser, provided that he is subject to proper management and compliance oversight, and continuing professional development and training.
    c. The QFCRA does not seek to permanently exclude the appellant from holding a controlled function in the QFC financial services industry. The prohibition is time limited. He is relatively young, and the QFCRA considers that that he may well be suitable for approval in a controlled function in the future once he is able to demonstrate appropriate professional development, training and insight.
    d. Nevertheless, he was the CEO of IFSQ, holding the SEF and EGF functions, and responsible for the conduct of its business. He was personally responsible for the errors and omissions set out in the Decision Notice and he was aware of the relevant facts that should have led him to act.
    e. In these circumstances, the regulatory action set out in the Decision Notice is proportionate and justified and necessary to protect the integrity of the QFC financial system and the interests of clients.

The appellant's case

17. The appellant's case is as follows:

a. The appellant acted with due skill, care and diligence during the period of May 2016 to March 2018. He neither acted deliberately or recklessly, nor did his standard of behaviour fall below what was reasonable in the circumstances.
b. He delegated appropriately to specialist Money Laundering Reporting Officers (MLROs) and compliance officers. The MLRO and COF who he dealt with for much of the Relevant Period has been referred to in these proceedings as "Ms B".
c. Whilst it is true that Ms B did not in fact address the RMP items, this does not mean that the appellant has failed to act with due care, skill and diligence. Further to Article 2.15 of QFCRA's Enforcement Policy Statement 2012 ("EPS") dealing with senior management obligations, the QFCRA cannot penalise an individual on the basis of vicarious liability, provided that appropriate delegation and supervision has taken place. It is clear that the appellant did appropriately delegate and supervise. This, he says, is accepted in paragraph 8.1 (d) of the Response.
d. The appellant supervised Ms B by regularly meeting with her, corresponding with her, and reviewing her work.
e. In the circumstances, his reliance on Ms B's claim that she had remediated the RMP items was entirely reasonable. IFSQ's Board was itself satisfied that she had done so.
f. The appointment of Ms A as the independent reviewer was brought to the QFCRA's attention on two separate occasions. The QFCRA accepts that it did not object to her appointment.
g. The QFCRA acknowledged that she would be in charge of carrying out COF and MLRO functions on an interim basis and thus had constructive knowledge that she would be responsible for the Q2 2017 report but raised no objection.
h. As regards the addition of the word "complete" to the November 2017 remediation report, when the appellant added the word in the revised RMP Independent Review Report, he reasonably believed that the contents of those reports were true. This is because he had delegated the task of undertaking the

RMP reports to Ms B and Ms A respectively, in their capacity as the MLRO and COF. That delegation was proper, as such tasks fell squarely within their remit and expertise.

i. More particularly, the appellant thought that the word "complete" was an accurate reflection of Ms A's appraisal of the items in the report.

j. Accordingly, it cannot be said that he failed to exercise due skill, care and diligence, or that he was acting deliberately or recklessly, or that he was not open or cooperative with the QFCRA.

k. The most that can be said is that he made an honest mistake whilst acting competently.

l. It follows that, applying the criteria contained in Enforcement Policy Statement 2012 Articles 2.12 to 2.18 of the EPS, there was no breach by him of either principle relied on by the QFCRA.

18. If the Tribunal rejects his primary case, the appellant submits that:

a. No prohibition should be imposed because:
    i. The appellant did not seek wrongly to conceal information from the QFCRA; nor does his conduct amount to dishonesty or a lack of integrity, or a serious lapse of judgment or serious lack of competence;
    ii. his conduct does not demonstrate that he is not fit and proper; he poses no risk to third parties or to the integrity, reputation, stability and users or prospective users of the QFC;
    iii. his conduct cannot possibly give rise to "very serious concerns" about him.

b. With reference to the financial penalty, the appellant submits that:
    i. Given that the QFCRA seeks to impose a Prohibition Order, it cannot also levy a financial penalty: to do so would amount to double jeopardy, which is prohibited by Article 59(2) of the Financial Services Regulations;
    ii. It is unclear how the Financial Penalty would have a deterrent effect on the appellant: the underlying contraventions have been remedied for some time now;
    iii. The size of the penalty is disproportionate to the conduct alleged;

iv. He is innocent of any regulatory contraventions, or at worst, deserving of a "private warning";
v. Without prejudice to the above, the appellant submits that the Tribunal should commute the financial penalty in whole because it would cause serious financial hardship, to the extent that it would threaten his solvency;
vi. The QFCRA's proposal that he pays the financial penalty in the amount of QAR 10,000 per month starting from 1 October 2022 is manifestly unreasonable.

The Tribunal's approach

19. The Tribunal rejects the submission on behalf of the appellant that where the regulator seeks to impose a prohibition order it cannot in addition levy a financial penalty. The scope and object of the two regulatory powers, it appears to the Tribunal, are clearly distinct and operate in different spheres. Article 59 of the Financial Services Regulations, on which the submission is based, is addressing financial penalties only. The effect of Article 59(2) is that the regulators may not impose a financial penalty in respect of any matter for which the person has already been sanctioned by way of a financial penalty (the reference to "the Tribunal" is in this context a reference to the Court: see Articles 8 and 9).

20. There is an important point of principle here. In financial regulation the imposition of a financial penalty is, as the term suggests, a means of penalising a regulated person for the conduct concerned and deterring similar contraventions. On the other hand, a prohibition order is primarily intended to protect the public (and the QFC and the financial system itself) where the regulated person's behaviour demonstrates a lack of fitness for a particular role or roles in a regulated firm – in this case, a senior executive role. Both sanctions are said to be justified in the present case, and such an outcome is specifically recognised in Enforcement Policy Statement 2012 paragraph 10.20.

21. As to the evidential approach in deciding whether the case against the appellant is proved, it is submitted on behalf of the appellant that the QFCRA failed to adduce witness evidence to controvert the appellant's case that he had reasonably delegated matters relating to the remediation of the admitted deficiencies in IFSQ's AML/CFT procedures. The regulators are therefore, it is submitted, in evidential difficulties in relation to disputed matters.

22. The Tribunal does not accept this to be the correct approach, and considers that the position is as follows. When reaching its decision, the Tribunal has regard to the totality of the material before it. The regulatory authority has the burden of proof and must prove its case to the civil standard of the balance of probabilities (*Abdelkareem v QFCRA* [2012] QIC (RT) 2 at paragraph 29). However, a regulator will usually not be in a position to call witness evidence as regards disputed matters relating to the internal affairs of a firm. It will rely on the documentary and oral evidence collected during the investigation, including (as in this case) interviews with the appellant. Although there may be documents generated within the firm which could be relevant to the issues in the appeal, there is no obligation on appellants to give disclosure (i.e., discovery), which obtains in common law on parties to civil litigation being enjoined to disclose relevant documents in their possession. The appellant's obligation is to produce the documents it relies on in support of the appeal. The regulator, on the other hand, is under a duty to disclose material in its possession which should fairly be taken into account, in particular documents in its possession which support the appellant's case. (See generally Article 17 of the Tribunal's Regulations and Procedural Rules.) In these circumstances, the evidential burden of proof lies on an appellant in relation to any particular assertions which are positively advanced in support of the appeal.

23. In this case, however, so far as an evidential burden of proof may have fallen on the appellant, this has not affected the Tribunal's conclusions.

The appellant's case

24. The appellant's case is that he reasonably relied on the MLRO (Ms B) to remedy the deficiencies found in the 2016 RAV and ensured that she addressed the RMP items to the extent that a reasonable person in his position would be expected to do. He says that he instigated a review of the risk mitigation programme (RMP) from the end of August 2016, and delegated the review to Ms B (IFSQ's MLRO and COF from 24 August 2014 until 22 February 2017 when she left the firm). He says he had regular meetings with her to apprise himself of the progress of her review. He went with her to a meeting at the QFCRA on 24 November 2016, at which she updated the Regulatory Authority and agreed new deadlines for the submission of her initial report which was submitted on 11 December 2016. Throughout, the appellant says he kept the Board informed of all relevant issues, seeking its approval where required.

25. Shortly after Ms B's departure, the appellant says he informed the QFCRA that Ms A, who was Head of Compliance at a company in Singapore called IFSS (which has the same name but is not connected), would be preparing the RMP Independent Review Report. The QFCRA raised no objections or other issues, and therefore he says (tacitly) approved her appointment to undertake this task.

26. During Ms B's notice period, the appellant says he started taking immediate steps to seek a replacement MLRO and COF. Unfortunately, her proposed replacement failed the CISI Exam. The next in line joined IFSQ in August 2017, and the appellant says that he asked him to focus on the issues arising from the RMP Independent Review Report. Unfortunately, however, this person resigned after only being employed at IFSQ for 3 days. Despite this setback, the appellant persuaded him to work his 3-month notice period. The next candidate joined IFSQ, and was in post for the rest of the Relevant Period.

27. As regard independent review, as soon as the QFCRA indicated that the Biennial Independent Review Report was not satisfactory, the appellant immediately wrote to Ms A, who was preparing the report and told her that her approach was mistaken and that the QFCRA required an independent review of all AML/CTF compliance matters, and not just a review limited to the matters identified in the RMP.

28. In November 2017, the appellant liaised with Ms A about the status of the RMP Independent Review Report, and reviewed her drafts. He made certain changes to the draft of 29 November 2017 in good faith. There was no attempt to mislead. In particular, he wrote the word "Complete" to indicate his understanding of what Ms A considered to be the position in respect of the relevant items. After he had made those changes, he returned the document to Ms A, who made no further comments, and he sent it to the QFCRA.

29. Between then and March 2018 (being the end of the Relevant Period), the appellant cooperated with the QFCRA as it undertook a further risk assessment.

First issue: Alleged failure to act with due skill care and diligence in remediating AML/CFT failures

30. The Tribunal accepts the appellant's submission that as CEO he was entitled to place reliance on the expertise of the MLRO in AML/CFT matters. That is not in dispute, and that includes in this case delegating to her responsibility at least in the first instance for compliance with the regulators' requirements. The extent of such reliance depends on various factors, including the extent to which it was reasonable to place reliance, or continuing reliance, on the MLRO in the particular circumstances. (It is not however correct, as the appellant asserts, that the QFCRA accepted the appellant's case in this regard.)

31. The Tribunal also considers that while there is force in the QFCRA's submission that it was clear what required remediation from its letter to the firm of 4 April 2016, overall, the steps that the regulators required to be taken must have seemed challenging for a small firm like IFSQ, and in particular clearly required a considerable degree of delegation by its CEO.

32. However, the Tribunal notes that there are limits to such delegation. As CEO, the appellant had the personal duties set out in paragraph 2.2.2 of the AML/CFT Rules. These may seem at first reading extensive, but as the QFCRA points out, these are

provisions of the kind that CEOs of financial services firms generally have to comply with wherever the firms are situated, because of the importance of AML/CFT, something the Tribunal has noted itself in earlier cases.

33. As the Tribunal stated in *Horizon Crescent Wealth LLC v Qatar Financial Centre Regulatory Authority* [2020] QIC (RT) 1 at paragraph 31, "Financial professionals are exposed to AML/CFT issues throughout their careers on almost a daily basis". His expertise in this field was emphasised by the appellant himself in promotional literature, in which he stated that he had "… deep knowledge of AML/CFT rules and development/implementation of risk and governance frameworks". Remedying defects in such frameworks was the purpose of the regulators' intervention in IFSQ's affairs. As the Tribunal stated in *Russell v Qatar Financial Centre Regulatory Authority* [2020] QIC (RT) 2 at paragraph 46, "It is precisely because of AML's importance that the relevant regulations require that senior management be responsible for ensuring that AML systems, procedures and controls are adequate".

34. The QFCRA's case as advanced at the hearing is that the stage was reached when it was clear to the appellant that problems identified by the regulators were not being fixed, and at that stage as CEO he had to get involved.

35. In assessing the evidence in this respect, a contemporary document seems persuasive to the Tribunal. This is a QFCRA file note of a meeting held between the QFCRA and the appellant on 1 August 2017. In it, it is stated that the appellant " …explained that he had relied on [Ms B] the previous COF/MLRO but [he] did not exert sufficient oversight over the AML remedial action taken by [Ms B] to ensure that they were actually properly addressed". That in essence is the QFCRA's case against him.

36. The appellant submits that although he was aware on 1 August 2017 that the RMP failures had not been remedied, IFSQ set about remediation for those items which were subsequently reviewed by Ms A and adjudged by her to be complete as at November 2017. He submitted the November report based on the November information and not the August information. However, the Tribunal considers that the same issues arise as regards his delegation to Ms A as to Ms B without further verification. The position as regards Ms A is considered further below.

37. Further, it is significant in the Tribunal's view that during the 2018 RAV, the QFCRA conducted a sample review of 24 customer files, 5 of which were handled by the appellant personally in the Relevant Period. There were concerns with 4 of these in that the appellant had taken on a customer in circumstances in which the documentation was deficient in some respects. Although the appellant's evidence in cross-examination explained to some extent why the documentation was as it was, saying that he believed that there was a monetary threshold on the application of certain rules, the Tribunal considers that the sampling supports the conclusion that, overall, the appellant's attitude was less diligent than was required. This was clearly particularly so in circumstances in which he knew at the time that the firm's AML/CFT compliance was considered unsatisfactory by the regulators.

38. As the Tribunal said in *Russell* (see above) at paragraph 46, it is no answer to a failure to have in place compliant AML/CFT provisions that sales are mainly to professionals who were low risk, and that the insurance companies providing the products can be expected to vet the source of funds. The AML/CFT obligations on an intermediary such as IFSQ are important in their own right, not least because the firm will have direct contact with the client in the first instance. Similar considerations apply to the appellant's suggestion that the tests applied by the providers of the policies concerned, primarily Zurich International Life Ltd, only required source of wealth documents for investments above USD 10,000. The fact (if it is a fact) that IFSQ applied more rigorous criteria than the providers is not material if such criteria were themselves non-compliant.

39. In assessing the reliability of his oral evidence, upon which much of his case rested, there was a significant inconsistency between the appellant's evidence to the Tribunal and his earlier account. This arose in relation to the appointment of Ms A to conduct the independent review of the position in relation to AML/CFT. It is not in dispute that she was not, in point of fact, independent, because she had stood in for the MLRO during the time after Ms B had left IFSQ's employment and had carried out the firm's 2017 Q2 compliance report in July 2017. The appellant told the Tribunal that he thought that this was a great idea. In his interview with the QFCRA, however, he said that he implored the company to appoint a more independent reviewer and pay someone

to provide this work. Clearly, one of these versions is not right. The Tribunal considers that it is more likely the second version.

40. The appellant has particularised in his Witness Statement the steps he took to supervise the work that was done to comply with the regulator's concerns. It is clear that he did take some steps. However, the Tribunal considers that these steps were insufficient and should have been appreciated as such. The Tribunal considers that the appellant failed to validate the work delegated to Ms B and Ms A as shown by the fact that some of QFCRA's concerns and actions to be remediated have been repeated in several RAVs. These failings were, the Tribunal considers, further manifested by the certification by the DMLRO (deputy MLRO) to the effect that she had met customers when she had not. In cross-examination, the appellant accepted that he knew this was not best practice, which it clearly is not.

41. It is fair to say that there was a period in 2017 when IFSQ was finding difficulty in replacing Ms B as MLRO which cannot have made the appellant's task any easier. Nevertheless, it may be noted that in interview, the appellant said that the board set about improving the position and "… in November 2018 it was redone and then we thought it was fantastic. Then the Protiviti review in June 2019 revealed that to be insufficient so really it just revealed that we had extremely poor compliance/MLRO oversight because for board level/SEF level people, when they're presented with a document which looks like it meets the requirements, we're happy to sign that off. However, it was discovered that it was too generic still". Protiviti is a firm that was appointed to perform a review of AML/CFT at IFSQ.

42. Taking the material before it as a whole, although fully accepting that he did not act deliberately or recklessly (the contrary is not contended), the Tribunal is satisfied that during the relevant period, the appellant failed to act with the due skill, care and diligence required in remediating the AML/CFT failures identified by the QFCRA, as was his duty as the CEO of the firm.

Second issue: Alleged failure to deal with the QFCRA in an open and cooperative manner

43. As noted above, the case that the appellant failed to deal with the regulator in an open and cooperative manner, in that he provided information to it which was incorrect and misleading, is, as developed before the Tribunal, an allegation that by editing a report by the independent reviewer (Ms A), the appellant gave the impression that the AML/CFT compliance problems had been resolved, when he knew they had not.

44. As has been noted above, Ms A had stood in for the MLRO during the time after Ms B had left IFSQ's employment, and had carried out the firm's 2017 Q2 compliance report in July 2017. For that reason, Ms A was obviously not qualified as an independent reviewer. It was argued for the appellant that because the QFCRA was notified that she would carry out the review, and had not objected, it had given tacit consent to her acting as such. The Tribunal does not accept that argument. Mere failure to object is not in itself sufficient to bind the regulator in such circumstances.

45. On the other hand, the Tribunal is inclined to think that the appointment of Ms A in itself is a relatively minor breach, and Ms A was on the face of it well qualified for the task. That being said, it is not disputed by the appellant that she did not in fact remediate all items that required remediation, more of which appeared during the 2018 RAV. There are substantial criticisms in this respect in an internal IFSQ Note made in January 2018.

46. The more serious matter concerns the allegation by the QFCRA that the appellant in effect deliberately changed the Remediation Report produced by Ms A in November 2017 to make it appear that items were "complete" when they were not. This is denied by the appellant.

47. There is contemporary email evidence on 29 November 2017 that sheds some light on what happened. After Ms A had produced her report, the appellant emailed her saying:

> "I have a question: On points 10, 11 and 12 of the updated remediation document, when you say "Review the updated policy" do you mean either:
> 1. You want us to review the updated policy? Or

> 2. You have "Reviewed the updated policy", and you're satisfied?
> If you mean point 1, I have reviewed it and I'm satisfied, and I trust that you are as well. If you mean point 2, then great.
> In either case, I'll change the document to "Reviewed updated policy" and then submit to the QFCRA now as this exercise is now complete."

48. Shortly afterwards, the appellant emailed her again saying, "I've also updated the document to reflect that all points are complete – attached". His case is that this gave Ms A the opportunity to object to the additions but she did not do so.

49. The QFCRA's case is that the appellant changed the report from Ms A by inserting/deleting words to give the incorrect impression that the RMP items were remediated without actually verifying they were completed.

50. The appellant's case is that when he added the word "Complete" he reasonably believed it to be true, because he had delegated the task of doing the necessary tasks to Ms A and Ms B, and properly supervised them. More particularly, he thought that the word "Complete" was an accurate reflection of Ms A's appraisal of the items in the revised RMP Independent Review Report.

51. For reasons already explained, the Tribunal rejects the proposition that the appellant properly supervised the work on the remedial tasks required by the QFCRA. As to his belief that adding the word "Complete" was a reflection of Ms A's appraisal, the Tribunal considers that his approach to this was perfunctory in that he never got Ms A's express approval to what was clearly a significant change.

52. Nevertheless, having heard his explanation in oral evidence, the Tribunal considers it right to give the appellant the benefit of the doubt on this issue. It does not consider that the appellant set out to mislead. It accepts his alternative case that what happened was an honest mistake. It follows that the QFCRA has not proved that he failed to deal with it in an open and cooperative manner.

Sanctions

Prohibition

53. The QFCRA submits that the prohibition is a time limited and narrow prohibition on carrying out a controlled function in the QFC. There is no prohibition on carrying out (for example) a customer-facing function. The appellant's deficiencies were primarily as a senior manager and the prohibition is tailored to that issue.

54. The appellant submits that no prohibition should be imposed because he did not seek wrongly to conceal information from the regulators, nor does his conduct amount to dishonesty or a lack of integrity, or a serious lapse of judgement or serious lack of competence. In any event, a prohibition on his performing a controlled function is inappropriate, because his conduct does not demonstrate that he is not fit and proper, he poses no risk to third parties or to the integrity, reputation, stability and users or prospective users of the QFC, and other disciplinary action has been taken against him (i.e., the financial penalty).

55. The appellant submits that the withdrawal of approval is an exceptional step which should only be taken in circumstances of significant wrongdoing. The starting point is set out in Article 9.34 of the Enforcement Policy Statement: "Generally, own initiative action to withdraw an individual's approval, or vary their approval to remove one or more controlled functions, is taken only if the Regulatory Authority has very serious concerns about the individual".

56. The appellant submits that his conduct cannot possibly give rise to "very serious concerns" about him. Still less are any of the factors under Article 9.35 of the EPS, under the heading "Fitness and propriety", engaged so as to make it appropriate to impose this sanction. Indeed, the seriousness of this sanction is why, pursuant to Article 46(1) of the Financial Services Regulations has first to be satisfied. At most, a private warning is appropriate in this case.

57. The Tribunal's conclusion is as follows:

a. The QFCRA's policy in relation to enforcement including prohibition under Article 62 of the Financial Services Regulations is set out in its Enforcement Policy Statement 2012 (EPS). Chapter 10 deals with prohibitions and restrictions. In considering appeals, the Tribunal must also act in accordance with the EPS. A prohibition may be considered where a person has contravened a relevant requirement under any rules, the relevant rules in the present case being the Individual (Assessment, Training and Competency) Rules 2014, and specifically Principle 2 (due skill, care and diligence) (INDI 2.1.3). For reasons set out above, the Tribunal is satisfied that such contravention occurred.

b. The serious nature of prohibition means that action will normally be taken by the Regulatory Authority only if it has particularly serious concerns. Compliance with AML/CFT regulations is viewed as central to the protection and reputation of the QFC as well as to the protection of individuals. The Tribunal is satisfied that such concerns in the present case as regards the competence of the appellant were particularly serious.

c. The prohibition imposed in the present case limited as it is to three years is proportionate. The appellant is not prohibited from carrying on a customer-facing function in a firm. If he wishes to return to senior management functions in due course he will have the opportunity to demonstrate his competence at that time.

d. Accordingly, the appellant's appeal in respect of the prohibition is dismissed.

Financial Penalty

58. The QFCRA submits that the financial penalty imposed of QAR 273,000 (equivalent to USD 75,000) is proportionate and similar to those in comparable cases by other regulators.

59. The appellant submits that the penalty is excessive because it is not a case of deliberate, reckless or fraudulent misconduct, he is an individual, without the resources of a firm, he would suffer serious financial hardship were a financial penalty of any or any significant level to be imposed, he gained no pecuniary advantage from the breaches and has co-operated fully since the investigation began, and has a clean disciplinary record both in the QFC and elsewhere.

60. The Tribunal's conclusion is as follows:

    a. Chapter 6 of the EPS Chapter sets out the QFCRA's policy in relation to the imposition of financial penalties. The Tribunal is satisfied that a fine of QAR 273,000 was appropriate given the seriousness of the contraventions alleged by the QFCRA.

    b. However, only the first of the two contraventions has been proved. In these circumstances, the Tribunal considers that the financial penalty should be reduced proportionately to QAR 136,500 (equivalent to USD 37,500).

61. Two other matters arise, the first is as to the appellant's submission that he is unable to pay the penalty, and the second is as to his request to commute the penalty entirely on financial hardship grounds. Both these points were raised against the background of the original penalty.

62. In this respect, the appellant has made full disclosure of his financial position. It is not the Tribunal's practice to include such details in a public decision. The Tribunal considers that an offer of time to pay made by the QFCRA to the appellant on 16 September 2021 was a fair and reasonable offer within the appellant's means, and the more so since the amount to be paid is half the original penalty. For the avoidance of doubt, the monthly payments in that offer are to stand at half the rate proposed.

63. The appellant's request to have the penalty commuted in whole on the basis of financial hardship is not allowed. The criteria for such an order were set out in the *Russell* case (see above) at paragraphs 71 to 75, and it is wholly exceptional for a penalty to be

commuted. The present case is not in that category. Among other considerations, the appellant is still working unlike the appellant in the Russell case.

64. Before formulating the decision, the Tribunal places on record the capable assistance rendered *pro bono* by Mr Thomas Williams on behalf of the appellant and Mr Ben Jaffey QC on behalf of the QFCRA who stated his position and understanding of law with complete fairness.

Decision

65. On the appellant's appeal it is ordered that:

(1) The appeal against the prohibition order is dismissed.

(2) The Tribunal having found against the appellant on the first issue but in favour of the appellant on the second issue, the appeal against the financial penalty is allowed to the extent that a penalty of QAR 136,500 is substituted for the penalty of QAR 273,000 in the Decision Notice.

(3) Repayment is to take place in accordance with the terms of a letter dated 16 September 2021 from the QFCRA to the appellant.

By the Regulatory Tribunal,

[Signed]

Sir William Blair, Chairman

A signed copy of this judgment has been filed with the Registry

Representation:

The appellant was represented under the QICDRC Pro Bono Service by Mr Thomas Williams, Mr Umang Singh and Mr Ahmed Durrani of Sultan Al-Abdulla & Partners, Doha, Qatar.

The respondent was represented by Mr Ben Jaffey QC of Blackstone Chambers, London, UK.