

Appeal concerning the powers of the Guernsey Financial Services Commission (GFSC) to deal with the conduct of individuals within the environment regulated by the GFSC

**[2019]GCA076**

**IN THE COURT OF APPEAL OF GUERNSEY**

**CIVIL DIVISION – APPEAL NO. 523**

**17 June 2019**

**Before:**

**James McNeill QC  
George Bompas QC  
Sir Wyn Williams**

**Between:**

**GUERNSEY FINANCIAL SERVICES COMMISSION**

**Appellant**

**-v-**

**Y**

**Respondent**

**Advocate T M J Shires for the Appellant  
Advocate N J Barnes for the Respondent**

**[JUDGMENT OF THE COURT]**

**Bompas JA:**

Introduction

- 1 The present appeal concerns powers of the Guernsey Financial Services Commission (“the GFSC”), specifically the powers to deal with the conduct of individuals in the environment regulated by the GFSC. The GFSC appeals to this Court on the ground that the Royal Court (Mr Richard McMahon, Deputy Bailiff), in a judgment handed down on 29 November 2018 (judgment 47/2018) has taken too narrow a view of certain of those powers.
- 2 A cross-appeal is brought by one Y, the individual in respect of whom the GFSC sought to exercise those powers and who submits that the Royal Court should have set aside in their entirety all the orders made in relation to him by the GFSC (by a Senior Decision Maker) in its Final Notice dated 2018; and he appeals against the decision of the Royal Court refusing to do so.

- 3 The orders in question are set out in appendix 1 to the Final Notice. The text of that Appendix (which is also appended to this Judgment as Appendix 1) identifies the relevant powers sought to be exercised and specifies, in formal terms, the GFSC’s actions in respect of Y. In summary, Y
- 3.1 was to be prohibited for 4 years from doing various things regulated by several different laws (“the Prohibition Order”),
  - 3.2 for 4 years was not to have the benefit of one of the exemptions (the specific exemption in this case we refer to as “the Paragraph (g) Exemption”) which allows a person to be in certain cases a company director by way of business without being licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (“the Exemption Order”),
  - 3.3 was fined £13,000 (“the Fine”), and
  - 3.4 was to be the subject of a public statement (“the Statement Order”).
- 4 The power to make the last two of these orders (the Fine and the Statement Order) is given by the Financial Services Commission (Bailiwick of Guernsey) Law 1987 (“the FSC Law”), by sections 11D and 11C respectively. Any appeal to this Court from the decision of the Royal Court concerning these orders is regulated by section 11H(9) of the FSC Law, which gives a right of appeal only on a question of law. It follows that before us any appeal is not a rehearing or review of the Royal Court’s decision, but must identify a question of law arising from the Royal Court’s decision.
- 5 The second of the four orders, the Exemption Order concerns the removal of a particular exemption (in section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law 2000 (“the Fiduciaries Law”)), this being the Paragraph (g) Exemption. That exemption, when available, would enable Y to hold by way of business directorships (up to 6 in number) of any companies, regardless of their place of incorporation or place of business or other characteristics, without his activity as such a director becoming a regulated activity within section 2 of the Fiduciaries Law. By section 19(11) of the Fiduciaries Law the Royal Court’s decision in relation to the Exemption Order is open to appeal in this Court only on a question of law.
- 6 The first of the four orders, the Prohibition Order, prohibiting Y from certain activities, was made under a combination of (a) section 17A of the Fiduciaries Law, (b) section 18A of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“the IMII Law), (c) section 28A of the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“the Insurance Business Law”), (d) section 17A of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (“the Banking Supervision Law”), and (e) section 34E of the Protection of Investors (Bailiwick of Guernsey) Law (“the POI Law”). We refer to these Laws along with the FSC Law compendiously as “the Regulatory Laws”.
- 7 Any appeal to this Court from the decision of the Royal Court as regards the first of the four orders is, as with the appeals on the other decisions, only on a point of law (section 19(11) of the Fiduciaries Law; section 43(11) of the IMII Law; section 63(11) of the Insurance Business Law; section 18(9) of the Banking Supervision Law; and section 36(7) of the POI Law).
- 8 The decisions of the Royal Court under appeal to this Court are, in summary, its decisions:

- 8.1 to set aside both the Prohibition Order and the Exemption Order, this being because (as the Royal Court concluded) it was not possible for any such orders to be limited in point of time (and thus, in particular, to be limited as set out in the Final Notice), and in exercise of the powers in section 19(7)(a) of the Fiduciaries Law to remit the matter to the GFSC for further consideration, it being left to the GFSC to decide whether any, and if so what, substitute orders should be made;
  - 8.2 to uphold the ordered Fine; and
  - 8.3 to set aside the Statement Order as regards the actual statement (set out in Annex 2 to the Final Notice) which the GFSC was to make, but otherwise to confirm that order and in exercise of the powers in section 11H(5) to remit to the GFSC the settling of a different and appropriate public statement. This particular decision of the Royal Court, the decision as to the Statement Order, was on the basis that in principle the GFSC's decision to make a public statement was sustainable, but that the particular statement proposed was not appropriate and would in any event need revision to reflect changes made to the outcome of the case as a result of the appeal to the Royal Court.
- 9 The GFSC appeals against the decision of the Royal Court in respect of the first and second orders only. The GFSC submits that the Royal Court was wrong in law in deciding that a prohibition order could not specify a time during which activity should be prohibited, but should always be open ended. A corresponding submission is made in relation to the Exemption Order.
- 10 Y's cross-appeal is, succinctly, that the Royal Court was wrong to have upheld the Fine and was wrong not to have quashed and set aside, without more ado, all the other orders made in the Final Notice, so that Y should not after all have been subject to any regulatory restraint or sanction as ordered in Appendix 1 to the Final Notice. There are several detailed grounds in support of the cross-appeal, considered below; but at their root is a case that Y should not have been found to be unfit, or so unfit as to be subject to the sanctions ordered by the GFSC and upheld by the Royal Court.
- 11 Each of the four orders made in the Final Notice, described in paragraph 3 above, was made in exercise of a power connected with criteria set out in Schedule 1 to the Fiduciaries Law. This Schedule describes personal conditions to be met by an applicant for a licence. These are set out under headings, notably "*Integrity and Skill*" and "*Fit and proper persons*". Under the second heading, in paragraph (3), there is a long list of criteria to be taken into account in considering fitness and propriety, this list including such matters as probity, experience, educational qualifications and, notably, record of compliance with statutory regulations, prohibitions and the like.
- 12 In the present case the basis for the GFSC's orders was:
  - 12.1 in the case of the Prohibition Order, that having regard to paragraph 3 of Schedule 1, referred to above, Y was not fit and proper person to perform functions in relation to a regulated activity carried on by a licensed fiduciary;
  - 12.2 in the case of the Exemption Order, that having regard to the criteria of Schedule 1 he was not a fit and proper person to be or become a company director; and
  - 12.3 in the case of the Fine and the Statement Order, that he did not fulfil the minimum criteria for licensing specified in the Fiduciaries Law.
- 13 We return to this point later; but the Royal Court noted that the orders were not underpinned exclusively by findings concerning Y's contravention of the Fiduciaries Law.

- 14 In the next section of this judgment we summarise the salient facts. In subsequent sections we first address the question of law raised by the GFSC's appeal, before then considering Y's contentions concerning the findings (1) that he had contravened the Fiduciaries Law, (2) that he was unfit to be licensed under the Regulatory Laws, and (3) that the exercise of the GFSC's powers of sanction was flawed and should be quashed.
- 15 While the GFSC's appeal plainly is on a question of law, we shall have to consider the extent to which the various grounds put forward in support of Y's cross-appeal are on questions of law and to confine ourselves to those questions only.
- 16 In this judgment we will need to give consideration to, and to refer to, numerous provisions of the Regulatory Laws. We will not extend this judgment by setting out the text of those provisions, except to the minimum essential for the sense of our reasoning and conclusions. Rather, in Appendix 2 to this judgment we set out for the convenience of the reader the full text of those provisions (or the more relevant parts of those provisions) to which we make most reference, namely sections 11C, 11D and 11H of the FSC Law and sections 1 to 3, 17A, 17B, and 37 of the Fiduciaries Law, along with Schedule 1 to the Fiduciaries Law.
- 17 It is convenient to explain here that at the heart of the present case is the regulation made under the Fiduciaries Law concerning activities loosely indicated by the full name of that Law. This regulation starts from a prohibition in section 1 of that Law. This prohibition is against, relevantly, individuals carrying on by way of business any of the activities described in section 2 of the Fiduciaries Law (these being regulated activities) unless under the authority of an appropriate licence. Section 3 of the Fiduciaries Law, in contrast, sets out a long list of activities which are taken not to be regulated activities, and which therefore can be carried on by anyone without a licence by way of business without any section 1 contravention. The foundation of the case against Y was that he had been carrying on a regulated activity (that is, a regulated activity within the meaning of the Fiduciaries Law) without the necessary licence.
- 18 The Royal Court's judgment concerning the prohibition order focussed on the part of the order based on the Fiduciaries Law, the relevant section being section 17A. In summary, a prohibition order contemplated by section 17A is directed at prohibiting an individual, found not to be a fit and proper person to perform functions in relation to a regulated activity carried on by a licensed fiduciary, from performing such functions.
- 19 The Royal Court did not describe, in terms, the prohibition orders contemplated by the IMII Law, the Insurance Business Law, the Banking Supervision Law or the POI Law. However, in summary the prohibition in:
- 19.1 the IMII Law is concerned with functions relating to any business as insurance manager or intermediary, or for any insurance licensee;
  - 19.2 the Insurance Business Law is concerned with functions in relation to any insurance business or licensee;
  - 19.3 the Banking Supervision Law is concerned with functions in relation to any deposit-taking business, or for licensed institutions; and
  - 19.4 the POII Law is concerned with functions in relation to controlled investment business or licensees.

20 Before the Royal Court, as before us, neither party has sought to base any separate argument, so far as concerns the Prohibition Order, on anything contained in the Regulatory Laws mentioned in the previous paragraph. It is common ground that any argument or conclusion based on the Fiduciaries Law, will apply equally to those other Laws as regards the Prohibition Order.

### Summary of the facts

21 We set out below a brief outline of the facts in as non-controversial way as possible. This outline is based upon what has been described in the Final Notice, and in the first part of the judgment given by the Royal Court.

22 Y is an accountant and a member of the Institute of Chartered Accountants of England and Wales. In 2010 he established his own business, under the name “Z Accounting”, providing certain professional services. This he carried on thereafter. References to Z Accounting are references to Y as the principal in and proprietor of the Z Accounting business. At the heart of the present case is the formation by Y, for clients of Y, of a dozen Guernsey registered companies from May 2012 to February 2016.

23 During this period Y was also an executive director of a company (which we call “X Co”) licensed by the GFSC to conduct regulated activities under the Fiduciaries Law. As part of his terms of employment with X Co, Y was not permitted to “*accept any other work or office without the express permission of*” X Co; and he was not without permission to “*be engaged or interested .. in any capacity in any other trade, business or occupation*”. Also, in about 2014 Y became X Co’s Money Laundering Reporting Officer.

24 For a period between August 2015 and March 2016 Z Accounting advertised on its website that Guernsey company formation was a service which it could offer its clients.

25 For a period in 2017 Y had another website advertising for Z Accounting, offering company and administration services. The detail of what was advertised on this website (which we refer to as “the 2017 website”), and the extent to which what was offered was a regulated activity for which Y and Z Accounting had no licence is considered below.

26 In relation to this alleged advertising contravention Advocate N J Barnes on behalf of Y does not take any point that section 1 of the Fiduciaries Law contains no prohibition on the making of advertisements offering to undertake regulated activities, and prohibits instead only the carrying on of regulated activities: advertising or offering services which comprise regulated activities is not itself a regulated activity within section 2 of the Fiduciaries Law. Section 20 of the Fiduciaries Law does contain an advertising prohibition, but only where appropriate regulations have been made, and is of no relevance in the present case. By contrast, section 37 of the Fiduciaries Law contains a prohibition which, by subsection (1), prevented Y as an individual without any fiduciary licence from “*offering to carry on, or hold himself out as being willing to carry on, by way of business, in or from the Bailiwick, any regulated activity*”.

27 In March 2016 X Co began formal disciplinary proceedings by reference to a number of alleged failures on the part of Y. These included that without permission he had pursued private business interests at Z Accounting, that he had done work for Z Accounting during X Co’s business hours, and that he had used X Co’s registration at the Guernsey Registry to carry out incorporation and company administration services for non-clients of X Co (for which Z Accounting was

remunerated). At a hearing of these disciplinary proceedings on 6 April 2016 Y tendered his resignation, and the disciplinary proceedings came to an end.

28 Also in March 2016 Y made email contact with the GFSC. This led to an investigation by the GFSC, by a Senior Decision Maker (“the SDM”), which continued through 2017, with representations being made by Y or by Advocate Barnes on his behalf; and eventually the Final Notice came to be made in respect of Y with the various orders (referred to in paragraph 3 above) which were appealed by Y to the Royal Court.

29 The Final Notice given by the SDM concluded that Y had contravened the Fiduciaries Law in two respects. First, Y’s formation of the dozen registered companies was held to be a contravention. Second, his advertising, referred to in paragraphs 24 and 25 above was held to involve a regulatory contravention. The Final Notice reached the conclusion that, by reason of these contraventions and various other matters concerning Y’s behaviour, Y had been shown to be unfit and did not fulfil the minimum licensing criteria. We quote later the material paragraphs in the Final Notice.

### The Prohibition Order and the Exemption Order – introduction

30 The question raised by the GFSC on its appeal concerns the scope of the relevant powers relating to the Prohibition Order and the Exemption Order. In each case the question is whether, as the Royal Court decided (see paragraph 8 above) and contrary to the position taken by the SDM, there is no power to make any order other than one which has no time fixed after which the imposed prohibitions or disabilities will cease.

31 The powers to make prohibition orders set out in each of the IMII Law, the Insurance Business Law, the Banking Supervision Law and the POI Law are expressed in much the same terms as the powers in the Fiduciaries Law. These powers were introduced into the Regulatory Laws by amendments made either in 2003 or (in the case of the IMII Law and the Insurance Business Law) 2008. Adopting for the sake of convenience the approach taken by the Royal Court, we confine ourselves to a consideration of the position under the Fiduciaries Law: it is common ground between the parties that the position under the other Regulatory Laws will be, *mutatis mutandis*, the same.

32 In outline, section 17A of the Fiduciaries Law explains, in subsections (1) and (2), when and why a prohibition order may be made in relation to any person, and also what the order may prohibit when made. Subsection (5) then explains that the GFSC “*may, on the application of the individual named in a prohibition order, vary or revoke it*”. Section 17C provides machinery for making a prohibition order; and section 17B contains provisions directed at having an accessible list of those who are subject to prohibition orders.

33 The Exemption Order raises considerations confined purely to the Fiduciaries Law. We have explained how section 1 of that Law prohibits the carrying on of regulated activities by way of business without an appropriate licence. Section 2 defines regulated activities. Section 3 excludes certain activities from qualifying as regulated activities. The Paragraph (g) Exemption, set out in section 3(1)(g) of the Fiduciaries Law, is, so far as material, in the following terms (emphasis added):

*“acting ... as a director of not more than six companies, being directorships which are not the subject of an exemption contained in any other paragraph of this subsection,*

*except in any case where the Commission disapplies the exemption contained in this paragraph in respect of any person on the grounds that, having regard to the criteria of Schedule 1, the Commission is not satisfied that he is a fit and proper person to be or to become a director of a company; and, where the Commission decides so to disapply the exemption contained in this paragraph, it shall serve notice to that effect on the person concerned, giving particulars of the right of appeal ...”*

- 34 While the activity of being a company director by way of business is in principle a regulated matter for which a fiduciary licence is needed, section 3 excludes various different specific cases so as to allow any person quite properly to carry on by way of business being a company director. It is not only the Paragraph (g) Exemption which is in point in this regard. Thus paragraphs (b) to (f) (inclusive) of section 3(1) of the Fiduciaries Law all exclude the activity of being a company director in particular classes of case. What is left for the Paragraph (g) Exemption is the case where the person is a director of one or more companies (up to a maximum of six) to which none of the other exemptions applies.
- 35 Bearing in mind that there are exclusions applying to listed companies, family companies and companies (other than companies providing fiduciary services) with established places of business in Guernsey, as well as the subsidiaries any such companies, the Paragraph (g) Exemption is directed most obviously at Guernsey companies whose activities are outside the Bailiwick; in other words, companies which might require professional directors based within the Bailiwick. Up to six of such directorships may be held in reliance on the Paragraph (g) Exemption.
- 36 There is one further exemption to which it is relevant to draw attention. Paragraph (y) of section 3(1) enables the Commission to give a specific exemption “*for any particular activity, transaction or appointment*”. It follows that even in a case where the Paragraph (g) Exemption is not to apply in the case of any person, the GFSC may nevertheless give an exemption to the person to be a director of one or more companies (that is an exemption which would enable the person to carry on the business of being a director where his directorships fall under no other section 3(1) exemption, and in particular where the Paragraph (g) Exemption is not available to him). But an individual seeking to obtain a paragraph (y) specific exemption from the GFSC would have to pay a fee to the GFSC, and would not necessarily be able to satisfy the GFSC that the specific exemption should be given.
- 37 In contrast with section 17A, there is nothing expressly enabling a person in respect of whom the Paragraph (g) Exemption has been disapplied to return to the GFSC to have the diapplication lifted.
- 38 With this introduction we turn to the GFSC’s appeal concerning the decision of the Royal Court as to the Prohibition Order and the Exemption Order.

### The Prohibition Order

- 39 It would seem that until the present case came before the Royal Court on Y’s appeal, there had been no challenge at any time to the GFSC’s view that prohibitions imposed by prohibition orders under the relevant regulatory laws could be defined in a way which gave them specified temporal impact. In its judgment the Royal Court acknowledged that there have indeed been cases before it where such prohibition orders have been upheld, albeit without argument on the point.

- 40 It seems reasonable to assume that until the present case came before the Royal Court the absence of argument on the point is likely to have been the product of a generally held assumption that such prohibition orders could properly be made in the exercise of the GFSC's powers.
- 41 On the other hand, an inference might also be that a natural way of understanding the powers to make prohibition orders is that they may be exercised so as to impose a prohibition which is not to continue to prohibit the relevant person for the person's lifetime. In the present case the Deputy Bailiff remarked, referring in particular to a previous case which had been before him and in which a time-limited prohibition order had been made, that "*it had not previously crossed my mind ... that time-limited prohibition orders could not be made*" (paragraph 39 of the judgment).
- 42 As it seems to us, a natural starting point when considering a power to impose a sanction is that the power should admit of the imposition of some lesser sanction, absent either (a) some express provision or limit to the contrary in the instrument giving the power or (b) some feature of the sanction authorised by the power which makes the sanction incapable of mitigation. It may well have been a consideration of this kind which has led to the assumption referred to above.
- 43 It seems to us, looking at section 17A of the Fiduciaries Law as a matter of first impression, that the assumption referred to above was correct and is supported by the language used in 17A. Specifically, a prohibition order is not necessarily to be all-encompassing, prohibiting a person forever from doing anything of a kind stated in section 17A. Rather, the section provides, relevantly, that a prohibition order may be directed at a specified function or specified description of function in relation to regulated activities of licensed fiduciaries (sub-section (1)); and it may relate, not simply to any regulated activity, but also to any specified regulated activity or any specified description of regulated activity (sub-section (2)(a)), or to any licensed fiduciaries (sub-section (2)(b)). In other words, by the language of section 17A a prohibition order may be tailored: it need not be a blanket prohibition.
- 44 We also consider that, further, the power may be understood to allow the imposition of prohibitions with a temporal limit. The power might be exercised, say, to prohibit someone from carrying on the function of being within the period of the next four years a director within a licensed fiduciary. In other words the specification which a prohibition order might make as to function (or regulated activity) might define, or specify, the relevant function or activity by reference to a period of time.
- 45 In the present case this is what the Prohibition Order has done. As regards the Fiduciaries Law prohibition, the prohibition relates to licensed fiduciaries, referring to them as "persons licensed under" the Fiduciaries Law. It defines the prohibited function as that of holding certain offices or positions in relation to such persons within the period of four years.
- 46 In her Skeleton Argument in support of the GFSC appeal Advocate T M J Shires has referred to Bennion, "Statutory Interpretation", 7<sup>th</sup> edition (2019), to assist the Court in interpreting section 17A of the Fiduciaries Law (and, for that matter, paragraph (g) in section 3(1) of that Law). She submits, based on certain passages from, and authorities cited in, that text book that "*The meaning to be attributed to an enactment consists not just of what is expressed, but what may necessarily or properly be implied. ... A common manifestation of this principle is that a statutory power carries implied ancillary powers where needed*". In support of this she cites two brief passages from the case of *Attorney-General v Great Eastern Railway Company* (1880) 5 App Cas 473, one from the speech of Lord Selborne LC at 478 and one from that of Lord Blackburn at 481.

47 In further support of the appeal Advocate Shires seeks to draw assistance from sections 1 and 24 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016. This Law, although passed before the GFSC’s decision in the Final Notice and the decision of the Royal Court, only came into effect after those decisions, namely on 1 October 2018. Nevertheless, section 1 provides, among other matters, that the Law applies “*unless the contrary intention appears, to every enactment (including this Law) made before or after the commencement of this Law*”. There is nothing to indicate that the Law does not apply to each of the Fiduciary Laws.

48 Section 24 of the Interpretation Law is in the following terms:

“24. (1) *Where an enactment confers a power or imposes a duty, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.*

(2) *Where an enactment confers a power or imposes a duty, unless the contrary intention appears, all powers -*

(a) *as are reasonably necessary or expedient for the purposes of, or in connection with, or*

(b) *as are ancillary, or incidental, to,*

*the exercise of the power or the performance of the duty, shall be regarded as given.”*

49 The argument here is that, if the application of section 24 of the Interpretation Law does now require section 17A of the Fiduciaries Law to be understood differently from the way in which it would have been understood had the section never been passed, that impact will have had the effect of changing the interpretation correctly to have been arrived at in, say, 2016 or 2018. In other words while at the time the GFSC may, when exercising the section 17A power, have misunderstood the scope of the power, and the Royal Court when setting aside that exercise may have correctly understood the scope of the power, now the reverse is taken to have been true relating back to the time when the matter was before the GFSC and the Royal Court.

50 We do not think we need to decide this point, as it seems to us that section 24 of the Interpretation Law does no more than to express more fully and clearly the approach to statutory interpretation which, in the light of the Great Eastern Railway case, was part of the general law.

51 In particular, we consider that a statutory provision giving a power to impose a penalty or sanction will normally include as part of the power a power to do a lesser thing, where the greater thing is not sui generis and incapable of being done as a lesser thing. In section 17A there is no express reference to any time limits at all; but there is a power to define (and thus limit) the scope of what is to be prohibited. It does not therefore seem obvious why a prohibition must be taken to be necessarily a perpetual prohibition without admitting of something less.

52 Before the Royal Court, as before us, there has been a wealth of material and submission on the principles for interpreting of statutes, as regards the legislative history of the amendments made to the various Regulatory Laws, and as to the position in the United Kingdom. All this was considered extensively and carefully by the Royal Court. But, wide ranging as the argument has been, we think there is little assistance in all this in resolving what is after all a short point. Below we comment on the main arguments we have noted.

- 53 Where a prohibition order is made, the order is to be included in a list maintained by the GFSC. This requirement is contained in section 17B. The list, and the information contained in it, may be published, and must be produced on request (sub-sections (4) and (3)). There is provision allowing for the publication, by the GFSC, both of the fact of a person's being named in the list, as well as of the fact of a variation or revocation of a prohibition order. The argument in support of there being no possibility of a limited prohibition order being made is that section 17B contains no provision for the removal of a person's name from the list if and when a prohibition order ceases to have any operation by lapse of time. This argument commended itself to the Royal Court.
- 54 In answer Advocate Shires on behalf of the GFSC has pointed out that there is no express provision in section 17A to require or authorise the removal of a person's name from the section 17A list when, in exercise of the power in section 17A(5), the GFSC revokes a prohibition order in respect of a person. It follows, so Advocate Shires submits, that it is attaching too much weight to section 17B if the section is thought to point towards there being no power to make a limited prohibition order on the basis that section 17B does not provide for the removal of a person's name.
- 55 We accept this submission. Logically there should be no distinction between the revocation of a prohibition order and the lapse of a prohibition order's operation. If there is no provision for the removal of the former prohibition order from the list (and all there is, after all, is an express power to publish the fact of a change to the order made, including by revocation), the absence of a provision for removing a lapsed prohibition order cannot be regarded as significant.
- 56 Although not necessary for the resolution of this case, in view of our conclusion in the previous paragraph, we question whether after all the section 17B list is bound to continue to include the names of and information about all individuals in respect of whom a prohibition order has been made. Sub-section (2) uses the present tense when describing the information which must be included in the list about any of the listed individuals: the list is to "*specify the functions or descriptions of functions which the individual concerned is prohibited from performing*" (emphasis added). If there is no currently operative prohibition, this information is not apt. Likewise, subsection (1) uses the present tense when describing the list and the GFSC's obligation in that regard: the list is to be one of "*all individuals to whom a prohibition order applies*". Where a prohibition order no longer applies, because there is no longer anything prohibited, we cannot see why an individual's name can or should remain included in the list.
- 57 The second main argument is based on what is done in the United Kingdom by the Financial Conduct Authority in exercise of powers in section 56 of the Financial Services Act 2000. This provision resembles sections 17A to 17C. It was explained in paragraph 22 of the Royal Court's judgment that "*the approach taken by the regulators in the United Kingdom is to decide whether to make a prohibition order and, if so, whether to give any indication as to when an application to revoke might receive favourable treatment*". There is no reported case from the United Kingdom concerning the powers of the regulators there as regards prohibition orders; but in a case in the Upper Tribunal (Tax and Chancery Chamber) in *Burns Financial Conduct Authority* [2015] UKUT 0252 (TCC) it was commented, without more, that "*We do not have power to limit the time period of a prohibition order*".
- 58 In our judgment there is no help to be gained from examination of the position taken in the UK by the regulators there in relation to their powers under the UK legislation. More than that, we have

misgivings about the position they have taken. If the legislature has not given power to define the operation of a prohibition order by any period of time, we cannot see how it is appropriate for the GFSC in making a prohibition order to fetter itself in advance as to the exercise of any power to vary or revoke a prohibition order on the application of the prohibited person. That power, a discretionary power, was given for the GFSC to exercise in the circumstances prevailing at the time of exercise. It would be wrong in principle for the GFSC to decide in advance the way in which it would exercise its discretion after, but not before, a specified period. If all that is allowed by the Legislature is an order with no reference to time, it cannot and should not be decided in advance that lapse of a previously named period of time will affect the GFSC's approach to a variation or discharge application.

- 59 The third argument turns on the legislative history of the provisions giving the power to make prohibition orders. At paragraph 29 of the Royal Court's judgment it was pointed out as being commonplace "*when the Court has to construe a legislative provision to consider what was set out in the policy letter leading to the measure*". And in the same paragraph the Royal Court quoted from the policy letter (page 1759 of the Billet d'État for 2002) prior to the enactment of the amendment to Fiduciaries Law, where reference was made to the proposal being for the GFSC to "*have the explicit power to suspend or bar individuals from working for a fiduciary in the Bailiwick if it considers relevant individuals not to be fit and proper ...*".
- 60 However the Royal Court pointed out, in paragraph 30 of its judgment, that as enacted section 17A did not include the words "*suspend or bar*". The Royal Court noted further that the policy letter (page 1530 of the Billet d'État for 2007) in relation to the amendments made in 2007 to the IMII Law and the Insurance Business Law, referred to updating the laws "*to include prohibition orders in the same way as it is currently provided for under the laws relating to other entities regulated by the Commission*", and to empowering "*the Commission to prevent any person, whom it deems not to be fit and proper to perform their duties, from performing duties in relation to the regulated activities of a licensee*". And the inference was drawn from this by the Royal Court that the legislature had moved away from the original 2002 plan that the power should have been to allow a person to be suspended, as well as barred, from doing certain things, and instead the power should be simply to prohibit a person for all time. As the Royal Court concluded on this, the intention so far as appearing in the materials before the Royal Court "*seems to acknowledge that the sanction is about prevention rather than also about suspension for a time*".
- 61 We agree with the indication given by the Royal Court when considering the legislative history of the various provisions that it is difficult to gain much assistance. For example, we think a plausible view of the comments made in the Billet d'État for 2007 concerning the proposals for the IMII Law and the Insurance Business Law is that at that time the other Regulatory Laws were then regarded as empowering the GFSC to impose a sanction directed at prevention for a measured, finite, time rather than prevention for the whole of an individual's lifetime, and this was what was sought to be achieved in the amendments made to the two former Laws; and that as regards the other Regulatory Laws the legislature considered that the language being used achieved the aim of allowing a person to be, as it were, put off the road for a definite period rather than indefinitely for the person's remaining lifetime. The result, in our judgment, is that in the present case we are left to find the meaning to be given to the provisions empowering the making of prohibition orders in the words of those provisions set out in their various Laws.
- 62 We have come to the conclusion that there would be no rationale for interpreting the words 'prohibit' or 'prohibiting' as restricted to prohibition without limitation of time. In ordinary parlance one can envisage a prohibition, say, during the hours of darkness or a prohibition

pending the occurrence of an anticipated event. Whilst it is clear that the regime set up by the Regulatory Laws was intended to provide protection for the financial reputation of Guernsey, that does not seem to us to require only a prohibition without limit of time leaving it up to the affected person to make such application for variation or revocation as and when it seemed appropriate to do so. Although a prohibition for a specified period implies that the authority considers that the affected person should have returned to a state of fitness and propriety after the specified period, the specification of the period does not fetter the authority's hands: any further breaches will lead to further orders.

- 63 The interpretation which allows the making of time-limited orders permits an informed decision to be made as to the appropriate sanction for the acts in question. We consider, in agreement with the Royal Court, that the Legislature must have contemplated that, when the GFSC is to consider exercising the power to make prohibition orders, the GFSC is not to have only a stark choice between no order at all and a perpetual one: there must have been scope for a proportionate exercise of the power in cases where some sanction was appropriate, but not one that was on its face permanent during the life of the prohibited person. On the other hand, for reasons we have described above, we do not believe that there was any intention on the part of the Legislature for the GFSC to have to achieve a moderated prohibition order by imposing a perpetual one while deciding in advance, and telling the prohibited person of the decision, that the GFSC would look favourably on an application under section 17A(5) made by that person after a set period of time to have the prohibition order discharged.
- 64 Nor does the interpretation which in our judgment is correctly to be given to section 17A deprive section 17A(5) of effect. It will remain open to an affected person to make an application for variation or revocation upon a change of circumstances: examples might be the seeking of revocation on account of manifest exemplary behaviour or the seeking of variation because an offer of acceptable employment at a more junior and supervised level has become available.
- 65 In conclusion, then, on the scope of the section 17A power, in our judgment it was open to the GFSC to make an order which made the prohibition as regards activities specified in point of time, as well as by other descriptions. Accordingly, we would allow the GFSC's appeal on this question.
- 66 For reasons we explain below, we consider that we should also reverse the Royal Court's decision to remit to the GFSC further consideration of the exercise of the section 17A power, and should reinstate the Prohibition Order as made in the Final Notice, notwithstanding Y's (limited) success on one aspect of his appeal to the Royal Court concerning a finding of contravention of the Fiduciaries Law.

#### The Exemption Order

- 67 Here the question of interpretation turns on the meaning to be given to section 3(1)(g) of the Fiduciaries Law: that provision contains the entirety of what is expressly set out in the Fiduciaries Law concerning the Paragraph (g) Exemption and the powers of the GFSC in relation to any disapplication of the exemption.
- 68 Advocate Barnes, on behalf of Y, submits that the only power available to the GFSC as regards the Paragraph (g) Exemption is to make, once and for all, a permanent disapplication of the exemption: in his submission, there can be no half-measure, there not having been any express statement that the power can be exercised so as to limit the disapplication. Advocate Shires for

the GFSC has submitted the opposite, that the power to disapply the Paragraph (g) Exemption includes a power to make a restricted disapplication. Her argument is that, by parity with the available power as regards prohibition orders, a power to make a permanent disapplication includes a power to make a finite one.

69 Before discussing these rival submissions we draw attention to a couple of features of the Paragraph (g) Exemption, and of the GFSC's powers in relation to the exemption.

69.1 First, without the Paragraph (g) Exemption being available a person can undertake the activity of being a company director by way of business or if the company falls within a description of within any of any of paragraphs (b) to (f) of section 3(1) of the Fiduciaries Law (other paragraphs exempting activity of being a director from being a regulated activity). This we have explained earlier. The grounds on which the right to take advantage of the Paragraph (g) Exemption may be removed from an individual are that the GFSC has reached a conclusion concerning the individual not being fit and proper to be or become a director. But, surprisingly, reaching such a conclusion does not enable the GFSC to interfere generally with the right of the individual to take advantage of the other exemptions.

69.2 Second, there is no provision in the Fiduciaries Law, comparable to section 17A(5) (discussed above), which expressly allows revision by the GFSC of any disapplication of the Paragraph (g) Exemption which it may have made. No doubt an affected individual might seek to persuade the GFSC to grant an ad hoc, specific, exemption under section 3(1)(y) (referred to above); alternatively the individual might apply to become licensed with a personal fiduciary licence under section 4 of the Fiduciaries Law, so that he or she would no longer depend upon proposed activities as company director all falling with section 3 exemptions in order to be lawful. But in either such case the individual would have to undergo fresh consideration to satisfy the GFSC that after all he or she was appropriately to be given the ad hoc exemption or was qualified as fit and proper, meeting the minimum licensing requirement, while all the time being subject still to a disapplication made because the GFSC had considered the individual not to be fit and proper to be or become a company director.

70 In our judgment the submission of Advocate Shires is to be preferred to that of Advocate Barnes. In concluding at any time that an individual is unfitted to be a director and deciding whether to exercise the power to disapply the Paragraph (g) Exemption, the GFSC can quite properly reach a qualitative decision concerning the individual's characteristics and conduct and decide also that, while these matters point to a disapplication of the exemption, nevertheless they are not so serious that the disapplication must be perpetual: the disapplication may be for a period only.

71 As we see it, an interpretation of paragraph (g) which entailed a permanent disapplication of the Paragraph (g) Exemption as the only one available would so limit the power given to the GFSC in that paragraph that it would be of little use. The power interferes with a liberty which may be enjoyed by anyone. It is plainly a matter of significance if the power is exercised at all, assuming that it can be time-limited. If it cannot be time-limited, only a permanent disapplication being available, the cases when it could ever be appropriate for the power to be exercised would be rare.

72 Further, for the same reason as explained in paragraph 58 above in relation to the Prohibition Order, we do not consider that, when exercising the power to disapply the Paragraph (g) Exemption, the GFSC should seek to mitigate the impact of a permanent disapplication by

deciding when in the future it would be minded to make an order, if so invited, giving a person an ad hoc exemption under section 3(1)(y). We cannot see the Legislature as having contemplated that, if the GFSC considered that the Paragraph (g) Disapplication should be made, but so as to endure for a period shorter than life, the choice for the GFSC was either to make no order or alternatively to make a permanent order while inviting the affected individual to seek a “work around” in the future and offering to help in that respect.

73 We are satisfied that, on the language of paragraph (g), an interpretation which permits a fixed limit for the disapplication is available. The paragraph uses the present tense, referring to the case “*where the Commission disapplies the exemption*”. Strictly, however, these words must be understood as referring to a past event, insofar as they involve action by the Commission: they are to be understood as if the imperfect tense had been used. This is because the function of paragraph (g) is to provide an exemption which is for the time being available to any individual; but a condition of the exemption is that at the time relevant for its application it has not been disapplied in relation to the individual. Looked at in that light, it can be seen that whether or not the exemption is available at any time will depend on the precise terms of the disapplication as made in the past: the question in any case will be whether, as matters stand, the exemption does not apply.

74 On Y’s case, there is only one decision and order which may be made. This is that the exemption is disapplied in relation to an individual, it being implicit that the exemption will stand disapplied for the life of the particular individual without more. But an order simply that the exemption is disapplied, without anything more being stated, would leave room for argument in the future, should the point arise, that at that time it was not disapplied. So, logically, it would be open to the GFSC to order that the exemption is disapplied during the life of the individual. But if an order can be made which disapplies the exemption for life, necessarily having an operation within a defined time, in our judgment it is open to the GFSC to specify a different time for the operation of the disapplication when making the disapplication order.

75 Therefore, differing on this from the Royal Court, we consider that the GFSC did have power to make the Exemption Order, time-limited as it was; and we allow the GFSC’s appeal on this point too, reversing the Royal Court’s decision and direction.

#### Y’s grounds of appeal

76 Y’s appeal against the Royal Court’s judgment and order is based on the following grounds:

76.1 that because (as the Royal Court had found) the GFSC had no power to make time-limited prohibition orders or orders in relation to the Paragraph (g) Exemption, so that permanent orders were the only ones available, and as the GFSC and the Royal Court had concluded that permanent orders would be excessive in the present case, the Royal Court should simply have set aside the Prohibition Order and the Exemption Order and should not have remitted the matter back to the SDM for further consideration;

76.2 that the Royal Court should have concluded that there was no regulatory contravention involved in the formation of the 12 companies, leading to the inevitable conclusion that there should not have been any sanctions imposed on Y;

- 76.3 that in any case such (mis)conduct on Y's part as might properly have been found could not support the conclusion that Y was unfit or failed to meet the requirements for being granted a licence; and
- 76.4 that even if such a conclusion could be justified, still the sanctions imposed were excessive and unreasonable.

The finding that Y had contravened the Fiduciaries Law

77 We have summarised in paragraph 29 above the SDM's conclusions concerning contraventions of the Fiduciaries Law by Y. In this section we consider the Royal Court's decision concerning Y's challenge to those conclusions, and Y's appeal concerning the decision.

78 The Royal Court, upholding in this respect the GFSC, rejected Y's appeal challenging a finding that he had carried on a regulated activity by way of business and without a licence. This activity had been his causing the formation of the 12 companies. By that activity, therefore, he was found to have contravened the prohibition in section 1 of the Fiduciaries Law. Y appeals against the Royal Court's decision on this activity.

79 By section 2(1)(b) of the Fiduciaries Law regulated activities include that of:

*“(b) company or corporate administration including (without limitation)-  
(i) the formation, management or administration of companies...”*

80 On the face of it, therefore, company administration, in the broadest terms, would qualify as a regulated activity. This is, of course, subject to exemption for specific activities in section 3(1) which might ordinarily have been regarded as aspects of company administration (although not of company formation). The specific section 3(1) activities relevant in the present case are commented on later in this judgment; but these have no application as regards company formation.

81 The GFSC had found that Y's formation of companies fell within that section 2(1)(b) of the Fiduciaries Law (as it plainly does); that the formation of the 12 companies was Y's activity in his capacity as Z Accounting and was not X Co's activity; that (as plainly is correct) there was no applicable exemption in section 3 of the Fiduciaries Law; and that the formation activity was by way of business so as to be in principle within the prohibition in section 1 of the Fiduciaries Law.

82 By Y's second ground of appeal (referred to in paragraph 76.2 above) the Royal Court's decision on this point is sought to be appealed. Y's written case on the point is as follows: *“The Commission found and the Royal Court confirmed that the companies were formed by the Respondent in his private capacity on behalf of the clients of his accountancy practice. The Respondent submits that this is an incorrect analysis and that it was impossible for him to form the companies other than through X Co because only X Co had the necessary portal access and that he was authorised to use it”*

83 The relevance of *“the necessary portal access”* is that the formation of a Guernsey company depends upon the Guernsey Registry receiving and processing information required for a company to be incorporated, and then registering and recognising the company as incorporated. Communication of the information with a request for incorporation requires the use of an on-line system with log-in details; and neither Y nor Z Accounting were able to access directly the

Registry's system, lacking the necessary recognition. For this reason Y had used X Co's computer terminal and log-in details to bring about the incorporation of the 12 companies.

84 In the Royal Court's judgment at paragraphs 65 and 66 there was careful consideration given by the Deputy Bailiff to GFSC's numerous reasons for finding that, despite Y's use of the X Co log-in to the Registry's system, the formation of the 12 companies was an activity by way of business by Y as Z Accounting. The Royal Court also considered Y's arguments that the GFSC had been wrong in its conclusion. The Royal Court's decision was, as it appears to us, arrived at after an evaluation of the evidence and arguments, and on the materials before the Royal Court was a decision which was open to it. Given that the appeal to us is only to be on a question of law, and nothing has been explained to us in relation to the second ground of appeal as raising such a question concerning the Royal Court's decision, we reject this ground of appeal. It follows that the appeal in respect of the Royal Court's decision concerning Y's contravention of the Fiduciaries Law, as regards the formation of the 12 companies, must be dismissed.

85 We have referred above to Z Accounting's advertising from 2015 to 2016, and the advertising on the 2017 website. The Royal Court rejected Y's appeal against the GFSC's finding that the former had involved a regulatory contravention. That aspect of the Royal Court's judgment is not challenged by Y. It follows therefore that there was a further regulatory contravention by Y when he caused the 2015 to 2016 advertising.

86 However, there is an issue concerning the 2017 advertising. Here there is a difference between the parties as to what was in fact Royal Court's decision on the point. On the one hand the GFSC argues that the Royal Court did not reverse the GFSC's finding of a regulatory contravention. On the other hand Y submits that the Royal Court did reverse that finding, but then failed to follow through the implications of that when considering other aspects of his appeal.

87 The difficulty with the 2017 advertising and what was concluded as to that lies in the way the Fiduciaries Law sets out the general description of regulated activity in section 2(1)(b) (quoted above) but then takes out of the category of regulated activity various specific activities which would otherwise be embraced in the larger category

88 We were shown the particular website advertisement which was said to have given rise to the 2017 regulatory contravention.

88.1 The home page gave the name of the business, explaining that it was "*an accountancy practice based in Guernsey providing prompt and personal accounting services for those needing an experienced accountant*". This was elaborated by the explanation that what was provided was "*personal and prompt accountancy, bookkeeping, financial reporting, statutory and administrative services for medium and small sized Guernsey businesses, sole traders and individuals.*" This continued by explaining that the practice was "*called upon to provide a wide spectrum of professional services in Guernsey assisting local businesses beyond straightforward accountancy services*", and added that "*We liaise on behalf of clients with banks, finance houses, States of Guernsey authorities and the Registry*".

88.2 On a page for "Services" the website listed "*some of the primary accountancy plus services*" offered, and added "*we also provide general administration for Guernsey companies, in particular when dealing with other service companies and Authorities*". The listed services included bookkeeping under the heading "*Accountancy*", and

explained, under the heading “*Secretarial and Statutory*”, that the practice “*engage fiduciaries to incorporate Guernsey Companies and we assist with all other start up matters including opening bank accounts to get businesses operational*”; and it was added that “*We also assist with*” various matters, including “*Company dissolution*”.

- 89 We have set out above the general language used in section 2(1)(b) of the Fiduciaries Law to make company administration generally a regulated activity; and broadly the 2017 advertising was of such activity. Indeed, the website was explicit that company administration was being offered. But Y submitted before the Royal Court that paragraphs (h), (q) and (r) in section 3(1) of the Fiduciaries Law would carve out of the general run of company administration services offered by Y anything which was (i) providing bookkeeping or company secretarial services (but nothing else regulated) to a company with an established place of business in Guernsey (para (h)), (ii) providing advice or drafting documents in the ordinary course of carrying on the profession of accountant (para (q)), and (iii) drafting minutes of meetings (para (r)).
- 90 For Y Advocate Barnes submits to us, as he had before the Royal Court, that the advertising on the 2017 website therefore did not involve a contravention of the Fiduciaries Law; and he submits further that this was held to be the case by the Royal Court.
- 91 The difficulty with this, if in fact it represents the Royal Court’s decision, is that if there was any offering by Y of activities, or holding out by Y of a willingness to undertake, by way of business, the provision of company administration services which were not covered entirely by exemptions, the fact that some part of the offered services might have been lawfully carried on as having been within an exemption and therefore not regulated does not excuse the non-exempt services by causing also the latter activity of providing these non-exempt services not to be regulated. Offering or holding oneself out as willing to conduct activity which is partly regulated and partly not still involves the offering or holding out of oneself as willing to conduct regulated activity. In this regard what matters is what Y held himself out as willing to do; so what matters is what would he would have reasonably been understood by a reader of his website to be offering himself as willing to do. So for instance, when the advertisement referred to giving assistance with all start up matters including opening bank accounts, Y would reasonably be understood to be offering to give practical help, not simply to advise: this is clear, in the light of the advertisement’s earlier reference to liaising on behalf of clients with banks, finance houses, States of Guernsey authorities and the Registry.
- 92 Nevertheless, Advocate Barnes drew attention to the Royal Court decision, that Y’s appeal concerning advertising was to be upheld albeit to a “*limited extent*” (para 63 the judgment); and what was upheld, he submitted, was the appeal in relation to the 2017 website advertising.
- 93 Against this the submission made on behalf of the GFSC by Advocate Shires was that the Royal Court’s decision, upholding Y’s appeal in this respect, was confined to criticism of the SDM’s chain of reasoning when making its decision in the Final Notice; that, in short, the SDM was found to have failed specifically to address the extent to which parts of the activity of administering and managing companies may have been conducted lawfully as falling within specific paragraphs in section 3(1) of the Fiduciaries Law. But this criticism by the Royal Court of the SDM’s reasoning, so Advocate Shires submits, did not detract from the GFSC’s ultimate conclusion that the description of offered activities was larger than simply an offering of specifically exempted activities, and therefore included at least to some extent regulated activities.

- 94 We were shown the relevant parts of the GFSC’s Final Notice in which the SDM had found the 2017 website advertising to have involved a regulatory contravention. In paragraph 46 of the Final Notice, after referring to the fact that section 2(1)(b) of the Fiduciaries Law makes company administration a regulated activity, the submissions made on behalf of Y in relation to the specific exemptions were described. The SDM then considered whether the services advertised fell exclusively within the range of what was exempted by relevant paragraphs in section 3(1) of the Fiduciaries Law and held that they did not, and that what was advertised went further. There followed, in paragraph 47 of the Final Notice, a conclusion as to the 2017 advertising that Y had “*offered company administration and secretarial services*” by way of business, a regulated activity, when not licensed to carry on that activity.
- 95 The Royal Court, at paragraph 62 of its judgment, described this conclusion as being that Y had “*offered company and administration*” services (the emphasis being the Royal Court’s). Later in its judgment, at paragraph 97, the Royal Court referred to a finding made by the SDM that “*company secretarial services were not exempt*”, the Royal Court’s reference indicating that this was a finding with which the Royal Court did not agree.
- 96 It seems to us that paragraph 62 the judgment the Royal Court must contain a transcription error when intending to quote, with emphasis, from the conclusion in paragraph 47 of the Final Notice, and that what must have been intended was emphasis on the fact that paragraph 47 referred to both administration and secretarial services: the Royal Court was concerned that seemingly the secretarial services were exempt by reason of paragraph (h) in section 3(1) of the Fiduciaries Law, and so to the extent that Y held himself out as carrying on these his advertising was innocuous.
- 97 It might be argued that, having regard to the words in paragraph (h) (and in paragraph (l)) indicating that bookkeeping and secretarial services are only exempt if no regulated activity is carried on, if there is any regulated activity carried on the exemption drops away. On this footing, if the offered administration services went beyond what was strictly exempt and thus included regulated activities, the offered secretarial services could also be regulated. Furthermore, the paragraph (h) exemption only applies where the services are exclusively to companies with established places of business in Guernsey, so that advertising services without restricting what was offered only to companies with such places of business could go beyond the scope of the exemption. This point was not argued before us by the GFSC, and we are therefore left with an unchallenged finding that insofar as the 2017 advertising offered company secretarial services there was no regulatory contravention.
- 98 But this still leaves the question whether the Royal Court found that the 2017 website advertising had not involved any regulatory contravention at all, or whether the Royal Court’s only finding differing from that of the GFSC was confined to so much of the advertising as concerned the services of company secretary.
- 99 Advocate Shires on behalf of GFSC points out that the Royal Court’s criticism of the GFSC’s decision was muted. The Royal Court had remarked only that the GFSC’s approach “*has been slightly flawed*”, for the reason that “*a broadbrush conclusion has been reached without piecing together the exemptions Y’s practice was entitled to rely upon*”, before indicating that Y’s appeal was to be upheld to a limited extent (as mentioned above). Arguably, therefore, the finding was only that the GFSC’s broadbrush conclusion had been too broad in sweeping up and including a finding of irregularity as regards the secretarial services referred to in paragraph 47 of the Final Notice, and in failing to observe in that respect that once the paragraph (h) exemption had been

applied there was nothing of the nature of secretarial or bookkeeping services going beyond the exemption. This conclusion might be supported by Y's Notice of Appeal, which characterised the Royal Court's decision as having been that "*the Senior Decision Maker had found incorrectly that the Respondent had contravened the Fiduciaries Law by offering to provide company secretarial services*".

100 While we see the force of Advocate Shires' submission, we are unable to accept it. In our judgment the reason why the Royal Court described Y's appeal as regards advertising as having been upheld only to a limited extent was because it failed as regards the 2015 and 2016 advertising. As regards the 2017 advertising, the Royal Court's conclusion was that there had not been any regulatory contravention, contrary to the decision of the GFSC. This, we think, is plain not only from the language of paragraphs 62, 63 and 97 of the Royal Court's judgment, but also from paragraph 75. This paragraph stands at the end of the part of the judgment where consideration was being given to the question whether the SDM's decisions had been irrational; whether, in particular, the SDM was acting irrationally in deciding that Y had been shown to be unfit. In paragraph 75 the Royal Court supported as permissible the SDM's finding that Y had been shown to be unfit by reference only to Y's regulatory contraventions as regards company formation and advertising company formation services, without any further reference to any contravention in respect of the 2017 website advertising.

101 Whatever our views might have been concerning the 2017 website advertising, the GFSC has not sought to appeal against any decision by the Royal Court that that advertising (in contrast with the 2015 and 2016 advertising) had not involved Y in any regulatory contravention. We therefore accept the argument made on Y's behalf by Advocate Barnes, that insofar as the Royal Court upheld the sanctioning of Y by the GFSC, its decisions had to be approached on the basis that in one respect, not challenged on this appeal, the Royal Court had found the SDM to have been in error.

#### The finding that Y is unfit

102 The powers of the GFSC to impose the Fine and to make the Statement Order required, as a condition, either or both of (1) contravention by Y "*in a material particular*" of a provision of or under the Regulatory Laws, or (2) a conclusion that Y did not "*fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to him*" (see sections 11C(1) and 11D(1) of the FSC Law). In order therefore for the GFSC to impose the Fine and to make the Statement Order it was sufficient that there had been the regulatory contravention we have just explained concerning the formation of the 12 companies.

103 In the present case, however, as the Royal Court rightly pointed out in paragraph 70 of its judgment, the SDM relied only on the second limb of the condition, that concerning Y's failure to fulfil minimum criteria for licensing under the Fiduciaries Law (paras 60 and 68 of the Final Notice). These minimum licensing criteria are set out in schedule 1 to the Fiduciaries Law; but included among these criteria is the consideration of any contravention of any of the Regulatory Law.

104 The Fiduciaries Law schedule 1 criteria are matters to be satisfied positively for a licence to be granted; but in relation to the making of the various orders in question in the present case, they are to be looked at negatively, in particular when a qualitative assessment is required for the purposes of deciding on an available sanction. The relevant question, therefore, is whether and if so how far the person has fallen short of what is necessary for being licensed, rather than whether

he has at least equalled what is necessary to be licensed. Thus, paragraph 3 in schedule 1 sets out as a criterion, (“the fit and proper person test”) that “*The applicant or licensed fiduciary is a fit and proper person to hold a fiduciary licence*”, in this connection regard being had to, among other matters, his probity and competence, his knowledge and understanding of his obligations, his record of compliance with various statutory or regulatory provisions, and his previous conduct including evidence of any contraventions of any of the Regulatory Law.

105 In contrast, the powers of the GFSC to make the Prohibition Order and the Exemption Order required a conclusion by the GFSC that Y was not a fit and proper person for the purposes of the relevant Regulatory Laws (see section 17A(1) of the Fiduciaries Law, section 18A(1) of the IMII Law, section 28A(1) of the Insurance Business Law, section 17A(1) of the Banking Supervision Law, and section 34E(1) of the POI Law). But this conclusion required to be made by the GFSC “*having regard to the provisions of*” the applicable schedule to the relevant Regulatory Law, the focus being on provisions equivalent to paragraph 3 in schedule 1 to the Fiduciaries Law, which we have described above. In other words the matters to which regard was to be had, in deciding whether a person is not after all fit and proper for the purposes of the Prohibition Order, would include those noted in the previous paragraph.

106 The GFSC’s findings that Y did not meet the minimum licensing criteria for the purposes of the exercise of the power to fine and to make a public statement, and that he was not a fit and proper person so as to be open to a prohibition order or to an order that the Paragraph (g) Exemption should not apply, was set out and explained in paragraphs 59 and 60 of the Final Notice. These (appropriately redacted) read as follows:

***“Fit and proper person***

59. *As narrated above, I conclude that [Y] contravened the Fiduciaries Law, in that (i) in incorporating companies for clients of [X] accounting, he conducted the regulated business of company administration (by way of business) without the appropriate licence; and (ii) he offered to carry out company formation services, and more general company administration and secretarial services, (by way of business) without having the appropriate licence. Even if, alternatively, it were to be considered that [Y] had carried out the company incorporations in his capacity as a [X] director and with their awareness (and hence did not contravene the Fiduciaries Law in that regard and to that extent), I find that, in any event, the manner in which he carried out the incorporations was such as would have placed [X] in breach of obligations under the POC Regulations and the Handbook.*

60. *On the basis of this conduct (and regardless of the capacity in which he was acting in carrying out the 12 company incorporations, and whether or not [X] were aware of his actions), I conclude that [Y] fails to fulfil the minimum criteria for licensing in the Fiduciaries Law, and that he is not a fit and proper person in terms of each of: (i) the Fiduciaries Law; (ii) the IMII Law; (iii) the Insurance Business Law; (iv) the Banking supervision Law; and (v) the POI Law. [Y]’s position would appear to be that he did not ignore, but was not sufficiently conversant with, the legislation applicable to the activities which he was carrying out. However, this would indicate a lack of the necessary knowledge and understanding of legal and professional obligations, and a lack of prudence. I consider that, on the basis of his own evidence, [Y] was not fully candid with [X] about his incorporation of the 12 companies, and the full circumstances and purpose of those incorporations. Given that [Y] was using his*

*access as a [X] director of the Guernsey Registry to carry out the incorporations, this seems to me to be a serious matter. Despite being a [X] director, he failed to act in the company's best interests (in particular, with regard to the taking and holding of CDD). He cannot explain how he came to offer services on his website, which he ought not to have offered. I do find that there are inconsistencies in the various accounts which he has offered of what occurred, and this does cause me concern as to his openness and honesty during the investigation. I also am not convinced that [Y] yet appreciates the seriousness of his conduct. Accordingly, in all these circumstances, I consider that doubt is cast on his competence, and also on his probity and the soundness of his judgment. Further, I consider that he engaged in business practices which were improper, and reflect discredit on his method of conducting business and his suitability to carry on regulated activities."*

107 It can be seen that the considerations relied upon included not only a conclusion that Y had contravened section 1 of the Fiduciaries Law by his company formation activity, but also an assessment of the nature of the contravention in terms of Y's culpability, and a consideration of his behaviour more generally in relation to X Co and in the aftermath of his involvement with X Co when what he had done he was being investigated by the GFSC.

108 Y's third ground of appeal is that the decision of the Royal Court upholding the SDM's finding concerning his not being a fit and proper person to hold a licence was itself wrong. He submits in his written case that his contravention of the Fiduciaries Law prohibition was because "*he believed he was forming the companies under the [X Co] licence*" and that he did not believe he was doing anything wrong; and he makes various challenges before us to the findings of the SDM concerning his behaviour in relation to X Co and in the GFSC investigation.

109 As we see it, there is nothing in these submissions which is properly the subject of an appeal to this Court. Y's only right of appeal to this court is on a question of law. The Royal Court's evaluation of the evidence before the SDM when making the Final Notice, and as to whether the SDM's findings and orders were open to the SDM and should be upheld, is not a matter which is to be appealed to this Court, unless it can be shown that some question of law arises for decision as regards that evaluation. None has been put before us. The Royal Court understood the submissions being advanced on Y's behalf, examined them in detail and rejected them in a conclusion at paragraph 75 of its judgment in the following terms:

*"75. Looking at the detailed reasons in the round, I am satisfied that this sixth ground of appeal is without merit. I think it is an attempt on behalf of Y to de-construct the reasons in such a way as to undermine the finding made that Y is not a fit and proper person and so did not fulfil the minimum licensing criteria. That is a finding that I am satisfied was available to the SDM to reach on all the material considered. Indeed, once the finding was made that the formation of these 12 companies was the action of Y and not Licensee X, as well as the acknowledgement that services had been advertised on the website as part of Y's practice that Y was not permitted to advertise, there was obviously material from which that finding could be made and, in my opinion, was properly made."*

110 In this connection the Royal Court understood, as we have described earlier, that part of Y's advertising, namely the 2017 website advertising in contrast with the 2015 and 2016 advertising, had not involved a regulatory contravention, contrary to the conclusion reached by the SDM. But, nevertheless, the Royal Court pointed out that the SDM's decision that Y should be subject

to sanction had been based upon the finding that Y was not fit and proper and failed to meet the minimum licensing criteria, not simply upon regulatory contravention, but that anyway the formation of companies and the advertising of those services was a contravention which could properly support the finding as to Y's want of fitness and failure to meet the minimum licensing criteria.

- 111 We therefore reject Y's third ground of appeal. The Royal Court was well entitled to uphold the SDM's conclusion that Y's conduct had caused him not to be fit and proper and to fail to meet the minimum qualification to be licensed, with the result that it was in principle open to the GFSC to make orders in exercise of the powers referred to in Appendix 1 to the Final Notice.

#### The exercise of the GFSC's powers of sanction

- 112 Y's grounds of appeal referred to in paragraph 76.4 above are directed at the Royal Court's decision concerning the actual exercise of the various powers, once it had decided that (contrary to Y's contention) some exercise was open to the SDM (and, on appeal and reconsideration, to the Royal Court). Before us Y's case was that having regard to the findings which were properly open to the SDM and to the Royal Court on the appeal, there should have been no exercise of the powers at all.

- 113 There are, in summary, two contentions made on Y's behalf.

113.1 The first is that the Royal Court's elimination of the advertising on the 2017 website as a regulatory contravention knocked away a material foundation for the making of the Appendix 1 orders: absent that foundation, so it is submitted by Advocate Barnes, the orders became unsupportable as made.

113.2 The second is that the orders were in any event excessively severe, and that the Royal Court failed to ask itself whether they were reasonable and proportionate leading to error in its decision to uphold the orders.

- 114 As to the first contention, as we have already pointed out, the Royal Court at paragraph 70 of its judgment drew attention to the fact that the basis for the SDM's exercise of the powers was not simply regulatory contraventions, but also other matters concerning Y's conduct more generally. Further, we have explained that we see no difficulty with the Royal Court's decision concerning the availability of the power to make the orders, expressed at paragraph 75 of its judgment.

- 115 The second contention requires a little explanation.

115.1 The Prohibition Order and the Exemption Order were, as made by the GFSC, limited in point of time so far as what was covered by those orders. The Royal Court's decision was that they could not have been limited in this way. But Y contends that, even making the assumption they could have been, still what was ordered was excessive, and that this is all the more so if the only permissible exercise of the powers was to be for a perpetual prohibition and disapplication of the Paragraph (g) Exemption (whether or not in the future, in the light of circumstances then prevailing, the orders might be varied or discharged).

115.2 In relation to the Fine and the Statement Order, the FSC Law sets out various matters the SDM had to take into account when exercising the relevant powers and deciding on the

level of fine and the making of a public statement. These matters are listed out in sections 11C(2) and 11D(2) of the FSC Law. In summary they concern the way in which the matter of complaint against the relevant person was brought to the attention of the GFSC, the seriousness of the matter, whether or not the matter was inadvertent, efforts made to rectify the matter or to prevent recurrence, the potential financial consequences of the statement or penalty imposed, and the actions taken or sanctions or penalties imposed by the GFSC in other cases. Before the Royal Court Y's contention was that the GFSC had failed to have regard, or proper regard, to these considerations, and arrived at a conclusion which was wholly unreasonable and disproportionate.

116 Before us Advocate Barnes on behalf of Y has made in his written contentions detailed argument concerning other cases in which the GFSC has taken action or imposed sanctions or penalties, comparing those cases with the present. These contentions are a repetition of what was submitted to the Royal Court and which the Royal Court understood. This is apparent from paragraph 79 of the Royal Court's judgment, set out in the part of the judgment headed "*Proportionality and reasonableness*":

*"79. Y's third ground of appeal contends that all the sanctions imposed by the SDM were "wholly disproportionate" and such that no reasonable decision-maker would have made. Particular reference is made to the sanctions not bearing comparison to other cases decided by the GFSC. In response, Advocate Shires contends that these sanctions were well within the range of responses open to the GFSC and so should not be set aside."*

117 Not only did the Royal Court consider Y's argument concerning other cases (paras 77, 91 to 97 and 99 to 101 of the Royal Court's judgment), but also considered carefully and at length the GFSC's treatment of each of the other matters listed out in sections 11C(2) and 11D(2) of the FSC Law (paras 81 to 90); and these matters were brought into account by the Royal Court when upholding the decision to impose the Fine and the principle of the Statement Order (paras 98 and 103 of the judgment).

118 We cannot see that Y's challenge to the Royal Court's decision in relation to the Fine and the Statement Order raises any question of law. The evaluation of the nature and quality of the conduct Y and of the other factors to be taken into account when determining the Fine and the making of Statement Order was a balancing exercise which the FSC Law has reserved to the GFSC in the first instance and subject to review by the Royal Court. Nothing has been put before this Court which might lead us to consider that the Royal Court's decision fell outside the bounds of what was open to the Royal Court on its review of the GFSC's conclusions and orders.

119 For the same reason, we consider that Y's challenge to the Royal Court's decision in relation to the Prohibition Order and the Exemption Order must itself fail. As explained earlier, the GFSC had thought it right to make orders, but nevertheless orders which were not to have operation during the whole of Y's life (subject – and only in the case of the Prohibition – to further review or discharge in the future pursuant to section 17A(5) of the Fiduciaries Law). The Royal Court remitted these orders for further consideration by the GFSC only because the Royal Court considered the SDM to have been mistaken as to the scope of the available powers. Concluding, as we have, that the SDM was after all not mistaken as to the available powers, in our judgment the Royal Court's order concerning the Prohibition Order and the Exemption Order should in principle be reversed: it is clear to us that, having upheld the Fine and the principle of the making of a public statement, the Royal Court would not have disturbed the Prohibition Order and the

Exemption Order had the conclusion been reached that the SDM had appreciated correctly the scope of the available powers as the four-year limit was well within the range of what could appropriately have been decided upon. In the circumstances it would not serve any purpose for the SDM now to be invited to reconsider afresh whether any and if so what orders should be made under the powers referred to in paragraphs 5 and 6 above.

#### Disposition

- 120 In the result, we allow the GFSC's appeal, and will order the reinstatement of the Prohibition Order and the Exemption Order made by the SDM and with the period of four years to run from the time when the orders were made by the SDM; and we dismiss Y's cross-appeals.
- 121 Provisionally we are minded to order Y to pay the GFSC's costs of the appeal and the cross-appeal. If either party considers that some different order should be made, we should be notified within 7 days of the handing down of this judgment once finalised and will then give directions for exchanges of written arguments and decide on the papers what, if any, costs order should be made.

## **APPENDIX 1**

### **APPENDIX 1: MEASURES AND SANCTIONS IMPOSED**

For the reasons set out in the Statement of Reasons, the Commission takes the following action in respect of [Y]:

- i. pursuant to each of section 17A of the Fiduciaries Law, section 18A of the IMII Law, section 28A of the Insurance Business Law, section 17A of the Banking Supervision Law, and section 34E of the POI Law, makes an order prohibiting [Y] for a period of 4 years, from (i) holding the position of director, controller, partner, manager, financial adviser, general representative or authorised insurance representative (as applicable); and (ii) acting as Money Laundering Reporting Officer or Compliance Officer within a person licensed under any of these said Regulatory Laws
- ii. disapplies the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect of [Y] (to preclude him from holding up to six directorships, which would not otherwise be exempt by virtue of section 3 of the Fiduciaries Law) for a period of 4 years
- iii. pursuant to section 11D of the FSC Law (i) imposes a financial penalty of £13,000 to be paid by [Y] and (ii) issues a public statement under section 11C of the FSC Law (in the form set out ...).

APPENDIX 2

**A) Financial Services Commission (Bailiwick of Guernsey) Law 1987**

**Public statements.**

- 11C. (1) Where the Commission is satisfied that a licensee, former licensee or relevant officer –
- (a) has contravened in a material particular a provision of, or made under, the prescribed Laws, or
  - (b) does not fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to him,
- it may, subject to the provisions of section 11E, publish a statement to that effect.
- (2) In deciding whether or not to publish a statement under this section and, if so, the terms thereof the Commission must take into consideration the following factors –
- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
  - (b) the seriousness of the contravention or non-fulfilment,
  - (c) whether or not the contravention or non-fulfilment was inadvertent,
  - (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
  - (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of publishing a statement, and
  - (f) the action taken by the Commission under this section in other cases.
- (3) A “**relevant officer**” means a person who when the contravention or non-fulfilment in question took place was a director, controller, partner, manager, general representative or authorised insurance representative of a licensee or former licensee.

**Discretionary financial penalties.**

- 11D. (1) Where the Commission is satisfied that a licensee, former licensee or relevant officer –
- (a) has contravened in a material particular a provision of, or made under, the prescribed Laws, or
  - (b) does not fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to him,
- it may, subject to the provisions of section 11E, impose on him a penalty in respect of the contravention or non-fulfilment of such amount not exceeding the relevant sum calculated in accordance with subsections (1A) and (1B) as it considers appropriate.
- ...
- (2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Commission must take into consideration the following factors –

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
  - (b) the seriousness of the contravention or non-fulfilment,
  - (c) whether or not the contravention or non-fulfilment was inadvertent,
  - (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
  - (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty, [and
  - (f) the penalties imposed by the Commission in other cases, and
  - (g) in the case of a personal fiduciary licensee or former such licensee or a relevant officer, the emoluments arising from or otherwise in respect of the relevant position held by him, at the time when the contravention or non-fulfilment took place and otherwise.
- (3) Where a penalty is imposed on a person under this section, the Commission may publish his name and the amount of the penalty.

...

**Appeals against decision.**

- 11H. (1) A person aggrieved by a decision of the Commission –
- (a) to make or vary a disqualification order against him under section 11B,
  - (b) to refuse to vary or revoke a disqualification order made against him under section 11B,
  - (c) to publish a statement relating to him under section 11C,
  - (d) to impose a financial penalty on him under section 11D,
  - (e) to publish his name under section 11D(3) as a person on whom such a penalty has been imposed, or
  - (f) to omit, pursuant to section 11G(2), any matter from a statement of reasons given to him,
- may appeal to the Court against the decision.
- (2) The grounds of an appeal under this section are that –
- (a) the decision was *ultra vires* or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
- (3) & (4) .....
- (5) On an appeal under this section the Court may –
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

- (6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

This subsection is without prejudice to the operation of section 11E(3).

- (7) An appeal against a decision to publish a statement in respect of a person shall be held in private unless –

- (a) the parties agree that all or part of the hearing should be held in public, or  
(b) the Court so orders.

- (8) Where an appeal against a decision to publish a statement under section 11C or 11D(3) is upheld the Commission shall, if the appellant so requests, publish a statement of that fact.

This subsection applies where pursuant to section 11E(3) the appellant did not have an opportunity to make representations before the decision was made.

- (9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

- (10) In this section “**the Court**” means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it

**B) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc  
(Bailiwick of Guernsey) Law, 2000**

**Prohibition of unlicensed business.**

1. (1) A person other than a Bailiwick company shall not carry on by way of business, in or from within the Bailiwick, any of the activities described in section 2 (hereinafter called “**regulated activities**”) except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 6 (hereinafter called a “**fiduciary licence**”).
- (2) A Bailiwick company shall not carry on by way of business, in or from within any place whatsoever, any regulated activities except under the authority of and in accordance with the conditions of a fiduciary licence.
- (3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.
- (4) The fact that a regulated activity is carried on in contravention of this section shall not of itself affect any civil liability arising in respect of the carrying on of the activity.

**Regulated activities.**

2. (1) subject to the provisions of section 3, regulated activities are the following –
  - (a) The formation, management or administration of trusts, and the provision of advice in relation to the formation, management or administration of trusts, including (without limitation) –
    - (i) acting as corporate or individual trustee or protector for trusts,
    - (ii) the provision to trusts of corporate or individual trustees or protectors,
  - (b) Company or corporate administration including (without limitation) –
    - (i) the formation, management or administration of companies, partnerships or other unincorporated bodies, and the provision of advice in relation to the formation, management or administration of companies, partnerships or other unincorporated bodies, whether incorporated or established in or under the laws of the Bailiwick or elsewhere,
    - (ii) the provision to any such companies, partnerships or other unincorporated bodies of –
      - (A) corporate or individual directors,
      - (B) individuals or companies to act as company or corporate secretary or in any other capacity as officer of a company, partnership or other unincorporated body other than a director,
      - (C) nominee services, including (without limitation) acting as or providing nominee shareholders,

- (D) registered offices or accommodation addresses (the expression “address” in this subparagraph including any postal, telecommunication or electronic address),
- (iii) acting as director of any company or unincorporated body, or as partner of any partnership, whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere,

...

### **Exempted activities.**

3. (1) The following activities are exempted from the operation of section 2 and accordingly are not regulated activities –
  - (a) acting as trustee or custodian of a collective investment scheme authorised by the Commission under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
  - (b) acting as a director of a company which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the company by the director (other than acting as director),
  - (c) acting as a director of a company which is quoted on a stock exchange recognised by the Commission for the purposes of this paragraph,
  - (d) acting as a director of a company where more than half in nominal value of the equity share capital of that company is held by –
    - (i) the director, as beneficial owner,
    - (ii) any close relative of the director, as beneficial owner, or
    - (iii) the trustees of a trust of which a person mentioned in subparagraph (i) or (ii) is a beneficiary,
  - (e) acting as a director of a supervised company,
  - (f) acting as a director of a company which is a subsidiary of a company described in paragraph (b), (c), (d) or (e),
  - (g) acting, where the person so acting is an individual, as a director of not more than six companies, being directorships which are not the subject of an exemption contained in any other paragraph of this subsection, except in any case where the Commission disappplies the exemption contained in this paragraph in respect of any person on the grounds that, having regard to the criteria of Schedule 1, the Commission is not satisfied that he is a fit and proper person to be or to become a director of a company; and, where the Commission decides so to disapply the exemption contained in this paragraph, it shall serve notice to that effect on the person concerned, giving particulars of the right of appeal set out in section 19,
  - (h) acting as bookkeeper or company secretary of a company which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the company by the person concerned (other than acting as bookkeeper or company secretary),
  - (i) acting as a partner of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the partner (other than acting as partner),

- (j) acting as a partner of a partnership –
  - (i) which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or which is exempt from licensing under section 29 of the Law, or
  - (ii) which holds an authorisation under section 8 of that Law,
- (k) acting as a limited partner in a limited partnership,
- (l) acting as bookkeeper of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the person concerned (other than acting as bookkeeper),
- (m) the acceptance of money on terms under which the money –
  - (i) is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable in the event of the property or services not in fact being sold, hired or otherwise provided,
  - (ii) is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract, or
  - (iii) without prejudice to subparagraph (ii), is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise,
- (n) acting as guardian of a minor or person under legal disability where the appointment is made by, and where the discharge of the functions of guardian is subject to the supervision of, the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (o) acting as executor of the will of, or administrator of the estate of, a person who was resident or domiciled in the Bailiwick at the time of the execution of the will or at the time of death, provided that the person so acting is a lawyer,
- (p) acting as trustee of testamentary trusts created by the will of a person who was resident or domiciled in the Bailiwick at the time of the execution of the will or at the time of death, provided that the person so acting is a lawyer,
- (q) the provision of advice or the drafting of documents by a lawyer, accountant or actuary in the ordinary course of carrying on the profession of lawyer, accountant or (as the case may be) actuary,
- (r) [...] the drafting of minutes of meetings by a lawyer, accountant or actuary,
- (s) the preparation and auditing of accounts,
- (t) activities undertaken in the course of a profession or business –
  - (i) which are undertaken without separate or additional remuneration (whether from the client concerned or from a third party), and
  - (ii) which are incidental to the carrying on of that profession or business, provided that the person carrying on the profession or business does not hold himself out as undertaking those activities,
- (u) the activities of the Ecclesiastical Court and Registrar thereof in relation to the granting of probate and letters of administration,
- (v) the provision of accommodation addresses (within the meaning of section 2(1)(b)(ii)(D)) –
  - (i) by the States of Guernsey Telecommunications Board or the States of Guernsey Post Office Board (or any company succeeding to the

- undertaking of either of those Boards) or by an internet or telecommunications service provider, or
- (ii) where the address is provided solely for the service of process or the service of notice under a contract,
- (w) any activity carried on under the authority of and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory Laws,
- (x) the following activities when carried on by a registered insurance intermediary within the meaning of section 49A of the Insurance Business (Guernsey) Law, 1986 –
  - (i) the formation of, and the provision of advice in relation to the formation of, a retirement annuity scheme or retirement annuity trust scheme approved by the Director of the Revenue Service under the provisions of Part XIII of the Income Tax (Guernsey) Law, 1975, or
  - (ii) the formation of, and the provision of advice in relation to the formation of, a pension scheme or gratuity scheme (in each case within the meaning of section 2(1)(e)) or trust of a life assurance policy,
- (y) any particular activity, transaction or appointment specifically exempted from the operation of section 2 by written instrument of the Commission; and for the purposes of this paragraph –
  - (i) an application for such an exemption shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,
  - (ii) the application shall be accompanied by such fee as may be prescribed by regulations under section 7,
  - (iii) the application may be refused or granted subject to such conditions as the Commission may consider necessary or expedient,
  - (iv) the Commission may at any time after receipt of the application require the applicant to furnish such additional information and
  - (v) the exemption may be revoked or varied at any time by the Commission by written notice to the person to whom it was granted.

(2) & (3) ...

- (4) For the avoidance of doubt, an activity which is not exempted from the operation of section 2 by or under this section shall not, by reason of that fact alone, be deemed to be a regulated activity; and, accordingly, the question of whether or not that activity is a regulated activity shall be determined solely by reference to the provisions of section 2.

### **Power to make prohibition orders.**

- 17A. (1) If it appears to the Commission, having regard to the provisions of paragraph 3 of Schedule 1, that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a licensed fiduciary, the Commission may make an order (a “**prohibition order**”) prohibiting that individual from performing any function, any specified function or any specified description of function.

- (2) A prohibition order may relate to –

- (a) any regulated activity, any specified regulated activity or any specified description of regulated activity,
  - (b) licensed fiduciaries generally or any specified class of licensed fiduciary.
- (3) An individual who performs or agrees to perform any function in breach of a prohibition order is guilty of an offence and liable –
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
  - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.
- (4) A licensed fiduciary shall take reasonable care to ensure that none of its functions, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.
- (5) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.
- (6) In this section “**specified**” means specified in a prohibition order.

**List of prohibition orders.**

- 17B.** (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.
- (2) The list referred to in subsection (1) shall specify the functions or description of function which the individual concerned is prohibited from performing.
- (3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).
- (4) The Commission may publish –
- (a) the list referred to in subsection (1), and
  - (b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.
- (5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

**Offering to carry on business.**

37. (1) No person, other than a Bailiwick company or a licensed fiduciary, shall offer to carry on, or hold himself out as being willing to carry on, by way of business, in or from within the Bailiwick, any regulated activities.

- (2) No Bailiwick company other than a licensed fiduciary shall offer to carry on, or hold itself out as being willing to carry on, by way of business, in or from within any place whatsoever, any regulated activities.
- (3) A person who contravenes any provision of this section is guilty of an offence.

**SCHEDULE 1**  
**MINIMUM CRITERIA FOR LICENSING.**

**Integrity and skill.**

1. (1) The business of the applicant or licensed fiduciary is or, in the case of a person who is not yet carrying on a regulated activity, will be carried on –
  - (a) with prudence and integrity,
  - (b) with professional skill appropriate to the nature and scale of his activities, and
  - (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.
- (2) In conducting his business, the applicant or licensed fiduciary shall at all times act in accordance with the following documents issued by the Commission –
  - (a) the Principles of Conduct of Finance Business, and
  - (b) any rules, codes, guidance, principles and instructions issued from time to time under this Law and under any other enactment as may be applicable to him.

**Economic benefit.**

2. ...

**Fit and proper persons.**

3. (1) the applicant or licensed fiduciary is a fit and proper person to hold a fiduciary licence and, in the case of a full fiduciary licence, every person who is, or is to be, a director, controller, partner or manager of the applicant or licensed fiduciary is a fit and proper person to hold that position.
- (2) In determining whether a person is a fit and proper person to hold a fiduciary licence or a particular position, regard shall be had to –
  - (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensed fiduciary or (as the case may be) of that position,
  - (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
  - (c) whether the interests of clients of the applicant or licensed fiduciary are, or are likely to be, in any way threatened by his holding a fiduciary licence or that position,

- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
  - (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
  - (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under –
    - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
    - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
    - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
    - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
    - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
    - (vi) the Transfer of Funds (Guernsey) Ordinance, 2017, the Transfer of Funds (Alderney) Ordinance, 2017 and the Transfer of Funds (Sark) Ordinance, 2017,
    - (via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,
    - (vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
    - (vib) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
    - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, or
    - (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
  - (g) his record of compliance with any provision contained in or made under the Companies (Guernsey) Law, 2008 in acting as a corporate services provider or a resident agent within the meaning of that Law,
    - (ga) his record of compliance with any provision contained in or made under the Limited Liability Partnerships (Guernsey) Law, 2013 in acting as a corporate services provider or a resident agent within the meaning of that Law,
    - (gb) his record of compliance with any provision contained in or made under the Companies (Alderney) Law, 1994 in acting as a corporate services provider or a resident agent within the meaning of that Law,
  - (h) his record of compliance with any provision contained in or made under the Foundations (Guernsey) Law, 2012 in acting as a foundation official or a resident agent within the meaning of that Law,
  - (i) his policies, procedures and controls to comply with any rules, codes, guidance principles and instructions referenced in paragraph 1(2).
- (3) Without prejudice to the generality of the foregoing provisions, regard maybe had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has –
- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
  - (b) contravened any provision contained in or made under –
    - (i) this Law,
    - (ii) the regulatory Laws,

- (iii) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt rules, instructions and guidance issued by the Commission in relation thereto), or
  - (iv) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –
    - (A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities, banking, insurance, investment or other financial services, or
    - (B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of “désastre”),
  - (c) engaged in any business practices (whether unlawful or not) –
    - (i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or
    - (ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on regulated activities, or
  - (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.
- (4) For the purposes of this paragraph and for the avoidance of doubt,
- (a) “**conduct and activities**” includes any conduct, activity or omission in any jurisdiction,
  - (b) “**offence**” includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and
  - (c) “**enactment**” includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.