

Appeal to the Royal Court concerning a decision of the Senior Decision Maker on behalf of the GFSC for breach of article 6, prejudgment, failure to disclose relevant documents, failure to permit cross-examination, errors of law, proportionality, material error of fact/procedure and level of sanctions.

[2025]GRC082

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between:

PAUL RANDALL PYBUS

First Appellant

-and-

**ADJURE GLOBAL LIMITED
(in liquidation)**

Second Appellant

-and-

**THE CHAIRMAN OF THE GUERNSEY FINANCIAL
SERVICES**

Respondent

Judgment circulated under the Practice Direction: 2 October 2025

Final Judgment handed down on: 17 October 2025

Before: Jessica E Roland, Deputy Bailiff

Counsel for the First and Second Appellant: Advocate J T Le Tissier

Counsel for the Respondent: Advocate J Hill

Cases, legislation and texts referred to in decision:

The Human Rights (Bailiwick of Guernsey) Law, 2000

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

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2000

The Insurance Business (Solvency) Rules, 2015

The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020

The Regulations of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020

The Electronic Transactions (Obligations to Use Electronic Form)) Guernsey (Ordinance 2014)

Walters v States Housing Authority [1997] 24 GLJ 39

Chick v GFSC [2020] GRC 035

X, Y and Z v The Chairman of the Guernsey Financial Services Commission [2023] GRC 032

John Robilliard v GFSC [2023] GCA 035

Guernsey Financial Services Commission v Domaille and others [2024] GCA 003

R v Sussex Justices ex parte McCarthy [1924] 1 KB 256

McGonnell v United Kingdom [2000] 30 EHRR 289

Tsfayo v United Kingdom (2009) 48 EHRR 18

Loutfi v General Medical Council [2010] 1762 (Admin)

RWE Npower Renewables Ltd v Welsh Ministers [2011] EWHC 1778 (Admin)
Ivey v Genting Casinos UK Ltd [2017] UKSC 67
Newell-Austin v. Solicitors Regulation Authority [2017] EWHC 411 (Admin)

Hauschildt v Denmark (10486/83 24 May 1989)
Ramos Nunes de Carvalho E SA v Portugal (55391-13, 57728-13, 74041)
Carmel Saliba v Malta (24221/13 29 November 2016)

Introduction

1. At the commencement of the hearing on 8 January 2025, I gave leave for the Appellants to amend the Cause containing the grounds of appeal against the decision of the Senior Decision Maker, Terence Mowschemson KC (the “SDM”) on behalf of the Guernsey Financial Services (the “GFSC” the “Commission” or the “Respondent”) made on 23 March 2023 (“the Decision”) (“the Amended Cause”). In the Decision, the SDM imposed a financial penalty of £150,000 upon Mr Pybus pursuant to Section 39 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the “Enforcement Law”); a prohibition pursuant to Section 33 of the Enforcement Law for a period of 10 years; and the disapplication of six directorships exemption in Section 3(1) of the Regulations of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the “2020 Fiduciaries Law”) pursuant to Section 33 of the Enforcement Law for a period of 10 years. The SDM imposed a financial penalty of £300,000 on Adjure Global Limited (“AGL”) pursuant to Section 39 of the Enforcement Law and imposed the making of a public statement pursuant to Section 38 of the Enforcement Law. Following a judgment handed down by me on 24 October 2023, the financial penalty against Mr Pybus, the Prohibition Order and the issue of a public statement relating to both the Appellants was suspended until determination of this appeal. The application for suspension of the financial penalty against AGL was rejected. By operation of Section 32(7) of the Enforcement Law, the disapplication order has no effect until this appeal is determined.
2. In addition to the comprehensive skeleton arguments filed by the parties, the parties augmented their written arguments in a hearing before me over three days from 8 to 10 January 2025. The Appeal bundles consisted of 8 lever arch files, plus a further supplementary bundle and additional documents handed up during the hearing. On the final day of the hearing, the Respondent handed up a timeline dealing with various requests and directions to the Enforcement Division and the SDM. In addition, the Respondent filed electronically the bundles provided to the SDM for the oral meeting. The Appellant filed a response to the timeline on 21 February 2025 (with further documents) and the Respondent responded to that on 24 February 2025.
3. In order to keep this judgment within manageable proportions, I shall not be referring to all the documents which I have read or to which I was referred, only to those which I regard as necessary to explain the reasons for my conclusion. Nevertheless, in view of the nature of the arguments put forward by the parties, it is of necessity a lengthy judgment. Inevitably the grounds of appeal overlap one another.
4. In accordance with the Act of Court dated 12 July 2023, this version of the judgment in this appeal has been anonymised in relation to persons and companies mentioned in Decision but not the subject of the Appeal.

Legal Framework

5. The right of appeal conferred on any person or group by a decision of the GFSC to impose any of the sanctions listed in Section 106(1) of the Enforcement Law is set out at 106(3) of the Enforcement Law. The grounds are:

- a) *the decision was ultra-vires or there has been 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 as to the procedure.”*

Factual Background

6. AGL is a Guernsey company which was incorporated on 4 January 2010 under the name of LEY Fiduciary Limited. After December 2015, AGL was ultimately owned 75% by the sixteen equity partners of LEY Group Limited, including Mr Y and Mr N (non-executive directors of AGL) and 25% by Mr Pybus via the Falcon Foundation. Mr Pybus, his spouse and children are the main beneficiaries of the Falcon Foundation. AGL changed its name to Adjure Global Limited on 1 June 2018. Mr Pybus is the largest single ultimate beneficial owner via the Falcon Foundation. AGL obtained a fiduciary licence on 2 September 2010 under the Regulation of Fiduciaries, Administration Businesses and Company Directors, Etc (Bailiwick of Guernsey) Law, 2000 Fiduciaries Law (“2000 Fiduciaries Law”) and was subsequently licensed (subject to conditions) to conduct regulated activities under the 2020 Fiduciaries Law. It was also licenced as an insurance manager under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (the “IMII Law”) from 1 July 2011 to date. On 9 July 2014, AGL was granted an insurance managers licence pursuant to Section 4 of the IMII Law. On 30 March 2021, conditions were imposed on the licences to which limited it to acting as an insurance manager or as a general representative for existing clients or clients who wished to establish (or transfer) a category 5 (re) insurer as defined in The Insurance Business (Solvency) Rules, 2015. AGL surrendered its licence under the 2020 Fiduciaries Law and the IMII Law with effect from December 2022 and is being wound up.
7. The following individuals were directors of AGL at the time of the Decision: Mr Y (appointed as Non-Executive Director on incorporation in January 2010); Mr Pybus (appointed as a Director (and Managing Director) in July 2011)); Mr N (appointed a Non-Executive Director in August 2011); and Mr S (appointed as a Director on June 2019). Mr YN was appointed as a Director in January 2013 but resigned with effect from 31 December 2018. He was the Compliance Officer from 1 December 2012 until 1 December 2018 and the Money Laundering Reporting Officer (“the MLRO”) from 13 February 2013 until 1 June 2018. YN was succeeded by RY as a Compliance Officer and MLRO from 1 June 2018 until 30 June 2019 and by D Ltd Group Limited as Compliance Officer from 5 August 2019 with SW of D Ltd appointed as MLRO on 30 June 2019.
8. AGL is the primary licensee for the following secondary licensees; AG Nominees Limited (“ANL”); Adjure Global Trustees Limited (“AGTL”); AG Directors Limited (“AGDL”); Adjure Global Secretaries Limited (“AGSL”); Adjure Global Nominees Limited (“AGNL”); and Adjure Global Directors Limited (“AJGDL”).
9. Each of the secondary licensees is a licensed fiduciary within its own right and each retains individual responsibilities to comply with the legal and regulatory obligations to which it is a subject. The secondary licensees do not trade independently from the primary fiduciary licensee in respect of regulated activities but only acts for clients of its primary licensee and is controlled by the primary licensee. All the secondary licensees referred to in this determination are subsidiaries of AGL. However, for the purposes of the enforcement division investigation, AGL, as primary license, has been treated as wholly responsible for the alleged breaches of the relevant laws, regulations, rules, codes and principles.

10. AGL carries on business by providing trust services, including the formation and administrations of trusts, advice on formation and administration of trusts and the provisions of trustees. AGL provides company administration services, including company and/or corporate administration, company formation, provision of directors and secretaries, nominee services, registered office and registered agent services and administration of foundations. AGL also provides insurers management services and acts as General Representative of two insurers, both owned by AGL.

Grounds of Appeal

BREACH OF ARTICLE 6(1) RIGHT TO A FAIR TRIAL BEFORE AN INDEPENDENT AND IMPARTIAL TRIBUNAL

Summary of submissions

11. In the Appellants' Amended Cause at paragraph 7, the Appellants say that the approach taken by the GFSC and the SDM to the enforcement proceedings, as a whole, culminating in the Decision, fails to constitute a fair trial by an independent and impartial tribunal and in particular: (a) the SDM is not independent of the executive; (b) the SDM is not independent of the GFSC; (c) the approach taken by the SDM and the GFSC does not present an appearance of independence or impartiality; and (d) the approach taken by the SDM and the GFSC fails to offer sufficient guarantees to exclude legitimate doubt as to independence and impartiality which was unreasonable and amounted to an error of law and a material error as to procedure.
12. Whilst the Appellants accept that arguments based on The Human Rights (Bailiwick of Guernsey) Law, 2000 (the "Human Rights Law") have been attempted in appeals against enforcement decisions by the GFSC a number of times but have not succeeded, they say that their argument is based on two new and inter-related reasons which need to be determined. In the *Guernsey Financial Services Commission v Domaille and others* [2024] GCA 003 ("*Domaille*") at paragraphs 79 and 80, the Court of Appeal sets out that the Royal Court's appellate role is limited to a strictly appellate review and cannot assume a full merits based trial or fact finding function. As a consequence, the Appellants say that the failing of the Enforcement Law is to ensure that decisions by the Respondent, which are not those of an independent and impartial tribunal, cannot be rectified by the Royal Court because it does not have full jurisdiction or sufficiency of review. In essence, it cannot cure the deficiencies in the enforcement procedure. The Appellants rely on the decision of *Tsfayo v United Kingdom* (2009) 48 EHRR 18 ("*Tsfayo*"). The Appellants say that *Tsfayo* found that where the following matters meant that a review by a court did not have "sufficiency of review" necessary to cure the violation, namely:
- i. The matter under appeal was a question of fact which was central to the dispute (see paragraph 46);
 - ii. the tribunal concerned was not lacking in independence from the executive but was directly connected to one of the parties which could "*infect the independence of judgment in relation to the primary fact in a manner which could not be adequately scrutinised or rectified by judicial review*" (see paragraph 47);
 - iii. the safeguards built into the tribunal's procedure were not adequate to overcome the fundamental lack of objective impartiality (see paragraph 47); and
 - iv. the court did not have jurisdiction to rehear the evidence or substitute its own views as to the central factual issue, so that there was never the possibility that the central factual issue could be determined by a tribunal independent one of the parties to the dispute (see paragraph 48).

13. The Appellants also rely on *Ramos Nunes de Carvalho E SA v Portugal* (55391-13, 57728-13, 74041) 6 November 2018 ("*Ramos Nunes*"). The Appellants directed me towards paragraph 182 which says:

"...The case of Tsfayo falls into this category. In that case, the body whose decision was under judicial review was not merely lacking in independence from the executive, but was also directly connected to one of the parties to the dispute (see Tsfayo, cited above, § 47). The Court considered that the independence of judgment in relation to the finding of primary fact was liable to be impaired in a manner which could not be adequately scrutinised or rectified by judicial review. As the competent court had lacked jurisdiction to rehear the evidence and had therefore been unable to determine a crucial issue of fact, the Court found a violation of Article 6 on the ground that the central issue had not been determined by a tribunal that was independent of the parties. In other words, in that case, the impossibility of re-examining a decisive factual issue had prevented the appellate court from remedying the lack of independence from one of the parties to the dispute that had been found at first instance."

14. The Appellants say that the Decision contains findings of fact which are challenged by the Appellants. These finding of fact are in turn central to the main findings by the SDM against the Appellants where he concludes that they acted with a lack of probity and with a lack of integrity. The Appellants say that the lack of independence within the GFSC is more acute than it was in *Tsfayo*. The GFSC is the investigator, prosecutor and decision-maker. It is also the party which receives payment of any fines. The Appellants say there are no safeguards which can address the absence of impartiality within the GFSC. Only where such a body is subject to subsequent control by a judicial body which has full jurisdiction or sufficiency of review can this mean that there is no contravention of Article 6(1). However, because an appeal to the Royal Court under the Enforcement Law is not a de novo trial, there is never going to be the possibility of an independent tribunal being able to make its own findings or substitute its findings for the GFSC's findings. The Appellants say that *Domaille* is not authority for the proposition that the statutory appeal regime "cures" the manner in which a decision is taken by the GFSC to make it Article 6 compliant or with the principles of natural justice. Whether the appeal regime does, or not, is specific to the facts and circumstances of each appeal and also by the differences in reasoning and outcome.
15. Further, the Appellants say that the issue decided in *Domaille* was whether the Lieutenant Bailiff had exceeded her statutory jurisdiction when deciding the appeal to the Royal Court not whether the decision in that case was itself ultra vires. *Domaille* confirms that the Royal Court's role is limited to appellate function and does not conduct a trial de novo. The Royal Court is unable to substitute its own findings for those of the GFSC and is limited to either setting aside the decision which can involve remitting the matter back to the GFSC or confirming the decision. In this case, the issues central to the Appellants' substantive appeal are factual issues which include whether they acted with a lack of probity, integrity and failed to admit the standard of a fit and proper person. This requires the SDM to make the findings of fact on what the Appellants subjectively knew or believed, as required by the first limb of the test in *Ivey v Genting Casinos UK Ltd [2017] UKSC 67* ("*Ivey*"). The only tribunal which is able to make the necessary finding of facts concerning the Appellants is the GFSC through the SDM and not the Royal Court on an appellate basis. In the absence of the Royal Court's jurisdiction to rehear the evidence or substitute its own views as to the Appellants' credibility, there is no possibility that the central issue of what the Appellants knew or believed being determined by a tribunal that is independent of one of the parties to the dispute. It is submitted that the Royal Court in the specific circumstances of the Appellants' current appeal does not have full jurisdiction or sufficiency of review to render the enforcement process compliant with convention and therefore, there is a violation of Article 6(1) of the Convention on Human Rights incorporated into Guernsey law by the Human Rights (Bailiwick of Guernsey) Law, 2000, the right to a fair trial ("Article 6") and the Decision needs to be set aside.

16. The Appellants say that the parts of *Domaille* relied on by the GFSC where the Court of Appeal says that the statutory scheme is Article 6/rules of natural justice compliant is not a decision on those issues rather these observations are obiter. They say the observations in the judgment dealing with the leave to appeal from the Court of Appeal decision in *Domaille* to the Privy Council (the “LTA Judgment”), which the Respondent relies on, are not binding on the Royal Court. The Appellants say they are under no obligation to seek a Declaration of Incompatibility under section 4(2) of the Human Rights Law, nor does doing so have an immediate or obvious benefit for the Appellants. It is not a requirement for a Declaration of Incompatibility to be made in order for the Appellants’ case to be successful. The Appellants also say whether a Declaration of Incompatibility is or is not granted is not dependent on whether a litigant has sought one. They say a proper reading of Section 4 of the Human Rights Law is that the decision of the relevant court to make a Declaration of Incompatibility is when the court “*is satisfied that the provision is incompatible with a convention right*”. The Appellants’ case is that the Decision, and all the matters connected to it are in breach of their Article 6 rights. They say it should be uncontroversial that the Decision itself is a breach of Article 6. The Appellants rely on paragraph 70 of *Domaille* where the Court of Appeal says “*the GFSC is not an “independent” tribunal within the meaning of Article 6, because it functions as investigator, prosecutor and decision-maker.*” The Appellants say there is no evidence before the court of any safeguards or any other measures which have been put in place by the GFSC to ensure the independence of the SDM’s role. The relationship between the SDM and the GFSC is entirely opaque to the Appellants (and the public at large). In *McGonnell v United Kingdom [2000] 30 EHRR 289* the European Court of Human Rights found that the Bailiff’s multiple roles meant that there was a lack of independence and impartiality and therefore, a violation of Article 6(1) of the Convention. There was no suggestion of actual bias or impartiality, it was the objective issue of independence and impartiality which caused the violation. In this instance, irrespective of whether one considers that the SDM is ostensibly independent, there can be no doubt that the GFSC violates Article 6(1) unless this is somehow otherwise cured. This approach is entirely consistent with the dicta of Lord Hewart CJ in *R v Sussex Justices ex parte McCarthy [1924] 1 KB 256* at paragraph 259 “*a long line of cases show that it is not merely of some importance but is of fundamental importance that justice should not only be done but should be manifestly and undoubtedly be seen to be done*”. What constitutes “full jurisdiction” or “sufficiency of review” on appeal will depend on the circumstances of each case. The Appellants pray in aid the stark contrast between the Guernsey system and appeals from the Financial Conduct Authority. The appeal tribunal has a full merits jurisdiction under Section 55 of The Financial Services and Markets 2000 on appeal to the Upper Tribunal (Tax and Chancery Chamber) which is an independent and impartial tribunal for the purposes of Article 6(1). The court should also take into account that as reported in *Chick v GFSC [2020] GRC 035* Lieutenant Bailiff, Sir Richard Collas “*the GFSC has received clear legal advice that it should not be judge and jury in its own cause*”.
17. The Respondent says that the argument that the Royal Court must have the ability to conduct a “full merits review” given the lack of independence in the enforcement process concluding with the SDM decision is flawed. Not only is *Domaille* binding on the Royal Court, but the Respondent says that the Royal Court’s powers are limited by the Enforcement Law. At paragraph 9 of the “LTA Judgment”, Perry JA (by reference to paragraph 50¹ of the judgment of the Court of Appeal) says: “*this interpretation of section 106(3) is consistent with the statutory scheme, ensures procedural fairness, provides a considerable safeguard for the individual and is sufficiently broad to ensure compliance with Article 6.*”
18. The Royal Court does not have the power to approach the appeal in the way that the Appellants submit it should. The Appellants’ real challenge is to the Enforcement Law itself, and therefore, the appropriate procedure should be adopted under Section 4(2) of The Human Rights

¹ This appears to be a typo as the correct reference is paragraph 80.

(Bailiwick of Guernsey) Law, 2004. In any event, the Respondent says the situation is very different from the *Tsfayo* case relied on by the Appellants. That was a case that is concerned with the adequacy of judicial review, whereas the grounds for the statutory appeal under the Enforcement Law are broader than judicial review grounds. Also, the nature of the decision making by the GFSC is different from that in *Tsfayo*. Unlike a simple question of fact in *Tsfayo* which was whether there was good cause for the applicant's delay in making a benefits claim, the SDM under the Enforcement Law is exercising an “*expert, evaluative, regulatory decision-making function*” (see *Domaille* at paragraphs 67 and 69). The SDM has a very high degree of independence and is a professional lawyer in the quasi-judicial role. Further, the procedural safeguards in place overcome any lack of impartiality. Similarly, the Respondent says that comparisons with the *Ramos Nunes* case are also flawed. The systems being compared are completely different, the processes are different, the expertise of the decision-maker is different, and the powers of the Royal Court compared to the judicial division of the Supreme Court in the *Ramos Nunes* case are very different. The Respondent says a correct and holistic analysis of all the relevant features of the decision-making process undertaken by the Respondent and the appeal process to the Royal Court will lead to the conclusion there is no Article 6(1) breach.

Discussion

19. This is the latest attempt to challenge the enforcement process of the GFSC on the basis of a human rights challenge under Article 6(1), the right to a fair trial. It is important to remember that this appeal is not by way of judicial review but rather is a statutory appeal. As set out above, the grounds on which appeal may be brought under Section 106 of the Enforcement Law are listed under Section 106(3):

*“(a) the decision was ultra vires or there was some other error of law,
 (b) the decision was unreasonable²,
 (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.”*

The powers of the Royal Court hearing such an appeal are set out in Section 106(6).

It may:

*“(a) set the decision of the [GFSC] aside and, if the Royal Court considers it appropriate to do so, remit the matter to the [GFSC] with such directions as the Royal Court thinks fit, or
 (b) confirm the decision, in whole or in part.”*

20. I am not satisfied that the Appellants have demonstrated that their arguments are new even if the cases of *Tysafo* and *Ramos Nunes* have not been relied on in the past. In any event, I do not consider that either of those cases offers the support that the Appellants' submissions seek to argue in these proceedings. In *Tsafyo* at paragraph 46, the ECHR makes a clear distinction between the facts of that case and those decisions which require professional knowledge or experience and the exercise of administrative discretion pursuant to wider policy aims. In the case of *Ramos Nunes*, whilst it begins at paragraph 176 by stating that in order for a tribunal (dealing with the appeal) to meet the requirements of article 6(1) the “tribunal” in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it goes on to say:

“177. Both the Commission and the Court have acknowledged in their case-law that the requirement that a court or tribunal should have “full jurisdiction” will be satisfied

² The parties both agreed that the test of unreasonable to be applied was that set out in *Walters v States Housing Authority* [1997] 24 GLJ 39.

where it is found that the judicial body in question has exercised “sufficient jurisdiction” or provided “sufficient review” in the proceedings before it (see *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, § 152, 21 July 2011, and the case-law cited therein). Thus, the requirement of full jurisdiction has been given an autonomous definition in the light of the object and purpose of the Convention, one that does not necessarily depend on the legal characterisation in domestic law.

178. In adopting this approach the Convention organs have had regard to the fact that it is often the case in relation to administrative-law appeals in the member States of the Council of Europe that the extent of judicial review over the facts of a case is limited, and that it is characteristic of review proceedings that the competent authorities review the previous proceedings rather than taking factual decisions. It can be derived from the relevant case-law that it is not the role of Article 6, in principle, to guarantee access to a court which can substitute its own assessment or opinion for that of the administrative authorities. In this regard, the Court has placed particular emphasis on the respect which must be accorded to decisions taken by the administrative authorities on grounds of expediency and which often involve specialised areas of law (see *Sigma Radio Television Ltd*, cited above, § 153, and the case-law cited therein).

179. In assessing whether, in a given case, the extent of the review carried out by the domestic courts was sufficient, the Court has held that it must have regard to the powers of the judicial body in question and to such factors as: (a) the subject-matter of the decision appealed against, and in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and, if so, to what extent; (b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the administrative body; and (c) the content of the dispute, including the desired and actual grounds of appeal (see *Sigma Radio Television Ltd*, cited above, § 154; see also *Tsanova-Gecheva*, cited above, § 98, and the cases cited therein, and in particular *Bryan v. the United Kingdom*, 22 November 1995, § 45, Series A no. 335-A, and *Galina Kostova*, cited above, § 59).

180. In considering whether the legislative scheme, taken as a whole, provided a due enquiry into the facts, the Court must also have regard to the nature and purpose of that scheme. Indeed, in relation to administrative-law appeals, the question whether the extent of judicial review afforded was “sufficient” may depend not only on the discretionary or technical nature of the subject-matter of the decision appealed against and the particular issue that the applicant wishes to ventilate before the courts as being the central issue for him or her, but also, more generally, on the nature of the “civil rights and obligations” at stake and the nature of the policy objective pursued by the underlying domestic law (see *Fazia Ali v. the United Kingdom*, no. 40378/10, § 84, 20 October 2015).”

21. The Court of Appeal in its judgment in *Domaille* considered the breadth of appeal available under the Enforcement Law and, in particular, from paragraphs 65 to paragraph 80 the judgment sets out the appellate jurisdiction of the Royal Court – what Perry JA referred to as the “true scope of the Royal Court’s function” (see paragraphs 74 and 75), including addressing the question of whether Article 6 requires a full merits-based trial de novo. This reasoning was not obiter but was central to the Court of Appeal’s conclusions. A necessary consideration for their decision was whether the powers of the Royal Court on appeal are sufficiently broad to ensure compliance with Article 6. At paragraphs 75 and 76, Perry JA held:

“75. In assessing correctly the true scope of the Royal Court’s function under s. 106, it is convenient to start by identifying the framework within which the analysis needs to be conducted:

- (i) *The Royal Court’s jurisdiction in this context is entirely statutory.*
- (ii) *The requirements of fairness are always fact specific.*
- (iii) *Similarly, the question whether a person’s rights under Article 6, ECHR, have been violated in any given case is again fact specific. It is often said that, where an administrative decision is made which engages Article 6, the review court must have ‘full jurisdiction’ – but that is a protean concept which does not necessarily demand that a single procedural model must be followed in all cases and in all circumstances.*

76. With these points in mind, two interim propositions can be advanced: (i) it cannot be suggested that the Royal Court is positively required (either by the rules of natural justice or by s. 6 of the Human Rights Law) to conduct a full, merits-based trial de novo under s. 106; (ii) the ultimate answer to the question whether the Royal Court is either required or entitled to conduct a full, merits-based trial de novo under s. 106 is to be found in a correct interpretation of the EP Law.”

22. He then goes on at paragraph 79 and 80:

“79. The function of an appellate court on these issues begins and ends with a determination of whether the GFSC’s decision was reasonable or proportionate: if it was, then the GFSC’s decision stands; if it was not, the Royal Court can only exercise the limited functions conferred on it under s. 106(6); but it cannot usurp the primary decision making function of the GFSC. Similarly, the fact that a successful appeal can be brought on the basis that there was a material error as to the facts does not mean that the Royal Court is to undertake its own primary, evidential decision-making function. Rather, its appellate mandate is to consider the evidence and to determine whether the GFSC’s decision on the facts is materially ‘wrong’ in the usual appellate sense – i.e. that it is unsupported by any evidence or is perverse in the face of the overall weight of the evidence. If the GFSC’s decision was not wrong, in this sense, then it stands; if it was wrong, then the GFSC’s decision cannot stand; but in that situation, the Royal Court is again limited to the exercise of the powers under s. 106(6), and it cannot arrogate to itself a primary fact-finding function.

80. The conclusion is that the Royal Court’s function under s. 106(1) is to hear an appeal by reference to all or any of the grounds listed in s. 106(3), and to exercise the powers conferred by s. 106(6) – no more, no less. It is not the Royal Court’s function to conduct a full, merits-based trial de novo, or to assume the primary fact-finding function or the expert, evaluative, regulatory decision-making function of the GFSC.”

23. Thus, the Court of Appeal came to the conclusion that taking into account the nature of the regime in full, the powers of the Royal Court on appeal were sufficiently broad. Furthermore, the principle of the SDM being required to make findings of fact and the nature of the review undertaken by the Royal Court on appeal on findings of fact was central to the Court of Appeal judgment on *Domaille* case. In that case whilst the appeal was successful in terms of demonstrating that the underlying decision was flawed due to an absence of the basis upon which the SDM had come to his conclusions on probity, the Court of Appeal was satisfied that that the statutory appeal process under the Enforcement Law, when properly applied, is sufficient to be Article 6 compliant. I am satisfied that the Court of Appeal case of *Domaille* is binding upon me and confirms that Enforcement Law is compliant with Article 6 of the ECHR. Having come to this conclusion it is not necessary for me to consider the further arguments put forward by the Appellants under this ground of appeal and this ground of appeal is dismissed.

24. Nevertheless, it is appropriate for me to confirm that due to the very comprehensive nature of the grounds of appeal by the Appellants against the Decision, in conducting this appellate review of the SDM's Decision, I have taken into account and scrutinised not only the substantial amount material which was filed for the January appeal hearing but also all the documentation that was filed subsequently by both parties which included all the documentation that was before the SDM at the time of Decision before coming to my conclusions. However, although the scope of my review of the Decision is an intense one it is nevertheless a review of the Decision and not a rehearing.

FAILURE TO FIND AND/OR APPLY THE CORRECT LEGAL TEST WHEN FINDINGS OF A LACK OF PROBITY AND LACK OF INTEGRITY.

Summary of submissions

25. At what I believe should be paragraph 8 of the Appellants' Amended Cause (although the numbering has gone awry) the Appellants say that the SDM, and therefore the GFSC, has failed to specify adequately or at all the legal test it had applied when making the multiple findings of a lack of probity and/or a lack of integrity.
26. The Appellants say that it is not in doubt that the test set out in *Ivey* for dishonesty is the test which should be applied by the SDM. In *Domaille* the GFSC's decision was set aside because the Court of Appeal found that it could not be sure that the GFSC had applied the correct legal test for probity.
27. At paragraph 183 of *Domaille* the Court of Appeal held:

"...in some parts of the Decision it is not clear if the SDM was proceeding on the basis of what the Individuals actually knew or believed, or what they ought to have known. One possible reading of the SDM's Decision is that he was proceeding on the basis that the facts known to each of the Individuals were such that to continue to act in the particular cases (the X Trust, in the case of Mr Domaille and Mrs Hannis) or to continue with the transaction, (the Y Trust, in the case of Mr Clarke) was unethical and demonstrated a want of probity. This was a finding open to the SDM, but the specific findings of what was known or believed by each of the Individuals is not entirely clear, nor is it clear whether he was proceeding on the basis of the fact known or believed by each of them, or on the basis of what each of the Individuals ought to have known. This lack of clarity, which goes to the heart of the finding of want of probity, is itself sufficient reason for the Decision to merit reconsideration."

28. The Appellants say that the issue before the Court in this case is materially more acute than in *Domaille*. If *Ivey* is properly applied what a person knew or did not know to be wrong is immaterial to the test of dishonesty. In this Decision, the SDM does not specify the legal test it applied when considering whether the Appellants acted with a lack of probity and/or lack of integrity.
29. The failure of the GFSC to state the legal test, if any, that it may have applied when deciding whether the Appellants had acted with a lack of probity and/or integrity means that the Appellants are unable to know whether the SDM misdirected itself on the law and/or applied the correct test. The Appellants rely, in particular, upon the case of *RWE Npower Renewables Ltd v Welsh Ministers* [2011] EWHC 1778 (Admin) at paragraph 37(5) where Beatson J found:

"in considering whether there has been a deficiency of reasons three situations are to be distinguished. They are: where it was necessary to the decision to resolve an issue of law, where the decision had depended on a disputed issue of fact, and where the decision was essentially an exercise of discretion; see Save Britain's Heritage v No. 1

Poultry Limited, per Lord Bridge. In the first situation, if the reasons do not disclose how the issues of law resolved, that “will” suffice.”

30. Furthermore, here there is a statutory obligation on the GFSC to provide reasons under Section 105 of The Enforcement Law. This requires the GFSC to “provide [the Appellants] with a written statement for the reasons of the Decision”. The Appellants say that they do not know what, if any, legal test was used by the GFSC and if any prejudice was caused as a result. They cannot say whether there is a potential point of appeal arising from the application of the wrong test. Further, the GFSC has failed to state how it applied the issues before it to that legal test. Findings with regard to a lack of probity and/or integrity require a tribunal to set out the correct legal test to be applied and then the tribunal has to make a finding of what the party subjectively knew, or believed, in relation to each set of circumstances and then make a finding on whether, on that subjective knowledge, their actions amounted to a lack of probity or integrity by applying the objective standards of ordinary people.
31. In relation to the First Allegation, which was failure to supply documents in response to Statutory Notices (the facts of which are set out in more detail below), the SDM made a finding that AGL acted with a lack of probity by not providing certain documents in relation to a Notice requiring the production of those documents. The Appellants say the GFSC failed to apply any legal test when making such a finding and did not make a finding as to AGL’s subjective knowledge or belief, as required by the first limb of the *Ivey* test. There was no analysis on the second part of the test either. Similarly, in relation to the Second Allegation the GFSC made a finding that Mr Pybus lacked probity in relation to H Ltd (paragraph 84.2 of the Decision) but the Decision fails to apply the proper legal test in making such a finding. Likewise, the Third Allegation lacks the application of a legal test applied in relation to the finding that AGL acted in breach of the requirements for integrity and probity in relation to the thematic client visit. At paragraph 118 of the Decision, the SDM finds that Mr Pybus has caused AGL to fail to act with probity but there is no finding that Mr Pybus himself acted with a lack of probity nor are there any findings concerning his subjective knowledge or belief nor is there any analysis of the actions to the standard of ordinary decent people. In relation to the Fourth Allegation in relation to J Ltd, the Appellants say that it is unclear whether there is a fact of finding because of the language used. The Decision says, “it reflects extremely poorly on the probity of both Mr Pybus (sic)”. This appears to be an unfinished sentence and fails to identify the legal test used by the GFSC, if any. In the Sixth Allegation in relation to L Ltd, there is no expression of the application of any legal test.
32. In the conclusion sections, the SDM sets out its decisions but, again, does not identify the legal test used in such findings. Then at paragraph 346 under the section “Factors Relevant to and consequences of the Proposed Sanctions” and the sub-heading “Whether the contravention or non-fulfilment was inadvertent”, the SDM sets out that “Mr Pybus should have known the statements he was making were false or misleading”. The Appellants say this is again the application of the wrong test and therefore, the appeal should be allowed.
33. In response, the Respondent says the Decision demonstrates that for each finding the SDM did have regard to the state of knowledge of the relevant appellant in determining whether there had been a lack of integrity. For example, in finding a lack of probity arising as a result of Mr Pybus’ materially misleading conduct in attributing responsibility to YN in the H Ltd Report (which was a report on a client H Ltd prepared for the Commission by AGL (by Mr Pybus and FT)) in response to the Second Notice) for marking reviews as complete, the SDM found that Mr Pybus knowingly attributed responsibility to YN despite the contents of the reports. This was in the context of a finding about Mr Pybus’ awareness of issues of control with H Ltd. Likewise, when the SDM found breaches of the requirements for integrity and probity in AGL (acting by Mr Pybus) in causing its secondary licensees to resign as corporate directors of H

Ltd so that they could remove H Ltd from the Thematic Visit³ client list, the SDM had regard to what the email evidence showed that Mr Pybus knew at any time. The Respondent says that the SDM made findings on Mr Pybus' knowledge for each finding of a lack of probity, including when he concluded that Mr Pybus knew that there were technical steps to be taken by AGL before it could officially terminate the client relationship with H Ltd (thereby undermining his explanation that the AGL was already in the process of terminating the relationship), when he concluded that Mr Pybus knew there were serious matters relating to H Ltd that would potentially be difficult to bring into compliance with legislation; and that Mr Pybus was intended to conceal serious compliance problems from the GFSC (acting with such intention necessarily implying a state of knowledge).

34. With regard to the lack of probity found under allegation 4 with regard to J Ltd, the finding that Mr Pybus' pattern of behaviour "*whereby Mr Pybus sought to blame others or stated that he was unaware of an issue...reflects extremely poorly on the probity of Mr Pybus*" (at paragraph 153) is implicitly an assessment of the state of Mr Pybus's state of knowledge.
35. When the SDM found that the misleading response Mr Pybus provided to the GFSC on 26 February 2020 containing the amended L Ltd minutes demonstrated a serious lack of probity (at paragraph 208), the SDM had found that no Escrow account discussion had happened at the meeting of 28 October 2019 (at paragraph 204). The Respondent says the only conclusion the SDM could have drawn in those circumstances is that Mr Pybus knew this (as he had attended the meeting).

Discussion

36. When the Court of Appeal in *Domaille* considered the decision of the SDM in that case, they considered that his approach to the question of probity had been flawed. The Court of Appeal found that whilst it was not necessary for the SDM to conclude whether or not the individuals in that case knew if they were acting ethically, it was necessary for the SDM to consider "*what each of the Respondents knew or believed of the (objective) facts. It would then have been necessary to consider whether, knowing of or believing in the existence those facts, the Respondents' conduct lacked probity.*" Paragraph 183 of *Domaille*, as set out above, says that it was not clear if the SDM was proceeding on the basis of what the individuals in that case knew or believed or what they ought to have known. The Court of Appeal concludes "*This lack of clarity, which goes to the heart of the finding of want of probity, is itself sufficient reason for the Decision to merit reconsideration.*"
37. Although the main focus of the argument in this case was on probity, the SDM also makes findings of a lack of integrity, for the purpose of this judgment (as the Court of Appeal did in *Domaille* (see paragraph 116)), I will proceed on the basis that integrity and probity are interchangeable.
38. Paragraph 120 and 121 of the Court of Appeal's judgment in *Domaille* is also relevant to this decision where it says:

"120. In Ivey, the Supreme Court brought the criminal law test for dishonesty into line with the civil test, and simplified the law (as well as the task of fact-finding tribunal) by removing the subjective limb of the Ghosh test. The test is now solely objective. This was made clear by Lord Hughes (at §74) who explained the position in the following way:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief of the facts

³ The Thematic Visit is more particularly described under Allegation 3.

... When once his actual state of mind as to knowledge or belief as to the facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

121. In our judgment, there is nothing technical about this. Lord Hughes is describing the conventional exercise of deciding whether certain conduct is dishonest by reference to the nature of the conduct and what the individual knew or believed the circumstances to be as a matter of fact (as opposed to their knowledge or belief as to the honesty or ethical standards of ordinary decent behaviour). As such, it is perhaps unhelpful to speak of a person’s “state of mind” in this context, and more accurate to focus instead on the person’s knowledge or belief as to the existence or absence of facts. What is important is the actual state of the Individuals’ knowledge or belief in that regard, not their particular state of mind based on their system of values. Once their knowledge or belief as to the facts has been established, the question can then be answered as to whether their conduct (or inaction) involved dishonesty, judged objectively”.

39. The last sentence is particularly apposite for this case. Although the focus in *Domaille* was on the first part of the test and the ascertainment of the party’s knowledge or belief of the facts, nevertheless, the objective element is also an essential and necessary part of the test.
40. At paragraph 122 of *Domaille* the Court of Appeal sets out that “*As a matter of principle, we see no real difference between the Ivey approach in determining dishonesty and the correct approach to assessing probity..... Once their knowledge or belief as to the facts has been established, the question can then be answered as to whether their conduct (or inaction) involved dishonesty, judged objectively.*”
41. Relying on *Newell-Austin v. Solicitors Regulation Authority* [2017] EWHC 411 (Admin), and the decision of Morris J, Perry JA says: “*integrity connotes moral soundness, rectitude and steady adherence to an ethical code (at §47) and went on to explain (at §§48 – 50) that, while the test for lack of integrity was objective, the state of a person’s knowledge was nevertheless relevant to determining whether they had acted without integrity.*”
42. The *Domaille* judgment further sets out at paragraph 185:
- “In the case of the Individuals, the question of want of probity will turn on whether the facts known to the particular individual, viewed objectively, gave rise to a suspicion that funds were tainted or that they were to be used for a discreditable purpose. If so, a reasonable director or manager in the financial services sector aware of those facts would not have pressed on with the client relationship or continued with the transaction, at least not without making further enquiries.”*
43. Whilst there is no doubt that *Domaille* gave clarity to this issue, the argument of the GFSC that the SDM’s approach in not setting out what test he has applied to probity and/or integrity in his Decision is because it predates the Court of Appeal judgment is not sustainable. Indeed, as *Robilliard v The Chairman of the Guernsey Financial Services Commission* [2023] GCA 035 sets out at paragraph 87, previous decisions by the SDM have contained this necessary analysis⁴.

⁴ Paragraph 87 “At paragraphs 208-247 and 399-400 of the Decision the SDM concluded (1) that the Appellant had failed to understand the implications of what he was proposing and implementing in relation to the transfer of beneficial ownership of T from L to H, and that his explanation regarding D’s personal reasons for secrecy was lacking in any credibility (ie was false) and (2) that his conduct was dishonest and lacking in probity by the standards of ordinary decent people. This was a legitimate application of the two-stage test.” *Robilliard v GFSC* (*ibid*)

44. In the instant Decision, the SDM does not set out the test he is using by reference to *Ivey*. Whilst specific reference to the case itself may not have been fatal to the SDM's Decision, what is necessary, is that the SDM clearly articulates the basis for a finding of want to probity or integrity. This includes explicitly following and demonstrating that he has followed the steps that are required, and making clear that he is doing so, each time he makes a finding of a lack of probity (and/or integrity) i.e. first, determining the party's actual state of knowledge or belief about the facts (a subjective inquiry), and second, whether the party lacked probity and/or integrity by objective standards. I do accept that this is different from the type of fact scenario in *Domaille* which focused on third parties' funds and whether on whether the facts known to the party, viewed objectively, gave rise to a suspicion that funds were tainted or that they were to be used for a discreditable purpose⁵. Here it is the actions of the Appellants particularly in their approach to their regulatory obligations and interactions with the GFSC where the questions of a lack of probity are raised. This may mean that in this case where a lack of probity is alleged, the subjective knowledge of the party will sometimes be obvious, but it is still necessary for the SDM to apply the elements of the test properly, including the objective element so that the Decision has the required degree of clarity for a finding of a lack of probity. Although there is the statutory requirement under Section 105 of the Enforcement Law for a decision to have reasons, I do not consider that this adds any greater obligation than that set out clearly in the Court of Appeal judgments in relation to probity.
45. The first finding of a lack of probity by the SDM is under the First Allegation. It is in relation to the omission of documents from AGL's response to the Second Notice⁶. At paragraph 30 of the Decision, it says:

"The failure to supply the February 2013 Client Synopsis and February 2013 Company Review in the circumstances demonstrate a lack of probity by AGL."

46. At paragraphs 27 and 28, the SDM sets out the circumstances in which he comes to that conclusion:

"27. On analysis, a number of documents that were provided by AGL in response to the Third Notice actually fell under the description of "business activities of [H Ltd]" or "[H]ow AGL monitored the transactions and activities of [NT]" or "Initial [or periodic] Client risk reviews of [H Ltd]" or "evidence of AGL monitoring transactions and activities of [H Ltd]" which were requested in the Second Notice but not provided in response to it. In particular, there are two documents that are clearly evidence of AGL monitoring transactions and activities of [H Ltd]: a February 2013 Client Synopsis and February 2013 Company Review, both of which evidence that concerns existed within AGL about a lack of control over the activities of [H Ltd]. The February 2013 Client Synopsis noted that the previous administrators were unaware of the full nature of the activity conducted by [H Ltd] and that a review of [H Ltd] would be expedited by AGL and noted that it supported customers in the area of electronics and had an international presence in Saudi Arabia, Kuwait, Malaysia, Turkey, Chile, the UAE, Qatar and that monies amounting to €12,000 were sent regularly from the International Defence Council to a bank account in the name of [H Ltd] but not known to the administrators. The synopsis referred to another bank account in the name of [H Ltd] with Societe Generale which was not reflected in the annual financial statements of [H Ltd]. The February 2013 Company Review of [H Ltd] also referred to a bank accounts out with the control of the AGL, and the total lack of control over the operations of AGL - then called [LEY] Fiduciary Limited. Mr Pybus' contention that the 2013 Company Review was not a "risk review" and thus fell outside the ambit of

⁵ See paragraph 185 of *Domaille*.

⁶ The Second Notice dated the 7 April 2021 is more particularly described below.

the Third Notice is not correct. It was part of the exercise of monitoring the transactions and activities of [NT] and albeit not called a risk review contained material relevant to the review of risk as part of the review or was part of the monitoring of [H Ltd] or its transactions. Mr Pybus also contends that the Second Notice required evidence of AGL monitoring transactions and not all evidence, a point he emphasised in the 17 March 2023 submissions.

28. The GFSC considers that the omission of these documents from AGL's response to the Second Notice was deliberate, taking into account their content and the matters referred to below in relation to [H Ltd] in relation to the termination of AGL's services to [H Ltd]. Further there has been no credible explanation for the failure to supply the two documents particularly in the light of the obligation on AGL and Mr Pybus to cooperate with the GFSC and Appendix B (Reasons for Decision) paragraph 3.3 in the Second Notice which explained that the requests in the Second Notice were made in the course of the GFSC's investigation into whether AGL "have adequately monitored transactions an activity of its clients.". The omissions were part of a process to conceal aspects of AGL's administration of [H Ltd] from the GFSC."

47. AGL does not deny that the documents were not included, rather it justifies their non-inclusion (as set out in more detail below). The SDM concludes that these are not credible explanations, and the non-inclusion of these documents was deliberate. The conclusions that the SDM comes to which go to the motives behind the non-provision of the documents, in turn, go directly to the finding of a lack of probity. However, I cannot see that that in the Decision contains an application of the test when coming to his conclusion at paragraph 30. Whilst the SDM is entitled to reject AGL's version of events. He must decide the facts on the balance of probabilities on the evidence before him, however, whether the conduct demonstrates a lack of probity, this must be done by reference to the objective test. It is not enough to infer that this is what the SDM must have done this particularly in the absence of any reference to the test found in *Ivey*. The Decision lacks reasoning and clarity with regard to the finding of the lack of probity by AGL.

48. The SDM deals with the Second Allegation which related to H Ltd at paragraphs 32-84 of the Decision. At paragraphs 83 and 84 of the Decision the SDM makes the following findings:

"83. The [H Ltd] Report is also misleading in stating that [YN] and [RY] marked reviews as complete which had actually been dropped, not fully completed or signed off with elements of control weaknesses identified. Neither [YN] nor [RY] signed off the 2015 Company Review or the 2016 Risk Review, which raised elements of control weaknesses, as suggested by the [H Ltd] Report.

84. Whilst [YN] failed in his role as a director of AGL in failing to ensure that the control issues with [H Ltd] were rectified, the comments made by Mr Pybus and [FT] in the [H Ltd] Report to the effect that [YN] was marking periodic reviews as complete when they had been either dropped, not fully completed or completed and signed off with control weaknesses noted are not supported by the evidence obtained by the GFSC. Furthermore, the GFSC considers that for Mr Pybus (and [FT]) to have attempted to attribute responsibility to [YN] in this manner in the [H Ltd] Report is materially misleading and represents additional evidence that:

84.1. Mr Pybus was not open and cooperative with the GFSC as is required by Principle 8 of the Code of Practice – Corporate Service Providers ("the CSP Code"), Principle 10 of the Finance Business Principles and Principle 11 of the Company Director Code;

84.2. Mr Pybus lacks probity as required by the MCL⁷;

49. In this section of the Decision when taken in the context of the previous paragraphs, the SDM makes findings as to Mr Pybus' knowledge of the conduct (whether that was reasonable or not I consider further below) however, in the absence of the application of all of the requirements of the test for establishing whether Mr Pybus lacked probity, the finding at paragraph 84.2 that Mr Pybus lack probity is an error of law.
50. In relation to the Third Allegation which is substantively dealt with from paragraph 85 of the Decision, the finding in relation to probity is at paragraphs 117 and 118 where the SDM concludes:

“117. AGL, acting by Mr Pybus and [FT], between 3 and 22 July 2019 caused its Secondary Licensees, Adjure Global Directors and AG Directors, to resign as corporate directors of [H Ltd] so that it could remove [H Ltd] from the Client List. The resignations were intended to ensure [H Ltd] was not reviewed by the GFSC and therefore avoid the possibility that the serious issues described above would be discovered. This conduct was serious and involved breaches of the following by AGL:

- 117.1. The MCL: in particular the requirements for integrity and probity;*
117.2. Principle 10 of the Finance Business Principles: in particular the requirements for integrity and for open and co-operative relations with the GFSC;
117.3. Principle 8 of the CSP Code: the requirement for Corporate Service Providers to deal openly and honestly with the GFSC; and
117.4. Principle 11 of the Company Director Code: the requirement for directors to cooperate fully with any regulatory authority.

118. In acting as he did, Mr Pybus caused AGL to fail to meet the standards required by the above noted Principles and therefore caused AGL to fail to meet the standards set out above and failed to act with probity.”

51. Under this allegation considering the SDM's Decision as a whole on this issue, the SDM's assessment of evidence and the findings on Mr Pybus' (and FT's) state of knowledge are set out in the paragraphs above the conclusion and in turn AGL's knowledge, in particular, paragraphs 98, 100, 106, 108, 112 and 113. Whether the SDM's conclusion on Mr Pybus' knowledge of the facts was a reasonable one I shall deal with further below, nevertheless, there is no apparent application of the objective part of the test, in this case, of a lack of probity or integrity. Therefore, I have come to the conclusion that the finding at paragraph 117.1 of the Decision in relation to the requirement to act with probity and integrity and paragraph 118 in relation to a failure to act with probity is an error of law.
52. The Fourth Allegation which involves J Ltd starts at paragraph 119 of the Decision and references the J Ltd Report which was prepared by Mr Pybus and FT.
53. At paragraph 150 of the Decision the SDM he says:

“150. The [J Ltd] Report states that the matters largely stem from problems with staff not correctly following policies and procedures. The [J Ltd] Report also states that [YN] and [RY] had been reporting to the AGL board that client matters, including periodic reviews, were fully up to date and signed off. Both [YN] and [RY] disputed in

⁷ The Minimum Criteria for Licensing, Schedule 1 to The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (“MCL”)

interview that they reported that all matters were up to date and signed off and there appears to be no contemporary evidence to support the assertion that they did so report.”

54. At paragraph 153 the SDM found:

“153. In addition, the [J Ltd] Report is materially inaccurate and misleading regarding the statements that [YN] and [RY] were reporting that client matters were up to date. It is an example of a pattern of behaviour whereby Mr Pybus (sought to blame others or stated that he was unaware of an issue. This behaviour is obstructive in relation to the ability of the GFSC to fulfil its statutory duties and reflects extremely poorly on the probity of both Mr Pybus.(sic) This behaviour involved a breach of each of the following requirements:

153.1. The MCL;

153.2. Finance Business Principles: Principle 10; and

153.3. CSP Code: Principle 8.”

55. It is evident that the SDM preferred the evidence of YN and RY about what was said to the Board. Also, that there was an absence of contemporaneous evidence to support the J Ltd Report’s conclusions. However, given that Mr Pybus was one of the co-authors of the J Ltd Report, the argument that the Decision does not deal with the state of Mr Pybus’s knowledge is not one that can be properly maintained. Whether this was a reasonable conclusion I shall deal with further below, however, paragraph 153 is very curiously worded where it says: *“It is an example of a pattern of behaviour whereby Mr Pybus (sought to blame others or stated that he was unaware of an issue. This behaviour is obstructive in relation to the ability of the GFSC to fulfil its statutory duties and reflects extremely poorly on the probity of both Mr Pybus .(sic)”*

56. Ignoring the typo of the additional parenthesis, it is evident that the SDM has not completed what he intended to say in the sentence commencing *“This behaviour...”* nor is it a proper finding nor does it demonstrate the application of the test required for a lack of probity.

57. Under the Sixth Allegation relating to L Ltd and an alteration to the October 2019 Board Minutes, the SDM commences consideration of this issue at paragraph 181 of the Decision and at paragraph 208, the SDM finds:

“208. The GFSC considers that the response that Mr Pybus provided to the GFSC on 26 February 2020 was misleading and demonstrates a serious lack of probity by Mr Pybus for the following reasons:

208.1. If the [L Ltd] board had “fully considered this matter” (as described in Mr Pybus’ email of 26 February 2020 to the GFSC) and it had been “important due to the discussion around solvency and the board ensuring ongoing compliance with solvency” (as stated by [Mr S] in his statement), then the Escrow Account Discussion would have been detailed in the Draft Minutes or Revised Draft Minutes or soon after the Revised Draft Minutes were produced;

208.2. The Draft Minutes were circulated for comment within AGL and between the members of the [L Ltd] board and therefore it is likely that had there been an omission in respect of an important discussion then this omission would have been noticed by at least one of the persons to whom the Draft Minutes and the Revised Draft Minutes were circulated — particularly by Mr Pybus before he sent the Revised Minute to the auditors;

208.3. Mr Pybus had plenty of opportunity to review and amend the Draft Minutes and the Revised Draft Minutes when they were circulated on 31 October

2019 and 1 November 2019 respectively, or before he sent them to the auditors on 26 November 2019 but claims he did not do so until 26 February 2020;

208.4. Neither [Mr L] nor [Mr D] (or anyone else) raised the alleged omission of the Escrow Account Discussion when reviewing the Draft Minutes shortly after the meeting;

208.5. On 26 February 2020 Mr Pybus had no reason other than the GFSC's request for information to review and make amendments to the Revised Draft Minutes;

208.6. If, as Mr Pybus claims, he only reviews draft board minutes prior to the next board meeting, that is not in accordance with sound practice as a person's memory will inevitably recall less detail after the passage of time. In any event, there was no board meeting of the [L Ltd] board forthcoming as at 26 February 2020 and so the review by Mr Pybus of the minute at the time he said is inconsistent with his general practice;

208.7. [OE]'s understanding on seeing the Tracked Change Minutes was that the reference to the Escrow Account Discussion was inconsistent with the approach in relation to the escrow account which had been agreed prior to the meeting; and

208.8. [Mr D's] response on seeing the draft e-mail to the GFSC was that he did not recall the Escrow Account Discussion and it was inconsistent with [L Ltd]'s previous position. Whilst [Mr D] later told the GFSC he was not 100% certain that the discussion did not occur, he thought it serious enough to mention it to the GFSC in March 2020.

209. The GFSC is entitled to expect that documents provided to it are accurate and that directors act with probity at all times in accordance with the requirements of the relevant laws, codes, principles and guidance etc. The provision of false or misleading information or documents is a very serious. The amendments to the [L Ltd] 28 October 2019 Minutes that the GFSC believes, on the evidence, to have been made by Mr Pybus (and do not accurately reflect the Escrow Account Discussion) and Mr Pybus' deployment of the minute to the GFSC and his answers in interview demonstrate a lack of probity and soundness of judgment by him. This appears to be further example of a pattern of misleading behaviour exhibited by Mr Pybus both during the regular ongoing supervision of AGL and during the course of this investigation. This includes the production of misleading client list for the Thematic Visit, on which [H Ltd] did not appear, and misleading comments in the [H Ltd] and [J Ltd] Reports. This pattern of misleading behaviour demonstrates a serious lack of probity by Mr Pybus and is in breach of the MCL."

58. For this allegation I consider that the Decision sets out Mr Pybus' knowledge of the facts (as set out more particularly below) and the basis of why the SDM comes to his conclusion on whether he accepts Mr Pybus' version of events (which he does not) however, the SDM fails to set out and apply the test for a lack of probity. Having failed to set out the test, it is not enough to infer that this is what the SDM must have done. Therefore, the findings of a lack of probity in paragraphs 208 and 209 are an error of law.

59. Having come to the conclusion that the SDM has failed to properly apply the correct test, this amounts to an error of law and, therefore, the Appellants are successful on this ground. I shall deal with the consequences of the Appellants success on this ground below.

PREJUDGMENT OF THE MATTER BY THE GFSC

Summary of Submissions

60. At paragraph 4 of the Appellants' Amended Cause, the Appellants say that the approach taken by the SDM, and therefore the GFSC, was to effectively and substantively reach its decisions

on matters concerning Mr Pybus' and AGL's actions and the sanctions the GFSC was to impose, before the SDM had meaningfully engaged with Mr Pybus and AGL on matters which were material to the SDM's findings and the sanctions to be imposed. The enforcement proceedings against Mr Pybus and AGL were effectively pre-judged by the SDM who failed adequately to take into account the evidence and submissions made by and on behalf of Mr Pybus and AGL, denying Mr Pybus and AGL a fair trial which was unreasonable, amounted to an error of law and a material error as to procedure. This, they say, amounts to a breach of Article 6.

61. The Appellants say the Minded to Notice dated 19 December 2022 with the draft public statement attached was, in effect, the SDM's decision in draft form. Only once the Minded to Notice had been provided to the Appellants, did the Appellants have an opportunity to be heard by the SDM. The Appellants say that on receipt of the Minded to Notice, the Appellants then had the burden of convincing the GFSC that its own decisions were wrong and/or there were reasons why they should be changed. By adopting the approach to the investigation and decisions that he did, the SDM prejudged the case against the Appellants and unfairly caused them to be in the position of having the burden of disproving the GFSC's own decisions. The Appellants say this approach is contrary to the Appellant's right to a fair trial within the scope of Article 6. Further, the Appellants have not received a fair trial before an impartial tribunal, see *Hauschildt v Denmark* (10486/83 24 May 1989) at paragraph 52. Further, the Court should draw inspiration from its approach to criminal law matters: see for example *Carmel Saliba v Malta* (24221/13 29 November 2016).
62. The Respondent says that in producing a Minded to Notice the SDM was doing what the Enforcement Law requires it to do. In any event, the Respondent says the Minded to Notice does not contain a decision and therefore, there is no pre-judgement and, in any event, pre-judgement does not breach the civil limb of Article 6 of the ECHR. The law cited by the Appellants in support of their argument only relates to the criminal limb of Article 6 which is does not apply here.

Discussion

63. There is some overlap with the first ground of appeal, and I do not propose to repeat my conclusions save to say that I consider to the extent it is relevant to this ground of appeal, the *Domaille* decision is binding upon me.
64. These are administrative proceedings and the case law relied on by the Appellants is not of assistance. As has been previously determined the enforcement process does not engage the criminal limb of Article 6 (see *Chick v GFSC* [2020] GCA 078 paragraph 61) nor, (despite the effect of parties subject to the process) is this adversarial civil litigation (see *Robilliard v The Chairman of the Guernsey Financial Services Commission* (*ibid*) paragraph 28).
65. When considering whether to exercise its statutory powers of sanction against any party, the Respondent follows its published decision making process, which is outlined in its published Guidance Note entitled Investigation and Decision Making Process Relating to the Use of Enforcement Powers ("the Explanatory Note"). The version that was relied on during this process was the September 2022 document. The Explanatory Note sets out that it intended to inform the way in which the GFSC approaches the exercise of its statutory powers that involve the exercise of the Commission's enforcement powers. It explains in some detail what is involved in each stage of the decision-making process after a matter has been referred to the Enforcement Division of the GFSC. It also sets out that the objective of the Explanatory Note is to enable those affected to understand where they are in the process and that "*whilst it will generally be followed, in exceptional circumstances the Commission may depart from the process described in this document.*"

66. Paragraph 8 of the Explanatory Note deals with the “Provision of Case Material, Draft Report and a Schedule of Disclosable Material”. It says at 8.1:

“8.1 This stage involves the provision to the party of the draft Enforcement Report and all of the material on which the Commission proposes to rely in asking any appointed decision-maker to act. It will be carried out by the Enforcement Division, who will be responsible for the investigation and findings.

8.2 The party will be asked to consider the material that has been provided and respond to the Enforcement Division, in writing by a specified date:

8.2.1 confirming that the facts as presented are correct or, if not, suggesting what changes might be made so that they are correct, with the evidence to support the assertion made;

8.2.2 providing any additional information they consider to be material or relevant to the matter; and

8.2.3 including any comments they may wish to make in relation to the recommendations contained in the draft Enforcement Report.

8.3 In determining the date by which the response should be provided, the Commission will take account of the nature and volume of information, and the extent to which individual items have been previously available to the party for review and comment.

8.4 No delays in responses will be accepted unless there are documented exceptional circumstances. Any late submissions pertaining to 8.2.1-8.2.3 above, will have to be made before a Senior Decision-Maker in due course and if appointed.

8.5 All comments and material received will be considered and evaluated prior to a revised Enforcement Report being produced by the Enforcement Division. This will be marked as the “Final Enforcement Report”.

67. In this case, a draft Enforcement Report (the “dER”) was served on the Appellants and others by the Enforcement Division of the GFSC on 30 June 2022 with a request for a response by 3 September 2022. Although the Explanatory Notes makes clear at paragraph 8.2 that this was an opportunity for the Appellants to respond challenging the conclusions and providing information to support their position, no response was submitted to the dER (other than from Mr S). The Advocates, then acting for Mr Pybus, wrote to the Enforcement Division on 19 August 2022 asking for a 6 week extension for filing a response to the dER. The letter sets out that the lawyers had been “*working diligently*” in relation to this matter. The Enforcement Division responded on the same day setting out that the 6 week extension was not granted as the Enforcement Division considered that there were no exceptional circumstances (which the Explanatory Note explains at paragraph 8.4 will be the test for delaying the responses) but, nevertheless, a further week was offered on the basis that AGL voluntarily agree to a new business condition with a deadline for response to this offer by 22 August 2022. No response was received and therefore, on 23 August 2022 the Enforcement Division confirmed that no extension had been granted. The Decision notes (despite the apparent diligence with which the lawyers had been working when the extension was requested) that “*Apparently Adjure Global Limited (“AGL”) and Mr Pybus had been advised not to respond to the draft supplied on 30 June 2022*”.

68. On 26 September 2022, the Final Enforcement Report (the “Final Enforcement Report”) was issued by the Commission. The front page of the Final Enforcement Report notes that matters against two of the members of the board of directors of AGL had been resolved. On 7 October 2022, lawyers (not the firm of advocates who had previously written to the Enforcement Division) for Mr Pybus and Mr S wrote to the Respondent also indicating that they were likely to be instructed by AGL too. This letter contained a request that the Final Enforcement Report not be presented to the SDM on 7 October 2022 (in accordance with the timetable set out in the Final Enforcement Report) in order that advice could be taken by the parties on the report and requested that it be delayed until 28 October 2022. Although the response back from the GFSC

does not directly respond to the request, it makes clear that the process of referral to the SDM would not be delayed.

69. Paragraph 11 of the Explanatory Note sets out the next steps, setting out the steps and timetable for the issue of a “minded to” notice or taking other action. The Explanatory Note also makes clear at paragraph 11.3, that a “minded to” notice is not the only option open to the SDM at this point:

“11.3 After considering the Enforcement Report, the evidential documents provided and any further information provided pursuant to paragraph 11.1.1 or 11.1.2, the decision-maker may:

11.3.1 Issue a “minded to” notice as referred to in paragraph 11.7;

11.3.3 decide to take no further enforcement action; or

11.3 refer the matter to a person with the authority to take the appropriate enforcement action.”

70. The requirement to indicate what decision the Respondent is proposing to make, i.e. the “minded to” notice, is prescribed by the Enforcement Law at Section 103 (and is reiterated in the Explanatory Note at paragraph 11.7). The Explanatory Note at paragraph 11.10 also makes clear that the proposed text of any public statement will be issued at the same time as the “minded to” notice and says “*which may or may not be the same as the version proposed by the Enforcement Division, dependent on the SDMs findings.*” In this case the Minded to Notice dated 19 December 2022 was served on the Appellants describing the decisions the Commission proposed to make, the terms of the sanctions the Commission proposed to impose, and the reasons for the proposed decisions in respect of each of the Respondents as well as the draft public statement. The covering letter to the Minded to Notice set out the timetable for the matter going forward, including the period in which the Appellants had to make representations. These representations can be written and/or oral and it is open to the party to request an oral meeting before the SDM during this period. This was extended to 42 business days (rather than 28 calendar days provided under Section 103 of the Enforcement Law) as it was over the Christmas period.
71. Thus, by the time the Minded to Notice was sent to the Appellants, the Appellants had declined the opportunity to engage with the Respondent before the Final Enforcement Report had been submitted to the SDM. If the parties had engaged with the Enforcement Process in accordance with the Explanatory Note, this could have included their own material and responses as well as challenges to the Enforcement Division’s dER but they did not do so. Thus, the Final Enforcement Report was finalised without the input of the Appellants. This was despite the fact they were legally advised at the time and that after receipt of the Final Enforcement Report. The Appellants’ argument that only once the Minded to Notice had been provided to the Appellants did they have an opportunity to be heard by the Commission and make their representations, is simply wrong.
72. The 42 business day period identified above was the Representation Period (as defined at paragraph 11.8 of the Explanatory Note). As they were entitled to do, the Appellants requested an oral meeting. In accordance with directions issued on the 4 January, the SDM directed that Appellants (and Mr S) could (amongst other things) file written representations by 9:00 am on 31 January 2023 with an opportunity for the Enforcement Division to respond. Thereafter, there was a two day oral meeting where Mr Pybus appeared on his own behalf and that of AGL. After the oral meeting, the SDM gave a further opportunity for written representations from the Enforcement Division and then to the Appellants after which he issued his Decision.
73. Thus, after the Minded To Notice was issued and in accordance with the process set out in the Explanatory Note, (as set out at paragraph 4 of the Decision), the SDM reviewed and had regard to the witness statements, documents, information and written submissions which have been

put before him by or on behalf of the Appellants and the Enforcement Division in response to the Minded to Notice; held an oral meeting on 14 and 15 February 2023 during which oral representations were given by Mr Pybus on behalf of himself and AGL and by Counsel on behalf of Mr S and during which Mr Pybus and Mr S gave evidence; considered further additional material and submissions served by the Enforcement Division on 10 March 2023 and further additional material served by the Appellants on 21 February 2023 and 17 March 2023.

74. The Minded to Notice was only one step in the decision making process by the SDM. In accordance with Section 104 of the Enforcement Law, the decision is made after the Commission has taken into account any representations made by the person concerned. It is evident that before making the Decision, the SDM considered the Appellants' representations both oral and written. There are examples where between the Minded To Notice and the Decision, the terms of the Decision have changed. In the Minded To Notice in relation to the sixth allegation at paragraph 211, it says that "*it is probable that [Mr S'] statement is deliberately misleading in order to support Mr Pybus' version of events. This demonstrates a serious lack of probity by [Mr S']*". However, at paragraph 207 of the Decision it says "*The Commission is not satisfied [Mr S'] statements to the Enforcement Division (including the contents of his letter dated 3 October 2022 to Enforcement Division) were deliberately misleading in order to support Mr Pybus' version of events and does not intend to take any further action against him.*"
75. Similarly, with regard to the Third Notice (as set out more particularly below) although part of the general complaint about non-compliance with the Notices in the Minded To Notice, in the Decision at paragraph 29, this complaint was no longer pursued as the relevant document "*may have been provided to the Commission.*"
76. These examples demonstrate that the Minded To Notice was not the Decision and that the SDM, having considered the evidence before him between those two steps was satisfied that there was not a proper factual basis for reaching a finding. There is no evidence before me to show that the SDM conducted the decision-making process other than in accordance with the process laid down in the Explanatory Note and prescribed in the Enforcement Law. The process was a procedurally fair and reasonable one and I find no basis for this ground of appeal.

FAILURE TO DISCLOSE RELEVANT DOCUMENTS AND INFORMATION

Submissions

77. At paragraph 5 of the Amended Cause, the Appellants plead that the failure of the GFSC to disclose to the Appellants the recordings and/or transcript of a call which is said to have taken place by the Appellants on or about 11 October 2022 between DE and Mr Jeremy Quick of the GFSC is procedurally and substantively unfair, amounting to an error of law and/or the GFSC acting unreasonably and/or there being a material error as to the procedure in the proceedings taken against the Appellants. The Appellants confirmed that this ground of appeal is focused on the recordings or transcript and that they are not pursuing this ground with regard to any other document.
78. They say that it is essential if the enforcement process is going to be fair that the GFSC discloses to the subjects of the enforcement process all relevant documents and information. This is acknowledged by the GFSC in its guidance documents "*Investigation and Decision-making Process relating to the use of Enforcement Powers*". The Appellants say, after DE spoke with Mr Pybus about the conversation, Mr Pybus says it was clear to him that the conversation included a discussion by Mr Quick about the enforcement proceedings against Mr Pybus and what the GFSC was going to do to Mr Pybus as a consequence. Relying on the evidence as set out in Mr Pybus's affidavit of 31 July 2024, the Appellants say the intimation from the conversation was that the outcome was already decided by the GFSC and it was going to be

particularly adverse to Mr Pybus. Mr Pybus requested a transcript of the conversation which was refused and the Appellant's advocates then requested a copy of the recording which was also refused. The Appellants submit that a copy of the recording and/or the transcript of the conversation which took place between DE and Mr Quick is properly disclosable by the GFSC because it appears to contain evidence which would support the Appellants' cases and adversely affects the GFSC's case. The failure to disclose relevant documents and/or information in this respect represents an error of law, unreasonableness and a material error as to procedure on the part of the GFSC. The Appellants say that the importance of the conversation between Mr Quick and DE cannot be underestimated if it contains information whereby it evidences that the GFSC has already decided to take action adverse to Mr Pybus before the process has been completed. The Appellants say that in circumstances where the GFSC is the investigator, prosecutor and judge of the proceedings, as well as the party who holds the recording and who conducted the recording, it cannot be just or proper for the GFSC to withhold the recording of the call.

79. This issue is one of significant importance and from the Appellant's perspective they have a wholly justified concern that they have not had all the relevant information disclosed to them. They rely on the maximum "*[it] is of fundamental importance that justice should not only be done but should be manifestly and undoubtedly be seen to be done*" as *R v Sussex's Justice ex parte McCarthy [1924] 1 KB 256* at page 259 per Lord Hewart CJ. The Appellants say in their submissions that there are three ways in which the court can deal with the matter: allow the appeal on the basis that the relevant information was not disclosed to the Appellants; order that the recording of the call be disclosed so the court can hear submissions on whether it ought to have been disclosed or not before making its decision; or do nothing notwithstanding the evidence submitted by Mr Pybus. However, the Appellants say not to proceed with either of the first two options would be unjust. The balance of justice must weigh in favour of, or at the very least, require the GFSC to disclose the recording. The Appellants say the failure to disclose a copy of the recording means that the appeal ought to be allowed.
80. In response to this, the Respondent says that it is necessary to consider the chronology of relevant correspondence and events relating to disclosure. In a letter to the GFSC on 25 October 2022, Mr S and the Appellants made a very wide disclosure request. On 15 November 2022, the Respondent's Enforcement Division responded in terms declining to provide any of the documents requested and explaining why. The Appellants applied to the SDM for disclosure of the same documents under cover of an email dated 16 January 2023. This request was rejected on the basis that it added no additional grounds to those in the letter dated 25 October 2022 which was comprehensively answered by the GFSC's letter dated 15 November 2022. The Appellants revised the application for disclosure in the written representations to the SDM on 30 January 2023 and the Respondent's Enforcement Division responded to this in their representations. The Respondents say that the Appellant's disclosure requests were extremely broad and rely on the comments of the Court of Appeal in *John Robilliard v GFSC [2023] GCA 035* at paragraph 81.
81. The Respondent says the request that was specific to the telephone conversation was not to the Respondent during the decision-making process, rather there was a Data Subject Access Request ("DSAR") from Mr Pybus on 28 March 2023, that is to say 5 days after the SDM handed down his decision. The principles applicable to the DSAR are different. In any event, the Respondent reviewed the materials held by it to determine if some material which could have been disclosed during the decision-making process should have been but concluded that there was nothing to disclose.

Discussion

82. Advocate Le Tissier confirmed in the appeal hearing, it is not known what role Mr Quick had, if any, in the enforcement proceedings against the Appellants other than it was acknowledged he is not part of the Enforcement Division itself.
83. Disclosure in the enforcement process is dealt with at paragraph 8.7-8.13 of the Explanatory Note. At paragraph 8.8 and 8.9 it says:

“8.8 Disclosure is a two-way process between the parties, and if respondents believe there is material in the possession of the Commission which would meet the descriptions in paragraph 8.10 below, and which has not been disclosed, they are encouraged to apply to the Commission in writing with sufficient detail to identify the document or documents – including search terms if these will assist.”

8.9 They should also provide a detailed explanation as to why the document or documents meets any of the descriptions in paragraph 8.10. If the Commission is satisfied the material identified meets the disclosure test, it is under an obligation to disclose the material and will do so. The Enforcement Division is only obliged to search and review material that is in its possession.”

Further on it says:

“8.12 The Commission will continue to monitor its disclosure obligations throughout the enforcement process and make any further disclosures that are appropriate as a case develops and/or new material is uncovered.

8.13 If a matter is referred to one of the Senior Decision-Makers, issues relating to disclosure will continue to be dealt with between the Enforcement Division and the respondents unless there is a dispute which is not capable of being resolved.”

The Explanation Note also provides that at the oral meeting:

“11.17.16 The decision-maker may, at its sole discretion, adjourn the meeting. This may occur where the decision-maker requests that the Principal Executive Officer or the party provide further material or attend a subsequent meeting, or to assist the decision-maker in obtaining information it requires to make a final decision, though where strict statutory provisions exist the decision-maker is unable to adjourn a meeting scheduled to hear oral representations beyond the Representation Period.”

84. Therefore, the Explanatory Note provides the basis upon which issues of disclosure can be dealt with and how to request further documentation, including the opportunity at various stages to request specific material to be disclosed throughout the process up to and including at the oral meeting. It was accepted by Advocate Le Tissier that the disclosure requests to the Enforcement Division and then to the SDM were limited to the wide requests in the manner of *“all emails internal and external.....etc”* with no specific reference to any document including this phone call whether as a recording or transcript, and that no specific requests were made to either the Enforcement Division or the SDM about this call at all during the enforcement process. There is no evidence that the provisions of the Explanatory Note were not complied with by the Respondent. It does not appear that any witness statement was sought from DE by Mr Pybus about what was allegedly said on the call or indeed anything in writing from him.
85. It is very surprising given the emphasis on the importance of this telephone call in the appeal that the Appellants at no time during the course of the enforcement proceedings requested a recording or transcript of this phone call. Nor does it appear to have been mentioned in the oral meeting nor in the written representations nor at any time prior to the DSAR which postdated the Decision. Advocate Le Tissier confirmed in oral submissions at the appeal hearing that no

further action was taken by Mr Pybus after the response from the GFSC on the DSAR. Nor, as I have set out above, did the Appellants introduce a witness statement from DE nor seek permission from the Respondent (if there were concerns about confidentiality) for Mr Pybus to speak to him. If there was any real and proper basis to the complaint made by Mr Pybus, there was ample opportunity before the Decision was handed down to bring this to the attention of the GFSC and, in particular, the SDM. In all of the circumstances, I can see no basis for this ground of appeal.

FAILURE TO PERMIT THE APPELLANTS THE OPPORTUNITY TO CROSS-EXAMINE AND FOR MR PYBUS TO RE-EXAMINE OR RESPOND

86. At paragraphs 6 and 9 of the Amended Cause, the Appellants say that the failure to permit the Appellants the opportunity to cross-examine and/or to re-examine or make any oral submissions in response to questioning by the Commission at the oral meeting was individually and collectively unreasonable, amounts to an error of law and a material error as to procedure. Rather than dealing with this ground separately, I shall deal with this in the course of the relevant allegations where this is raised by the Appellants.

FIRST ALLEGATION – FAILURE TO SUPPLY DOCUMENTS REQUESTED IN NOTICES

87. At paragraph 20 of the Decision, the SDM sets out that the First Allegation relates to a failure to supply all the documents requested in three notices: a first Notice (“the First Notice”) issued pursuant to section 23(2)(a) of the 2000 Fiduciaries Law, section 45(2)(a) of the IMII Law, and section 1(1)(a) of the Ordinance of the Enforcement Law on 27 March 2020; a Second Notice (“the Second Notice”) issued pursuant to the same provisions as the First Notice on 7 April 2021; and a third notice (“the Third Notice”) issued pursuant to section 7(1) and (2) and section 1(1)(a) of the Ordinance of the Enforcement Law on 12 November 2021.

88. As I have set out above, in the Decision at paragraph 29, the SDM confirms that no complaint is being pursued in relation to non-compliance with the Third Notice. At the January hearing, the Appellants conceded that there was a “technical” breach of the First Notice.

89. With regard to the Second Notice, the requirement under the Second Notice was: -

“5.1 In an electronic sub-folder named “Report”, a report explaining:

- (a) The business relationship between AGL and [H Ltd] International Limited (“[H Ltd]”), including but not limited to, the services provided by AGL and the date the business relationship commenced;*
- (b) The business activities of [H Ltd];*
- (c) [NT’s] control of [H Ltd] and [H Ltd]’s bank accounts;*
- (d) How AGL monitored the transactions and activities of [NT] and [H Ltd].*

5.2 In an electronic sub-folder named “CDD”:

- (e) All CDD in relation to [NT] and ISF;*
- (f) Initial client risk assessment of [H Ltd]; and*
- (g) All periodic risk reviews of [H Ltd].*

5.4 In an electronic sub-folder named “Monitoring”:

- (h) Evidence of AGL monitoring the transactions and activities of [H Ltd].”*
- (i)*

90. The background to the H Ltd relationship is more particularly described under the Second Allegation. Documents were provided by AGL in response to the Second Notice.

91. Following the interviews, further information and documents were requested from AGL in the Third Notice including: “*Any and all documents, to include, but not limited to, letters, emails, files (sic) notes, notes of meetings and telephone calls where any member of Adjure Global Limited staff raised concerns within Adjure Global Limited regarding [H Ltd] International Limited.*”
92. A number of documents that were provided by AGL in response to the Third Notice which, at paragraph 27 of the Decision, the SDM found fell within the description of “*business activities of [H Ltd]*” or “*[H]ow AGL monitored the transactions and activities of [NT]*” or “*Initial [or periodic] Client risk reviews of [H Ltd]*” or “*evidence of AGL monitoring transactions and activities of [H Ltd]*” which were requested under the Second Notice. The Decision focuses on two documents in particular which the SDM found were evidence of AGL monitoring transactions and activities of H Ltd: a February 2013 Client Synopsis and February 2013 Company Review. The SDM found that both of these documents evidenced that concerns existed within AGL about a lack of control over the activities of H Ltd. The February 2013 Client Synopsis noted that the previous administrators were unaware of the full nature of the activity conducted by H Ltd and that a review of H Ltd would be expedited by AGL. The synopsis noted that H Ltd supported customers in the area of electronics and had an international presence in Saudi Arabia, Kuwait, Malaysia, Turkey, Chile, the UAE, Qatar. Further, that monies amounting to €12,000 were sent regularly from the “International Defence Council” to a bank account in the name of H Ltd but the account was not known to the administrators. The synopsis referred to another bank account in the name of H Ltd with Société Générale this was another account not reflected in the annual financial statements of H Ltd. The February 2013 Company Review of H Ltd also referred to a bank account out with the control of the AGL, and the total lack of control over the operations of AGL - then called LEY Fiduciary Limited.
93. The SDM notes that in oral and written representations the Appellants alleged that the February 2013 Company Review was not a “risk review” and thus, fell outside the ambit of the Second Notice⁸. At paragraph 27 of the Decision, the SDM states that he considered that this was incorrect and that it was part of the exercise of monitoring the transactions and activities of NT, albeit it was not called a risk review, and it contained material relevant to the review of risk or was part of the monitoring of H Ltd or its transactions. The SDM also noted that the Appellants contended that the Second Notice required evidence of AGL monitoring transactions but not all evidence, a point the Appellants emphasised in the 17 March 2023 submissions. Both of these submissions were reiterated on appeal.
94. It was the conclusion of the SDM at paragraph 28 of the Decision, that the omission of these documents from AGL’s response to the Second Notice was deliberate, taking into account their content and the matters referred to below in relation to H Ltd and the termination of AGL’s services to H Ltd. The Decision also set out that the Commission considered that there was no credible explanation for the failure to supply the two documents particularly in the light of the obligation on AGL and Mr Pybus to cooperate with the Commission and also Appendix B (Reasons for Decision) to the Second Notice at paragraph 3.3 which explained that the requests in the Second Notice were made in the course of the Commission’s investigation into whether AGL “*have adequately monitored transactions an activity of its clients.*”. The SDM further found that the omissions were part of a process to conceal aspects of AGL’s administration of H Ltd from the Commission.
95. At paragraphs 30 and 31, the SDM concludes that the failure to supply the February 2013 Client Synopsis and the February 2013 Company Review demonstrated a lack of probity by AGL and a failure to act with the Commission in an open and cooperative manner as required by Principle

⁸ There appears to be a typographic error at paragraph 27 of the Decision with a reference to Third Notice but this appears to be about the Second Notice.

10 of the Principles of Finance Business. He also noted that the failure to supply documents in response to a Notice was a criminal offence⁹.

Summary of Submissions

96. The Appellants say that AGL complied with the Second Notice. In the Second Notice the GFSC did not use the wording “any and all”, “any” or “all” as it had done in the First Notice. The wording was not framed as an exhaustive requirement. Had the GFSC wanted to see all documents it should have drafted the Notice accordingly. The Appellants say that this represents a significant issue of construction with plainly different wording being issued in the Second Notice from that used in the other notices. The Appellants say that AGL complied with the requests within the Second Notice. Further, owing to the fact that it was asked to create a report in accordance with 5.1 of the Second Notice, it set out the steps taken to provide the information to the GFSC. Further, in AGL’s report responding to the Second Notice, it was stated:

“the parties undertaking of this work are no longer with AGL and therefore we have used emails and documents as well as timesheets, activity logs saved without our electronic document management system to support matters. Examples of the monitoring that occurred (we have provided one example per year and a number of the contracts) has been provided in a separate folder, as requested.”

97. Therefore, it was clear from the outset that AGL had not provided every document in its possession, as this was not a requirement to comply with the Notice. It is of relevance, say the Appellants, that upon the receipt of the report the GFSC did not request further disclosures.

98. Further, the Appellants argue that there was no requirement on AGL to conduct a server wide search in response to the Second Notice and it was plainly set out by Mr Pybus at the time that this had not been done. The documents which were provided in compliance with the Third Notice were located when a specific new word search on the server was undertaken. The documents were stored within the Legacy Folder system which is separate to the DMS system. The Appellants also argue that the later provision of further documentation in response to the Third Notice does not render the compliance with the earlier Second Notice void, nor does it evidence a deliberate failure to comply, nor an attempt to conceal, as alleged by the GFSC. Therefore, there is no basis to find that there was a deliberate or intentional withholding of such documentation in dealing with the request for a report under the Second Notice.

99. The Appellants also argue that the SDM was wrong to conclude (at paragraph 27 of the Decision) that two of the documents were evidence of AGL monitoring transactions and activities of H Ltd and thus, should have been provided in accordance with the Second Notice. One of these was an internal document to meet AGL’s own policies and not a risk assessment. A risk assessment is a specific Commission requirement. AGL’s position on this was credible and the balance must therefore fall to AGL and Mr Pybus’ favour. The Appellants say that characterising the credible explanation as a deliberate omission of documentation is indicative of a pre-established view that the GFSC held of AGL. AGL and Mr Pybus maintain there was no deliberate or intentional withholding of documentation as alleged and that such a finding is based on mere speculation. Further, the Appellants say that if there was any issue it was due to the ambiguity of the request made by the GFSC and therefore, the contra proferentem rule should apply.

⁹ If this is without reasonable excuse, see section 7 (7) of the Enforcement Law and the equivalent section of the 2000 Fiduciaries Law and IMII Law

100. The GFSC maintain that AGL failed to act in accordance with Principle 10 of the Principles of Conduct of Finance Business because of the documents not provided in response to the Second Notice. The requirement under Principle 10 is:

“a financial institution and should deal with the GFSC in an open and cooperative manner and keep the GFSC promptly informed of anything concerning the financial institution which it might reasonably be expected to be disclosed to it.”

101. However, the Appellants say that the actions of AGL and Mr Pybus are clearly explained and do not fall below such requirements. Similarly, the lack of probity finding here is made without an identification of the correct legal test (as set out above) and the GFSC has failed to explain its reasons for making such findings. The Appellants, therefore, say that the GFSC erred in finding of the breach of the Second Notice and this amounts to a manifest error.
102. The Respondent says the argument with regard to the construction of the Second Notice, was considered and rejected by the SDM (see paragraph 27 of the Decision). The Appellants fail to address the total basis of the SDM’s finding, which included:- other evidence and factors which left no doubt that the material should have been provided with the Second Notice, including: other requests contained in the Second Notice which covered the missing material, the justification provided by the GFSC for the Second Notice in Appendix B to the Second Notice and the obligations on the Appellants to cooperate with the GFSC. The Respondent says there is no place for the contra proferentem rule in compliance with a statutory request and the explanations about why they were not provided are not credible. The Respondent says it is also necessary to take into account the content of the documents which were not provided in the Second Notice. The SDM found that these were part of the concealment of *“aspects of AGL’s administration of [H Ltd] from the GFSC”*. The submission that compliance with the Third Notice amounts to effective compliance with the Second Notice is misconceived and it ignores the fact that the Third Notice was issued after the interviews by the enforcement division.

Discussion

103. The Second Notice was issued on the 7 April 2021. At paragraphs 27 and 28 of the Decision (which are set out in full above at paragraph 44) the SDM sets out the reasons why he came to the conclusions that he did with regard to the Second Notice. He sets out in these paragraphs his analysis of the evidence before him, including the representations that were made by Mr Pybus about the omission of the particular documents in question.
104. As the Decision sets out, non-compliance with a Notice whether under the 2000 Fiduciaries Law, the IMII Law or the Enforcement Law is very serious and a criminal offence. The offence is made out if the Notice is not complied with without reasonable excuse. This must be within the context of the purpose of the 2000 Fiduciaries Law, the IMII or the Enforcement Law and the reasons why the Notice was issued as set out in the Notice. In relation to the Second Notice, the SDM clearly rejected the justifications of Mr Pybus on behalf of AGL as not amounting to a reasonable excuse. I agree that there is no place for the contra proferentem rule which is a doctrine of contract interpretation when considering a Notice under one of the statutory regimes. The Second Notice was not intended to procure a selective sampling of documents by the Appellants but was part of an active investigation into the potential breaches identified in Appendix B of the Second Notice. Nor does the does the wording in the report from AGL in response to the Second Notice provided at the time mean that this was a reasonable excuse. The Second Notice was clear as to its intention and purpose. It was within the range of reasonable responses to conclude that inclusion of the documentation under the Third Notice did not exonerate the Appellants from provided the information under the Second Notice and was not a reasonable excuse. Having come to this conclusion, it was reasonable and proportionate for the SDM to conclude as he did, that failing to comply fully

with a statutory Notice which is a criminal offence is a serious failing and undermines the ability of the Commission to conduct regulatory investigations and was also a failure to act with the Commission in an open and cooperative manner as required by Principle 10 of the Principles of Conduct of Finance Business.

105. However, as I have set out above, after analysing the evidence and having set out his conclusions, the SDM goes directly to the finding of a lack of probity at paragraph 30 without any apparent application of the objective test for finding a lack of probity. Therefore, in this respect of a lack of probity only, the GFSC's determination amounts to an error of law.

SECOND ALLEGATION -H Ltd

106. In considering this matter it is necessary to set out the chronology from the Decision in some detail. H Ltd, a Guernsey company, was transferred to AGL as part of an acquisition of business in or around March 2012. AGL was appointed as registered agent for H Ltd and Adjure Global Directors and AG Directors ("the AG Corporate Directors") were appointed on 20 March 2012. H Ltd was a high-risk client, as AGL had identified issues over a lack of control in its risk assessment at the time of take on. AGL provided administration, directors, secretary and registered office/registered agent services to H Ltd. H Ltd is a sister company to H SA, a long-standing French engineering employment services company which had been established by AT, which specialises in the provision of engineers in varying disciplines delivering engineering support, maintenance and training, predominantly in the defence sectors within France. AT's son, NT, took over the business in 2012 and became the beneficial owner. H Ltd dealt with the placement of a limited number of engineers to non-French jurisdictions but within the same sectors as H Ltd SA.
107. Before H Ltd was taken on as a client, a Money Laundering Specific Risk Assessment Checklist ("the Checklist") relating to H Ltd was completed on 6 January 2012 and signed off by Mr Pybus (on 9 December 2012). This Checklist raised various issues, including a lack of control over the activities of the Company. In answer to the Checklist question "*Is there any doubt regarding the services the client requires?*" The response is "Y" to signify yes and then it is noted "*client appears to be running co without reporting fully to us*". Under the heading "*Assignment History*" the Checklist records "Y" to the question "*Has there was evidence that indicates that the client's accounting has been unreliable and incomplete*". The Checklist also records: "*We have no control over the activities of the company & no accounting information etc rec'd.*" Nevertheless, in March 2012 AGL was appointed as agent for H Ltd and the subsidiary companies, AGDL and AJGDL, were appointed directors. It was identified as a high-risk client. Mr Pybus in his interview on 21 October 2021 confirmed that H Ltd was accepted as a client and an agreement was put in place that required that everything had to come to AGL for pre-approval. There was no evidence of this agreement.
108. The February 2013 Client Synopsis (referred to under the First Allegation), was prepared by an employee expressing concerns about a lack of control over the activities of H Ltd. The February 2013 Company Review (also referred to under the First Allegation) completed by YN also reported a lack of control over operations of the company and that the "*UBO holding himself as a director -ACTION*".
109. In May 2013, YN on behalf of H Ltd and NT signed the NT Agreement. The NT Agreement prescribed what NT could and could not do on behalf of H Ltd. However, the SDM found that the NT Agreement went well beyond what was acceptable for AGL's proper approach to risk and corporate governance, as acknowledged in the H Ltd Report written by Mr. Pybus. In interview, Mr Pybus acknowledged that the reports supplied by NT did not comply with the NT Agreement and there was no contemporaneous evidence that Mr Pybus checked whether the reporting was satisfactory.

110. In a Company Review by AGL dated 25 September 2015 (the “2015 Company Review”), it recorded that there was no control over H Ltd, that there were bank accounts under the control of H Ltd and no signed copy of the NT Agreement could be found. A Structural Risk Review of H Ltd dated 25 October 2016 (but not signed off until November 2017) (“the 2016 Risk Review”) again concluded that there still no control over the company and the funds had been flowing without the knowledge or consent of AGL.
111. In October 2018, RY (who was then the Compliance Officer) provided a report to the AGL board on the impact on clients of the introduction of the substance requirements (“the 2018 Substance Report”). He identified H Ltd as a client which required urgent review. A further Structural Risk Review of H Ltd was undertaken by AGL in November 2018, although not signed off until October 2019 (“the 2018 Risk Review”). However, this review recorded ‘yes’ to the whether the nature and level of activities of H Ltd is as expected, and ‘no’ to whether there were any unexpected incoming funds.
112. A Compliance Report to the AGL board on 1 February 2019, included a document called “the Issues Log” (which is dealt with further below). Mr Pybus, Mr N and Mr Y were all present at the board meeting. In relation to H Ltd, an entry was made in the Issues Log on 4 December 2018. The entry states: *“This case is troubling. We are the directors of a Guernsey company that appears not to have held a board meeting since 2014. The company appears to be run by the UBO almost without reference to us; this is of particular concern given the activity of the company – military defence contracting. . . . All company bank accounts operated by the UBO”*.
113. On 17 May 2019, an employee contacted NT stating that unless AGL could bring all of the company’s activity to Guernsey and fully under its administration and control it must resign. On 25 June 2019, FT emailed NT acknowledging that the directors had very little or no oversight into the actions of H Ltd.
114. In the H Ltd Report prepared for AGL by Mr Pybus and FT, AGL stated that periodic reviews are automatically monitored and progress reported to AGL management. The H Ltd Report states: *“AGL is aware and accepts that there were some deficiencies with the administration of [H Ltd], which were identified through Management Information automatically provided to senior management on Jobstream which conflicted with staff reporting and as part of AGL’s wide review work carried out in late 2018 early 2019.”* At paragraph 82 of the Decision, the SDM concludes that this is misleading. He found that these issues had been identified much earlier. At paragraph 83, the SDM concludes that the H Ltd Report is also misleading in stating that YN and RY marked reviews as complete for this client which had actually been dropped, not fully completed or signed off with elements of control weaknesses identified. Neither YN nor RY signed off the 2015 Company Review or the 2016 Risk Review, which raised elements of control weaknesses.
115. The SDM records at paragraph 35 that Mr Pybus signed off the Checklist on 9 December 2012 stating, *“This client has already been identified as one requiring remedial work to bring it up to date.”* As a high-risk client, the SDM found that AGL should have ensured that there was extensive and frequent monitoring of the transactions and activity of H Ltd. Mr Pybus stated in interview that AGL took H Ltd on, even though it was aware of issues over control, because a “process” was put in place to regain control of the company. The SDM records that later in the interview, Mr Pybus confirmed that when AGL accepted H Ltd as a client, an agreement was put in place requiring that everything had to come to AGL for pre-approval. The Commission says that no evidence of any such agreement dated around March 2012 has been provided to the Commission by AGL or Mr Pybus, who was aware of the matters of concern with H Ltd, since he signed off the Checklist and noted that H Ltd *“required remedial work.”*

116. At paragraph 36 of the Decision, the SDM maintains that AGL failed to implement any controls which were necessary for compliance with The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended (“the 2007 Regulations”), the CSP Code and the Company Director Code from the commencement of the relationship.
117. At paragraph 47 and 48 of the Decision, the SDM determined that the 2016 Risk Review pointed to serious breaches by AGL of Principles 2, 5 and 6 of the Company Director Code, Principle 6 of the CSP Code and Regulations 5(2)(a)(iv) and 11(1) of the 2007 Regulations. Further, at paragraph 49 of the Decision, he found that AGL’s policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing were not appropriate and effective, as required by Regulations 3(1)(e) and 15(1)(a) of the 2007 Regulations and evidenced breaches of Principles 1, 2, 4 and 5 of the Code of Corporate Governance.
118. At paragraph 50, the SDM says that if Mr Pybus’ statement in interview that he was unaware of the 2016 Risk Review and that, as far as he was aware, H Ltd was being run in accordance with the agreement put in place, was correct, this is evidence of the failure by AGL to have in place effective board level controls. The fact that Mr Pybus stated that he would have expected to have been made aware of the issues, if he was correct, is evidence that there was a lack of reporting structure and reporting at board level. Alternatively, if Mr Pybus was aware of the 2016 Risk Review and that H Ltd was not being run as per the agreements in place, then he provided misleading statements to the Commission in his interview.
119. The SDM notes in the Decision at paragraph 52, that Mr Pybus contended that he assumed that H Ltd was being run in accordance with the NT Agreement but had checked since 2012. However, the SDM also records that this was contrary to the evidence of YN and RY. In particular, at paragraph 56 the SDM reports:

“In his interview, [RY] stated that when he presented the 2018 Substance Report to the board of AGL, he was told by Mr Pybus it, “was an absolute load of rubbish and where have I got this information and this is wrong. Where’s this one, where’s? etc.”. [RY] also explained in interview that Mr Pybus would have known the clients sufficiently enough to make a decision on whether they should be on the list or not. In relation to [H Ltd] and [NT], [RY] stated, “Again he [Mr Pybus] knew the client, yes... Pretty much everything apart from his inside leg measurement. He knew the guy, yes.”

Whereas at paragraph 57, he sets out:

In his interview, Mr Pybus denied that [RY’s] 2018 Substance Report made him aware that there might be an issue with [H Ltd]. Mr Pybus stated, “[RY’s] report on economic substance was rejected en masse on the basis it failed to address the economic substance matter coming to Guernsey and was wholeheartedly inaccurate and it was later determined that [RY] had not written this. [YN] had written this and presented it to the board to try and cause a response from myself at the October board meeting.”

120. At paragraph 65, the SDM determines that AGL and Mr Pybus were aware of the very serious issues regarding AGL’s lack of control of H Ltd but did nothing to ensure it gained control of the company over the next seven years. The GFSC further determined that a report on H Ltd prepared for the GFSC by AGL (by Mr Pybus and FT) in response to the Second Notice (“the H Ltd Report”) was misleading, and is evidence that Mr Pybus (i) was not open and cooperative with the GFSC as is required by Principle 8 of the Code of Practice; (ii) lacks probity as required by the MCL; and that AGL did not place an effective board of directors in control of H Ltd as required by Principle 2 of the Company Director Code and did not work as an effective or collaborative board as required by Principles 1 and 2 of the Code of Corporate Governance.

Summary of Submissions

121. The Appellants accept that they were aware of control issues relating to H Ltd at the time they took the business on. However, the Appellants say that as a consequence of the agreement between NT dated 16 April 2013 and H Ltd (the “NT Agreement”) and the monitoring of H Ltd pursuant to the NT Agreement, the H Ltd control issues were effectively addressed for the majority of the period H Ltd was AGL’s client. Whilst AGL said that the NT Agreement, when operating properly, addressed the issues of control, AGL conceded that H Ltd was not run in accordance with the NT Agreement at all times. However, AGL provided the Commission with substantial evidence for the years 2015 and 2016 in the form of emails between AGL and NT (or persons acting on his behalf) and reporting on the affairs H Ltd which the Appellants say that the Commission has failed to consider, adequately or at all. The Appellants submit that the contemporaneous documents provided to the Commission demonstrate that AGL did have the requisite information about H Ltd, and had control of the company, including monitoring its activities and transactions. The Appellants say that the Commission placed undue weight on comments contained in internal documents, such as the 2016 Risk Review and the 2015 Company Review which reflected an individual’s (inadequate) review and were not reflective of the reality of the AGL’s oversight of H Ltd. Further, the 2017 Structural Risk Review for H Ltd did not refer to any of the issues raised in the 2015 Company Review and the 2016 Risk Review. Whilst the Issues Log recorded that *“this case is troubling”* and *“the Company appears to be being run by the [ultimate beneficial owner] almost without reference to us”*, the documents provided to the Commission evidence that these statements were, in fact, an inaccurate description of the position, for the majority of the period H Ltd was AGL’s client. The Issues Log did not refer to the NT Agreement or the monitoring carried out in accordance with that agreement. The Commission placed undue weight on the comments in the Issues Log whilst disregarding contrary evidence presented to it by AGL. Sporadic reporting in 2017 was addressed in the first half of 2018 and further sporadic reporting was resolved by the termination of the relationship in July 2019.
122. The Appellants say that the criticism and findings against Mr Pybus are not reasonable. Mr Pybus was not involved in the day to day management of client matters, and his role was not to review company and risk reviews and the Decision does not take into account directors’ responsibilities. The GFSC was wrong and/or unreasonable in failing to accept that following the execution of the NT Agreement that Mr Pybus was unaware of outstanding control issues. In the SDM decision reference to the H Ltd Report being misleading is based on a misreading of the H Ltd Report. The Report states that *“a number of reviews and activities”* which YN, RY or HT *“had marked as completed for this client had either been dropped, not fully completed, or had been completed and signed off but contained statements noting that there might be elements of control weaknesses.”* The statement refers to all activities and reviews referred to in the H Ltd Report not just the 2015 Company Review and 2016 Risk Review. Further, the Appellants say on a natural reading of the statement, it does not suggest that all the reviews referred to were signed off by these three individuals. Therefore, the GFSC’s finding that the H Ltd Report is misleading is unreasonable and/or based on material errors as to facts. At paragraph 84 of the Decision, the GFSC made various findings against Mr Pybus that he was not open and cooperative with the GFSC. Mr Pybus argues that this is an error of law, or it was unreasonable to make such findings because in relation to Principle 8 of the CSP Code and Principle 10 of the Finance Business Principles only apply to institutions and not to individuals. It was incorrect for the GFSC to have made the finding of a breach of this principle by Mr Pybus. In relation to Principle 11 of the Company Director Code, this required Mr Pybus to *“cooperate fully”* with the GFSC. Whilst the GFSC has taken a view that Mr Pybus and FT’s views expressed in the H Ltd Report are not supported by evidence obtained by the GFSC. Mr Pybus says that this is an example of a difference of view over matters not non-cooperation.

123. At paragraph 77 of the Decision, where the GFSC identifies six examples where it is said that Mr Pybus was aware from the outset of the AGL client relationship with H Ltd about serious issues over control, he says it is highly relevant that he was not given the ability to cross-examine RY and/or YN. This was notwithstanding their witness evidence which was relied upon by the GFSC when making its findings against Mr Pybus of a lack of probity and/failure to meet the requirements of the MCL. This is a further failure of the GFSC to permit Mr Pybus to have a fair trial. As to the finding of lack of probity as set out above, the GFSC has failed to set out the standard against which it is judging Mr Pybus' conduct. The GFSC's determination in this regard is, therefore, unreasonable and/or amounts to an error of law. AGL says that the GFSC's reliance on 2007 Regulations 3(1)(e) amounts to an error of law as that provision did not exist, Regulations 3(1) which has subsequently been revoked only went up to 3(1)(b).
124. The Respondent's say that the 2007 Regulations were in force at the time H Ltd was taken on by AGL. It was replaced by Regulation 3(2)(c) of The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 on 28 March 2013. The wording remained the same. Given the SDM's focus was on the extent to which the minimum criteria for licensing had been breached, even if there was an error of law as to the precise breach, it does not have significance.
125. The Respondent says that the SDM examined and properly relied upon the evidence of lack of control over H Ltd which was contained in a variety of formal documents. The sheer quantity of evidence available to support the SDM's conclusion was very significant. In his Decision, the SDM listed the evidence which he had relied upon (in particular) to show Mr Pybus' knowledge of the serious issues over control. The SDM carefully analysed Mr Pybus' role and the evidence of what he knew, and his conclusions were wholly reasonable ones. Mr Pybus would have been cognisant of the rules on cross-examination in the oral meeting because they were set out in the Explanatory Note. The Respondent relies on the applicable legal principles concerning cross-examination are described in *X, Y and Z v. The Chairman of the Guernsey Financial Services Commission [2023] GRC 032*. The absence of cross-examination does not render the Decision unfair.

Discussion

126. From 2012, there was clearly a red flag about this relationship which Mr Pybus knew about from the outset. As the SDM sets out at paragraph 77, the SDM came to the conclusion that Mr Pybus was fully aware of the situation with this client which were not just limited to the initial flagged issues of control on the basis of the evidence before him. This included Mr Pybus' own evidence and the contemporary documentary evidence. The SDM does not suggest that Mr Pybus had sole responsibility as is demonstrated by the action taken against AGL but, nevertheless, he was the Managing Director. I do not consider there is any material error in the SDM's focus on Mr Pybus' role and his failings in this matter given his role at AGL and his role in this matter. To do so was reasonable in the circumstances. In coming to the conclusions that the SDM did in relation to H Ltd, he relied on AGL's own internal documentation and reviews. The reliance by Mr Pybus on email discussions in 2015/2016 does not ameliorate a serious situation which clearly was being regularly flagged up by those undertaking reviews over the very same period nor does the one report (the 2017 Structural Risk Review) which was silent on the issues raised in the other reviews. It also appears that even within those emails, questions were raised about what had been signed by H Ltd (e.g. an email dated 27 October 2015 from an employee to YN) and an email between employees dated 2 December 2016 flagging up considerable action which needed to be taken by H Ltd prior to the Company review being signed off. In any event, the SDM directly addresses these documents at paragraph 65 where he says:

“AGL provided the Commission with emails created in 2015 and 2016 which it contended demonstrated monitoring of [H Ltd] by AGL. The emails were said to be exhaustive. Most of the emails said to illustrate monitoring were partial or summary accounts by [NT] with the relevant documentary evidence. In the [H Ltd] Report and by Mr Pybus in his interview it was accepted that monitoring had not taken place in accordance with the [NT] agreement.”

127. It was reasonable for the SDM to place reliance on AGL’s own contemporaneous reports that amongst other things that control of H Ltd was inadequate. Also, it was reasonable, in all the circumstances, for the SDM to prefer the evidence of contemporaneous reviews than after event testimony where this contradicted the contemporaneous evidence. Further, it was open to the Appellants to provide evidence at the relevant times during the enforcement process if there was other documentation which supported their position. Whilst Mr Pybus complains that the conclusion that the H Ltd report is misleading is due to the report being misread by the SDM, the SDM’s conclusion that the H Ltd Report is misleading is reasonable in circumstances where the H Ltd Report under the heading of *“Issues around monitoring”* it says:

“Issues around monitoring

From around 2017, problems with the monitoring arrangements began to occur. These problems were detected in 2018 through the contradictory Management Information in Jobstream against that being provided by [YN] and through reviews undertaken following [YN's] departure at the end of 2018, although reviews conducted by administrators had identified the issues prior to 2019.

Following the review work carried out early in 2019, it was highlighted that a number of reviews and activities which [YN], [RY] or [HT] had marked as completed for this client had either been dropped, not fully completed, or had been completed and signed off but contained statements noting that there might be elements of control weaknesses. [NT] continued to provide AGL with copies of bank statements and journal prints detailing the company’s activities together with copies of purchase orders and employment contracts and there is evidence by way of email discussion that these were reviewed but not formally documented. [YN], by his email of 4 February 2014 advised [NT] that AGL did not need to sign employment contracts.

It is clear from the review work that [YN] did not follow the AGL procedures and processes, in addition the later work carried out by [YN], [RY] and [HT] failed to take account of the earlier matters raised and simply carried on with the work. AGL’s policy is not to provide this level of authority to an individual, unless the entity is a subsidiary of a listed PLC. The level of authority provided under the Technical Agreement as well as by [YN's] email of 4 February 2014 is beyond what is acceptable from a risk appetite and a corporate governance perspective.”

128. Taking into account the evidence before the SDM it was reasonable for the SDM to conclude that the H Ltd Report is misleading when had been by employees identified much earlier than late 2018. Deficiencies had been described in the February 2013 Client Synopsis, the February 2013 Company Review, the 2015 Company Review, the 2016 Risk Review and the 2018 Substance Report but never rectified. The SDM also found it was misleading in stating that YN and RY marked reviews as complete which had actually been dropped, not fully completed or signed off with elements of control weaknesses identified. Neither YN nor RY signed off the 2015 Company Review or the 2016 Risk Review, which raised elements of control weaknesses.
129. With regard to the Appellants’ complaint that they did not have a fair trial because he could not cross-examine other witnesses, in this case, RY or YN, the starting point is the Explanatory Note which provides:-

“11.12 Oral evidence may be given at the meeting (see 11.18), and testing of that evidence by another party, will, in each case, be permitted only where the decision-maker considers that the interests of justice so require. This is not expected to be a frequent event since the parties and potential witnesses will normally have been interviewed by the Enforcement Division, will have had an opportunity to comment on the transcript of the interview, and written representations would have been reviewed:

11.12.1 Where the Principal Executive Officer or a party proposes to call a witness, a request must be submitted to the decision-maker in writing, identifying the name of the witness(es) and a summary of the evidence to be adduced. The request must be made within 7 days of the “minded to” notice being sent and must be copied to the other parties and the Enforcement Division.

11.12.2 The decision-maker will then decide whether to permit the witness(es) to give evidence in person. Witnesses proposed to be called during a meeting must be available on the scheduled meeting date. The unavailability of a witness on the scheduled meeting date may not constitute sufficient grounds upon which to adjourn the meeting.

11.12.3 Exceptionally the decision-maker may decide it needs to hear from an individual as a witness.”

130. In this case, the SDM sent out a number of directions dealing with witnesses and further evidence. On 19 December 2022, the SDM when sending out the Minded To Notice, which included a direction for anyone who wished to call a witness to an oral meeting (as well as to confirm if an oral meeting was necessary). Thus, it was open to AGL and/or Mr Pybus to request that RY and/or YN be available so that their evidence could be tested by them. No such request was made. On 4 January 2023, a further directions notice was sent out by the SDM setting out amongst other things: a deadline for written representations, a direction dealing with the date by which the filing of any further documents that the Respondent wished to rely on had to be filed, referring to the fact that no one had sought additional witnesses but requiring confirmation of attendees to the meeting. In addition to the directions, the GFSC in the documentation that was provided to me after the January hearing, there was correspondence from the Secretary to the SDM who sent a further letter asking for an agenda for the oral representations, and confirmation as to who would be attending the oral meeting, as well as chasing Mr Pybus for his written representations.
131. Setting to one side that the Appellants did not avail themselves of the opportunity to request witnesses contained within the Explanatory Note nor the directions, it must be remembered that this is not civil litigation but administrative proceedings. As I set out in X, Y and Z v. The Chairman of the Guernsey Financial Services Commission (*ibid*) “*The true question in every case is whether the absence of cross-examination renders the decision unfair in all the circumstances.*” In this matter, the Appellants had access to both of the witness statements and had the opportunity to challenge the contents of the transcripts of their respective interviews before the SDM which they did orally, as well as in written representations. The SDM was entitled to take into account the witness evidence of RY and YN in coming to his conclusions when taken with the other evidence before him. Taking this all into account the absence of cross-examination did not render the SDM’s conclusions on this allegation unfair, unreasonable, amounting to an error of law or a material error as to procedure
132. The SDM carefully analyses the evidence before him between paragraphs 32 and 84, setting out the contemporaneous evidence, Mr Pybus’ knowledge as well as addressing the representations by the Appellants in relation to the issue. His reasoning is comprehensive and fair, weighing up the evidence and balancing the arguments including the regulatory failings if, as Mr Pybus and AGL asserted they were not aware of the issues, and also in coming to the conclusion on the evidence before him that, on balance, he considered that they were aware as set out at paragraph 63 and at paragraph 77.

133. At paragraph 64, the SDM summarises some of the principles set out at Principle 2 of the Code of Corporate Governance which relates to the role of directors, namely:

*“64.1 [Principle 2.1 & 2.2] that Directors have a duty to act in accordance with all relevant legislation with which they have a duty to be conversant;
64.2 [Principle 2.3] Directors should take responsibility for company policy and key strategies;
64.3 [Principle 2.5] Directors should have sufficient understanding and time available to discharge their duties effectively, taking into account the number and importance of their other commitments; and
64.4 [Principle 2.6] Boards of Directors should be supplied in a timely manner with information in a form and a quality appropriate to enable them to discharge their duties, facilitate decision making and allow for effective monitoring and control of company performance.”*

134. At paragraph 65 of the Decision, the SDM explains why, with application to the facts that he had failed to ensure that he complied with these obligations and responsibilities (even on his own version on events).
135. The CSP code came into operation on 1 August 2009. In its introductory paragraph it says it is: *“for the guidance of companies and partnerships carrying on company administration business [as defined] in or from within the Bailiwick of Guernsey or through a company incorporated in the Bailiwick. There are separate codes for those undertaking trust business or acting as a director as described in sections 2(1)(a) and 2(1)(b)(iii) respectively of the Law.”*
136. It then goes on to say that *“This Code attempts to set out sound principles of practice for Corporate Service Providers but is not a statement of the law. A failure to comply with this Code does not automatically make a Corporate Service Provider liable to any sanction or proceedings, but the Court may, and the Commission will, take into account any breach of this Code which is relevant to any decision which either of them has to make.”*
137. Principle 8 is *“CSPs should deal openly and honestly and co-operate with the Commission and any other regulatory authorities to whose supervision they are subject.”*
138. Principle 10 of the Principles of Conduct of Finance Business, which is the principle the SDM refers to paragraph 84, states *“A financial institution should deal with the Commission in an open and cooperative manner and keep the Commission promptly informed of anything concerning the financial institution which might reasonably be expected to be disclosed to it.”* All other principles are similarly worded as being the financial institution.
139. I agree with the Appellants that the CSP Code applies to CSPs and not to individuals. Also, the Principles of Conduct of Finance Business issued by GFSC are principles applicable to financial institutions not individuals within them although Mr Pybus through his actions can, for example, lead or cause AGL to breach the CSP Code or the Principles of Financial Conduct.
140. Regulation 3(1)(e) in the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 was in force in 2012 when H Ltd was taken on as a client by AGL. This was replaced by Regulation 3(2)(c) in the 2007 Regulations in 2013 (which was the version of the Regulations that Advocate Le Tissier was considering in the January appeal hearing). The wording of Regulation 3 (1) (e) obliged a financial services business to:

“ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.”

The wording of the replacement provision at Regulation 3(2)(c) on 28 March 2013 is identical. I accept that there was an error in this reference, although clearly the failings identified relate to the exact regulatory obligations.

141. However, importantly these references to CSP Code, the Principles of Conduct of Finance Business and the misreference to the regulation do not mean that Mr Pybus’s role in the conduct of AGL as Managing Director can be ignored, nor his own specific failings in this regard given his conclusions about Mr Pybus’ knowledge of the risk in the H Ltd relationship since its commencement, the SDM was entitled to come to the conclusions that he did at paragraph 84 save in relation to the finding at 84.2 that Mr Pybus lacks probity. Given the nature of the Second Allegation, the SDM has made findings as to Mr Pybus’ knowledge of the facts (which I have found were reasonable ones for him to have made) however, in the absence of the application of all of the requirements of the test for establishing whether Mr Pybus lacked probity, the finding at paragraph 84.2 that Mr Pybus lack probity is an error of law.
142. Although AGL conceded that the H Ltd relationship was not run in accordance with the NT Agreement at all time, I consider that it was reasonable for the SDM to conclude on the evidence before him that AGL had failed in its regulatory obligations in the comprehensive manner set out in detail in the SDM Decision and that these findings were proportionate.

THIRD ALLEGATION – THEMATIC VISIT CLIENT LIST.

143. This allegation also involved the H Ltd relationship. Again, it is necessary to set out some detail from the Decision. On 3 July 2019, the GFSC informed AGL that it wished to undertake a visit on 5 August 2019 to AGL as part of a thematic visit regarding directors’ duties (“the Thematic Visit”). The GFSC requested advance information from AGL, in the form of a list of clients (“the Client List”) in relation to which AGL’s corporate directors (Secondary Licensees) were retained, to be provided to the GFSC by 22 July 2019.
144. On 3 July 2019, Mr E, an employee of AGL, emailed FT regarding his work on annual reviews. Mr E noted that some clients may be exiting, including H Ltd. FT responded later the same day stating, “[H Ltd] – I was a little concerned over this one and went to him with a £70k a year fee to do it properly. He wasn’t keen. Have given him the opinion (sic) of reg office or take it away. He is considering both but have said we will need to bring it up to scratch before either of these events happen. I suspect it will go but all the contracts will, if they are able, need novating.”
145. The SDM set out at paragraph 88 that “as at 3 July 2019, [FT] anticipated that AGL’s relationship with [H Ltd] might cease- but that was not inevitable. [FT] also acknowledged that it was not possible to simply walk away from problematic client relationships with outstanding matters requiring remediation and that the file would therefore have to be brought “up to scratch” before AGL could downgrade to a registered office only service or exit the relationship.”
146. In an email dated 25 June 2019 to NT, FT had outlined 11 matters which would need to be carried out, including due diligence on the personnel and institutions H Ltd was contracting with, and management of H Ltd’s bank account.
147. On 17 July 2019, Mr Pybus sent a draft version of the Client List to FT, which included H Ltd. FT responded to Mr Pybus as follows: “I worry about [H Ltd] as we only have 3 signed

minutes, two minutes which apologise for not holding an AGM and one which deals the registered office change, no signed financial statements at all. We are contracting with about 12 staff for whom we have no CDD or other information, not to mention the governments/agencies we are contracting these staff to.”

148. Mr Pybus replied to FT: *“On [H Ltd], this has been playing on my mind as well, I think we need to terminate the relationship, maybe before we send the list [to the GFSC]. Thoughts?”*
149. FT responded to Mr Pybus as follows: *“Termination of [H Ltd] was my option 2 but I am conscious that we are shuffling a bit out the door at the moment. Admittedly of what is going I would prefer loosing (sic) this as opposed to the others,”* and *“However, even if we file an ineffective registered office, it will still show this address (if GFSC do actually look) until a new registered office is found or the company is struck off. But this may get it off our client list.”*
150. Mr Pybus replied to FT on the same day (17 July 2019): *“Well we have two issues the first is the directors list, we need to get the corporate directors off to remove it from the GFSC remove (sic). The second is off as a client.”*
151. In another email discussion between Mr Pybus and FT regarding H Ltd, also on 17 July 2019, Mr Pybus forwarded to FT an email chain with NT (dated the previous day, 16 July 2019), in which NT stated to Mr Pybus that time spent on a problem with his existing agreement with AGL, was at AGL’s initiative. FT responded to Mr Pybus as follows: *“It is very much at his ‘initiative’ as he is running the company without consultation to the directors.”* Mr Pybus replied to FT: *“So we either terminate and loose £4k of debtors, we could chase for payment I cant (sic) see him doing it or if they pick this entity we show the details of us correcting the positions?”* FT responded: *“I think our emails are quite strong as we are saying even if you want us to retire we want to bring the position up to a correct standing before letting it out the door, but we haven’t been on it previously. I’m never keen on losing money, unless to generally protect the overall business. We don’t make anything on this case as it stands, or shouldn’t if we are doing it properly.”*
152. The following morning (18 July 2019), Mr Pybus emailed FT saying he had been thinking about H Ltd overnight. Mr Pybus suggested a strongly worded email to NT stating that NT would need to agree to AGL’s terms by 3pm the following day or AGL would resign. Mr Pybus added, *“I think given were (sic) we are with the GFSC I would rather this wasn’t on the list.”*
153. On 19 July 2019, FT emailed Mr Pybus with an overview of his conversation with NT earlier that day. FT explained that NT had asked if there was a compromise and if AGL could continue to act as director until the end of the year. FT suggested retiring that day - 19 July 2019 - and reconsidering their position in a week’s time about being reappointed once they have received all of the required documentation from NT. Mr Pybus responded stating: *“I think retire today and then consider position post once we have everything we need.”*
154. FT emailed NT on 19 July 2019, confirming that the AG Corporate Directors would resign as directors but would consider being reappointed upon receipt of all the requested documentation, including the due diligence documentation of contractors and contracting parties and a full understanding of the activities undertaken by H Ltd.
155. The SDM concluded that these emails demonstrate that the decision to resign as directors was that of Mr Pybus and FT and not NT. Further, that the decision was taken on 19 July 2019 and not prior to this, as claimed by Mr Pybus and FT in their respective interviews. The AG Corporate Directors resigned as directors of H Ltd on 19 July 2019 and the client list was submitted to the GFSC on 22 July 2019, without H Ltd appearing on it. The 19 July 2019

was a Friday and the last working day before Monday 22 July 2019. The SDM found the willingness of Mr Pybus and FT to cause the AG Corporate Directors to resign on the last working day prior to the deadline to submit the Client List and then consider reappointment later, was consistent with an intention to keep H Ltd off the Client List, in order to avoid scrutiny of the manner in which the relationship with H Ltd had been managed by AGL, its corporate directors and personnel. In addition, Mr Pybus and FT's rush to arrange the resignation of the AG Corporate Directors resulted in H Ltd having no directors. Section 135 of The Companies (Guernsey) Law, 2008 ("the Companies Law") requires a company to have at least one director. The failure to have at least one director is a ground for striking a company off the Register of Companies. H Ltd was subsequently struck off the Register of Companies in November 2019.

156. In his interview, which the SDM sets out at paragraph 112 of the Decision, FT stated that it had always been the intention to resign from H Ltd but he did admit that the manner in which the resignation had been handled was not open or honest, as per the following extract from his interview transcript:

“SC So it seems to me that you think it’s legitimate that this could have come off the list and not been shown to the GFSC, is that correct?”

GT I don’t know that that was the right way to deal with it.

SC Okay, so what would have been the right way which deal with it?

GT To leave it on.

SC Okay, and why would that have been the right way to deal with it, to leave it on?

GT Open and honest.”

157. When questioned in interview about this resignation (on 21 October 2021), Mr Pybus stated: *“Ultimately the decision to terminate [H Ltd] was already in progress, it was already occurring.”* When Mr Pybus was asked in interview why there was a rush to remove the AG Corporate Directors before sending the Client List to the GFSC, Mr Pybus said, *“I don’t believe this email [17 July 2019] actually goes to state that. I believe it’s a factual statement that if we were to remove they would be coming off the list.”*. The email referred to stated *“we need to get the corporate directors off to remove it from the GFSC remove (sic).”*
158. The SDM concluded at paragraph 113 that the email chain between Mr Pybus and FT evidences that AGL, in particular Mr Pybus and FT, knew that there were serious matters relating to H Ltd that would be potentially difficult to bring into compliance with all relevant and applicable legislation; that Mr Pybus and FT were both debating (with H Ltd and with each other) the possibility of ceasing the H Ltd relationship; that Mr Pybus and FT both knew that there were technical and logistical steps required in relation to effecting the termination of a client relationship; that Mr Pybus and FT were motivated in part by the perceived advantages of H Ltd being removed from the Client List in order to attempt to avoid scrutiny of the manner in which its affairs had been administered; and part of the intention of both Mr Pybus and FT appears to have been to conceal serious compliance problems with AGL’s handling of H Ltd from the GFSC.
159. Further, at paragraph 117 of the Decision that AGL, acting by Mr Pybus and FT, between 3 and 22 July 2019 caused its Secondary Licensees, Adjure Global Directors and AG Directors, to resign as corporate directors of H Ltd so that it could remove H Ltd from the Client List. He concluded that the resignations were intended to ensure H Ltd was not reviewed by the GFSC and therefore, avoid the possibility that the serious issues described above would be discovered. This conduct was serious and involved breaches of the following by AGL: the MCL: in particular the requirements for integrity and probity; Principle 10 of the Finance Business Principles: in particular the requirements for integrity and for open and co-operative relations with the GFSC; Principle 8 of the CSP Code: the requirement for Corporate Service

Providers to deal openly and honestly with the GFSC; and Principle 11 of the Company Director Code: the requirement for directors to cooperate fully with any regulatory authority.

160. At paragraph 118, the SDM found that in acting as he did, Mr Pybus caused AGL to fail to meet the standards required by the above noted Principles and therefore, caused AGL to fail to meet the standards set out above and failed to act with probity.

Summary of Submissions

161. The Appellants say that the list provided to the GFSC at 09:03 on 22 July 2019 was correct as at that date. AGL complied properly with the request for the provision of a list of clients to whom AGL provides corporate director services. AGL cannot be properly sanctioned for accurate compliance with the GFSC's request. The GFSC's concerns and its decisions in this respect appear to arise from a desire that the list should have included H Ltd, notwithstanding that AGL complied accurately with the GFSC's request. If the GFSC considers that AGL ought to have provided a list of client companies to which it provided corporate director services as at a specific date (e.g. 3 July 2019, being the date of the letter) then it was incumbent on the GFSC to specify that. Nor does the request state the date at which the list of client companies needs to be current. If there is any ambiguity in the request made by the GFSC then the terms of the request should be construed against the GFSC, being the author of the request. If a licensee accurately complies with a request from the GFSC it should not be penalised for a failure to provide more information than was being sought. There can only be one proper objective interpretation of a notice – subjectivity on the part of the GFSC cannot form any part of the proper approach to interpretation because of the inherent uncertainty such an approach would bring to the interpretation of each notice. Thus, it cannot be appropriate to punish AGL for failure to properly comply with a request from the GFSC when, on a proper analysis and as a matter of fact, AGL did properly comply with the request.
162. Further, in relation to the breaches of the various codes the Appellants say that there is an absence of reasoning. This constitutes a failure to give any proper reasons for its decision which is contrary to section 105 of the Enforcement Law which requires the GFSC to “*provide that person with a written statement of the reasons for the decision*”. The Appellants need to be able to understand the basis on which the GFSC has decided that it breached the various codes in order for it to be able to consider, inter alia, the availability of any points of appeal. This failure represents an error of law made by the GFSC and the GFSC acting unreasonably.
163. The Respondent says that the Appellants' interpretation of the request should be dismissed. Further, the interpretation by the Appellants requires ignoring the regulatory obligations to be open and cooperative with the Commission. The Appellants' submissions also fail to take into account the evidence upon which the SDM bases his conclusions is derived largely from the emails between Mr Pybus and FT, including the findings of lack of integrity and probity. Further, the findings of breaches of the MCL and the various principles by the SDM were lawful with the reasons set out at paragraphs 85 to 117 of the Decision.

Discussion

164. When considering this ground of appeal, I consider the words of the Court of Appeal in paragraph 190 and 191 of *Domaille* apposite:

“190. Third, to the extent that the Royal Court Judgment suggests that the GFSC had acted inappropriately as a regulator or that compliance with the regulations, rules and guidance is to be regarded a matter of form and process, we respectfully disagree. As the Lieutenant Bailiff herself noted, the financial services industry is an extremely important part of the economy and culture of Guernsey. It is in Guernsey's interests to be a location which observes the highest ethical standards. In our judgment, this point cannot be overstated and it is legitimate for the GFSC to approach its role as a

regulator with this in mind. It has been given wide-ranging powers to enforce and uphold good practice in order to ensure that the Bailiwick's reputation as an international financial centre is enhanced and the public are protected from undesirable practices.

191. In summary we agree with the observations made by the Deputy Bailiff in Bordeaux supra (at §28):

“The regulatory environment in which businesses and individuals operate must deliver the GFSC’s objectives of maintaining financial stability in the regulated sector, managing risk to the financial system and maintaining market confidence; ensuring fair efficient and transparent markets, protecting financial services’ customers and countering financial crime and the financing of terrorism”.”

165. It is in this environment that the GFSC conducts regular thematic reviews, and in this case, as set out in the letter to the board of AGL, its purpose was *“to gain a greater understanding as to how fiduciary licensees fulfil their duties to Client Companies when using a Corporate Director to capture existing best practice with a view to developing our guidance or rules in this area”*. At Appendix 1 of the letter was a request for: *“A full list of Client Companies to which the Licensee provides Corporate Director Services and then a list of information required on each Client Company.”*
166. As I have said above, there is no place for the contra proferentem in statutory notices, nor is there a place for this rule in compliance with thematic reviews. The list could have been sent at any time between receipt of the letter and by 4pm on 22 July not necessarily on the final date and thus, on the logical extension of the Appellants’ argument would only relate to the clients on the date of the CSP’s selection, which cannot be right. The logical and reasonable reading of the letter from the GFSC is that it is the list of clients at the date of the letter rather than a future date when the list was submitted. However, the arguments put forward by the Appellants on this issue which focus on the date of the client list, fail to take into account the basis of the SDM’s conclusions about this issue. The SDM’s focus is not on the date upon which the list is taken but rather the actions of Mr Pybus and AGL to remove IDS as a client so that they are not on the client list, the reasons why that was done and then the consequences for IDS once this had been done.
167. In coming to the conclusions he did, the SDM was entitled on the evidence which is set out at length in the Decision make the findings that he did as set out at paragraph 113 of the Decision. I do not consider there is any basis for the criticism of the Decision on the basis of a lack of reasons. The Decision must be read as a whole, the reasons why the SDM came to the conclusions that he did are set out in detail. Having come to the conclusions that he did on the facts, it was reasonable for him to decide that AGL’s conduct had breached the MCL and the other Principles identified at paragraph 117 of the Decision (subject to the caveat identified above in relation to the lack of probity and integrity) and that Mr Pybus had caused AGL to fail to meet the standards required by AGL.
168. The SDM in the Decision makes findings on Mr Pybus’ state of knowledge, however, as I have found above, there is no proper application of the test for lack of probity or integrity. Therefore, as I have set out above, I have come to the conclusion that the finding at paragraph 117.1 in relation to the requirement to act with probity and integrity and paragraph 118 in relation to a failure to act with probity is an error of law.

FOURTH ALLEGATION – J Ltd

169. Again, in relation to this matter it is necessary to set out the background in some detail and the findings from the Decision. The SDM deals with this matter starting at paragraph 114 of

the Decision. AGL was appointed as resident agent for J Ltd on 20 September 2016. A report (“the J Ltd Report”) prepared by Mr Pybus and FT on J Ltd for the GFSC in response to the Second Notice in May 2021 stated that AGL provided registered office and registered agent services only. According to the J Ltd Report, KY Ltd Fiduciary (Isle of Man) Limited (“KY Ltd”) provided directors and general administration.

170. According to AGL’s Operating Manual dated November 2016, by default all registered office only cases should be classified as “*High/Higher than standard risk*” and because of the higher risk nature reviews would be required on an annual basis.
171. In an email exchange on 6 September 2016, Mr Pybus asked YN to prepare a letter of engagement for J Ltd. Mr Pybus told YN: “*We need to make sure that they have to consult with us on decisions and reporting etc.*” YN proposed an additional paragraph for the letter of engagement to cover this point, as AGL were not providing corporate directors. Mr Pybus agreed to the additional paragraph.
172. However, when YN prepared an AML Specific Risk Assessment for J Ltd on 20 September 2016 (“the J Ltd Risk Assessment”). The J Ltd Risk Assessment rated J Ltd as medium risk. The J Ltd Risk Assessment noted that the services provided were: “*standard corporate services, RO, RA, administration etc., but NOT directors – although they have given an undertaking to notify us of all director decisions.*”
173. A Company Take On/Over Checklist (“the J Ltd Take on Checklist”) was also started on 20 September 2016 (but not completed until 25 September 2018). The J Ltd Take On Checklist states in relation to control of the entity, “Registered office only”. It also reiterated that J Ltd was medium risk.
174. The SDM found that the description of AGL’s services in the J Ltd Take on Checklist and the description in the J Ltd Report, were inconsistent with the description in the J Ltd Risk Assessment.
175. The SDM concludes that as AGL were providing registered office only services, J Ltd should have been rated high risk. J Ltd was not reassessed as high-risk until around August 2019. Further, that the failure to rate J Ltd as high-risk in accordance with its own procedures, or alternatively the failure to review the nature of the services provided to J Ltd demonstrates that AGL’s AML/CFT procedures were not effective as required by the 2007 Regulations 3(2).
176. The Decision at paragraph 126 says that on 18 November 2016, YN was forwarded an email by KY Ltd from SLT Ltd dated 16 November 2016. The original email from SLT Ltd stated that the Companies Law and a condition of the GFSC’s approval for the incorporation of J Ltd, required J Ltd to be administered by a Guernsey licensee¹⁰. The email also said that the Commission had stated that “*this went beyond the simple provision of a registered office*” and that the Commission “*will need to be satisfied that the proposed new administrator is fully aware of their responsibility*”. YN and Mr Pybus confirmed in their interviews that an additional paragraph in their client services agreement was to comply with the Companies Law and the requirement of the GFSC’s condition for incorporation. This paragraph, proposed by YN and agreed by Mr Pybus required J Ltd to consult with AGL “*on decisions and reporting etc.*”
177. The email of 16 November 2016 from SLT Ltd also says that the Commission had asked for details of the new ultimate beneficial ownership for their records. This was followed up by

¹⁰ A copy of the letter dated 18 April 2012 from the GFSC directed to Guernsey Trust Company Limited (the former name for SLT Ltd) was provided to the SDM in the additional documents filed before the oral meeting by the GFSC.

an email from YN to KY Ltd dated 18 November 2016 asking “*what change of beneficial owner?*”. However, KY Ltd confirmed to YN that it remained DG who was the UBO (from April 2016) identified in the Company Take On Checklist.

178. The SDM set out at paragraph 128 that it is clear from the email of 6 September 2016 between Mr Pybus and YN, the J Ltd Risk Assessment and the email to YN from SLT Ltd of 18 November 2016 that AGL were aware that their services were required to be more than the simple provision of the registered office (even if they were not providing the majority of the administration services). He concludes that AGL failed to ensure that the services it provided to J Ltd were in accordance with the client services agreement (the “CSA”) between AGL and J Ltd so that its services went beyond the simple provision of registered office, as required by the Companies Law and the GFSC’s condition for incorporation of J Ltd.
179. On 11 January 2018, KY Ltd wrote to AGL providing details and CDD for a new ownership structure for J Ltd. From the ownership structure chart enclosed with the letter of 11 January 2018, the new ultimate beneficial owner (“UBO”) was shown as HL, who beneficially owned J Ltd via two trusts, the D Trust based in Belize and the SY Trust based in the Isle of Man.
180. A company review of J Ltd was started on 29 June 2018 by an employee of AGL (although it appears never to have been signed off and was closed due to its age on 16 April 2020) (“the J Ltd Company Review”). The J Ltd Company Review noted that the current risk rating for J Ltd was medium. There was no mention of any change in ownership to HL in January 2018. The SDM recorded that in relation to ensuring that a management agreement was on file signed by the UBOs of the Company, the response was indicative that the agreement was between AGL and DG and thus, overlooked the information supplied on 11 January 2018. The SDM found that the J Ltd Company Review was ineffective in reviewing the risk rating and the activity of J Ltd.
181. The Issues Log presented to the AGL board on 1 February 2019 with the Compliance Officer’s report, noting various failings including “*New UBO in/around Jun (sic) -September 2017. No CSA [client service agreement] in place with new UBO (or it seems with [J] Investments itself) Unsure whether information provided to Guernsey Registry re UBO correct CDD provided in respect of new UBO seemingly out of date when received.*” The SDM concluded (at paragraph 134) that the failings demonstrated failures by AGL to meet the standards of the Finance Business Principles, the CSP Code and the Code of Corporate Governance.
182. In an email from an associate director of AGL to Mr Pybus sent on 17 April 2019 (the “17 April 2019 Email”), reference is made to the ownership structure being overly complex without tax rationale/advice as to why. It also notes that “*If the decision is to retain it I would suggest full tax rationale obtained and outstanding dd and CSA obtained. This would include full docs on [D Trust] Belize, CSA from Trustees or UBO (AA), current accounts, minutes.*” It also notes that “*the BO filing should have been the UBO (AA) and not [DG]. If in agreement, this should be submitted to the Registry asap. ([DG] removed and AA added).*” The 17 April 2019 Email attached a review of the Customer Due Diligence (“CDD”) for J Ltd.
183. The SDM concluded that for a period of over a year AGL knew, or should have known, that there were serious deficiencies in relation to this matter: they did not have the correct information on the UBO; there was no client agreement in place with the new UBO; the CDD was out of date; and there was a lack of appropriate documentation and records.
184. Mr Pybus responded to the 17 April 2019 email on 28 April 2019, stating: “*we cant (sic) exit this case due to the undertaking to the GFSC. Can we please progress the remediation on this and ensure that we hold all required items ASAP.*” Mr Pybus confirmed in interview that the “*undertaking to the GFSC*” refers to the GFSC’s condition as described as being required by SLT Ltd in their email.

185. On 30 April 2019 (the “30 April 2019 Email”), an associate director of AGL emailed KY Ltd requesting further information and confirmation in relation to the ownership structure and tax rationale of J Ltd. Mr Pybus was copied into the email.
186. The SDM found at paragraph 138 of the Decision, that there is no explanation as to the reason why AGL had not taken any action to bring its understanding of the ownership and control structure to the level required by the 2007 Regulations in early 2018 after being informed as to the change of ownership.
187. In interview, Mr Pybus stated that the 30 April 2019 Email was an attempt by the AGL employee to check that the ownership structure provided in January 2018 remained correct. The SDM concluded that this statement was unlikely to be correct, as 30 April 2019 Email states: “*As our [CSA] was signed by [DG] at inception, we will also require a new [CSA] to be signed by the UBO when confirmed.*” The SDM further concluded that AGL were evidently not seeking to confirm that their understanding was correct but seeking to confirm who was the beneficial owner.
188. There was a further email on 19 June 2019 from AGL to KY Ltd requesting CDD and reminding them of the obligations under the Client Agreement. On 5 August 2019, AGL emailed again noting that J Ltd had been upgraded to high-risk due to the nature of the arrangement and also due to the fact that AGL had not been given full information with regard to the decisions made by the non-Guernsey directors required under the Client Agreement. This email and KY Ltd’s response, which was received on 15 August 2019, were forwarded to Mr Pybus and FT on 16 August 2019.
189. According to AGL’s Operating Manual dated November 2016, by default all registered office cases should be classified as high/higher than standard risk. The SDM concluded that J Ltd appears to have been rated high-risk around August 2019. Accordingly, AGL was in breach of its own internal compliance procedures for at least three years before taking steps to remediate the compliance deficiencies in relation to J Ltd.
190. On 15 October 2019, an associate director of AGL wrote to KY Ltd reminding it of the GFSC’s requirement that J Ltd be administered by a Guernsey administrator and noting that administrator responsibilities went beyond those connected with the provision of registered office only services (the “15 October 2019 Letter”). AGL reminded KY Ltd that this had resulted in the special provision in the client agreement and that AGL had not been kept fully informed. AGL also explained to KY Ltd that J Ltd was treated as high-risk and subject to enhanced monitoring. The letter noted that AGL had not been kept informed and significant breaches had occurred including: no prior communication on establishment of cells; no notification on establishment of new cells; no notification or communication on dissolution of cells; no accounts on cells provided or regularly reported; and no copy documentation provided regularly including board minutes, agreements or share transfers.
191. The SDM held that the 15 October 2019 Letter is inconsistent with AGL’s submissions at the oral meeting on 14 February 2023 that AGL held correct records, understood J Ltd’s transactions or that it was in a position to contend that there “*were minimal activities and transactions*” and that AGL were entitled to rely on KY Ltd. Further, he held that the provision of information appears to have been seriously deficient and deficient since AGL agreed to provide a registered office in 2016.
192. On 4 February 2020, an employee of AGL sent an email to Mr Pybus identifying adverse open-source media relating to HL. The original article in the internet link concerned was first published in June 2018. Accordingly, the SDM concluded, if J Ltd had been rated high-risk in accordance with AGL’s Operating Manual and therefore, subject to the required level of

enhanced monitoring from the correct time, the adverse media would probably have been identified much earlier.

193. A review of the J Ltd file conducted by external compliance consultant, D Ltd, dated 7 February 2020 (the “D Ltd Review”), also referred to the adverse media report. The D Ltd Review recommended that the position relating to beneficial ownership needed to be clarified and documented. The D Ltd Review also noted that appropriate CDD and Enhanced Customer Due Diligence (“EDD”) was not held and that there was insufficient information as to the rationale for the company. There is a reference in the D Ltd Review to “[AGL’s] covering email file note relates to [DG] being the Beneficial Owner and DD is held on him.” The SDM found that the D Ltd Report illustrated AML/CFT failings: namely under the 2007 Regulations and the 1999 Regulations 4: Failure to identify and verify the UBO, or take measures to understand the ownership and control structure; and under the 2007 Regulations and 1999 Regulations 11: Failure to perform ongoing and effective monitoring including reviewing identification data to ensure it is kept up to date and scrutiny of transactions and activity.
194. In his interview on 21 October 2021, Mr Pybus stated that D Ltd wanted to conduct paper-based file reviews, rather than use AGL’s document management system, which lost some of the subtleties of looking through the reviews. Mr Pybus also admitted that it was clear from the letter of 11 January 2018 that AGL were aware of HL’s involvement with J Ltd. Mr Pybus said that he was unaware what was said in the D Ltd Email.
195. On 25 February 2020, FT was informed of the results of an internal review of the J Ltd files. This review records that when AGL received details of the new ownership structure of J Ltd it was hugely complex, but significantly, that nobody at AGL thought to query why a structure originally set up by individuals with a domestic profile was suddenly changed to a complex structure involving ownership by a trust with links to Belize and a UBO resident in Dubai. The SDM concluded that this is a clear failing by AGL to comply with the 2007 Regulations 3 and the 1999 Regulations 3(1) and (4)(b).
196. The J Ltd Report acknowledged that there were deficiencies with the administration of J Ltd by AGL. In particular, the J Ltd Report acknowledged the following failings against the requirements of the Regulations: no risk assessment was conducted when AGL was notified of the change of ownership in January 2018 despite there being a number of high-risk indicators; no source of wealth information was obtained for HL; the proof of address that was accepted for HL as part of his verification information was out of date when accepted; no forms were completed at the time of the change of ownership and HL’s details were consequently not put into AGL’s overnight screening process; internal risk reviews were undertaken but not signed off (in some cases they were eventually signed off but not until some two years later); and risk reviews failed to highlight that there were no specific CDD reviews carried out on the UBO. The J Ltd Report states that the matters largely stem from problems with staff not correctly following policies and procedures. The J Ltd Report also states that YN and RY had been reporting to the AGL board that client matters, including periodic reviews, were fully up to date and signed off. Both YN and RY disputed in interview that they reported that all matters were up to date and signed off and the SDM concluded that there appears to be no contemporaneous evidence to support the assertion that they did.
197. The SDM concluded that the deficiencies described in the J Ltd Report relate to matters which are board level responsibilities. Accordingly, he found that Mr Pybus as the Managing Director, must accept his responsibility to the failings of the board of AGL.
198. The 2007 Regulations and the 1999 Regulations 15 provide that it is the board of a financial services business that has effective responsibility for compliance with the 2007 Regulations, 1999 Regulations and the Handbook. The J Ltd Report describes matters which involve

breaches of the 2007 Regulations 3 and the 1999 Regulations 3 (4)(b) and Regulation 15. In addition, these breaches point to breaches of the Code of Corporate Governance. The SDM also found that the J Ltd Report is materially inaccurate and misleading regarding the statements that YN and RY were reporting that client matters were up to date. The SDM concluded at paragraph 153 of the Decision that this was an example of a pattern of behaviour whereby Mr Pybus sought to blame others or stated that he was unaware of an issue. The SDM also concluded that this behaviour is obstructive in relation to the ability of the GFSC to fulfil its statutory duties and “*reflects extremely poorly on the probity of both Mr Pybus . (sic)*”

199. The SDM concluded that this behaviour involved a breach of the MCL, the Finance Business Principles: Principle 10; and CSP Code: Principle 8.
200. The J Ltd Report records that AGL resigned from its position as provider of registered office services on 12 March 2020 and according to the Guernsey Registry, AGL resigned as registered agent on 11 March 2020 and removed itself from providing the registered office on 12 March 2020. The SDM concluded that AGL, and in particular, Mr Pybus and YN, were aware that they had to do more than simply provide the registered office service in order to satisfy the Companies Law and the GFSC’s condition for incorporation. This led to them putting in place the purportedly enhanced reporting requirement in the CSA. However, after AGL took on the business, there was very little actual effective monitoring and oversight of the activities of J Ltd by AGL. This demonstrates a lack of competence, sound judgement and diligence, specifically by Mr Pybus (and YN), and a series of serious board level failings by AGL in breach of the CSP Code, Principle 3, and Principle 6. Also, breach of the 2007 Regulations 4 or the 1999 Regulations 3(1) and 4(3)(c), the 2007 Regulations and the 1999 Regulations 11(1). Further, AGL’s failures were exacerbated by the allegations against HL that he created a network of offshore companies to launder the proceeds of crime (which AGL also took nearly two years to identify). The SDM also found that this caused a heightened risk of money laundering and a significant risk to the reputation of the Bailiwick.

Summary of Submissions

201. The Appellants say that the AGL Operating Manual dated November 2016 says at paragraph 12.1:

“PBF may provide services to clients with a Guernsey registered company but who do not require the provision of directors, administrations, Company Secretary, bookkeeping / accounting – but simply require a physical address to be used and the use of a Resident Agent”

Then at paragraph 12.3, the Operating Manual states that:

“By default, PBF will deem all Registered Office cases as High/Higher than Standard Risk...”

202. The Appellants say that AGL correctly assessed J Ltd as medium risk in September 2016. The special provisions of the client services agreement with DG, the original UBO, meant that as J Ltd was required to inform AGL of proposed decisions and/or actions of J Ltd’s directors and to report on general matters relating to activities of the company. Accordingly, the services provided by AGL to J Ltd were not restricted to a registered office. Also, in the J Ltd Risk Assessment there was an accurate shorthand of the services provided and thus, the designation of “medium risk” and there was no obligation to assess J Ltd as high/higher risk.
203. Undue weight was placed on the J Ltd Take On Checklist which incorrectly noted that it was “*registered office only*”. The SDM failed to give appropriate weight to the terms of the J Ltd

CSA and the J Ltd Risk Assessment, which contained a summary of the services provided to J Ltd, an assessment for AML/CFT risks, in light of the services provided. The SDM also failed to take into account the context of the “*registered office only*” entries in the J Ltd Take On Checklist. These entries were in the “*Transfer of Control*” section of the document, which listed a number of actions in the case where AGL was taking control of an entity when the section was inapplicable because none of the services provided by AGL required a transfer of control. The “*registered office only*” entries were a very brief description of why the section of the checklist was inapplicable. They were not intended to be a full summary of all the services. The Appellants say that the GFSC has cherry picked references which support its intended outcome rather than a proper assessment of the matter. AGL, therefore, submits it conducted an appropriate AML/CFT assessment in accordance with its procedures and correctly assessed J Ltd to be medium risk. In light of the foregoing, there is a no basis for a finding of breach of the 2007 Regulations 3(2) in connection with the take on of J Ltd in 2016.

204. AGL further submits that it did understand the ownership and control structure of J Ltd at all times, including following the change in UBO to HL in January 2018. The evidence shows that following the information from KY Ltd on 11 January 2018, this new ownership information was the subject of a detailed review and discussion within AGL, as evidenced by email communications in early March 2018 (“the March 2018 Emails”). The March 2018 Emails includes an email dated 1 March 2018 asking for direction on how to record the beneficial ownership on AGL’s internal systems (“Jobstream”). The details to be entered on Jobstream were finalised on 8 March 2018. Accordingly, it is submitted by latest 8 March 2018, AGL had considered the information regarding J Ltd’s new ownership structure and understood the ownership structure. The GFSC, therefore, unreasonably found, and/or made a material error of fact in finding, that AGL never understood the ownership and control structure of J Ltd.
205. The SDM placed undue weight on the J Ltd Company Review (although the pro forma did not require the reviews to note a change of ownership) and the D Ltd Review, which was a paper based review, did not take into account AGL’s document management system and client administration system which correctly recorded HL as the UBO. The Appellants conducted a risk assessment after it was notified of the change in the ultimate beneficial owner to HL. The March 2018 Emails evidenced AGL’s assessment that no risk assessment was required. Further, or alternatively, AGL was not required, under the Regulations, to carry out a risk assessment in circumstances where the new ultimate beneficial owner was very remote from J Ltd.
206. AGL also says that KY Ltd did report to AGL on matters relating to the activities of J Ltd. AGL also submits that although 15 October 2019 Letter from AGL to KY Ltd states that J Ltd had breached the J Ltd CSA, including by failing to notify AGL of the establishment of new cells and the dissolution of cells, the GFSC failed to have regard to the fact that no new cells had been established by J Ltd, no cells had been dissolved without AGL being notified, and AGL was in possession of the minutes detailing the activities of J Ltd (as opposed to the position stated in the letter). The GFSC made a material error of fact in finding, and/or unreasonably found, that AGL failed to ensure that the services it provided to J Ltd went beyond the simple provision of registered office/registered agent. The Appellants were refused the opportunity to cross-examine YN and RY. The Appellants’ position is that YN and RY were not reporting issues with J Ltd to the Board and therefore, the Board was not aware of any issues when it ought to have been so that it could take action.
207. As to the breaches of the Finance Business Principles and the principles in the Code of Corporate Governance, the Appellants say that the SDM has failed to adequately explain the exact basis on which it maintains that AGL has breached the Codes. Consequently, AGL is unable to properly consider the availability of any points of appeal. Further, the SDM’s failure to provide reasons amount an error of law, and the GFSC acting unreasonably. For example:

at [153] of the Decision that [it] “*reflects extremely poorly on the probity of both Mr Pybus (sic).*” Not only is the statement apparently unfinished but it again fails to identify the legal test used by the GFSC, if any.

208. Further, the SDM’s findings that the Codes had been breached were underpinned by the SDM’s erroneous and/or unreasonable findings that: (a) AGL did not carry out appropriate risk assessments of J Ltd; (b) AGL did not understand the ownership and control structure of J Ltd, in particular, following the change in UBO to HL; and (c) AGL failed to ensure that it provided services in accordance with the J Ltd CSA. Accordingly, the GFSC erred in finding, on the basis of those facts, that AGL breached the relevant Codes, and in finding that AGL’s lack of monitoring of J Ltd in accordance with the J Ltd CSA demonstrates a lack of competence, diligence and sound judgment by Mr Pybus.
209. The GFSC says in response that the SDM’s Decision was based on the evidence and accurately reflected the position supported by the evidence before the SDM, including the contents of the J Ltd Report itself. The totality of the evidence in the case, to which the SDM had proper regard, strongly supports the conclusion that the SDM’s decision was lawful. J Ltd should have been registered high risk flowed from the evidence that: (a) J Ltd was a registered office case and AGL’s 2016 operating manual stated that such cases should be classified as “*High/Higher than standard risk.*” Whilst J Ltd had agreed an undertaking to notify AGL of all director decisions, it would not have been reasonable for the SDM to conclude that this meant the relationship was anything other than a “*registered office case*” given other evidence. The GFSC say that Mr Pybus appeared to accept in the oral meeting that J Ltd perhaps should have been rated as higher risk and that AGL had failed to conduct risk assessments. There was relevant evidence on which the SDM relied upon to conclude that AGL did not have a proper understanding of J Ltd’s ownership and activities. In response to the complaint that the SDM failed to adequately explain the basis upon which AGL is said to have breached the Codes, the GFSC says the SDM set out which provisions were breached under each section of findings in the report, but a full and clear summary of why the SDM found that each of the Codes had been breached was provided in the Decision. The decision is not rendered unfair by the lack of cross-examination of YN and RY.

Discussion

210. As the detailed chronology above sets out, AGL took on this client relationship from SLT Ltd in September 2016. However, what is apparent is that the records for AGL at the commencement of the relationship were inconsistent in their description of the services they were due to provide for J Ltd. It is also the case that the J Ltd Report (which was completed by Mr Pybus in response to the Second Notice) records that AGL were asked to provide registered office and resident agent services only to J Ltd, with KY Ltd providing the directors and general administration. It is also the case that Mr Pybus during the oral meeting conceded in cross-examination that high risk should have been considered as the initial risk categorisation of J Ltd. The exchange between Mr Pybus and the representative of the commission was as follows:

JN: Should regard have been had, do you think, to AGL’s operating manual where it says, “Deem all registered office cases as higher than standard risk”? Do you think that should have been considered in the initial risk categorisation of Sharp?
PP: I believe it should have been considered.”

211. I find no basis for the criticism that the SDM has cherry picked the evidence. It is evident from the detailed consideration by the SDM, that he looked at the evidence before him in the round. He was entitled to place weight on the contemporaneous evidence over retrospective testimony which contradicted the evidence at the relevant time. In those circumstances and when taken into account with all the other evidence, the SDM’s conclusions that in accordance

with AGL's own Operating Manual, the assessment of the relationship as medium risk was wrong was a reasonable one.

212. The Decision at paragraph 131 acknowledges the letter (dated 11 January 2018) with attached structure chart from KY Ltd and CDD received on 15 January 2018. From the covering letter this appears to have been prompted by an email from an employee at AGL. From the documentation attached to the 11 January 2018 letter, the change in ownership appears to have happened in around July 2017. However, it is evident that there remained confusion about the beneficial ownership of J Ltd as demonstrated in the J Ltd Company Review and the D Ltd Review about the beneficial ownership. The March 2018 Emails starting on 1 March 2018 in response to the CDD received on J Ltd demonstrate some engagement by AGL about the lack of understanding of J Ltd. It starts with an email from YN forwarding the CDD from KY Ltd to an employee on the 15 January 2018. This garnered a response from another employee on the 1 March 2018 *"From the attached it looks as though the UBO has changed??! Are you in the process of updating Jobstream?"* This then results in a series of queries between various employees about what and how information should be recorded and what further information that was required. It also appears that one of the same employees completed the J Ltd Company Review in June 2018 where the reference is to the agreement with DG and makes no reference to the new UBO. However, in April 2019 when an associate director reviewed the CDD held by AGL on J Ltd, she concluded that the CDD was lacking in numerous respects and that AGL should require a full tax rationale including *"full docs on [D Trust] Belize, CSA from Trustees or UBO (AA), current accounts, minutes"*. She also noted that the Company Registry needed to be amended as soon as possible. The reaction from Mr Pybus was that this should be followed up and, not as the Appellants' case would have it, that AGL did in fact have the necessary information.
213. The April 2019 review appears to have led to the letter of 30 April 2019 to KY Ltd from the associate director asking for confirmation of the current Beneficial Owner and the dates of all changes in beneficial ownership, a new client services agreement, as well as tax advice and rationale behind the structure and further correspondence querying the set up. Taking this into account, the SDM's conclusion that for a period of over a year AGL knew, or should have known, that there were serious deficiencies in relation to this matter: they did not have the correct information on the ultimate beneficial owner; there was no client agreement in place with the new ultimate beneficial owner; the CDD was out of date; and there was a lack of appropriate documentation and records was reasonable in all the circumstances.
214. It is the same associate director who had raised the issues on 17 April 2019 and had written to KY Ltd on 30 April 2019 and subsequently chased them on 19 June 2019 (all copied into Mr Pybus) who wrote to KY Ltd on 15 October 2019. The submissions on behalf of the Appellants with regard 15 October 2019 Letter, required the SDM to disregard the contents of the letter, the concerns of the associate director and the line of enquiry she pursued with KY Ltd, to ignore the concerns identified in the email dated 25 February 2020 sent to FT and the external D Ltd Review or the information contained in the August correspondence between AGL and KY Ltd. The SDM does not make any finding with regard to whether there have been new cells or not. The SDM's focus is that contrary to the oral submissions of AGL that it held: correct records, understood J Ltd's transactions, that it was in a position to contend that there *"were minimal activities and transactions"* and that AGL were entitled to rely on KY Ltd; its own contemporaneous correspondence belies these representations. The 15 October 2019 Letter (which the SDM summarises at paragraph 143) says:

"You are aware that at the registration of this PCC the Regulator, the Guernsey Financial Services Commission, stipulated that non-Guernsey directors were permitted on the strict understanding that the Administrator's responsibilities went beyond the simple provision of registered office and we were obliged to confirm that understanding

to the Regulator. We were therefore to be kept fully informed of activity and positions. This was reiterated as a special provision in the Client Services Agreement. We have not been kept fully informed and significant breaches have occurred in reporting.”

215. Further, it is also evident that Mr Pybus and FT were aware of the concerns as they were copied in or forwarded correspondence. This included in February 2020, prior to the D Ltd Review, an employee forwarding to Mr Pybus adverse media reporting about the UBO. As well as the conclusions of the J Ltd Report, which sets out that information was being provided retrospectively.
216. As with the previous submissions on cross-examination, despite the Explanatory Note and the directions given by the SDM, no requests were made for RY and YN to be made available for cross-examination. There was no evidence to support Mr Pybus’ assertion that either of them had reported all matters were up to date and signed off (other than the assertion in the J Ltd Report) rather the evidence that was before the SDM was that Mr Pybus and FT knew from other members of AGL that matters were not in good order. In the circumstances, I am not persuaded that if the Appellants had sought to cross-examine RY and YN, which they did not, it would have rendered the Decision unfair, unreasonable, amounting to an error of law or a material error as to procedure.
217. The conclusions that the SDM came to on the evidence before him were within the range of reasonable responses. Further, I also consider there is no basis for the general complaint that the Appellants do not know the reasons for the conclusions of the SDM on the relevant codes and principles. The Decision must be read as whole. The SDM has set out in detail the basis for his conclusions, referring to the evidence before him in detail and then to the codes or principles breached.
218. As I have set out above, at paragraph 153 of the Decision it says, *“it reflects extremely poorly on the probity of both Mr Pybus (sic)”*. This appears to be an unfinished sentence and fails to identify the legal test used by the SDM, if any. Therefore, in relation to this part of the SDM’s Decision in relation to the fourth allegation only, the appeal is upheld.

THE FIFTH ALLEGATION - K Ltd/K HOLDINGS

219. Again, due to the wide nature of the appeal under this allegation, it is necessary for me to set out in some detail the chronology in relation to this matter and the findings of the SDM in the Decision on this matter. K Ltd was a client relationship that came to AGL as consequence of an introduction from another Guernsey business in April 2016. Mr RD (“RD”) was already the director and the shareholder of K Ltd at the time of the introduction.
220. AGL was appointed on 4 May 2016 by K Ltd to provide services under a Company Management Agreement (“the K Ltd Agreement”). The services included provision of directors, maintenance of statutory records, dealing with correspondence, arranging for the keeping of accounting records and arranging for the execution of documents by or on behalf of K Ltd.
221. The following employees of AGL were appointed directors of K Ltd: YN from 6 July 2016 to 26 November 2018; Mr Pybus from 6 July 2016 to 21 September 2018 and from 26 November 2018 to 20 September 2019; and HT from 21 September 2018 to 20 September 2019. Another gentleman, unconnected to AGL, AR (“AR”) was also a director between 13 October 2016 and 15 October 2019.
222. K Holdings was incorporated by AGL on 5 May 2016 and AGL’s Secondary Licensees, AG Directors and Adjure Global Directors, were appointed as directors on the same day. AG Directors and Adjure Global Directors were the sole directors of K Holdings between 4 May

2016 and 11 December 2019. On 5 May 2016, the directors of K Holdings agreed to engage the services offered by AGL as set out in the first schedule of an agreement between K Holdings and AGL. However, no agreement was provided to the GFSC. It was presumed by the GFSC that the services are the same as those set out in the first schedule of the K Ltd Agreement.

223. At paragraph 170 of the Decision, the SDM concludes that from the evidence before him, AGL was never fully in control of and did not have adequate records for K Ltd or K Holdings despite appointing directors to the boards. The grounds for this conclusion are set out at paragraph 170.1 – 170.11.
224. During his interview when questioned in relation to K Ltd, Mr Pybus said that he was unaware of any issues regarding the governance of K Ltd from March 2017 until he was re-appointed as a director of K Ltd in November 2018. Mr Pybus suggested that in the intervening period, YN (who was a director of K Ltd from 6 July 2016 to 26 November 2018), reported to him that everything was fine. The SDM Decision records that Mr Pybus did not provide the GFSC with evidence to support his assertion. The SDM concluded that this appeared to be an attempt by Mr Pybus to attribute responsibility for AGL's failings to YN.
225. As a result of RD signing loan documents and terms sheets without the approval of the remainder of the Board, Mr Pybus and HT resigned as directors of K Ltd on 20 September 2019. However, despite the serious concerns that AGL had in relation to K Ltd they continued to administer the company. The SDM found at paragraph 172 of the Decision, that the decision to continue as administrator of K Ltd in these circumstances reflected poorly on the prudence of AGL and the soundness of judgement of Mr Pybus because he knew that RD was making decisions without the approval of all the directors and was unlikely to keep AGL informed of material changes, as required under Principle 3 of the CSP Code.
226. The SDM came to the conclusion that from the evidence that for a period of at least two and half years that AGL was not effectively in control of K Ltd; it had no knowledge of the payment to or the reasons for the payment of a consultancy fee to OS and in the end AGL personnel resigned as directors of K Ltd; AGL did not keep proper records for K Ltd or K Holdings; and the AGL related directors did not know the company's business or have full and up to date information on K Ltd or K Holdings. The absence of minutes suggested that appropriate meetings of the board were not held and there were no minutes of meetings approving financial statements. The SDM found that it was not sufficient to maintain data if the data is not used to provide comprehensible information to a board or for a board to function on the basis that information is supplied to the board after transactions are supposedly entered into for the board to give retrospective approval.
227. The SDM concluded that failings in relation to AGL's client relationship with K Ltd and K Holdings demonstrated breaches of the following Regulation 11(1) of the 2007 Regulations in relation to the monitoring of transactions and activity; Principles 2, 5 and 6 of the Company Director Code; Principles 3 and 6 of the CSP Code, Principle 9 of the Finance Business Principles; Principle 1, 1.5 and 2 of the Code of Corporate Governance.
228. Further, the SDM found that Mr Pybus blamed YN for the failures rather than being open and co-operative with the GFSC and accepting any responsibility.

Summary of submissions

229. The Appellants say that the GFSC's determination that AGL was not effectively in control of K Ltd, was unreasonable and/or amounts to an error of law, in that the GFSC made its determination solely by reference to the actions of the AGL-related directors of K Ltd, including Mr Pybus (from 6 July 2016 to 21 September 2018 and then from 26 November

2018 to 20 September). However, K Ltd's directors included those not related to AGL, i.e. RD and AR. The issue which the GFSC ought to have determined was whether, as a whole, the board of K Ltd was effectively in control of the company.

230. The Appellants also say that the GFSC made errors as to material facts and/or made unreasonable determinations in relation to the control of K Ltd. With regard to payments made to OS, it was incorrect of the SDM to conclude that AGL had no knowledge of these. In reaching its determination, the GFSC placed undue weight on an email from YN dated 1 October 2018 in which YN emailed ML, the Chief Financial Officer of K Ltd, noting that K Ltd regularly paid consultancy fees to OS and asking “*what exactly do they do for us, and is there a consultancy agreement in place[?]*” However, the Appellants say that the SDM failed to take into account the contemporaneous evidence presented to it by AGL which shows that AGL did in fact know why payments were being made to OS. This includes an email dated 7 December 2016 which, in response to a query from an officer of AGL about the nature of services provided by OS, ML explained that he is “*a self-employed consultant who is working for us on a part-time basis on our device design and manufacture project (Loka)*”. The Appellants say that this email would have been provided to the GFSC. With regard to the execution of documents, the GFSC noted that on 16 March 2017, an AGL employee emailed Mr Pybus and YN, noting that an Option Agreement had been signed by RD in final form on behalf of K Ltd, despite AGL only being sent a draft version for comment. However, the GFSC refused to accept the evidence of AGL and Mr Pybus that, after this incident, AGL addressed the issue of execution of documents without reference to it with K Ltd. After dealing with the incident, there was no evidence before the SDM that, after March 2017 and before September 2019, RD continued to execute documents on behalf of K Ltd without reference to AGL. When RD executed a loan agreement and issued term sheets without full board approval Mr Pybus and HT promptly resigned as directors of K Ltd on 20 September 2019. It was unreasonable for the SDM to conclude that the need to resign was further evidence of AGL's failure to effectively control K Ltd and evidenced a lack of control for two and a half years.
231. The GFSC's findings that AGL did not keep proper records for K Ltd or K Holdings and that the AGL related directors did not know the companies' business or have full and up to date information on K Ltd or K Holdings are erroneous and a material error of fact (being perverse in the face of the overall weight of evidence) and/or unreasonable. The GFSC failed to consider (adequately or at all) the evidence provided by AGL in relation to the records it held for K Ltd and K Holdings. The Appellants say there is evidence that the AGL related directors of K Ltd and K Holdings knew the business of those companies and had up-to-date information about the companies' activities. The records kept by AGL were adequate, albeit limited, and that there were no minutes for 2017 and 2018. The GFSC failed to give any, or adequate, consideration to the nature of K Holding's activities. The GFSC was wrong to determine that absence of minutes suggests that appropriate meetings of the board were not held. In relation to financial information available to the directors of K Ltd and K Holdings, the GFSC placed significant weight (at paragraph 170.7 of the Decision) on the fact that GAAP compliant accounts were not produced for K Holdings but failed to give any, or any adequate, weight to AGL's submission that it deployed an advanced client administration system which was used for real time book-keeping and that the directors of K Holdings had access to this system. The GFSC's findings of breaches of the Codes were wholly or partly based on the GFSC's factual findings which were unreasonable and/or the SDM made material errors as to facts in respect of those findings. Accordingly, the GFSC erred in finding, on the basis of those facts, that AGL breached the relevant Codes.
232. The Appellants take issue with the SDM's conclusion at paragraph 172 that the decision to continue as administrator of K Ltd in these circumstances “*reflects poorly*” on the prudence of AGL and the soundness of judgement of Mr Pybus because he knew that RD was making decisions without the approval of all the directors and was unlikely to keep AGL informed of

material changes as required under Principle 3 of the CSP Code. The Appellants say it is not clear whether the SDM has determined that AGL and/or Mr Pybus have breached any Codes and if, so, which one(s). It is insufficient for the SDM to simply state that the decision to continue as administrator of K Ltd in these circumstances “*reflects poorly*” on the prudence of AGL and the soundness of judgement of Mr Pybus. This amounts to an error of law. In any event, the SDM’s finding is unreasonable and/or is perverse in light of the evidence (and thus erroneous). The Appellants also argue that the GFSC failed to give any, or any adequate weight to Mr Pybus’ written submissions to the SDM. Thus, they say that there is no basis for any finding that AGL was imprudent and that Mr Pybus failed to exercise sound judgment, in continuing to administer K Ltd after the September 2019 director resignations. Further, the Appellants say throughout the SDM’s findings relating to K Ltd and K Holdings, the GFSC relies on evidence from YN and FT in making its conclusions and decisions of failures by the Appellants. However, at no point were the Appellants able to cross-examine YN or FT on such matters.

233. The GFSC says that the focus in the enforcement process was on AGL’s conduct, AGL’s compliance with the MCL and on AGL’s control (or lack thereof). The lawfulness of the Decision can only be properly assessed in the light of the entirety of that evidence and not the selective material put forward by the Appellants in their submissions. The email of 7 December 2016 was not an exhibit before the SDM and appears to have been relied upon for the first time in the appellate proceedings and therefore, cannot have been part of the SDM’s decision. The GFSC say, in any event, the email tends to support the conclusion that from at least 2016 AGL did not understand what OS did.
234. The GFSC say that the conclusions in relation to the continuing administration of K Ltd after the director’s registration relate to adherence to the MCL. There is no error of law. Further written submissions that Mr Pybus made to the SDM were no more than unevicenced assertions and, in any event, do not explain how they are capable of rendering the SDM’s conclusion that the decision to continue reflects poorly on prudence and soundness of judgement in circumstances the SDM found, as he did at paragraph 172. The submissions by the GFSC on cross-examination of FT and YN were the same as for the previous allegations.

Discussion

235. AGL’s board was collectively responsible for these companies under the CSP Code and the Code of Corporate Governance and the regulatory obligations owed by Guernsey companies and by Guernsey Directors remain regardless of the appointment of non-Guernsey based directors. Thus, the fact that K Ltd had two non-AGL directors does not undermine this conclusion.
236. In YN’s interview on 5 October 2021, in response the question (by reference to the 2018 email exchange): “*So why did Adjure not know what [OS] did for [K Ltd] at that point and you’d been paying consultancy fees for a while by the looks of it?*”

YN said:

“Unsure but what I can see from this, you know, I have identified something which I’m unhappy with, so therefore I’ve gone back and checked out what is going on. So, other than that, it’s difficult to know but, you know, we have identified it. Whether or not we identified it at the right time, you know, it’s probably not correct but we’ve identified something and we’ve taken the steps to try and resolve it”

237. In the oral representations made before the SDM, Mr Pybus submitted that the written representations dealt with this issue. In the written representations AGL says “*[AGL] have reviewed this matter, it transpires that the [OS] agreement was not entered into until October*

2018, after [YN] chased about this matter. The agreement had a start date of 1st March 2018, that an agreement had been entered into with [OS] in October 2018 with a start date of 1 March 2018, a review of the payments to [OS] in 2018, show that the required questionnaires were completed and signed off by the required parties, these also show who requested the payment and what it was in relation to. The questionnaires do typically provide hyperlinks to the invoices and expenses claim forms. [AGL] therefore did hold information around this matter and that the individual was a consultant. It is not for Adjure to understand the minutia of every contractors (sic) role or other matter, the work performed needs to be understood by the Board as a whole, which it was in this case.”

238. No reference was made by him in the oral or written submissions to the email of December 2016.

239. Payments had been made to OS from 2016 recorded as consultancy fees and expenses. The 7 December 2016 email which the Appellants now seek to rely in was a response to an email from an employee of AGL to ML asking what consulting services OS provided, ML says: “[OS] is a self-employed consultant who is working for us on a part-time basis on our device design and manufacture project (Loka).”

240. As this was not referred to by AGL or Mr Pybus in submissions before the SDM, the possible inconsistency between the two answers from ML could not be considered by the SDM, nor why it would appear that despite this email, that in 2018 AGL did not know what OS did or why they were paying him. Thus, even with this email, to the extent that it should be considered at all given that it was not before the SDM, the SDM’s finding that allowing payments to a party with no knowledge of the reasons for the payments demonstrates a lack of competence, sound judgement and diligence by K Ltd’s directors including its corporate directors was a reasonable one on the evidence.

241. At paragraph 172, the SDM concludes:

“As a result of [RD] signing loan documents and terms sheets as described above, Mr Pybus and HT resigned as directors of [K Ltd] on 20 September 2019. However, despite the serious issues that AGL had in relation to [K Ltd] they continued to administer it. The decision to continue as administrator of [K Ltd] in these circumstances reflects poorly on the prudence of AGL and the soundness of judgement of Mr Pybus because he knew that [RD] was making decisions without the approval of all the directors and was unlikely to keep AGL informed of material changes as required under Principle 3 of the CSP Code.”

242. At paragraph 172, the SDM concludes:

“As a result of [RD] signing loan documents and terms sheets as described above, Mr Pybus and HT resigned as directors of [K Ltd] on 20 September 2019. However, despite the serious issues that AGL had in relation to [K Ltd] they continued to administer it. The decision to continue as administrator of [K Ltd] in these circumstances reflects poorly on the prudence of AGL and the soundness of judgement of Mr Pybus because he knew that [RD] was making decisions without the approval of all the directors and was unlikely to keep AGL informed of material changes as required under Principle 3 of the CSP Code.”

243. Included in the evidence that the SDM considered when coming to this conclusion was Mr Pybus’ email of 19 September 2019 where Mr Pybus himself says that RD was controlling the company and acting without regard for governance or what the other directors thought. In that same email it refers to a meeting where it appears it was agreed amounts other matters

“No further loan agreements would be entered into that could not be converted at the Company’s discretion; no loan document was to be executed by a Director on behalf

of the Company without Board approval; and no offering document or term sheet will be issued unless approved by the Board in advance.”

It also says:

“We have also requested that statutory financial statements be prepared for the Company, which are required under Guernsey law, these have not been produced and the financial information being produced contains a number of anomalies which are not permitted under generally accepted accounting standards. We have raised these with Jim, however they have not been resolved and we are therefore concerned with the accuracy of financial information being produced.”

244. In his interview in October 2021, by reference to the correspondence Mr Pybus said about issues since RD signed the option agreement in March 2017:

“I cannot talk for the intervening period as I wasn’t a director for part of that. When I rejoined the board that’s where the issues became apparent and we started to reinstalled upon Chris what he needed to do and what he could and couldn’t do. Unfortunately that never got through to Chris, hence our resignations.”

245. This evidence runs contrary to the submissions that AGL had in fact addressed the issues with RD between March 2017 and September 2019.

246. Similarly, it was in part from emails to which Mr Pybus wrote (see above) or received, that the SDM concluded that the records of the two companies had not been up to date. In an email from FT to Mr Pybus on 26 July 2019, he noted by reference to K Holdings:

“Just going through the files and appointing CO to draft the letter and looking at the minute folder to see how the shares were issued and it looks like we might be a little light on minutes. I suggest it might be a good idea to go through and draw up a schedule of minutes which should have been produced and look at how we may correct the picture. We have first minutes, appointment of a banker and the issuance of the first share, but not too much else. The Company only goes back to 5 May 2016.”

247. In interview FT said:

“Due to the fact that this moved quite quickly and out of the door I didn’t go back and produce a schedule because it would have meant going through line-by-line all the correspondence and there simply wasn’t time but I would have expected there to be more minutes than there were but equally it was a holding company and did very little other than hold the shares in the underlying company.”

248. In interview, as set out by the SDM at paragraph 170.9, Mr Pybus responded to questions on the email from FT by blaming YN leaving draft emails on his desk. Further, whilst making the fair point that this was a holding company, nevertheless, accepted there should be annual minutes which had not been done (and blamed YN).

249. The SDM has considered the evidence and material before him. Having weighed up the evidence before him, it was reasonable that the SDM concluded that AGL was not in control of K Ltd or K Holdings. The written submissions of the Appellants to the SDM contradict the contemporaneous documentary evidence, including Mr Pybus’ own emails about the level of control, the up-to-date information and records. Further, the Decision read (as it should be) as a whole does distinguish the two companies. References to prudence and soundness of judgement are undoubtedly references to the MCL which require these characteristics. Further, and having set out the failings of AGL in details at paragraph 170, the reasons why the SDM considered that AGL and Mr Pybus had failed to demonstrate prudence and soundness of judgement by retention of the administration of the companies are clear from the Decision i.e. *“despite the serious issues that AGL had in relation to [K Ltd] they continued*

to administer it.” (see paragraph 172). For these reasons, whilst I consider it would better to make a specific reference to the MCL in these paragraphs of the Decision, this does not amount to an error of law (or comes close) or a procedural error and the SDM conclusions in relation to this allegation were reasonable and proportionate ones for him to come to on the evidence before him.

250. Although the Appellants submit that they were “refused the opportunity” to cross-examine, the reality is that despite the guidance contained in the Explanatory Note and the directions given by the SDM, no requests were made for FT and YN to be made available for cross-examination. The Appellants were able to make oral and written representations on the matters in contained in FT and YN’s witness statements. The conclusions that the SDM came to were on the entirety of the evidence before him including the contemporary documents against which the oral evidence was checked. I am not persuaded that if the Appellants has sought to cross-examine RY and YN, which they did not, and had it been refused, it would have rendered the Decision unfair nor is a procedural error or unreasonable

SIXTH ALLEGATION – L MEETING MINUTES

251. Mr Pybus was a director of L from 16 November 2017 until 17 May 2021. As a local licensed insurer, L Ltd is required to appoint a General Representative pursuant to section 29 of The Insurance Business (Bailiwick of Guernsey) Law, 2002. AGL was the General Representative of L Ltd. The duties of a General Representative were set out in The Insurance Business (Duties of General Representatives) Regulations, 2008. These duties include: acting as the principal point of contact within the Bailiwick of Guernsey for all communications between the licensed insurer and the GFSC; being responsible for filing the licensed insurer’s annual return; being responsible for monitoring and reporting to the GFSC on compliance with solvency requirements; and ensuring that adequate books and records in relation to the business of the licensed insurer are maintained in Guernsey. Pursuant to Schedule 1 of the Company Management Agreement between L and AGL entered on 14 March 2018 (“the L Agreement”), AGL were responsible for arranging the holding of directors or members meetings as necessary and preparing, distributing and retaining all relevant minutes.
252. As set out at paragraph 118 in the Decision, in correspondence between the GFSC and AGL in June to August 2018, AGL explained that L Ltd had been offered an escrow account with cryptocurrency as security for an unrated reinsurer, EE (“the Escrow Account”). On 21 August 2018, AGL confirmed by email (copied to Mr Pybus) (the “21 August 2018 E-mail”) that, *“Having considered the cryptocurrency escrow accounts then the Board have taken the view that no reliance should be placed on these for the purposes of Regulatory Solvency Assessment hence this is more of a courtesy notification to the GFSC.”* Mr Pybus reiterated that position to the GFSC at a meeting on 7 September 2018.
253. In an email dated 14 February 2020, from the GFSC to Mr Pybus, the GFSC queried the use of the Escrow Account in L Ltd’s Regulatory Solvency Assessment as submitted with L Ltd’s annual return for the financial year ending 31 July 2019. In particular, the GFSC noted the content of the 21 August 2018 Email, in which it had confirmed the Escrow Account would not be relied upon for the purposes of the Regulatory Solvency Assessment and noted that L Ltd might not be meeting its PCR requirement at its financial year end and emphasised its *“serious concerns”*. The GFSC requested a copy of the relevant board minutes at which the L Ltd board reconsidered the use of the Escrow Account for solvency purposes and the reasons why the board reversed its previous decision not to use the Escrow Account in this way.
254. The SDM records at paragraph 183 that Mr Pybus responded to the GFSC on 26 February 2020, explaining the use of the Escrow Account for solvency purposes and explaining: *“The Board fully considered this matter at the October meeting, a copy of the minutes are attached for reference”* (“the L Ltd 28 October 2019 Minutes”). Page 3 of the L Ltd 28 October 2019

- Minutes included a detailed discussion on the use of the Escrow Account (“the Escrow Account Discussion”).
255. The draft minutes of the 28 October 2019 board meeting (“the Draft Minutes”) were originally circulated internally within AGL for review on 31 October 2019 by Mr S, a director of AGL. Mr S’ practice in taking minutes was to summarise the discussion and record the conclusion. It was also his practice to write up minutes shortly after conclusion of the meeting. In this instance, the Draft Minutes were sent by Mr S to Mr Pybus and two other AGL employees including Mr L who had attended the meeting with a request that they check the minutes so that Mr S could send them on to OE, Mr D, and a Mr H (who represented C Ltd L Ltd’s insurance and reinsurance broker) the following day. The Draft Minutes do not make any reference at all to an Escrow Account Discussion. Mr L responded on 1 November 2019 and proposed changes to the Draft Minutes (which the SDM found demonstrates he read them at paragraph 185) but made no mention of an omission to record a discussion in relation to the Escrow Account Discussion.
256. A revised version of the Draft Minutes (the “Revised Draft Minutes”) was then sent to the L Ltd board by Mr S, including Mr Pybus, on 1 November 2019 with the comment, *“I hope they are in order but please let me know of changes which are necessary.”* The Revised Draft Minutes sent to the L Ltd board did not contain any reference to an Escrow Account Discussion. Mr D responded on 5 November 2019 with two suggested amendments. He did not refer to any omission of the Escrow Account Discussion.
257. The Draft Minutes and the Revised Draft Minutes stated in relation to the solvency calculation: *“The solvency calculation, based on known figures to date, was presented and the Directors were pleased to note that the Company is now comfortably solvent.”*
258. As set out at paragraph 187, on 26 November 2019, Mr Pybus forwarded a copy of the Revised Draft Minutes to L Ltd’s auditors. The Revised Draft Minutes that Mr Pybus sent to the auditors, did not include any reference to an Escrow Account Discussion.
259. At paragraph 188, the SDM found that by 26 November 2019, the Draft Minutes and the Revised Draft Minutes had been circulated three times as follows: internally within AGL, with Mr Pybus on 31 October 2019; to the L Ltd board, including Mr Pybus, by Mr S on 1 November 2019; and by Mr Pybus himself to L Ltd’s auditors on 26 November 2019 (copied to Mr O¹¹ who had attended the October meeting). He also found that on no occasion did Mr Pybus (or any other person) make any comments about omissions from or alterations that might be necessary to the text of the Draft Minutes or Revised Draft Minutes other than that described above.
260. Mr Pybus forwarded the GFSC’s email of 14 February 2020 to Mr S by internal e-mail on the same day that it was received from the GFSC, requesting that he be provided with the reinsurance documents so that he could draft a response. On the same day, Mr Pybus was provided with various documents in response to his request, including the Revised Draft Minutes. The SDM found at paragraphs 189 and 190 of the Decision that there was no reference to an Escrow Account Discussion in the Revised Draft Minutes with which he was provided nor was there a contemporaneous note regarding any Escrow Account Discussion that might have taken place at the 28 October 2019 L Ltd board meeting to enable Mr Pybus to make substantial retrospective amendments to the Revised Draft Minutes.
261. The Decision records that on 26 February 2020, Mr Pybus provided Mr S with a tracked changed version of the Revised Draft Minutes (“the Tracked Change Minutes”). The most

¹¹ I understand from Mr S’ evidence at the oral meeting that Mr O has since passed away.

significant change made by Mr Pybus was the addition of the following discussion regarding the Escrow Account:

“The solvency calculation was presented and the Directors, the Board noted that offset provisions against default and how these were calculated, particular reference was made to [EE] and the security agreement, whereby [EE] had placed US\$4m with US Lawyers to cover the exposure. The Board noted that the US Lawyers held assets for [EE] and acted as agent for a number of security accounts. In addition the assets that the agent held were a basket of currencies, predominantly crypto-currency, however the exact make up was not known. The Board noted that under the terms of the security agreement the lawyers were required to transfer US\$4m to [L Ltd] if required, the exact makeup of the assets of the security account were irrelevant for the contractual requirements. The Board noted that the RSA was only showing US\$3m as being held on security as a prudent measure due to the lack of detail around the basket of currencies or the quantum over and above the US\$4m held. The Board considered the ability to call on the security and the additional potential routes to secure the funds (through the lawyers insurance). The Board were satisfied that there is a contractual requirement for the lawyers to maintain US\$4m of liquid assets and to distribute the US\$ to [L Ltd] should the requirement arise.”

262. On the same day, Mr Pybus emailed a draft response to the GFSC (“the Draft Response”) to the other directors of L Ltd for their comment. The Draft Response states, *“the Board fully considered this matter at the October meeting, a copy of the minutes are attached for reference”* (although no minutes were attached to the Draft Response). Mr D, the independent non-executive director of L Ltd, responded stating: *“I can't be certain of many of the things you state (in particular in the first paragraph) but if you and [O] are confident of the statements then I think the response is OK.”* *“For the record, I don't recall the discussion you reference from the October minutes (I'm assuming it was 2019) and indeed the draft minutes don't include this point.”* The reference was believed to be to OE, the beneficial owner and a director of L Ltd.
263. The SDM records that Mr Pybus responded by email stating: *“With regard to the draft minutes, I changed and added to them when they were circulated as some of the language was appropriate (sic). We did have a conversation around the escrow account as this was also discussed earlier in the year and is a key part of maintaining the PCR.”* The SDM described Mr Pybus’ response at paragraph 193 of the Decision as *“somewhat elliptical if it was intended to suggest that there had been a discussion at the board meeting along the lines of his amendment.”*
264. OE (the UBO of L Ltd) responded to Mr Pybus stating: *“The reply in itself looks ok to me but I have to say I am struggling to understand the issue the GFSC have raised given that I thought we had already agreed [EE] couldn't be used against solvency issues because they were unrated and a crypto currency insurer?”*
265. The SDM concluded at paragraph 194 of the Decision, that OE’s response reflects his recollection that there was no decision taken at the L Ltd board meeting on 28 October 2019 to use the Escrow Account in the Regulatory Solvency Assessment, as OE believed the position was as explained in the 21 August 2018 E-mail. The L Ltd 28 October 2019 Minutes, containing the accepted amendments drafted by Mr Pybus in the Tracked Change Minutes, were provided to the GFSC by Mr Pybus later on the 26 February 2020.
266. At paragraph 196 of the Decision, the SDM records that on 16 March 2020, Mr D met with the GFSC following his resignation as a director of L Ltd. Mr D stated that he had seen the L Ltd 28 October 2019 minutes that were sent to the GFSC on 26 February 2020 and that these included the Escrow Account Discussion. Mr D informed the GFSC that he did not

recall the Escrow Account Discussion, which led to his concern that the discussion was added to the minutes after the initial draft. However, Mr D did clarify that he could not be 100% certain whether it was actually discussed or not. The SDM concluded that it would be surprising if he could not recall such a discussion because Mr D had previously told Mr Pybus that they should approach the Commission about using the Escrow account in L Ltd's solvency calculation but Mr Pybus had said that this was not something he wanted to raise with the Commission.

267. The SDM also took into account that on 4 September 2019, Mr D noted his concern to Mr Pybus in an email that the Escrow had been recorded as a Regulatory adjustment and that he considered that the GFSC "*will not be pleased if [the figures] were presented in this way without their agreement/knowledge*". He also noted that the arrangement was not common. Mr Pybus responded that he did not consider that that was something he wished to raise with the GFSC.
268. The SDM concluded at paragraph 196, that if there had been a discussion relating to the Escrow Account at the board meeting the SDM would have expected Mr D to have voiced his serious concerns and not to have forgotten the discussion. The SDM also concluded it would have been likely that any discussion as to reliance on the Escrow account would not have been brief due to Mr D's concerns.
269. In Mr Pybus' interview with the GFSC on 21 October 2021, Mr Pybus was asked why, if the Escrow Account was fully considered at the L Ltd board meeting on 28 October 2019, the Escrow Account Discussion did not appear in the Draft Minutes or the Revised Draft Minutes. Mr Pybus said that he only reviewed the minutes in the run up to the next meeting.
270. At paragraph 198, the SDM considered that in the light of the email from Mr S requesting a review of the board minutes sent on 31 October 2019, Mr Pybus might have been expected to review the minutes immediately before it was further circulated to the board or circulated to L Ltd's auditors. Further, the SDM concluded it is apparent that Mr Pybus reviewed the Revised Draft Minutes in order to respond to the enquiry from the GFSC on 14 February 2020 and then revised the Revised Draft Minutes on about 26 February 2020. The SDM found that there was no material in the board pack which suggests that the Escrow Account was referred to in the context of solvency. It is not referred to in the Insurance Manager's Report under the heading "Solvency of L Ltd" where one might have expected to find a reference to it. AGL and Mr Pybus also referred to references to "solvency" in the draft minutes, but the reference does not show that the board appreciated that the Escrow Account was being included and would not have drawn the attention of the board to the treatment of the escrow. The same can be said about the reference to the Risk Solvency Assessment ("RSA") sheets which AGL and Mr Pybus contended might have contained "references or amendments" influenced by the inclusion of the Escrow Account. AGL and Mr Pybus made representations that the revision in the Tracked Changed Minutes was undertaken by Mr Pybus based on his notes which were destroyed after the minute had been approved as well as reference to the Board Pack and other documents. The SDM concluded that the evidence did not support Mr Pybus and AGL's version of events but rather his conclusion that the minutes had been amended by Mr Pybus and the alleged discussion did not happen at the board meeting on 28 October 2019.
271. The Third Notice issued by the GFSC on 12 November 2021 sought an explanation from Mr S. Mr S who provided an (undated) written statement to the GFSC on 10 December 2021 in response. Mr S stated: "*It is my personal policy to keep handwritten notes until the next meeting, following which they are shredded. As such I do not have my original notes from the meeting on 28 October 2019.*" Further: "*I remember drafting these minutes. The meeting was important due to the discussion around solvency and the board ensuring ongoing compliance with solvency.*" In addition, Mr S stated that he sent the Revised Draft Minutes out by email

on 1 November 2019 with the following comment: *“I hope [the minutes] are in order but please let me know of changes which are necessary.”*

272. There was no response to the request in the email. The SDM said at paragraph 201 of the Decision, it appeared that the practice of some directors is to review minutes immediately before or at the meeting at which they are to be approved.
273. Mr S continued in his statement: *“It was only as we prepared for the subsequent meeting that Mr Pybus gave me feedback by email on 26 February 2020. Following this email, I believe, based on the email itself, a discussion of the changes was requested by Mr Pybus. At this point, I believe I realised I had made some omissions from the original set of minutes. Whilst I cannot remember for certain, I expect I would have referred back to my notes following this feedback, as I would typically do in these circumstances. The omissions were obvious once Mr Pybus pointed them out and were fundamental to the meeting content.”* The SDM concluded that in fact what appeared to prompt Mr Pybus’ feedback was the requirement to supply a copy of the minutes to the GFSC rather than the impending meeting.
274. The SDM notes at paragraph 202 of the Decision that Mr S’s statement was not written with the benefit of legal advice, albeit he suggests he referred back to his notes when he drafted the Draft Minutes when he made his written representations dated 30 January 2023 to the SDM for the oral meeting. The SDM notes that in the oral meeting, Mr S appeared to acknowledge that his notes (since destroyed) did not contain the matters to be found in the Tracked Change Minutes and that he relied upon Mr Pybus’ amendments as being accurate. The SDM also noted that Mr S was not a director of L Ltd or copied into all discussions regarding solvency, had been absent from the board meeting for a short period or periods and also was occupied with serving drinks. Accordingly, at paragraph 202 of the Decision, the SDM concluded that Mr S deferred to Mr Pybus and acquiesced to the Tracked Change Minutes being put to the next board meeting for approval even though he had no personal recollection of the discussion. The SDM also concluded in the light of Mr S’ absence from part of the meeting, Mr S was entitled to assume that if the Tracked Changed Minutes did not accord with what had transpired at the meeting that the other directors would not approve them. The SDM also noted that Mr S said in his oral evidence that he had asked certain of his colleagues who attended the meeting (by telephone), including Mr L, if they remembered the discussion in relation to the use of the Escrow Account and they indicated that they did not.
275. The SDM came to the conclusion at paragraph 204 of the Decision that there was no Escrow Account Discussion at the board meeting of 28 October 2019. Further, he found it unlikely, that Mr Pybus would not have reviewed the Revised Draft Minutes before sending them to the auditor of L Ltd if solvency had been an issue at the meeting. The Revised Draft Minutes did not reflect the Escrow Account Discussion if the alleged Escrow Account Discussion had taken place at the board meeting.
276. The SDM also concluded it was improbable that Mr Pybus was able to review the minutes on the 26 February 2020, some 18 weeks after the relevant meeting, and be able to provide such a detailed - accurate - addition to the text of the 28 October 2019 Minutes and which records no doubts being expressed by any other director as to the reliance on the Escrow Account. The SDM considered that the response that Mr Pybus provided to the GFSC on 26 February 2020 was misleading and demonstrates a serious lack of probity by Mr Pybus for the reasons set out in detail at paragraph 208 of the Decision.
277. The SDM noted in his Decision that the GFSC is entitled to expect that documents provided to it are accurate and that directors act with probity at all times in accordance with the requirements of the relevant laws, codes, principles and guidance etc. The provision of false or misleading information or documents is very serious. The amendments to the L Ltd 28 October 2019 Minutes that the SDM believes, on the evidence, to have been made by Mr

Pybus and which do not accurately reflect the Escrow Account Discussion, and Mr Pybus' deployment of the minute to the GFSC taken with his answers in interview demonstrate a lack of probity and soundness of judgement by him.

278. The SDM further found that this appears to be a further example of a pattern of misleading behaviour exhibited by Mr Pybus, both during the regular ongoing supervision of AGL and during the course of this investigation. This includes the production of a misleading client list for the Thematic Visit, on which H Ltd did not appear, and misleading comments in the H Ltd and J Ltd Reports. The SDM concludes at paragraphs 208 and 209 that this pattern of misleading behaviour demonstrated a serious lack of probity by Mr Pybus and is in breach of the MCL.

Summary of submissions

279. The Appellants say that the GFSC has not discharged its burden of proof to demonstrate that Mr Pybus was lying and that the Escrow Account Discussion did not take place in the sense set out in the Court of Appeal decision of *Robilliard v GFSC (ibid)*. They rely on the section judgment at paragraphs 34 to 38:

“34. If the GFSC’s submission to us as to the absence of an adversarial burden of proof was intended only to mean that there is no ‘trial’ between parties, we would agree. Whether such facts were actually ‘proved’ to the relevant standard would be relevant only in the context of a submission on an appeal to the Royal Court that the SDM’s findings of fact were unreasonable.

35. In other words, we agree that the absence of an adversarial burden of proof, following the characterisation of the enforcement process as not adversarial, means that there is no need for anyone to “prove” anything to the SDM, as that is commonly understood when describing a trial process. This is because the expression “burden of proof” when used in a legal context, while naturally invoking the idea of a weight or the like to be shouldered by someone or placed by them in a scale, also suggests a responsibility or duty of that person as party in a contest to prove something to someone else. It is impossible to fit this concept into a case where there are no contestants apart from the person involved in the enforcement process and the decision-maker themselves. One cannot naturally describe a decision-maker as having to prove something to himself or herself.

36. On the other hand, we have no doubt that the SDM is engaged in an exercise of fact-finding, followed by the drawing of inferences and evaluation as to appropriate consequences of the facts as found. We consider that the references in the Guidance Note to findings made “on the balance of probabilities” is an acknowledgement, and a proper acknowledgement, that when the SDM is making a decision in the enforcement process, there is an evidential benchmark (ie facts found to be true on the balance of probabilities) short of which the SDM should not be reaching conclusions of fact adverse to someone potentially exposed to sanctioning in the process.

37. In that sense, in the present case the Appellant must benefit from any doubt which may continue to exist as to the making of any finding of fact which the SDM used to reach decision concerning him. In this process it was not for the Appellant to prove or demonstrate or adduce anything, and certainly not for him to show that he was a fit and proper person or otherwise met the minimum licensing requirement: it was for the SDM to be satisfied of the contrary if, but only if, the SDM could properly do so on the basis of the materials before him.

38. More particularly, it is not for a person who is the subject of an investigation and enforcement to prove the negative of what is relied on by the GFSC. If the GFSC is contending the contrary, then we reject that submission. The point can be illustrated simply by saying that the person should have the benefit of any doubt: the person should not be subject to penalties of the sort imposed in the present case unless the SDM is satisfied positively that they are appropriate.”

Further at paragraph 54:-

“54. In our judgment the Deputy Bailiff was correct in her decision because she recognised that in substance the SDM would not, and could not, have made a finding adverse to the Appellant without having satisfied himself that there was a proper factual basis for reaching such a finding, applying the balance of probabilities measure. The fundamental proposition is captured by the statement at the end of the passage we have just quoted. In other words, in practice, as a result of fair operation of the SDM process, disputes (or doubts) as to fact and allegations will be resolved in favour of the person subject to enforcement, and there will not be found to be any breach, and no breaches of the requirements under the laws will be found, unless the SDM is satisfied positively as to those matters on the balance of probabilities. But this is not because the GFSC by its Enforcement Division has to “prove” anything to the SDM in a judicial capacity, but because the SDM cannot appropriately make a decision for the GFSC as to the imposing of enforcement penalties or sanctions unless the SDM has satisfied himself positively, that is on the balance of probabilities, that he should.”

280. The Appellants say that had the SDM properly directed himself, the SDM could not properly find that Mr Pybus was lying about what had taken place in the relevant meeting on the available evidence and to do so was unreasonable. Further, it was unreasonable for the GFSC to make the decision it did on whether or not the Escrow Account Discussion took place without obtaining evidence from all of the attendees of that meeting. Furthermore, as a matter of Guernsey law and in accordance with Article 37 of Loi relative aux Preuves 1865, good faith is always presumed. It is for the party alleging a lack of good faith to prove it. Mr Pybus maintains that the Escrow Account Discussion did take place and the amended minutes do record a true summary of the discussion and decisions which took place. Mr Pybus is entitled to review the minutes of the prior meeting immediately before the forthcoming meeting. No first-hand witness to the meeting which took place on 28 October 2019 has positively stated that the minutes are incorrect, despite there being 10 attendees at the meeting. Further, the SDM gives no material weight to the approval of the 28 October 2019 Minutes at the later meeting on 30 March 2020 (where 8 of the 10 participants in the 2019 meeting were present) and where there is a specific item concerning the approval of the previous minutes (which included the Escrow Account Discussion) which also detail the discussions over other aspects of the 28 October 2019 Minutes were changed. Therefore, there can be no suggestion that the 28 October 2019 minutes were waved through without due consideration. Nor does the Decision take into account Mr S’s letter of 3 October 2022 nor the email response from OE of 26 February 2020 and subsequent call which Mr Pybus referred to in his evidence. After this call OE approved the minutes with the additions on the Escrow Account Discussion. Even the evidence of Mr D which the GFSC rely upon, the meeting notes that he said that *“he could not be 100% certain, however, about whether the Escrow was actually discussed or not in the meeting.”* He was not in attendance at the meeting on 30 March 2020 as he had stepped down by then. Also, in the Draft Minutes there is an acknowledgement under the heading *“Solvency of L”*, it says: *“Following intervention by JCo and PP, revised calculations had now been compiled confirming that [L Ltd] is, in fact, comfortably solvent. This matter would be discussed further later in the Meeting.”* This, the Appellants argue, supports the Appellants’ case that the subsequent discussions did happen as set out in the final version of the minutes.

281. Although the SDM places weight on the other attendees at the meeting who considered the minutes without picking up on the apparent gap which was subsequently filled in by Mr Pybus as proof that the discussion did not happen, the GFSC have not asked for their recollections of what happened. The Appellants say that the SDM failed to take into account that they were seeking information about one technical detail within a relatively large and detailed meeting on 28 October 2019 a number of years later – allowance ought to have been taken over the issue that recollection over such a period of time is going to be impaired through the passage of time. Also, the SDM failed to give due weight to the correspondence taking place between Mr Pybus and Mr D in advance of the board meeting on the use of the Escrow Account which demonstrates the issue was being discussed. The SDM has insufficient evidence to make a finding that the Escrow Discussion did not take place and that finding is manifestly unsafe. The appeal should be allowed on the basis of unreasonableness, error of law and there being material errors as to the facts.
282. Further, the Appellants say it is notable that the GFSC has not taken action or made determinations against the other attendees of the meeting on 30 March 2020 who approved the minutes and were also present at the meeting on 28 October 2019 (although the Appellants confirmed at the appeal hearing in January that they were not pursuing the allegation that Mr Pybus had been unfairly singled out).
283. The Appellants argue that the failure to give the Appellants an opportunity to cross-examine Mr S was manifestly unfair, a material procedural error, a breach of natural justice and also a breach of the Article 6(1) right to a fair trial. There can be no proper criticism of the Appellants that they did not raise the point or ask to cross-examine Mr S at the time of the hearing as they did not understand that they could have had such an opportunity - they were unrepresented and are not legally qualified. Whereas, the GFSC were able to cross-examine witnesses (i.e. Mr Pybus and Mr S) whose oral evidence was central to the GFSC's determination of this issue, but the Appellants were not given this opportunity. The SDM failed to afford the Appellants the equivalent opportunities. The Appellants rely on Loutfi v General Medical Council [2010] 1762 (Admin), which they say bears material similarities to this matter. In particular, at paragraph 25 where Nicol J held:
- “Mr Hare says that the claimant did not ask for cross-examination of witnesses, or an adjournment to allow those witnesses to be called, when the hearing took place before the Investigation Committee; that is correct, but again I need to remember that the claimant was not a lawyer, and in my judgment it would not be right to hold against him the failure to take such a point in the middle of the hearing.”*
284. Further, the Appellants were not given the opportunity to re-examine Mr Pybus after his cross-examination had taken place or to make oral submissions in response (unlike the offer to Mr S' advocate to re-examine Mr S). This is unreasonable, represents an error of law, a material error as to procedure and, more generally, is unfair and represents a breach of natural justice. The Appellants also rely on section 155 of the Companies (Guernsey) Law, 2008 whereby the minutes are evidence of the proceedings at the meeting and, unless the contrary is proved, all proceedings at the meeting are deemed to have duly taken place.
285. In response, the GFSC say that the Appellants are wrong to say that it bears the burden of proof. Further, Article 37 of the Loi relative aux Preuves 1865 is not applicable to these proceedings. The SDM made his decisions on the evidence by reference to the applicable standard of proof (see paragraph 6 of the Decision). The SDM sets out the reasons for his conclusion that there was no Escrow Account discussion in the Decision following a careful analysis of the evidence starting at paragraph 181 of the Decision. The factual findings relating to the L Ltd Minutes were reasonable and lawful. In terms of cross-examination the GFSC relies again on the legal principles articulated in X, Y and Z v. The Chairman of the Guernsey Financial Services GFSC [2023] GRC 032.135. The GFSC also says that Mr Pybus

would have been cognisant of the rules on cross-examination in the oral meeting because they were set out in the Explanatory Note as well as the directions of the SDM. There was no unfairness. Further, fairness was preserved by the opportunities Mr Pybus was afforded to give oral and written representations. There was no “dispute” or “issue” which could possibly have been aided by cross-examination by Mr Pybus of Mr S. With regard to re-examination of Mr Pybus, the GFSC says there was no unfairness. The Appellants were given a right to a written reply. This was because, after the Enforcement Division was permitted to provide further representations dealing with what changes it would have made to the draft report, the Appellants were permitted to respond to those representations (having not taken the opportunity to provide written representations to the Enforcement Division’s draft report).

Discussion

286. The draft minutes were circulated by Mr S on 31 October 2019. At this point there were two references to L’s solvency. The first is early on in the meeting where, as the Appellants submitted, there was the first reference to L Ltd’s being “*comfortably solvent*” and that it would be discussed further later in the meeting. Later on in the minutes, in the section which Mr Pybus subsequently amended, the Draft Minutes are limited to: “*The solvency calculation based on known figures to date was presented and the Directors were pleased to note that the Company is now comfortably solvent.*” Therefore, even in the Draft Minutes there were two references to solvency, so I do not consider that there is any basis for the submission that the first reference supports the Appellants’ version of events.
287. The date of the enquiry from the Commission to Mr Pybus was 14 February 2020, on the 26 February 2020 Mr Pybus provided the Track Change Minutes with the significant addition to the Draft Minutes to Mr S. In terms of timing, it cannot be disputed that the amendment happened after the enquiry. Further, Mr Pybus also accepted that the Draft Minutes and the Revised Draft Minutes (with other attendees’ amendments) had been circulated to him (and others) previously and the Revised Draft Minutes had been provided by him to the auditor, although I note that Mr Pybus did say in the covering email to the auditor that the November minutes were in draft. The covering email from 14 February 2020 from Mr S to Mr Pybus says in relation to the minutes: “*In relation to [EE], I have attached the minutes from 28 October which record the discussions regarding solvency.*”
288. The SDM considered the submission of the Appellants that the email discussions Mr Pybus had with Mr D prior to the meeting on this issue supported the version of the minutes with Mr Pybus’ amendments, however, the evidence before the SDM was that Mr D responded to the Revised Draft Minutes which did not include the Escrow Account Discussion without raising its absence, and Mr D informed the GFSC he could not be 100% sure that the Escrow Account Discussion had happened as well as responding to inclusion by Mr Pybus of the Tracked Change minutes by questioning their inclusion.
289. The SDM also took into account that Mr L made changes to the minutes but not in relation to the Escrow Account Discussion and could not recall that it happened when questioned by Mr S.
290. I agree with the submissions of the Appellants that it is not uncommon for minutes of meetings not to be properly considered until just before and/or at the next meeting (this was also a submission by Mr S’ advocate at the oral meeting) and the SDM acknowledges in the Decision (at paragraph 201) that this was the practice of some of the directors of L and the SDM also took into account that they were approved in March 2022 without discussion of the amendment.
291. The SDM took into account Mr Pybus’s evidence and also Mr S’s evidence (who was not interviewed). The SDM accepted Mr S evidence that he had destroyed his original notes of

the 28 October 2021 meeting after they were approved at the subsequent board meeting. Also, that he relied on Mr Pybus (as he would have any other director) in amending the board minutes. He also accepted the evidence (after a question from the SDM during the oral meeting) that Mr S had spoken to Mr L who could not remember the Escrow Account Discussion. Also, that he had relied on Mr Pybus. Contrary to the arguments put forward by the Appellants, the SDM did consider the contents of Mr S's letter of 3 October 2022. This was specifically addressed at the oral meeting where Mr S's evidence was that he did not hear the contents of the Tracked Changes Minute being discussed at the board meeting. Further, Mr S' evidence at the oral meeting was that "*the letters¹² were not as tightly worded as they could have been*" by him. The SDM clearly accepted Mr S's evidence that he had not done anything deliberately and therefore, in a change from the Minded to Notice decided to take no further action against him.

292. In this case, as I have set out above, the SDM sent out a number of directions dealing with witnesses and further evidence before the oral meeting. However, the Appellants did not take up this opportunity to obtain further witness evidence (other than from Mr Pybus). In the appeal hearing, Advocate Le Tissier on behalf of Mr Pybus accepted that he had not approached any of the other attendees from the Board meeting to give evidence.
293. Following the parties providing the required information to the SDM, the SDM set out in a combined agenda for the oral meeting on 14 and 15 February 2023. This did not specifically mention the testing of the evidence although this is foreshadowed in the Explanatory Note. The SDM at the beginning of the meeting on 14 February 2023 said (after the initial introductions):

"TM Thank you very much. Well today is the opportunity for [Mr S] and Mr Pybus to indicate their objections or their disagreements with issues in the Minded to Notice, obviously I shall listen extremely carefully to everything and I will then also get a transcript. If you're referring to documents Miss Hitchon may have to help me, because although I've got them on this PC she's got them in a rather more useful order on that PC, so you'll see us occasionally huddling together to look at something if I'm referred to a document. This PC, because it has an arial, because it's a little bit old, but what happened is some of the documents don't work on Apples, which is rather curious. [Laughs] So, it's really Mr Dunster, for you to open for [Mr S], I believe you're going first on the round table?"

MD Yes, and I'm not sure how you want to get the information, whether you want me to generally question [Mr S] as one might do in old style evidence in chief, or whether you just wish to ask him questions, which is now completely—

TM You're here to ask questions. I've got [Mr S'] statement and I've got the response of the Enforcement Division to that statement. I look at those issues as they are. I think [Mr S] may have said most of what he wants to say, but it's entirely a matter for you how you play it."

294. Advocate Dunster then proceeded to ask Mr S questions and then the SDM asked some (as well as intervening during Advocate Dunster's questions). At the end of his questions the SDM asked Mr Normanton who appeared for the Enforcement Division if there was anything he wanted to ask Mr S, which he did and then the SDM asked Advocate Dunster if he had any questions arising. It would appear therefore, that although it had not been set up by the SDM to mimic a civil hearing, nevertheless, because of the way Mr S's representations were dealt with, it had the feel of one. However, Mr Pybus was not offered the opportunity to cross-examine Mr S.

¹² It was one letter and one statement but the reference in the discussions in the oral meeting by Counsel for Mr S was "letters".

295. With regard to Mr Pybus's evidence, Mr Pybus made his oral representations with the SDM interjecting when he had questions (and occasionally Mr Normanton to help with documents). When Mr Pybus had finished Mr Normanton asked Mr Pybus questions, but no opportunity was given to Mr Pybus to, in effect, reexamine or perhaps (as articulated in the 6th ground of appeal) given that Mr Pybus was representing himself and AGL, rather than reexamine as such, Mr Pybus was not offered the opportunity to clarify his evidence after Mr Normanton had asked him questions. After Mr Pybus' cross-examination, Mr Normanton said he did not want to address the SDM further as he had covered everything during cross-examination. However, the SDM then flagged up the issue of Mr Pybus or AGL having not previously taken the opportunity to challenge or respond to the dER (or the Final Enforcement Report), as well as Mr Pybus having not yet completing the statement of means. As a consequence of these matters, the further steps were added which were confirmed in written directions dated 18 February 2023: Mr Pybus was to submit the completed Statement of Means by 21 February 2023, by 5pm on 7 March 2023¹³ the Enforcement Decision were invited to comment on Mr S' and Mr Pybus' submissions or evidence and the statements of means; by 14 March 2023 AGL, Mr Pybus and Mr S were then able to provided further written representations. Thus, giving the Appellants, the opportunity to have the final response.
296. The *Loutfi v the GMC* case relied on by the Appellants, is a case about a decision of the Investigation Committee of the General Medical Council. The GMC were obliged to follow the General Medical Council (Fitness to Practise Rules) 2004 and the judge found that there had been a breach of the procedural requirements of those Rules and that breach did prejudice the claimant. It is in those circumstances, the learned judge made his comment about the cross-examination of witnesses. However, contrary to the submissions of the Appellants, the *Loutfi v the GMC* case is not, analogous to the situation here. The Explanatory Notice provides that it is for the SDM to determine procedure. Here, whilst I consider that the SDM could have spelled out more clearly what was going to happen at the oral meeting, the oral meeting is not and should not be compared to a hearing in court. Although the SDMs are all highly experienced lawyers and the parties are often represented by lawyers, the Explanatory Note says at 11.17.15 "*The process is intended to be interactive rather than adversarial in nature. For the avoidance of doubt, court rules, process and procedures do not apply. Whilst a party may instruct a lawyer to assist them this does not make the process of the meeting judicial.*"
297. Relevantly, AGL and Mr Pybus also had the opportunity after the hearing to make further written representations. In a document filed with the SDM on 17 March 2023 and headed: "*This document has been produced on behalf of Adjure Global Limited and Paul Pybus, it is in response to the amended Directions Letter of 18 February 2023, as well as responding to points raised by the Commission during the meeting of the 14 and 15 February 2023.*" The Appellants took up this opportunity including making further written representations about this particular issue. It was unfortunate that Mr Pybus was not offered the opportunity to cross-examine Mr S or to clarify his evidence (re-examine) after he had been cross-examined given the opportunities given to those who were legally represented. However, Article 6 does not guarantee cross-examination or re-examination or a final oral response and the SDM's directions on this matter both before, during and after the oral meeting ensured that sufficient opportunity for the Appellants' ability to present arguments in support of their case. Therefore, I am satisfied that the Decision was not rendered unfair nor was it unreasonable, amounted to an error of law and a material error as to procedure.
298. With regard to the Appellants' submission that the GFSC should have sought out other attendees of the November board meeting to establish what they remembered, it is for the

¹³ Although 7 March 2023 was subsequently amended to 10 March to allow for sufficient time to review the transcripts of the oral meeting.

GFSC to decide what inquiries could be made. It is then for the SDM as the decision-maker to decide whether, on the balance of probabilities, a finding of fact can be made or not on the evidence before him. It was open to the Appellants to put further evidence before the SDM from the remaining attendees, but they did not. In all of these circumstances, I consider there is no grounds for saying the procedure was unfair or that the SDM's conclusion were unfair or unreasonable as a consequence.

299. I agree with the Respondent's that Article 37 of the Loi relative aux Preuves has no place in this sort of proceedings. However, as is set out clearly in *Robilliard v GFSC (ibid)* there is no obligation on Mr Pybus to prove his case. Nevertheless, it is also important to reiterate that nor is there an adversarial burden of proof on the GFSC. The balance of probabilities is an "evidential benchmark"¹⁴. It is for the SDM to weigh all the evidence and decide whether a finding should be made and should only make those findings if the evidential benchmark is met. The SDM confirmed at paragraph 6 that the standard of proof is on the balance of probabilities. The SDM sets out at some length in the Decision the evidence that was before him and sets out his reasons for coming to the conclusion that the Escrow Account Discussion had not taken place and that it was improbable that Mr Pybus was able to review the minutes on the 26 February 2020, some 18 weeks after the relevant meeting, and be able to provide such a detailed - accurate - addition to the text and thus the 26 February 2020 email to the GFSC was misleading. The SDM sets out in the Decision, the evidence he considered to come to his conclusions. Having taken account of the all the evidence that was before him, these findings were within the range of reasonable conclusions on the evidence before the SDM and proportionate. However, at paragraphs 208 and 209 the SDM concludes that for the reasons articulated at paragraphs 208.1 to 208.8 and detailed in paragraph 209 that Mr Pybus' conduct demonstrated a serious lack of probity. As I have said above, it is not enough for the SDM to proceed to a finding of a lack of probity without the proper application of the *Ivey* test. The findings of fact that the SDM made could form the foundation of a finding of a lack of probity but it is not enough that the implication is that this conduct is or must be a demonstration of a lack of probity or that the SDM has applied his mind to the test properly, the application of the test must be done with clarity.

SEVENTH ALLEGATION CONFLICTS OF INTEREST AND TREATING CUSTOMERS FAIRLY

300. The Seventh Allegation also involves L. Mr Pybus was a director of L from 16 November 2017 until 17 May 2021. Mr Pybus is also a controller and Managing Director of AGL, which was the insurance manager and General Representative for L until July 2021. NR was appointed as an independent non-executive director on 15 April 2020 to replace Mr D. OE is the ultimate beneficial owner and a director of L Ltd. OE is also the owner and a director of NE Ltd, a UK insurance broker that sold L's insurance policies.
301. According to the L Agreement, AGL was due a fixed fee of £50,000 (the "Fixed Fee") per annum (subject to an annual inflationary increase). The L Agreement also allows for the variation of the Fixed Fee by agreement between AGL and L, with the stipulation that any such variation was to be agreed at least thirty days before any such variation becomes effective. Any fees for additional services also had to be separately agreed between AGL and L Ltd.
302. According to a file note of a meeting on 23 September 2020, which was attended by OE, NR, Mr Pybus and Mr S, Mr Pybus raised issues with the scope of the work being undertaken by AGL regarding L Ltd, including concerns that the original Fixed Fee did not reflect certain additional work that was being undertaken. According to the file note, Mr Pybus explained that considerable resources had been applied in analysing and corresponding with NE Ltd, the GFSC and other parties, as well as formulating scenarios for solvency and other matters. The

¹⁴ See paragraph 36 of *Robilliard v GFSC*

file note records that Mr Pybus proposed moving to a time spent basis from 1 November 2020 if matters had not settled down to take into account the additional work being undertaken. OE agreed to the changing of the Fixed Fee if matters had not resolved themselves from 1 November 2020.

303. Mr S notified L on 16 November 2020 by email that fees would, with immediate effect, be based on a time spent basis. Mr S stated that he would shortly confirm the method and charge scale being used. However, the SDM found that this information on method and charge scale was never sent to L. Further, that although there were discussions between the board members of L, these discussions were not noted or formally documented. Following this, there was correspondence between Mr Pybus and OE about the level of fees, the justification for the increase and the date from which the increase ran from including a reduction of the time fee basis for November as a gesture of goodwill.
304. As set out at paragraph 221 of the Decision, at a board meeting of L held on 7 December 2020, which was chaired by Mr Pybus, the issue of when the time spent basis came into effect came up and Mr Pybus recalculated the November 2020 fees based on the time cost basis which had come into effect on 16 November 2020. This recalculation resulted in a fee of around £79,000 for a two-week period (16 November 2020 to 30 November 2020).
305. AGL's Compliance Manual states that in all cases an employee must be careful not to subordinate the interests of a client to those of another party, including AGL or the employee. The AGL Compliance Manual also states that where appropriate, the disclosure of AGL's interest in a transaction should be made. It also states that at each board meeting the directors present should declare their interests and specifically identify any proposed transaction where a conflict of interest may arise.
306. Paragraph 222 of the Decision records that the minutes of the L Ltd board meeting of 7 December 2020, in relation to the Declaration of Interests by Directors state: "*There had been no changes to the circumstances of the Board members, which could impact the Company.*" The minutes do not state that Mr Pybus declared his interest in the proposed change in basis of fees, as required by AGL's Compliance Manual. It is recorded in the minutes that Mr Pybus was prompted by NR to be mindful of his conflict of interest. Mr Pybus stated in response that he: "*is mindful of potential conflicts and takes a fair-minded approach to each of his roles.*" NR, an L Ltd director, expressed his concern as to the level of fees and the need to "*preserve the financial prudence*" of L Ltd in terms of agreeing the management fees and suggested alternative fee structures to the board. The SDM set out in paragraph 222 of the Decision that the fact that NR referred to Mr Pybus' conflict of interest and reminded him of it did not obviate Mr Pybus' obligation to deal with that conflict properly and suggests that NR was concerned that it was not being dealt with properly.
307. The L board minutes from 7 December 2020 note its preference for a single charge rate for all work undertaken by AGL. Mr Pybus confirmed that AGL would consider and advise following the meeting. The minutes record that the new single charge rate would apply from 1 December 2020.
308. On 8 December 2020, Mr Pybus emailed OE and NR proposing an hourly rate of £275. Mr Pybus also explained that if they applied this rate to the period 1 December 2020 to 6 December 2020, this would see a reduction of 31% of the original charge out rates (applied in November 2020), resulting in an invoice of £10,450 (as opposed to £15,115) for 6 days' work. The SDM found at paragraph 225 of the Decision that whilst AGL was free to renegotiate its fees, in this case, the resulting fee was significantly in excess of the original Fixed Fee of £50,000 per year and which had been applied up to 1 November 2020. Mr Pybus stated in his interview that the £275 hourly rate was set after a discussion between himself, Mr S and FT (all of AGL). However, Mr Pybus confirmed that there were no records of this discussion.

There is no evidence of consideration of hourly rates which could have been charged by alternative providers.

309. On 9 December 2020, the Decision records that Mr Pybus emailed OE and NR regarding a number of issues, including the “AG fee agreement (email sent Tuesday).” OE responded later the same day and in relation to the fees, OE stated, “We don’t have much choice do we – i (sic) think we can agree your offer of reduced fee.” Mr Pybus confirmed during interview that this email was the only documentation evidencing L Ltd’s agreement to the rate of £275 per hour.
310. The Second Notice requested: “Any and all documents, to include, but not limited to, letters, emails, files notes, notes of meetings and telephone calls in relation to the change in basis for Adjure Global Limited’s management fees for the period 1 September 2020 to 31 December 2020.” A total of nine documents were provided in response including the minutes of the board meeting on 7 December 2020, four file notes of conversations, Mr S’ email of 16 November 2020 and the emails to and from OE on 9 December 2020 agreeing to the fixed fee arrangement. No agreement was provided documenting the new fee arrangement.
311. When Mr Pybus was asked during his interview on 21 October 2021 if he thought that the management of his conflict in this situation was adequately documented, Mr Pybus responded as follows:
- “Ultimately the conflict as far as I’m concerned only exists where we are doing work that is unnecessary and in this instance where we were doing the work it was at the request of [OE] and the GFSC or a requirement of another party who had influence over [OE]... I believe it was managed and is documented at the board meetings appropriately.”*
312. In a letter to AGL dated 17 May 2021, the GFSC formally raised, in writing, concerns in relation to the fees being charged to L Ltd by AGL. In particular, the GFSC noted that the time spent basis at £275 per hour could bring the run-off of L Ltd’s insurance business into doubt. The GFSC also noted that going forward AGL had reduced regulatory responsibilities and suggested reverting to a fixed fee basis.
313. Mr Pybus stated in his interview that if the discussion with L Ltd regarding fees had been about increasing the Fixed Fee, then he would be conflicted and would have not therefore been a party to that decision. However, when the GFSC suggested to Mr Pybus that the move to the time spent basis (even on the ostensibly reduced fee of £275 per hour) resulted in a significant increase in the fees payable by L Ltd and was therefore similar to increasing the fixed fee, Mr Pybus disagreed stating that the fee only increased due to additional work which was, according to him, necessary in the circumstances. The SDM found that this was indicative of Mr Pybus not understanding the nature of his conflict of interest or his determination not to acknowledge it. Mr Pybus’ understanding was also incorrect insofar as he believed that a conflict only existed where unnecessary work was being carried out.
314. The SDM concluded at paragraph 233 of the Decision that Mr Pybus had an obvious conflict of interest as director of both AGL and L Ltd, as he was likely to receive significant benefit as Managing Director and shareholder of AGL from the increased fees due from L Ltd to AGL as a result of moving to a time spent basis for fee charging. In the circumstances, the GFSC would expect to see the decision-making process that resulted in the amendment to the agreement on fees to have been clearly documented by both AGL and L Ltd to include appropriate declarations in the relevant minutes, associated agreements and entries in the conflict registers.

315. The SDM sets out at paragraph 233 of the Decision that the manner in which Mr Pybus managed the obvious conflicts had breached Principle 3 of the Principles of Conduct of Finance Business and Principles 3.2 and A:4 of the Code of Corporate Governance. Further, that Mr Pybus should have been aware that he had a conflict of interest in changing the fee basis and managed it appropriately. Mr Pybus should have ensured that the decision-making process within AGL and L Ltd was adequately managed and documented in order to demonstrate that he was not putting his interests above those of L Ltd. Mr Pybus' conflict could only properly be dealt with by removing himself from the discussion on the management fee at the L Ltd board meeting on 7 December 2020, in particular after NR raised Mr Pybus' conflict of interest. The SDM concluded that these issues demonstrated a lack of competence, sound judgement and diligence by Mr Pybus and a failure to fulfil paragraph 3(2) of the MCL.

Summary of Submissions

316. The Appellants assert that it is clear that a service provider will always have a conflict of interest whenever the issue of fees arises. However, here the directors' interests had been fully and properly declared and there can be no reasonable objection to this method of charging as a matter of principle. A service provider is entitled to be paid a fair amount of money for work that it does and charging on a time-spent basis is ostensibly fair. The agreement with L Ltd provided for the charging provisions to be varied from a fixed fee arrangement and thus the parties to the agreement are merely performing the terms of that agreement. A preliminary discussion happened at the meeting on 23 September 2020 and the new free structure was discussed at the board meeting of 7 December 2020. There were three directors present at the board meeting and therefore, if they considered it appropriate the two other directors could carry any motion not supported by Mr Pybus.
317. The other directors of L Ltd (not Mr Pybus, who the Appellants say did not take/participate in that decision) agreed the rate of £275 per hour and is confirmed in the email from OE sent on 9 December 2020. Therefore, Mr Pybus says that he had properly declared his interest and the other board members were aware of his interests. Given that additional work outside of the original scope of engagement had taken place it was on this basis it was proposed that the charging basis be amended in accordance with the agreement. The Appellants do not accept that changing the charging to a time-spent basis is not unfair. Therefore, there is no basis to suggest that Mr Pybus or L Ltd have breached Principle 3 of the Principles of Conduct of Finance Business and the GFSC's finding is an error of law, further or alternatively it is unreasonable.
318. The Appellants also say that in the SDM's conclusion that there has been a breach of Principle 3 of the Code of Corporate Governance, there is an absence of reasons and an application of the facts to relevant aspects of Principle 3. As a consequence, the GFSC has failed to act reasonably, lawfully (by failing to give any or any adequate reasons for its decision) and with a material procedural error. Further, the Appellants say that the evidence does not show that they cannot be properly or reasonably found to be a breach of Principle 3 of the Code of Corporate Governance.
319. When relying on Principle 3.2 of the Code of Corporate Governance, at paragraph 229.2 of the Decision, the GFSC cites the first sentence of Principle 3.2. However, when the Decision continues: "*Principle 3.2 also states, "Any transactions between the company and its Board members should take place at arms' length or be disclosed in detail at a Board meeting before the Board considers the transaction. Any conflicted directors should consider abstaining from participating in the decision."*" However, this text is from Principle 3.3 not 3.2. Principle 3.3 is "*Self Dealing*", therefore, the GFSC's reliance upon it represents a fundamental error of law. In any event, the Appellants say that Mr Pybus has not breached Principle 3.2. Mr Pybus declared his interests in accordance with section 162 of the Companies (Guernsey) Law, 2008

therefore this satisfies the requirement to declare an interest in accordance with the legislation. Mr Pybus' involvement in the fee matter has been dealt with by the other (majority) of directors and this satisfies the requirement at the end of Principle 3.2. Thus, the GFSC has made an error of law and/or has acted unreasonably nor has there been a breach of Principle A:4 of Appendix 3 the Code of Corporate Governance.

320. At paragraph 239 of the Decision, where the SDM says that these issues “*demonstrate a lack of competence, sound judgement and diligence by Mr Pybus and a failure to fulfil paragraph 3 (2) of the MCL*”. The SDM failed to take into account that ‘*competence*’, ‘*sound judgement*’ and ‘*diligence*’ do not form any part of the consideration of para 3(2) MCL and by taking them into account in its assessment as such the GFSC has made an error of law.
321. Further or alternatively, the Appellants submit that para 3(2) MCL is not an operative provision of the legislation where non-compliance represents a breach of a statutory provision by a person or entity. Paragraph 3(2) MCL assists in the interpretation of paragraph 3(1) MCL and therefore it is not a provision which the GFSC can correctly say has been breached by Mr Pybus and this is an error of Law. Further or alternatively, the Appellants have done nothing wrong in relation to the fee issue concerning L Ltd and the GFSC has made an error of law and/or acted unreasonably.
322. In response, the GFSC says that the Appellants have cherry picked the materials and evidence relied on to support their submissions. Having regard to the SDM’s actual decision, it was clearly a reasonable one for him to have made. The analysis is set out in detail from paragraph 210 of the Decision. The Decision sets out the reasoning as to why regulatory principles were engaged and breached. The Directors’ Declarations of Interests identifies there is a conflict but doesn’t deal with the issue identified by the SDM. The minutes of the L board meeting of 7 December 2020 was not evidence that everyone was aware of Mr Pybus’s interest, but rather was evidence of him not managing his conflict in negotiating the increased fee on behalf of AGL whilst chairing the meeting on behalf of L Limited. The Decision must be read as a whole including the analysis by the SDM of how the increased fee was arrived at, the documentation and other evidence, including the representations by Mr Pybus on the issue, that the SDM considered in coming to his conclusions. Nothing turns on the reference to self-dealing point when it is clear from the analysis that the SDM was dealing with conflict of interest. The Respondent accepts that Principle 3 of the Conduct of Finance Business applies to financial institutions, however, the SDM who cited the Principle and found “*the manner in which Mr Pybus managed the obvious conflicts has breached Principle 3...*” The GFSC submits that what mattered was Mr Pybus’s compliance with the MCL. The applicable MCL is found at Schedule 4 of IMII Law. This demonstrates that SDM had the correct legislation and provision in mind when considering the failure to fulfil paragraph 3 (2) of the MCL.

Discussion

323. Principle 3 of the Code of Corporate Governance is:

“3.2 Conflicts of interest

Directors have a duty to avoid, manage or minimise conflicts of interest and should, wherever possible, arrange their personal and business affairs so as to avoid direct and indirect conflicts of interest. Any actual or potential conflicts of interest should be declared to the Board in accordance with legislation and dealt with in accordance with the company’s memorandum and/or articles of incorporation or other constitutional documents, or by the other directors as they consider appropriate.”

However, in the Decision at paragraph 229.2 it says:

“229.2. Code of Corporate Governance: Principle 3.2 states: that directors have a duty to avoid, manage or minimise conflicts of interest and should, wherever possible,

arrange their personal and business affairs so as to avoid direct and indirect conflicts of interest. Principle 3.2 also states, “Any transactions between the company and its Board members should take place at arms’ length or be disclosed in detail at a Board meeting before the Board considers the transaction. Any conflicted directors should consider abstaining from participating in the decision.”

324. Unfortunately, the section quoted in the Decision starting at “*Any transactions*” is from Principle 3.3 on self-dealing rather than the conflict of interest section at 3.2. However, I agree with the Respondent that this error does not undermine the fairness or reasonableness of the SDM’s Decision which is clearly on the basis of conflict of interests. Appendix 3 of the Code of Corporate Governances relates to Licensed Insurers. Principle A:4 is:

“Principle A:4 - The individual members of an insurer’s Board are required to:

- act in good faith, honestly and reasonably;*
- exercise due care and diligence;*
- act in the best interests of the insurer and policyholders, putting those interests of the insurer and policyholders ahead of his/her own interests;*
- exercise independent judgment and objectivity in his/her decision making, taking due account of the interests of the insurer and policyholders; and*
- not use his/her position to gain undue personal advantage or cause any detriment to the insurer.”*

325. Having considered these regulatory obligations, I do not consider there is any basis for the Appellants’ argument that the GFSC has failed to apply the factual situation to the alleged breaches. The evidence considered by the SDM is set out at length in the Decision. As the Respondent set out, in this context, it is the MCL set out in Schedule 4 of the IMII Law which is relevant. Paragraph 3(2) of Schedule 4 of IMII Law sets out what the GFSC shall have regard to when determining whether a person is a fit and proper person which includes, inter alia, at paragraph 3(2)(a) person’s “*probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position*” and at 3(2)(b) “*the diligence with which a person is fulfilling or likely to fulfil these responsibilities.*”

326. There is no documentary evidence to show that Mr Pybus did not engage in the fees discussions as he asserted in his interview. There is no transparency of the discussion about the fees to demonstrate that the conflict of interests in the fee discussions had been recognised. Rather, the contemporary emails provided by AGL of 7 and 9 December 2020 which show the lead up and agreement to the new fee agreement are between OE and NR of L and Paul Pybus. There is no reference in these emails to any other directors from AGL being involved in or making the decision. Further, in a file note dated 2 December of a meeting (on Teams) between OE, NR, Mr S and Mr Pybus, after OE complained about the level of fees for November it is recorded that “*PP undertook to review the time and to put a proposal forward*”.

327. It is not in question that a service provider is entitled to be paid a fair amount of money for the work it does nor that charging on a time spent may be fair. It is also the case that where conflicts of interests arise, they can be managed. Disclosing a conflict of interest is the starting point only. In this case the minutes of the board meeting on 7 December 2020 show in response to the pro forma “*Directors’ Declaration of Interest*” it notes only that there had been no changes to the circumstances of the Board members. This is not evidence that a declaration of interests had been made at the board meeting. In that meeting, it is Mr S who is recorded on the minutes as representing AGL as “*the Managers*” however, it appears that it is Mr Pybus (who was chairing the meeting on behalf of L) who leads the discussion on the fees on the part of the Managers. As the SDM records, it is NR who reminds Mr Pybus that he should be mindful of potential conflicts and that Mr Pybus’ response is that he was “*mindful*”

of potential conflicts and takes a fair-minded approach to each of his roles.” Also, that *“the conflict as far as I’m concerned only exists where we are doing work that is unnecessary”*. These responses do appear to belie a lack of understanding by Mr Pybus about the steps he needed to take to ensure that the conflict was adequately managed. As a consequence of the lack of any documentation recording how the conflict was managed when dealing with the fees, with the emails supporting a conclusion that Mr Pybus was the one who dealt substantively with the discussions on the new fees and not anyone else, it was reasonable for the GFSC to conclude that the conflict had not been managed and that Principle A:4 of the Code of Corporate Governances and Principle 3:2 had been breached. Although the Appellants refer to L Ltd breaching Principle 3 in their submissions, I consider that this is either a typo or a misreading of the Decision. In any event, there is no allegation that L Ltd did breach any regulatory requirement.

328. Although the Appellants rely on the Directors’ Declaration of Interests, this fails to take into account that the SDM’s conclusions are that the acknowledgment that there is a conflict is only the first step, it is Mr Pybus’ failure to manage the conflict that has caused the SDM to come to the conclusion that he has. Whilst Principle 3 of the Conduct of Financial Business is (as I have set out above) relates to Financial Institutions, it does not undermine the finding that the requirements of the MCL have not been met by Mr Pybus’ conduct in this matter.

THE EIGHTH ALLEGATION: N PCC LIMITED AND N PORTFOLIO LIMITED

329. The Eighth allegation relates to N PCC Limited (“N PCC”) which is a collective investment scheme authorised under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”). Its authorisation was suspended in June 2010 but not revoked. N Portfolio Limited (“N Portfolio”) was a special purpose vehicle which pooled the investments from the various cells of N PCC. Mr Pybus was appointed as joint voluntary liquidator of N PCC and N Portfolio on 26 March 2013, in place of a previous joint liquidator.
330. In an email to the GFSC dated 18 May 2022, Mr Y explained, in relation to queries raised, that LEY Ltd accepted appointment as liquidator of N PCC (and the SDM presumes also N Portfolio as it is listed as a LEY Ltd appointment in Mr Y’s email), with two members of LEY Ltd staff appointed personally as joint liquidators. Mr Pybus replaced one of the joint liquidators when they resigned whilst he was a partner of LEY LLP (the controller of LEY Ltd), although the income was reported in LEY Ltd. On the demerger of AGL from LEY Group, AGL consented to Mr Pybus continuing to act as joint liquidator on the condition that LEY LLP and/or LEY Ltd pay appropriate fees to AGL.
331. On 23 April 2013, the joint liquidators appointed AGL to provide transfer agency services and to complete an AML remediation project for both N PCC and N Portfolio. The agreement on fees for these services to both N PCC and N Portfolio were an initial set-up/client acceptance fee of £10,000, a one-off fee of £6,750 for the AML remediation project, £4,750 per month for the transfer agency services plus a £500 fee per shareholder transfer. The monthly transfer agency fee was to increase annually in line with Guernsey’s Retail Price Index. On 3 June 2013, Mr Pybus wrote to the GFSC in his capacity as joint liquidator (representing LEY Ltd) noting that AGL had been appointed to undertake the transfer agency role for both N PCC and N Portfolio.
332. As recorded in the Decision at paragraph 242, on 31 January 2014, AGL provided a quote to the joint liquidators for providing regular reporting services to N PCC and N Portfolio on the status of the assets held by, and commentary from, each of the investment managers behind the holdings in both N PCC and N Portfolio. The proposed fee was a fixed annual fee of £75,000. This fee was in addition to the fees for the transfer agency services. According to a letter from AGL to the GFSC dated 18 February 2022 (“the 18 February 2022 Letter”) in response to the Fourth Notice, the investment reporting services commenced on 1 April 2014.

However, no documentary evidence has been provided by either AGL or the joint liquidators setting out the formal terms of the agreement.

333. At paragraph 243 of the Decision, it says that in a letter dated 15 April 2015 from YN on behalf of AGL to the joint liquidators, it was agreed that AGL would also provide a “*distribution payment service*” for the joint liquidators of N PCC (not N Portfolio) and that additional fees would be charged for this service on a time spent basis in accordance with AGL’s standard charge out rates. In agreements dated 4 July 2016, between the joint liquidators and AGL, AGL were appointed by N PCC and N Portfolio to provide FATCA/CDOT/CRS reporting services which included: attempting to obtain relevant tax reporting information from shareholders and beneficial owners; creating a database and preparing and submitting reports via IGOR (Information Gateway Online Reporter). The agreements state the initial cost to be £350 per entity plus £200 per shareholder. The ongoing annual cost is stated to be £350 per entity plus £100 per shareholder.
334. The Fourth Notice requested details on how the potential conflict of interest for Mr Pybus as joint liquidator of N PCC and N Portfolio and as Managing Director and shareholder of AGL was managed. The 18 February 2022 Letter noted that Mr Pybus was not a shareholder in AGL when the original agreements with N PCC and N Portfolio were signed in 2013 (although he was the Managing Director of AGL) and acknowledged he had a conflict of interest. The 18 February 2022 Letter states that the exclusion of Mr Pybus from the AGL side of the relationship was “*consistent throughout*” and that Mr Pybus would not be involved in the AGL side of the engagement or act on behalf of AGL in relation to N PCC or N Portfolio. The minutes of an AGL board meeting held on 29 July 2013 record that Mr Pybus reported the take on of the transfer agency for N PCC and N Portfolio and made a statement that as he was conflicted, he could not sign anything in respect of the transfer agency for the funds. This position is corroborated by an email dated 2 August 2016 in which Mr Pybus requested that another AGL employee deal with a share transfer.
335. At paragraph 248 of the Decision, the SDM records that contrary to the impression given to the GFSC in the 18 February 2022 Letter that Mr Pybus had excluded himself from the actual services provided to N PCC and N Portfolio by AGL, Mr Pybus was still involved in the relationship in his AGL role in that he was involved in compiling the billing information for N PCC and N Portfolio even if he was not carrying out a substantive task. Also, Mr Pybus had submitted the FATCA reporting for N Portfolio and had asked about nil returns on N PCC.
336. In addition (as explained in Mr Y’s email of 18 May 2022) Mr Pybus’ fees for acting as joint liquidator were paid to AGL. The SDM concluded that the breakdown of fees (provided to the GFSC by AGL in response to the Fourth Notice) showed that Mr Pybus, by his actions, had further blurred the lines between his roles as joint liquidator of N PCC and N Portfolio (on behalf of LEY Ltd) and as director and shareholder of AGL.
337. The SDM found at paragraph 253 of the Decision that the fees charged to N PCC and N Portfolio had increased significantly following the appointment of AGL in April 2013. The majority of the fees from 2015 onwards were charged by AGL rather than the joint liquidators, whose fees had decreased significantly. The SDM set out in his decision that it would appear that Mr Pybus may have used his position as joint liquidator to redirect the fees to AGL, a company in which he had a major interest, firstly as Managing Director and, subsequently, as a major shareholder albeit some of the fees may have been paid on to other professionals. N PCC and N Portfolio was the second largest client for AGL by turnover accounting for more than 10% of AGL’s fiduciary turnover in the period 1 April 2018 to 31 March 2019.
338. At paragraph 255 the SDM records that Following AGL’s appointment as a services provider, the majority of the fees in relation to N PCC and N Portfolio were earned by AGL rather than the joint liquidators. The fees payable to AGL were of significant financial benefit to AGL

(and to Mr Pybus as a shareholder in AGL) with N PCC and N Portfolio being AGL's second largest client in 2019. He observes it was therefore particularly important for Mr Pybus and AGL to manage his conflicts of interest in accordance with the applicable legal and regulatory requirements.

339. The SDM concludes that contrary to his representations that he had managed the conflict, Mr Pybus was involved in the AGL side of the arrangement. He concluded at paragraph 257 that on the evidence Mr Pybus and AGL were not adequately managing his conflicts of interest in accordance with the requirements of the Code of Corporate Governance (Principle 3 (paragraph 3.2)) and the Finance Business Principles (Principle 3).

Summary of Submissions

340. The Appellants say that the GFSC is, in effect, alleging that significantly higher fees have been charged collectively than had the roles been performed by entirely separate parties. However, it fails to take into account, adequately or at all, the submissions made by the Appellants that the fees charged collectively by the liquidators and by AGL were significantly lower than the previous incumbent companies, being CSS Ltd and MTS. The failure of the Commission to take such matters into account represents an error of law, the Commission acting unreasonably and a material procedural error. The N billing and the FATCA/CRS reporting were both administrative tasks. Mr Pybus could not have influenced or manipulated the fees being charged nor could FATCA reporting be regarded as a conflict of interest and moreover it made good sense in his role as liquidator. Further, Principle 3 of the Finance Business Principles only applies to businesses and therefore cannot apply to Mr Pybus personally.
341. Contrary to the Decision, the Appellants took steps to ensure that Mr Pybus did not act substantively for AGL in relation to N and there is evidence of which confirms that. Further, the evidence relied on by the GFSC demonstrates that Mr Pybus had no knowledge of the work undertaken by AGL, demonstrating that he undertook no substantive role for AGL and was not acting with an actionable conflict of interest. The Appellants say that no ordinary decent person would view Mr Pybus' actions of billing N or being involved in the FATCA/CRS reporting to constitute him acting substantively in a conflict of interest to N's detriment and thus there is no breach of Paragraph 3.2 of Principle 3 of the Code of Corporate Governance. Here, again, the GFSC has made an error of Law and/or has acted unreasonably. Further, the GFSC has acted with a lack of proportionality given the paucity of issues it has raised concerning Mr Pybus acting as a joint liquidator over a number of years. The Appellant's further allege the GFSC's failure to concede this point reflects poorly on the GFSC and any suggestion that it has dealt with the Appellants other than fairly and objectively.
342. In response, the GFSC accepts that there is evidence showing that Mr Pybus did manage the conflict, but this was not always the case. This evidence was more than ample to support the conclusion on the management of conflicts that the SDM made at paragraph 257 of the Decision. Whilst the Appellants seek to characterise his involvement as administrative it fails to take into account that it is contrary to AGL's own 18 February 2022 Letter about how this conflict was being managed and this was clear evidence there was no "consistent" exclusion of Mr Pybus from N PCC or N Portfolio.

Discussion

343. The relevant terms of the 18 February 2022 Letter are as follows:

"Potential Conflict of Interest

"Adjure believes it is important to note that Mr Pybus only became interested in Adjure as a shareholder in 2015, and therefore was not a shareholder at the time the original

agreements between Adjure and [N] Entities was entered into. The potential conflict therefore changes over time, however the exclusion of Mr Pybus from the Adjure side was consistent throughout.

In May 2013, the Board of Adjure formally noted Mr Pybus' potential conflict having been appointed as a liquidator, in these minutes it is clear that Mr Pybus would not be involved in the Adjure side of the engagement. By way of example, this can be evidenced by an email of 2 August 2016, where Mr Pybus clearly asks another team member to deal with a matter due to his Liquidator position. In addition this can be further evidenced through the document management system, which shows that since its implementation in 2014/2015, Mr Pybus has sent a total of 128 emails in relation to the [N] entities. None of these emails demonstrate Mr Pybus acting on behalf of Adjure in relation to the [N] engagement.

Adjure have included within this section the current conflict of interest register, this is presented at each Adjure board meeting where directors are asked to declare any new conflicts. In addition this register is made available to all senior employees within Adjure. Adjure have not included within the submission all versions of the register over the years neither have they included all board packs that contain the register however, Adjure can confirm that the conflicts register has recorded Mr Pybus' potential conflict since 2013."

344. The wording of the letter is unconditional and precludes the caveats that the Appellants argued both in the representations before the SDM and in their submissions on appeal that the billing and the FATCA/CRS reporting do not amount to a failure to manage Mr Pybus' conflicts.

345. The 1 October 2018 email from Mr Pybus says:

*"[X]
I am doing the [N] billing, can I please have the spreadsheet showing home (sic) many transactions have been completed and how much money we can take.
If we could do the transfer now that would help as I need to invoice in dollars but receive in sterling etc.
Thanks
Paul"*

346. It was reasonable for the SDM to conclude, on the basis of this email, that Mr Pybus was not managing the conflicting interests and should not have been involved in the billing on behalf of AGL even if this was not a substantive task for AGL. He had a clear interest in the fees as the Managing Director and major shareholder of AGL. Further, the FATCA reporting was a function carried out for N PCC and N Portfolio by AGL (and for which Mr Pybus had signed the agreement dated 4 July 2016 as joint liquidator and client), so this represented active involvement by Mr Pybus on behalf of AGL and, in any event, was not in accordance with the "consistent" exclusion which AGL represented was the case in the 18 February 2022 Letter. Due to the AGL fee income from this relationship, which had grown substantially in terms of value and significance in terms of AGL overall revenue, it was reasonable and proportionate for the SDM to conclude that it was particularly important for Mr Pybus and AGL to ensure that the conflicts of interests were managed in accordance with the applicable legal and regulatory requirements. Whilst other providers may have charged more as asserted by the Appellants, the focus of the SDM's decision is the failure by AGL and Mr Pybus to properly manage the conflict when the fees were such a significant part of AGL's revenue in which Mr Pybus had a real interest. In any event, even if the fees compared to other providers were cheaper, this does not override a conflict of interest nor the need to manage it accordingly. The Appellants refer to how ordinary decent people might view Mr Pybus' actions and whether they were a conflict of interest to N's detriment, I cannot see that this has any

relevance to the considerations of the SDM when coming to his conclusions on this issue. There was no procedural error as alleged by the Appellants.

347. Having taken into account the evidence before him, including Mr Pybus's own representations (for example as set out at paragraph 256 of the Decision), as well as the acknowledging the evidence which showed that Mr Pybus did recognise the conflict and acted accordingly at times (e.g. the N Transfer email), nevertheless, it was within the range of reasonable responses and proportionate for him to conclude that Mr Pybus and AGL had not adequately managed his conflicts of interest in accordance with the requirements of the Code of Corporate Governance (Principle 3 paragraph 3.2) and the Finance Business Principles (Principle 3).

NINTH ALLEGATION MAINTENANCE OF RECORDS AND DUE SKILL, CARE AND DILIGENCE

348. The ninth allegation relates to the maintenance of records and systemic issues. The SDM's consideration of this issue starts at paragraph 258 of the Decision. As set out above, the February 2019 Compliance Report produced for a board meeting of AGL on 1 February 2019 noted that a Wholesale Review (by Mr E) of all clients had been initiated following the release of a new GFSC Handbook. This review resulted in the production of the Issues Log identifying a number of issues relating to clients which raised cause for concern and which required more attention. A copy of the Issues Log was attached to the February 2019 Compliance Report. The Issues Log included a number of regulatory concerns (in addition to those noted in relation to H Ltd and J Ltd described above). The SDM reports at paragraph 261 of the Decision that the Issues Log identified a number of significant and systemic issues within AGL relating to its control over and administration of client entities. However, notwithstanding these serious issues there is no mention at all of the Issues Log in the compliance section or MLRO section of the minutes of the 1 February 2019 board meeting. There is only a reference in the MD Update section which merely noted that: "*Mr Pybus updated the Board on periodic review and the work undertaken, a copy of the issues log had been presented to the Board under the compliance section. The Board noted the progress with identifying issues.*"
349. The SDM records that RY in his interview on 12 August 2022 said that he did not believe that any remediation plan was put in place, as a result of the problems identified in the Issues Log.
350. In his interview on 21 October 2021, Mr Pybus said that the Wholesale Review was conducted by Mr E and that in his opinion some of Mr E's comments in the Issues Log were misguided and that a large number of his points could be discounted very quickly by simply looking at the file in a bit more detail and having an understanding of it. Mr Pybus went on to say that Mr E's mandate was: "*to look for the worst but by looking for the worst you often don't see the mitigating factors and that's where the admin team then need to come in and go, 'No, no, no, no, no, no,' to ensure we capture the worst with mitigation.*"
351. The SDM records at paragraph 261 that the Appellants in their representations to the SDM said that Mr E was instructed to carry out a high-level review of the issues and to remediate those matters which required remediation and that instructions were given that all entities were to have a fresh annual review and risk assessment.
352. The May 2019 Compliance Report noted that the Wholesale Review of clients was ongoing. The minutes of the AGL board meeting held in May 2019 state in relation to the May 2019 Compliance Report: "*The board noted the contents of the report and that a number of areas appeared not to correctly reflect the position of the Company.*" The SDM concluded at paragraph 265 of the Decision that the Issues Log demonstrates that the AGL board were (or should have been aware) of the issues around lack of control of client entities and poor record

- keeping. There is no contemporary written evidence that a remediation plan was put in place by AGL, despite the serious concerns outlined in the Issues Log.
353. At paragraph 267 of the Decision, having set out the requirements of the MCL above, it concludes that based on the matters in the Issues Log, AGL did not meet the requirements of the MCL in relation to the matters raised in the Issues Log.
354. With regard to record keeping and minutes, the SDM records at paragraph 268 (and at paragraph 170.7) of the Decision that in an email from FT dated 26 July 2019 by reference to K Holding he said “*we might be a little light on minutes. I suggest that it might be a good idea to go through and draw up a schedule of minutes which should have been produced and look at how we may correct the picture.*” In response, Mr Pybus emailed, “*we are going to need to force the minute project next week*”.
355. On 30 July 2019, FT, copying in Mr Pybus, sent a number of AGL employees an email (the “July 2019 Email”) entitled: “*Minute project*” asking staff to go through all entities and “*clear off as many of the tasks/questionnaires as possible*”. FT also noted in his July 2019 Email the forthcoming GFSC Thematic Visit regarding directors’ duties and that AGL needed “*to ensure that any action that a company has made which requires the directors to exercise their mind was properly recorded in the books of the company.*” There was no reference in the July 2019 Email to referring to contemporaneous notes. The July 2019 Email also said that the GFSC would want “*to see how we utilise our corporate directors and they will want to analyse the decision making process behind any decision the corporate director has made in its capacity of an entity we administer.*”
356. The SDM recorded in his Decision at paragraph 269, that the email did not address how minutes (which should be drawn up contemporaneously) should be prepared so as to reflect the manner in which directors had considered a matter and appears to be an invitation or direction to create minutes retrospectively.
357. At paragraph 270, the SDM notes that during his interview, FT initially claimed that the “*Minute Project*” involved a simple renaming of electronic files so that they were easily retrievable in AGL’s document management system. The GFSC provided FT with a copy of the July 2019 Email and FT explained that the “*Minute Project*” also included ensuring documentation, such as that listed in the July 2019 Email, was up to date. FT was unable to explain why he had missed such an important element of the “*Minute Project*” in his initial explanation of it. FT specifically identified four companies in the email which he directed should be focused on initially; thereafter the other companies should be subjected to the same exercise. Those four identified companies had been identified by the GFSC as being companies to be reviewed during the Thematic Visit.
358. During his interview, Mr Pybus described the “*Minute Project*” as having two elements. First, the renaming of electronic files, as also described by FT, and secondly, where minutes refer to an attached document, ensuring that the attached document was included with the minute. When shown FT’s 30 July 2019 Email, Mr Pybus said that this detailed work was outside of the scope of what he and FT had agreed as the “*Minute Project*”. The SDM concluded that there is no evidence that Mr Pybus responded to FT’s email which had been sent to a number of employees in order to suggest that the Minute Project was anything other than that described in the 30 July Email. The SDM found at paragraph 272 that the inference from this is that minutes were to be created retrospectively.
359. At paragraph 272 and 273 of the Decision, the SDM concluded that the emails regarding the “*Minute Project*” showed that the lack of record keeping was a systemic issue within AGL. If AGL had been keeping such records, it would not need a backward facing project to ensure tasks and questionnaires were cleared or those actions which required the directors to exercise

their mind were properly recorded retrospectively. He also concluded that as a result of not keeping proper records, AGL had not organised and controlled its internal affairs in a responsible manner or keep proper records, as required by Principle 9 of the Finance Business Principles. In addition, AGL was not conducting its business in a prudent manner, as required by paragraph 5 of the MCL.

Summary of Submissions

360. The Appellants say the SDM's findings that the Issues Log evidenced significant and systemic issues amount to a material error as to the facts and/or is unreasonable. They say the Decision gave no weight to the purpose of the Issues Log. Mr E was tasked with reviewing cases and finding potential issues or areas that required further work. He was not tasked with determining whether those issues were correct or whether there were mitigations in respect of the issues identified. Accordingly, they say the Issues Log was intended to provide a starting point for AGL's review of its clients not an authoritative record of the status of any particular client. The GFSC also failed to give any, or any adequate weight to evidence provided to it which contradicted the statements made by Mr E in the Issues Log, and which demonstrated that AGL had control of, and properly administered, its clients. It, therefore, follows that the GFSC's determination (based on those findings) that AGL did not meet the requirements of the MCL identified in paragraph 260 above is incorrect.
361. The Appellants say that the GFSC made material errors as to the facts and/or made unreasonable findings in relation to the Minute Project. The GFSC's determination was heavily influenced by its (erroneous) reading of FT's email of 26 July 2019. However, the GFSC failed to consider and/or give any weight to the evidence provided to it as to the scope of the Minute Project and evidence of AGL's record keeping more generally. Further, there is no evidence that there was retrospective creation of minutes following the email correspondence in July 2019. Rather, in respect of a limited number of cases, directors' actions were ratified and appropriately minuted. Further, the GFSC has taken into account in making its findings, in this respect, its interview with FT. However, as has been raised previously, the Appellants were not permitted to cross-examine FT and this renders the findings of the GFSC, in this respect, unfair. The GFSC's findings that AGL breached Principle 9 of the Finance Business Principles and paragraph 5 of the MCL are incorrect.
362. The Respondent says that the SDM rejected the Appellants' explanation as to the purpose of the Issue Log as one not supported by any evidence and fairly evaluated the evidence found against the Appellants. With regard to record keeping and the Minute Project as set out at paragraph 272 of the Decision: "*The emails regarding the "Minute Project" show that the lack of record keeping was a systemic issue within AGL. If AGL had been keeping such records, it would not need a backward facing project to ensure tasks and questionnaires were cleared or that actions which required the directors to exercise their mind were properly recorded retrospectively.*" The SDM did not find minutes were actually created retrospectively (and did not need to). The SDM's decision was reasonable. The lack of cross-examination did not make the decision unfair. There were no errors of facts, only a careful evaluation of the evidence.

Discussion

363. With regard to the Issues Log, at one stage in the oral meeting, Mr Pybus says that Mr E had been tasked "*not to undertake thorough and complete reviews of the cases, nor was it to investigate and try to resolve and matters, it was purely to highlight anything that he had a potential concern over.*" He also said that it "*contains a small number of entities compared to the number that Adjure looked after at the time, it therefore cannot be taken as representative.*" He then said that contrary to what RY said in his interview, RY was in fact involved in the subsequent process.

364. Mr Pybus then went onto say:

“The process that Adjure followed following the concerns with [YN] is very clear, we appointed [Mr E] to carry out a high level review of all cases, he was removed from all other work. Concerns raised by [Mr E] were reviewed by a Director or associate director And they were either disproved, progress to remediation, or discounted due to the nature of the comments.”

365. Despite Mr Pybus’s contradictory comments about its purpose, in terms of what the Issues Log was supposed to be, the SDM was entitled to rely on the February 2019 Compliance Report to which the Issues Log was attached which identified it as “**6. Periodic Reviews (CMP 26)** A wholesale review of all clients has been initiated with a copy of an issues log attached which outlines areas which require additional attention.” Likewise, despite the Appellants’ representations to the SDM that Adjure “*did undertake a full remediation programme*”, no evidence was provided to the SDM to demonstrate this. I note that in the GFSC’s written representations after the oral meeting dated 10 February 2023, the GFSC stated “*it remains open to AGL to provide evidence of the action it says it took to remediate these issues.*” Although in its written response the Appellants refer to the additional documents it filed prior to the oral meeting, the documents do not appear to be evidence of a remediation plan or the other steps that Mr Pybus said were taken in response to the Issues Log. Therefore, the SDM’s finding at paragraph 265 that the Issues Log demonstrates that the AGL board were (or should have been aware) of the issues around lack of control of client entities and poor record keeping and that there is no contemporary written evidence that a remediation was put in place by AGL, despite the serious concerns outlined in the Issues Log is reasonable on the evidence that was before him. Having come to that conclusion it was open to him to find that, as a consequence, AGL did not meet the requirements of the MCL in relation to this issue as he did at paragraph 267.

366. With regard to the record keeping and Minutes, it is again necessary to take as the starting point for this appeal the actual conclusions of the SDM. The conclusion of the SDM was not that the minutes were retrospective but that the various emails taken together, including the email of 30 July 2019 headed “Minute Project” “appeared to be an invitation or direction to create minutes retrospectively.” (see paragraph 269) or as the SDM put it at paragraph 271: “*the inference is that minutes were to be created retrospectively.*”

367. On 26 and 27 July 2019 FT and Mr Pybus had the following exchange under the heading “[K Holdings]” (an excerpt of which has already been set out above):

“From: Paul Pybus

To: FT

Date: Sat, 27 Jul 2019 10:09:11 +0100

[FT],

I have asked [HT] on several occasions to sort this is especially in light of recent events.

We are going to need to force the minute project next week.

Paul

From: [FT]

Sent: 26 July 2019 16:59

To: Paul Pybus

Cc: [HT]

Subject: [K Holdings]

Paul,

Just going through the files and appointing CO to draft the letter and looking at the minute folder to see how the shares were issued and it looks like we might be a little light on minutes.

I suggest it might be a good idea to go through and draw up a schedule of minutes which should have been produced and look at how we may correct the picture. We have first minutes, appointment of a banker and the issuance of the first share, but not too much else. The company only goes back to 5 May 2016.”

368. The 30 July 2019 email sent the following Tuesday is headed “*Minute Project*” and which was sent to various employees of AGL and copied to Mr Pybus was as follows:

“Alongside the minutes the GFSC are going to want to be able to see the following:-

- Register of directors and register of members;*
- Certificate of incorporation;*
- Memorandum and Articles of Association;*
- Minute book;*
- Correspondence file including email correspondence;*
- A copy of the latest risk assessment for the client/company selected.*

Please can we go through the entities and clear off as many of the tasks/questionnaires as possible.

As a start, please can we focus on the following companies:

[EAU Ltd]

[LSC Ltd]

[K Holdings]

[Q Ltd]

Once these are done we need to bring all others up to the same standard.

This is a GFSC thematic review and to so see how we utilise our corporate directors and they will want to analyse the decision making process behind any decision the corporate director has made in its capacity as the director of an entity we administer.

As such, we need to ensure that any action that a company has made which requires the directors to exercise their mind is properly recorded in the books of the company.

Any questions please ask.

Many thanks

[FT]”

369. The SDM was entitled to take into account that Mr Pybus having been copied into this email, did not respond, for example, by limiting the scope of the project to something akin to what he was now saying were its limits. The SDM’s conclusion at paragraph 272 that the emails regarding the “*Minute Project*” show that the lack of record keeping was a systemic issue within AGL which is based on inferences drawn from the contemporaneous documentary evidence is a reasonable one for him to have made. Further, that if AGL had been keeping such records, it would not need a backward facing project to ensure tasks and questionnaires were cleared or that actions which required the directors to exercise their mind were properly recorded retrospectively was a reasonable one on the evidence before him.

370. As I have set out above, the Explanatory Note sets out the procedure with regard to witness and cross-examination at an oral meeting and the SDM (and his secretary) sent out a number of directions and other correspondence dealing with witnesses and further evidence prior to the oral meeting in February 2023. Thus, it was open to the Appellants to request that FT be available so that their evidence could be tested by them. No such request was made. Leaving aside that the Appellants did not avail themselves of the opportunity to request that FT be available, the question is whether the absence of cross-examination renders the Decision unfair in all the circumstances. In this matter, the Appellants had access to both of the witness statements and had the opportunity to challenge the contents of the transcripts of their respective interviews before the SDM, which they did orally, as well as in written representations. The SDM was entitled to take into account the witness evidence of FT in coming to his conclusions when taken with the other evidence before him. Taking this all

into account, the absence of cross-examination did not render the SDM’s conclusions on this allegation unfair, unreasonable, amount to an error of law or a material error as to procedure.

371. Principle 9 of the Finance Business Principles is:

“A financial institution should organise and control its internal affairs in a responsible manner, keeping proper records, and where the financial institution employs staff or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.”

372. Paragraph 5 of the MCL (Schedule 1 of the 2020 Fiduciaries Law) says:

“5. (1) The applicant or licensed fiduciary conducts or, in the case of a person who is not yet carrying on a regulated activity, will conduct business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to the provisions of subparagraph (4), an applicant or licensed fiduciary (“A”) shall not be regarded as conducting business in a prudent manner unless –

.....

(d) A maintains or, as the case may be, will maintain –

(i) adequate accounting and other records of A's business, and

(ii) adequate systems of control of A's business and records.”

373. Given the SDM’s conclusions, in relation to the Minute Project, it was a reasonable conclusion that AGL had failed to meet the standard required by Principle 9 and was not conducting its business in a prudent manner, as required by paragraph 5 of the MCL.

THE PENALTY, PROHIBITONS AND OTHER MATTERS

374. When considering the factors relevant to and consequences of proposed sanctions and penalties, the Commission considered the specified categories as it is required to do under the Enforcement Law. At paragraph 342 of the Decision under the category, the seriousness of the contravention or non-fulfilment, the SDM says: *“The lack of probity demonstrated by Mr Pybus and described in these Reasons is very serious.”* In the section dealing with the penalties for cases imposed by the Commission in other cases, the SDM makes comparisons to previous cases where similar findings in relation to trust and company administration, financial crime legislation and the provision of false and/or misleading information.

375. At paragraph 377 the SDM says:

“The instances in which the Commission has concluded that Mr Pybus acted with a lack of probity are serious. In particular the removal of [H Ltd] as a client to prevent it appearing on the client list (and thus revealing the inadequate manner in which AGL had dealt with it) and Mr Pybus’s attempt to mislead the Commission in relation to [L Ltd] demonstrate instances of a serious lack of probity by Mr Pybus which merit a prohibition order and demonstrate that he is not a fit and proper person to be a director of a company having regard to the criteria in schedule 1 to the 2020 Fiduciaries Law. Accordingly, the exemption contained in section 3 (1) (g) of the 2020 Fiduciaries Law should be disapplied in the case of Mr Pybus.”

376. Probity is a critical factor in financial regulation. The legislative framework explicitly includes probity as a factor to be considered when determining whether a party meets the “fit

and proper” test and illustrates the central role in ensuring the integrity of Guernsey’s financial services. Guernsey relies on its financial services businesses and the individuals who work in them to conduct themselves with probity and integrity. As a consequence, it is right that where an individual or business fails to do so, the sanctions and penalties reflect this seriousness accordingly.

377. Therefore, although the Appellants at paragraph 18 of the Amended Cause have appealed the sanctions as unreasonable and lacking in proportionality, given the seriousness of the findings of a lack of probity and integrity and the impact that these will have had on the level of sanction imposed by the SDM, for the reasons I have set out below, it would not be appropriate for me to consider the grounds of appeal on the sanctions and penalties contained in the Decision.

Conclusion

378. For the reasons I have set out above, I have come to the conclusion that the SDM’s findings of lack of probity and integrity are flawed. Therefore, the parts of the Decision which relate to findings of lack of probity and integrity are set aside. As I have set out above, because of the impact of these elements on the sanctions and penalties, I have not dealt with this element of the appeal. However, I have found that remainder of the SDM’s findings and conclusions are reasonable and proportionate ones and to that extent I confirm the Decision.
379. Under section 106 (6) (a) of the Enforcement Law I have power to remit the Decision to the Commission to be taken again. I consider that the appropriate exercise of my power in these circumstances, is to remit the Decision and direct that the findings of lack of probity and integrity are re-determined by the GFSC, and then having taken into account the outcome of the re-determination of the Decision in relation to probity and integrity, the GFSC should re-determine the sanctions and penalties accordingly. I direct that this should go before a new SDM.
380. I give liberty to apply in regard to any matter arising.