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

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

Neutral Citation: [2020] QIC (RT) 2

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

10 August 2020

CASE No. 1 of 2020

DAVID RUSSELL

Appellant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Members of the Tribunal
Sir William Blair, Chairman
Justice Laurence Li SC
Justice Sean Hagan

DECISION

1. This is an appeal by Mr David Russell (the appellant) from a decision of the Qatar Financial Centre Regulatory Authority (the Regulatory Authority) made in a Decision Notice dated 12 December 2019. By the decision, the Regulatory Authority imposed a financial penalty of US$50,000 on the appellant, and prohibited him from performing a controlled function in the QFC for a period of three years. It is not suggested that his conduct lacked integrity or was reckless.

2. The appeal against the decision was brought by notice dated 27 January 2020, the appellant contending that such contraventions as are established against him (which he largely contests) merit only a private warning. The hearing of the appeal took place on 13 July 2020 on the QICDRC Cisco Webex platform, the appellant representing himself, and the Regulatory Authority being represented by Mr Ben Jaffey QC. Neither party called any witnesses, and though the appellant made oral submissions, all of which the Tribunal has taken into account, he did not give further evidence and was not cross-examined.

3. The matter arises out of the appellant's employment with Guardian Wealth Management Qatar LLC (GWMQ), a company which was part of the Guardian Wealth Management group of companies, and which was authorised by the Regulatory Authority to conduct business in the QFC as an insurance intermediary on 20 October 2009. GWMQ began conducting business at the beginning of 2010. Through its financial advisers, it specialised in the sale of life insurance policies to high income expatriates working in Qatar, particularly policies with an investment element. On a sale, payments were made direct to the insurance company – the company was not authorised to process client money itself.

4. GWMQ was owned by Mr John Hasberry and Mr David Howell who are described by both parties as having dominant personalities. The appellant's case is that he was essentially employed in a sales role and that, during the period when his actions are alleged to have given rise to contraventions (23 June 2014 to 16 August 2015), even this limited sales responsibility had been assumed by another individual. However, it is not in dispute that he was an approved individual in the senior management of

GWMQ between 23 November 2010 and 16 August 2015, when he left Qatar to take up employment with Guardian Wealth Management in Geneva as European Director, a position he held until about October 2018.

5. His approval was initially as a Senior Executive Function. In an application he made to the Regulatory Authority on 18 September 2013 for approval for the Executive Governance Function, the appellant described himself as the company's Chief Executive Officer, explaining that the application was necessary for him to become a director. Approval was granted on 8 October 2013, and from that time until he left Qatar, the appellant was a director of GWMQ.

6. The appellant says, and the Tribunal accepts, that relations between the company and the Regulatory Authority were good at least for the early part of the period of its operations in the QFC. As he says, after the first Risk Assessment Visit (RAV) in 2010, there was a period of 18 months before the next visit. He personally appears to have been successful in building the company's business, and an impressive set of testimonials including from the then British Ambassador to Qatar pay tribute in particular to his work in support of local charities.

7. However from 2014, the Regulatory Authority became concerned as to the governance of the company particularly as to its money laundering procedures and as to its capital position vis à vis other members of the group. During the period from 2014 to 2015, the Regulatory Authority implemented enhanced supervision of GWMQ as a result of concerns regarding general regulatory requirements relating to its capital position. The concerns regarding both AML and the capital position were outstanding at the time of the appellant's departure in August 2015.

8. The concerns were never resolved. Instead, on 27 December 2015, GWMQ notified the Regulatory Authority that it would cease business and wind up as of 1 January 2016. It is not suggested that the appellant has any responsibility for this act, which he himself describes as despicable. The 2016 RAV commenced on 24 January 2016 and continued in February 2016.

9. Regulatory action followed against GWMQ which was fined US$987,000 on 8 January 2018, made up as to AML/CFT (US$687,000) and as to general regulatory

contraventions (US$300,000). According to the Regulatory Authority, "GWMQ committed serious breaches of the AML/CFT and various general regulatory contraventions. In particular, it failed to comply with promises and assurances it made to the Regulatory Authority and did not properly manage its business. It did not meet the high standards required of a QFC regulated financial services firm." The company is insolvent, and this fine has not been paid.

10. Regulatory proceedings were not begun against individuals involved in the business, including the appellant, until January 2018, that is, after the decision notice against GWMQ was issued. The Tribunal is not aware of any impediment to proceeding against a firm and individuals at the same time – this would seem a preferable course so as to bring timely closure. As it is, there is some force in the appellant's complaint that it is now some five years since he left GWMQ in Doha to join GWM in Geneva.

11. All proceedings (except those of the appellant) ended in settlement. In July 2019, Mr John Hasberry and Mr David Howell were each fined US$200,000. They were also subject to a general prohibition preventing them from performing any function or being employed by any authorised firm in the QFC. The fines have been paid.

12. Mr Vincent Jones, the Chair of the Board of Directors, was fined US$75,000 and publicly censored. But because of mitigating personal circumstances – including financial hardship – in his case the fine has been commuted.

The Decision Notice appealed against

13. On 12 December 2019, the Regulatory Authority issued its Decision Notice to the appellant:

    a. It decides that the appellant breached Principles 2 (acting with due skill, care and diligence) and 4 (dealing with the Regulatory Authority in an open and co-operative manner) (INDI 2.1.3 and 2.1.5).
    b. The relevant period in which the contraventions took place is from 23 June 2014 to 16 August 2015.
    c. The contraventions fall into two areas:

i) AML/CFT contraventions: GWMQ's procedures were, the Regulatory Authority decided, entirely inadequate to properly identify money laundering risks. For example, its risk assessment procedures did not ensure that sources of wealth and sources of funds were properly identified. Many high-risk countries were wrongly rated as lower risk. More generally, GWMQ had not adopted the necessary AML risk assessment and mitigation procedures as is required under the relevant regulatory provisions. Given his senior management position, these regulatory provisions required the appellant to ensure that GWMQ's policies, procedures, systems and controls were adequate. In addition, in July 2014, he was put on notice that there were AML deficiencies. Finally, he personally authorised transactions which should have raised serious questions and which required substantial additional due diligence.

ii) General regulatory contraventions: these are based on requirements imposed by the Regulatory Authority, agreed by GWMQ but not properly implemented. The appellant was aware of the requirements and the timescale, and was aware, or should have been aware, of the failures. Many of the concerns related to GWMQ's place within an unusual corporate structure and how to ensure its continued solvency and capital adequacy.

d. As noted above, the Decision Notice imposed a financial penalty of US$50,000 and a 3 year prohibition preventing the appellant from carrying out a controlled function in the QFC.

The grounds of appeal

14. The grounds of appeal are set out in the appeal notice dated 27 January 2020, and in other documents filed by the appellant in the course of the appeal, as amplified by him in his oral submissions. In summary, the matters the appellant relies on are that:

a) From the time the company was set up, the real CEO was David Howell, and the Regulatory Authority would regularly deal directly with him and Hasberry.

b) The appellant did not have the relevant experience to be approved for the CEO role. The approval/vetting process was unfit for purpose and inadequate. It was negligent

of the Regulatory Authority to have approved him for a role for which he was not qualified.

c) He had experts in each of the relevant departments who he trusted to do their jobs.

d) He was fully open, honest, and professional at all times with the regulators. The contraventions were not serious enough to be flagged at the time. Nothing regarding AML systems/processes ever came up. His frequent communications with and cooperation with the regulators over the years have been ignored.

e) The AML systems and procedures were approved for many years, from the first RAV in 2010.

f) He had no control of the finance function and no responsibility for financial matters (which he says is conceded).

g) From the summer 2014, he had effectively been replaced on a day-to-day basis as CEO by another person. He was travelling and marketing, and not hands-on with regard to the Regulatory Authority, even though his name was "over the door". The Regulatory Authority tolerated this state of affairs, and must be taken to have accepted it.

h) He cannot be held at all responsible for the failure to appoint common auditors and establish a holding company for the group.

i) He left GWMQ with a clean bill of health in summer 2015.

j) The 2015 RAV, albeit with some criticisms, would have been dealt with but for the fact that the firm was pulled out of the QFC, which he had nothing to do with.

k) The 2016 RAV ramped up matters artificially, and was "over egged" as a means of "nailing" the firm and punishment for its liquidation.

l) If the Regulatory Authority had truly believed that GWMQ posed an AML threat to Qatar, the firm would have had its license suspended pending proof that things were up to scratch – either the Regulatory Authority was negligent, or, more likely was happy that the systems and processes were adequate.

m) Lack of due process is at the heart of the case. He was the only member of the senior team to be omitted from the proceedings against the company.

n) The three-year ban for himself is identical to that imposed on Howell and Hasberry who were much more culpable.

o) He has been unable to find a regulated job in the UK, and lost money investing in Guardian Wealth Management, so that a US$50,000 fine is very unfair.

p) A ban is wholly punitive, extreme and disproportionate. He has not worked in Qatar since summer 2015, and the ban would (effectively) preclude him from finding regulated employment in the UK for a further 3 years.

q) The appropriate penalty is a private warning for his actions, with no ban, and no monetary fine.

The Regulatory Authority's response

15. The Regulatory Authority's response as set out in its Response dated 23 February 2020 and written submissions dated 29 June 2020 is in summary as follows:

a) By 2015, the appellant had been working as CEO for 5 years: he was fully qualified to take on the management of the company, and that was what was expected of him. There is no question of the Regulatory Authority having "tolerated" a situation in which he did not have the responsibilities of CEO.

b) The AML arrangements at GWMQ were inadequate. As the CEO, he was responsible for ensuring that AML systems and controls were consistent with the relevant regulations and, by failing to do so, he failed in his duty to act with reasonable care and skill.

c) Three strands of evidence are relied on:

   a. Cases where he personally dealt with AML issues, thus demonstrating his personal lack of due care and skill in handling AML matters.

   b. Inadequacies in GWMQ's policies and procedures. He failed to act with due care and skill in allowing the deficiencies to continue.

   c. Correspondence between GWMQ and the Regulatory Authority, received by the appellant, in which the Regulatory Authority identifies AML concerns which were not adequately addressed by him. This correspondence also put him on notice of the need to act.

d) As to general regulatory contraventions, the Regulatory Authority's supervisors were dissatisfied with a number of aspects of GWMQ's operations. Many of the concerns related to GWMQ's place within an unusual corporate structure and how to ensure its continued solvency and capital adequacy.

e) This had to do with how the group of companies operated, with common shareholders, but no common auditors. The assets of each Guardian company were in practice treated as the assets of the group as a whole, and large (and inadequately documented) intercompany loans were made to cover other companies' expenses.

f) In practice, the flow of money was out of GWMQ and into other Guardian entities much of it by way of intercompany loans.

g) GWMQ also relied on other Guardian entities to collect and pay commission income from products sold. Other critical business functions were also outsourced. Binding contractual arrangements needed to be in place.

h) These defects created substantial regulatory risk. In April 2014, the Regulatory Authority expressed concerns about the risk of mis-selling of long-term savings plans, and GWMQ faced increasing numbers of complaints.

i) On 23 June 2014 (the first day of the relevant period), the Regulatory Authority wrote to the appellant and the Chair, reporting back from an inspection visit on 8-10 April 2014 and making its requirements clear.

j) These were the putting in place of an appropriate outsourcing policy, regularisation of intercompany debts, the establishment of a holding company and a common auditor.

k) GWMQ did not comply with the requirements, and the appellant was put on notice that matters were not being addressed adequately by continuing correspondence from the Regulatory Authority.

l) He was copied in on the correspondence with the Regulatory Authority setting out its requirements and GWMQ's agreement to comply with them. As the CEO leading GWMQ's senior management, it was his responsibility to see that the requirements were complied with, and he failed to take reasonable steps to do this, and failed to keep the Regulatory Authority informed.

The relevant Principles and AML rules

16. The relevant Principles and AML rules are not in dispute. They are set out in the Regulatory Authority's Written Submissions of 29 June 2020, and reproduced in the Schedule to this decision.

Regulatory decisions and appeals

17. Again, the principles applicable to regulatory decisions and appeals to the Regulatory Tribunal are not in dispute.

18. Under Article 59(1) of the Financial Services Regulations ("FSR"), if the Regulatory Authority considers that a person has contravened a "Relevant Requirement", it may impose a financial penalty.

19. Under Article 62 of the FSR, the Regulatory Authority may prohibit a person from "performing a specified function, any function falling within a specified description or any function".

20. If the Regulatory Authority exercises its powers and imposes a financial penalty or prohibition, it must give the person a decision notice: FSR Article 71(1).

21. A recipient of a decision notice has the right to appeal to the Tribunal: QFC Regulatory Tribunal Regulations and Procedural Rules ("Procedural Rules") Article 10. The Tribunal has jurisdiction to hear such appeals: QFC Law Article 8(2) (c); Procedural Rules Article 8(1).

22. The Tribunal's role is to conduct a de novo hearing of the matter appealed to it: *Abdelkareem v QFCRA* [2012] QIC (RT) 1 at [29], *Jabre v FSA* [2002] UKFSM 35 at [24]. As such, rather than undertaking a judicial review, or seeking to identify errors in the Decision Notice, the Tribunal decides for itself what is the appropriate action to take in all the circumstances.

23. When carrying out this function, the Tribunal will give such respect as it thinks appropriate to the reasoning and analysis of the Regulatory Authority in the decision notice. In areas where the Regulatory Authority has particular expertise, the Tribunal may give considerable weight to the Regulatory Authority's view. On a question of disputed fact on which the Tribunal has heard evidence (including potentially fresh evidence) or a question of law, the Tribunal will reach its own view.

24. The Tribunal may admit evidence on appeal whether or not it was available at the decision notice stage: Procedural Rules Art 19.7. The Tribunal may also hear fresh arguments from both parties.

25. The Regulatory Authority has the burden of proof and must prove its case to the civil standard of the balance of probabilities: *Abdelkareem* at [31].

The Tribunal's conclusions on the parties' contentions

Due process

26. For some reason which was not clear to the Tribunal, the appellant was not interviewed during the investigation into GWMQ along with other senior management. The appellant submits that the conclusions reached in reference to GWMQ were reached without regard to his input, and that there was a lack of due process. He said at one point that this is the heart of his case.

27. Generally, as the Tribunal understands it, third parties who may be affected by findings of a regulatory investigation should be given a chance to comment on the proposed findings. However, even if he should have been interviewed at this stage, the Regulatory Authority has made it clear in this appeal that none of the findings against GWMQ are in any way binding on the appellant. The Regulatory Authority accepts that it must satisfy the Tribunal that the regulatory action taken against the appellant is justified on its own merits.

28. The Tribunal noted above that investigations against the individuals in this case (including the appellant) commenced after a decision notice had been issued. The result is that matters have taken some time, but whilst accepting that there is some force in the appellant's complaint as to the time that has elapsed since he left GWMQ in Doha to join GWM in Geneva, the Tribunal is satisfied that he has not been prejudiced thereby in either the investigation against him or these proceedings.

29. After the investigation against him began in January 2018, the appellant had every opportunity to explain his position. There was a delay in interviewing him, which was because of the appellant's refusal to agree a time and place. He says that regulations in Switzerland inhibited him from participating in an interview while working there, but even if so there were alternatives (which the appellant admits were not pursued because of his unwillingness). In any event, the Regulatory Authority does not now fault the appellant for this. Taken as a whole, there is no valid complaint on grounds of lack of due process.

The appellant's position as CEO

30. The appellant's case is that he was CEO in name only and that this was accepted by the Regulatory Authority. The way he puts it in his further comments of 11 March 2020, is that the Regulatory Authority must have seen from its dealings with Howell and Hasberry that he was for all intents and purposes a "puppet" CEO. His name was above the door, but he was the sales/marketing manager and no more, and the Regulatory Authority would regularly deal directly with Howell and Hasberry. Also, to all intents and purposes, he was not CEO after 2014. The Regulatory Authority, he contends tolerated this position, and must be taken to have accepted it.

31. The findings of the Tribunal are as follows. It is common ground that Mr Hasberry and Mr Howell played a dominant role in the affairs of GWMQ, and the Tribunal also accepts that the appellant's expertise was principally in the sales and marketing field, where he seems to have excelled.

32. Nevertheless, he was the CEO of the company. A letter of 19 April 2012 from the Regulatory Authority to the appellant makes it clear that that the Senior Executive Function – which the appellant had since 2010 – gave him overall responsibility for the QFC operations of GWMQ. It pointed to numerous deficiencies in his understanding of the business, and required an authorisation letter detailing the scope of his functions. There is no evidence that such a letter was forthcoming, but the appellant cannot have

had any doubts as to what the Regulatory Authority considered that the CEO role required.

33. The following year when he became a director, he seemed to provide reassurance in that regard. In his application for approval in the Executive Governance Function dated 18 September 2013, he explained that had been developing his skills over the last few years. He said:

> "David has been the Chief Executive Officer holding the Senior Executive Function for Guardian Wealth Management Qatar LLC and is a member of the Board of Directors. He has developed skills over the past 2 years and 10 months of operating at a Senior Level and as a Board Member he needs to hold the Executive Governance Function"

34. There is a file note of 8 April 2014 in connection with the RAV that year which notes that the appellant is now "operating more as a CEO than sales manager".

35. The appellant held himself out as CEO at all times. He has produced a number of newspaper cuttings showing his charitable activities. The dates range over the entire period in which he was with GWMQ, and he is invariably described as CEO of GWMQ.

36. Although he points to documents which he says demonstrates that the Regulatory Authority accepted that he was not in fact the CEO, none of the documents supports that assertion.

37. The Tribunal accepts that, notwithstanding the position as it appears in the letter of 19 April 2012 and other documents, the possibility exists that (as the appellant maintains) the Regulatory Authority "tolerated" or even accepted that someone else fulfilled the CEO role. There is however no evidence that demonstrates this. The evidence adduced during the appeal goes the other way. The assertion that the Regulatory Authority was negligent in approving him for a Senior Executive Function and later an Executive Governance Function is not credible – these were his own applications, in which he affirmed his fitness in these roles.

38. In financial services regulation, responsibility for compliance rests with the firm, not with the regulatory authority, and in this case it rested with the appellant and other

senior executives and the firm. Throughout this appeal the appellant has consistently denied responsibility for the CEO function that he held. It is no answer to say, as the appellant does, that one was only a CEO in name. Such is tantamount to admitting that one did not in fact discharge the supervisory responsibilities of a CEO. More generally, it is not acceptable for an individual to accept a CEO position but fail to fulfil the responsibilities that are required of this position. The Tribunal considers that the appellant's behaviour on this issue to be central to both the question of whether the Regulatory Authority's case is proved, and as to the appropriate penalty.

AML/CFT

39. Money-laundering risks can come from insurance products such as savings plans opened using a lump sum and subsequently surrendered, the proceeds appearing to be the proceeds of a policy paid out by a reputable financial institution. As the Regulatory Authority puts it, there are more modest money laundering risks from term life insurance policies or monthly savings plans funded out of income, but proper procedures are necessary to identify cases of concern even in those cases.

40. There are a number of strands that the Regulatory Authority relies on in its case against the appellant. As regards transactions which he himself handled, one has been identified in which the source of wealth for the purchase of an insurance product was described as a property sale in a certain country in South America. AML considerations were raised by the MLRO – but the Regulatory Authority asserts that the appellant's role seems to have been limited to persuading the insurance company that there were no money laundering concerns. While it is not suggested that there was any actual money laundering in this case, it does seem to the Tribunal to demonstrate something of a lack of awareness on the appellant's part.

41. The other strands relate to inadequacies in GWMQ's policies and procedures for which he has responsibility. The appellant says, and the Tribunal accepts, that for most of the time that he was CEO, AML concerns were not raised by the Regulatory Authority. That changed following a high level AML review on 14 July 2014, the results of which

were conveyed in a letter dated 21 July 2014 addressed to the Money Laundering Reporting Officer (MLRO) and copied to the appellant.

42. The letter raises concerns about GWMQ's AML procedures in three respects in particular:

    a. The "Annual MLRO report you submitted to your firm's senior management does not sufficiently demonstrate or evidence how you discharged all your obligations under… AML/CTFR… and subsequently may not provide senior management with sufficient details on the firm's… AML… framework".
    b. There was no "comprehensive explanation as to how the MLRO assessed the adequacy and effectiveness of the policies, procedures, systems and controls".
    c. GWMQ "has reported that there are currently no high risk customers". This was considered unusual by the Regulatory Authority, and the firm was reminded of its obligation to conduct a "risk based approach" and to carry out a proper business risk assessment and risk profiling and scoring of the business.

43. The letter was clearly a red flag, in the Tribunal's view, and should have prompted action on the appellant's part, but though he says in general terms that he pushed for compliance with the Regulatory Authority's requirements, there is little specific evidence of this. The Annual Money Laundering Report for 2014 by the MLRO to Senior Management of 23 March 2015 mentions minor revisions and also improvements that have been implemented. It also says that four high-risk customers have been identified. The appellant countersigned it on 26 March 2015. In fact, it does not seem to be in dispute that that GWMQ's risk rating procedures were flawed, rating some countries which are conventionally considered high-risk as low or medium risk. These were serious flaws in the Tribunal's opinion.

44. It is right to say, as the appellant does, that the full extent of the deficiencies did not come to light until the 2016 RAV (AML was not the subject of the 2015 RAV). Given the findings of the limited onsite review that gave rise to the 21 July letter (for example, the relevant Regulatory Authority worksheet expressed concerns regarding a "tick and flick" attitude at GWMQ), one might have expected that a full AML review would have

formed part of the 2015 RAV. Nevertheless, the appellant does admit that he had been put on notice during the summer of 2014 of AML deficiencies and there is no evidence that the appellant directed a review to ensure that the Regulatory Authority's concerns (as expressed in the letter of 21 July 2014) were addressed. Such a review would have revealed the flaws in the system at the time.

45. As the Tribunal stated in *Horizon Crescent Wealth LLC v Qatar Financial Centre Regulatory* [2020] QIC (RT) 1 at paragraph 31, "AML/CFT concerns are well known. Even a lay person would have encountered such issues in daily life: in opening bank accounts, transmitting funds overseas etc. Financial professionals are exposed to AML/CFT issues throughout their careers on almost a daily basis" (permission to appeal refused, [2020] QIC (A) 2, 9 June 2020, see particularly at paragraph 6 a).

46. It is no answer to say, as the appellant does, that sales were mainly to professionals who were low risk, and that the insurance companies providing the products could be expected to vet the source of funds. In his submissions to the Tribunal, the appellant accepted that the grading of risk had been poor. AML obligations are among the most important of a firm's obligations, and enforcing compliance is an important feature of a reputable financial centre. It is precisely because of AML's importance that the relevant regulations require that senior management be responsible for ensuring that AML systems, procedures and controls are adequate. The Tribunal is satisfied that the Regulatory Authority has established that he failed to act with reasonable care and skill in this regard.

General regulatory contraventions

47. As noted above, the Regulatory Authority was dissatisfied as to a number of aspects of GWMQ's operations, and had concerns as to its continued solvency and capital adequacy.

48. The Regulatory Authority's case is that GWMQ was one of a number of GWM companies in different countries, in practice operating as a corporate group with

common shareholders (Mr Hasberry and Mr Howell) but without the usual safeguards in four main respects:

a. There was no group holding company or treasury function.
b. The assets of the companies were treated as the assets of the group. Large (and inadequately documented) intercompany loans were made to cover expenses, the flow of money being out of GWMQ and into other GWM entities.
c. GWMQ relied on other GWM entities to collect and pay commission income, and other critical business functions were also outsourced. Binding contractual arrangements needed to be in place.
d. There was no common auditor for the group, and little overall assurance that funds and capital were being properly managed and documented between entities.

49. A Risk Assessment took place in April 2014, and following various meetings, the Regulatory Authority wrote to the appellant on 23 June 2014. The letter referred to its "serious concerns relating to GWMQ's financial position and apparent material deficiencies in the firm's financial, accounting and reporting practices as well as related systems and controls that require immediate corrective action by the firm".

50. A further letter also dated 23 June 2014 was sent to the Chairman (copied to Mr Howell, Mr Hasberry and the appellant) setting out the Regulatory Authority's concerns in detail. There had been, it was said, a number of incorrect or misleading financial statements, in particular relating to the treatment of intercompany debts, giving rise to concern that GWMQ was in breach of its capital adequacy requirements. The "Required actions" recorded steps that GWMQ had agreed to implement within specified timescales:

a. Intercompany debts had to be regularised, recorded and all outstanding balances repaid by 1 December 2014.
b. Weekly net asset calculations were to be provided.

c. There had to be "an appropriate outsourcing policy… It also needs to put a robust service level agreement in place between GWMQ and any other company that provides services to it".
d. Mr Hasberry and Mr Howell "agreed to establish a holding company and a common auditor across the Guardian group of companies to enhance transparency and consistency".

51. In the letter, the Regulatory Authority referenced the duty to deal with the Regulatory Authority in an open and co-operative manner and to provide it with information, and emphasised the seriousness of the matters raised. Should they not be completed, the required actions would be imposed, potentially with a requirement "to cease carrying on regulated activity until such time as our requirements are met", i.e. to withdraw GWMQ's license to carry on insurance business.

52. The Chairman responded on 29 June 2014 to the effect that the requirements would be complied with.

53. However, the Regulatory Authority's case is that they were not complied with:

a. GWMQ continued to make intercompany loans to other Guardian entities, despite its promises.
b. Existing intercompany debts were not accurately identified or repaid on time. New and previously unreported intercompany debts were still being discovered and added in 2015.
c. The intercompany debts were not repaid by 1 December 2014. GWMQ's position was that the debts would not be fully repaid until August 2017.
d. No group holding company was established.
e. No common auditor was appointed. GWMQ said in February 2015 that this would not happen.
f. No outsourcing agreement was put in place for commission collection and reconciliation, which continued to take place in the UK. In reality, it appears that generalised outsourcing arrangements were used as a mechanism for removing surplus income from GWMQ to other GWM companies

54. The appellant's challenge to the Regulatory Authority's case is not primarily factual, and the Tribunal finds that the factual matters set out above are established.

55. The appellant's case is as follows. He says that neither he nor the Regulatory Authority was told that Iain Howell (David's brother) had left as Chief Financial Officer, which "very much 'spooked' the RA, and rightly so". Coupled with mistakes by GWMQ's accounting team, the process began whereby accounts had to be submitted on a more frequent basis to prove capital adequacy. His case is that Mr Hasberry and Mr Howell were responsible for the failures and that he did not know that the promises had not been complied with. They told him that everything was being resolved and that he should not trouble himself. He says that the Regulatory Authority itself would routinely communicate with them not routing everything through him. He says that he had no control of the finance function and no responsibility for financial matters (which he says is conceded).

56. The Tribunal accepts that the appellant cannot be held responsible for the failure as such to set up a group holding company or appoint a common auditor for the group, which was plainly not something that he could do. It is also accepted that the Regulatory Authority communicated with Mr Hasberry and Mr Howell, who each had approval for the Executive Governance Function.

57. However, the Tribunal does not accept that the appellant had no responsibility for financial matters, and this point was not "conceded" by the Regulatory Authority. It is correct that the company had a Finance Director resident in Qatar who was approved by the Regulatory Authority (there was a change in late 2014). The Finance Director would clearly have day to day responsibility, this did not absolve the appellant from overall responsibility for the financial side of the business: his job description as CEO states as a specific duty responsibility to the board for the overall financial health of the organisation. He had at least, to put it colloquially, to keep his eyes and ears open on matters of potential concern.

58. Further, these matters were not purely financial. They had resulted in a situation in which the Regulatory Authority had threatened to withdraw GWMQ's license to carry on insurance business, which is the ultimate sanction that a financial regulator can

impose. The appellant was obviously obliged to engage in such circumstances, The Tribunal notes that in the Chairman's response of 29 June 2014 to the QFCRA's Managing Director of Supervision and Authorisation he says, "I know that GWMQ will strive to meet the QFCRA requirements, and to this end I will encourage Mr Russell [*i.e. the appellant*] to maintain contact with Mr Busari [*Associate Director, Insurance Supervision*]. This will ensure that we are fully up to date with the detail of any changes that may occur and avoid such issues arising in the future".

59. It is correct to say that the Regulatory Authority was subsequently told that common auditors would not be appointed and that the 1 December 2014 deadline regarding the settlement of all intercompany loans would not be met. But the Tribunal accepts the submission made on behalf of the Regulatory Authority that it did not waive its requirements, though it did effectively accept that the December deadline had been extended. Further, the Tribunal does not accept that the appellant did not know that the promises had not been complied with. There is a considerable body of correspondence which shows that he was put on notice that matters were not being addressed adequately.

60. As to specific matters, the failure to establish an outsourcing agreement relating to commission was clearly within the appellant's responsibilities, given his role as CEO. Further, even if the Regulatory Authority acquiesced in the extension of the deadline for the repayment of the intercompany debts, it certainly did not acquiesce in the making of new intercompany payments. During the period of 1 June and 31 December 2015, payments made to various individuals resident in the UAE totalling USD 94,388.91 were made, and the appellant was CEO for over two months of this period.

61. The appellant says that when he left in August 2015, so far as he was concerned, all was well, and he had a pleasant farewell meeting with the regulators. The meeting is an example of efforts the appellant made throughout his time in Qatar, in the Tribunal's view, to maintain good relations with the Regulatory Authority.

62. But all was clearly not well. On 14 July 2015 the Regulatory Authority had written to him making it clear that in a number of instances management had failed to implement internal procedures, which was of particular concern because of what GWMQ had previously said, and which required to be urgently addressed. In the same letter, he

was notified of the company's next scheduled RAV in six months' time in January 2016. When the appellant left Qatar to join GWM in Geneva in August, GWMQ was still subject to enhanced supervision, and the problems that had arisen were not resolved.

63. The appellant has maintained that the January 2016 RAV ramped up matters artificially, and was "over egged" as a means of "nailing" the firm and punishment for its liquidation. The Tribunal does not accept this. It is unsurprising that after the company's sudden departure that a particularly thorough examination should have taken place.

64. The Tribunal is satisfied that the appellant was in breach in the above respects of Principle 2 (acting with due skill, care and diligence). The Tribunal considers however that any breach by the appellant of Principle 4 (dealing with the Regulatory Authority in an open and co-operative manner) was unintended. Indeed, as noted by the Regulatory Authority, there is no suggestion that the appellant's action lacked integrity, or was reckless. But this does not make a difference to the overall result, nor to the sanction.

Sanction

65. As noted above, the Decision Notice of 12 December 2019 imposed a financial penalty of US$ 50,000 and a 3 year prohibition preventing the appellant from carrying out a controlled function in the QFC.

66. As to the prohibition, the appellant contends that a ban is wholly punitive, extreme and disproportionate. He has not worked in Qatar since summer 2015, and the ban would (effectively) preclude him from finding regulated employment in the UK for a further 3 years. It is identical to that imposed on Mr Howell and Mr Hasberry who were much more culpable. As to the financial penalty, he has been unable to find a regulated job in the UK, and lost money investing in Guardian Wealth Management, so that a US$ 50,000 fine is very unfair. The appropriate penalty, he submits, is a private warning for his actions, with no ban, and no monetary fine.

67. The Regulatory Authority accepts in this case that Mr Howell and Mr Hasberry were more culpable than the appellant. However, contrary to the appellant's assertion, the prohibition is not identical to that imposed on them, which is a general prohibition preventing them from performing any function or being employed by any authorised firm in the QFC. The prohibition imposed on the appellant relates to a controlled function only. It is irrelevant that the appellant does not in fact intend to return to work in the QFC.

68. The Tribunal appreciates that any prohibition by a recognised financial regulator will inhibit the job prospects of the subject (potentially) anywhere, and certainly in the UK. But that cannot detract from the justification for a prohibition, if otherwise justified. Even accepting that the part which the appellant played was in some respects relatively limited, these matters involved how the firm dealt with AML and capital adequacy, both very significant matters. The Tribunal finds that the prohibition imposed is proportionate and fully justified in the present case.

69. The financial penalty of US$ 50,000 is a quarter of the US$ 200,000 penalty imposed on Mr Hasberry and Mr Howell, again reflecting a different level of culpability. The Tribunal considers that it is at an appropriate level given the matters established in relation to the appellant as set out above.

70. A private warning would not adequately reflect these matters.

Financial hardship

71. The Tribunal was told that the policy of the Regulatory Authority is that it will not (except in exceptional cases) impose a penalty that will lead to bankruptcy. This is in keeping with what the Tribunal understands to be a general principle that a regulatory penalty should not be imposed on an individual which the individual is unable to pay. Sometimes, that principle can be satisfied by allowing payments by instalments. But the commensurate principle is that an individual seeking what amounts to an

exceptional dispensation must establish financial hardship by making full and frank financial disclosure of his or her necessary outgoings, and the assets available to meet those outgoings, with copies of supporting documentation.

72. The appellant has provided a witness statement dated 12 May 2020 and documents in support. It is, in the Tribunal's view, a full and comprehensive document, detailing not only his own means, but those of his wife. The supporting documentation is extensive. The Regulatory Authority does not suggest that it leaves unanswered questions. It is also important to state that his means have to be assessed against the continuing COVID-19 pandemic.

73. The Regulatory Authority does not consider that the penalty needs to be reduced, but it does accept that it is appropriate that the Tribunal direct a "generous" arrangement for time to pay. [The remainder of this paragraph has been redacted by Order of the Regulatory Tribunal]

74. [This paragraph has been redacted by Order of the Regulatory Tribunal]

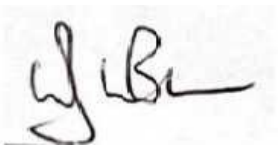
75. The Tribunal considers that this is an exceptional case in which financial hardship is established. It takes into account in particular the exceptional effect on him of the COVID-19 pandemic in that regard. Any period fixed by the Tribunal for time to pay would leave this penalty hanging over the appellant and his family for an unreasonably lengthy time. They should have the opportunity now to put this matter behind them, and make a fresh start. In the circumstances, the Tribunal has decided that the penalty should be commuted in whole.

Conclusion/ Disposition

76. It follows from the above that the appellant's appeal is dismissed.

77. The financial penalty is commuted on grounds of financial hardship and specifically the exceptional situation which he is facing due to the COVID-19 pandemic. For the avoidance of doubt, this does not suggest that the amount of the penalty is in any way inappropriate.

By the Regulatory Tribunal,



Sir William Blair
Chairman

Representation:

The Appellant represented himself.

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

Schedule of the relevant Principles and AML rules

The Principles

1. The Regulatory Authority has adopted a principles based system of regulation. The Principles apply to all individuals who perform a controlled function or the customer-facing function and include (INDI 2.1.3, 2.1.5)[1]:

   a) Principle 2 (due skill, care and diligence): "*The individual must act with due skill, care and diligence*"); and

   b) Principle 4 (relations with the Regulatory Authority): "*The individual must deal with the Regulatory Authority in an open and cooperative manner, and must disclose appropriately to the authority any information that the authority would reasonably expect to be informed of*".

2. The Principles are Rules and are binding on individuals. They are a "*general statement of the standards expected of individuals who perform controlled functions… for authorised firms. They apply directly to the conduct of firms' business by such individuals*" (INDI 2.1.6 Guidance)[2].

AML Rules

3. Firms must adhere to the AML/CFTR.

4. The AML/CFTR also provide a system of principles-based regulation[3]:

   a) A firm's senior management (which includes the appellant as holder of the SEF and CEO roles) must ensure that the firm's policies, procedures, systems and

[1] The Individuals Rules 2005 Version 11 and Individuals (Assessment, Training and Competency) Rules 2014 Version 1 applied during the Relevant Period. On 1 January 2015, the Individuals Rules 2005 Version 11 was replaced by INDI 2014 Version 1, however the relevant INDI rules did not change in substance however 'INDI 2.1.2 Principle 2' became 'INDI 2.1.3 Principle 2' and 'INDI 2.1.4 Principle 4' became 'INDI 2.1.5 Principle 4'.

[2] The Individuals Rules 2005 Version 11 and Individuals (Assessment, Training and Competency) Rules 2014 Version 1 applied during the Relevant Period. On 1 January 2015, the Individuals Rules 2005 Version 11 was replaced by INDI 2014 Version 1, 'INDI 2.1.5 Principle 5' became 'INDI 2.1.6 Principle 5'.

[3] These principles did not change in Versions 4, 5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015). The Individuals Rules 2005 Version 11 and Individuals (Assessment, Training and Competency) Rules 2014 Version 1 applied during the Relevant Period. On 1 January 2015, the Individuals Rules 2005 Version 11 was replaced by INDI 2014 Version 1, however the relevant INDI rules did not change in substance however 'INDI 2.1.2 Principle 2' became 'INDI 2.1.3 Principle 2' and 'INDI 2.1.4 Principle 4' became 'INDI 2.1.5 Principle 4'.

controls ("**PPSC**") appropriately and adequately address the requirements of the AML Obligations. ("**Principle 1**"): AML/CFTR 1.2.1;

b) A firm must adopt a risk-based approach to the AML/CFTR ("**Principle 2**"): AML/CFTR 1.2.2;

c) A firm must know each of its "*customers*" to the extent appropriate for the customer's risk profile ("**Principle 3**"): AML/CFTR 1.2.3; and

d) A firm must be able to provide documentary evidence of its compliance with the AML Obligations: AML/CFTR 1.2.6 ("**Principle 6**").

5. These principles are supported by specific rules, familiar to financial services practitioners worldwide. The rules prescribe detailed requirements designed to ensure compliance with well-established international AML standards. There are four key sets of rules.

6. First, Part 2.1 of the AML/CFTR focuses on a firm's obligations. It imposes an obligation on firms to develop a programme to combat money laundering and terrorist financing. The programme must include developing, establishing and maintaining internal PPSC to prevent money laundering and terrorist financing ("**AML Procedures"**): AML/CFTR 2.1.1(3)(a)[4].

7. Secondly, Part 2.2 deals with senior management (which is defined as including the appellant, who held the SEF and EG function – CTRL 2.3.1)[5], expanding on Principle 1. In particular, senior management must ensure the following: AML/CFTR 2.2.2[6]:

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[4] This rule did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

[5] The Rule did not change in Version 1 and 2 which covers the period 1 July 2013 to 31 December 2015.

[6] Versions 4 and 5, 1 February 2013- 30 June 2015. In Version 6, Rule 2.2.2(1)(3)(d) changed to "an independent review and testing of the firm's compliance with its AML/CFT policies, procedures, systems and controls in accordance with subrule (4)" and the addition of guidance at the end of Rule 2.2.2(1)(h) as follows:

> ***"Guidance***
>
> *The Regulatory Authority expects a firm's senior management to ensure that there is an AML/CFT culture within the firm where:*
>
> - *senior management consistently enforces a top-down approach to its AML/CFT responsibilities;*
> - *there is a demonstrable and sustained firm-wide commitment to the AML/CFT principles and compliance with the AML/CFT Law, these rules and the firm's AML/CFT policies, procedures, systems and controls;*
> - *AML/CFT risk management and regulatory requirements are embedded at all levels of the firm and in all elements of its business or activities.*

"2.2.2 Particular responsibilities of senior management

(1) The senior management of a firm must ensure the following:

(a) that the firm develops, establishes and maintains effective AML/CFT policies, procedures, systems and controls in accordance with these rules;

(b) that the firm has adequate screening procedures to ensure high standards when appointing or employing officers or employees;

(c) that the firm identifies, designs, delivers and maintains an appropriate ongoing AML/CFT training programme for its officers and employees;

Note See pt 6.2 (AML/CFT training programme) for details of the firm's training requirements.

(d) that the firm has an adequately resourced and independent audit function to test (including by sample testing) compliance with, and the effectiveness of, the firm's AML/CFT policies, procedures, systems and controls;

Guidance

QFC banks and QFC insurers are required to have an internal audit function (see CTRL, part 3.2). For such a firm, that function could carry out the testing required by rule 2.2.2 (1) (d).

(e) that regular and timely information is made available to senior management about the management of the firm's money laundering and terrorist financing risks;

(f) that the firm's money laundering and terrorist financing risk management policies and methodology are appropriately documented, including the firm's application of them;

(g) that there is at all times an MLRO for the firm who—

(i) has sufficient seniority, experience and authority; and

(ii) has an appropriate knowledge and understanding of the legal and regulatory responsibilities of the role, the AML/CFT Law and these rules;

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

(i) the development of new products; and

(ii) the taking on of new customers; and

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

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

Note See, for example, div 2.3.C (Reporting by MLRO to senior management)."

(iii) has sufficient resources, including appropriate staff and technology to carry out the role in an effective, objective and independent way; and

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

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

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

(C) all transaction records; and

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

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

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

(i) the development of new products; and

(ii) the taking on of new customers; and

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

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

Note See, for example, div 2.3.C (Reporting by MLRO to senior management)."

8. Thirdly, Part 3.1 of the AML/CFTR sets out the risk-based approach that a firm must adopt, amplifying Principle 2:

a) A firm is required to implement an adequate and proper AML/CFT programme and take measures to identify and address money laundering risks. As part of this, a firm is required to undertake a business risk assessment ("**BURA**"), to assess and identify the money-laundering risks of its business and to implement a threat assessment methodology ("**TAM**") to mitigate those risks: AML/CFTR 3.1.1 and 3.1.2[7];

[7] This rule did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

b) A firm must ensure that its PPSC appropriately and adequately address the requirements in the AML Obligations, including the key AML/CFT principles;

9. A TAM must address: AML/CFTR 3.1.2(2), 3.1.3(1)-(2):

a) customer risk;

b) product risk;

c) interface risk;

d) jurisdiction risk; and

e) the need for adequate screening;

10. A firm must be able to show that its practices match its TAM: AML/CFTR 3.1.2(3).

11. Finally, Chapter 4 of the AML/CFTR deals with the obligation of a firm to know its customers. The "*know your customer*" principle requires every firm to know who its customers are, and to have the necessary customer identification documentation ("**CID"**), data and information to evidence this: AML/CFTR 4.1.1. A firm obtains CID by applying CDD. CDD includes the following measures: AML/CFTR 4.2.1[8]:

> ***"4.2.1 What are customer due diligence measures?***
>
> *(1)* ***Customer due diligence measures*** *(or* ***CDD****), in relation to a customer of a firm, are all of the following measures:*
>
> *Note CDD measures may be required to be enhanced (see pt 4.4) or may be permitted to be reduced or simplified (see pt 4.5).*
>
> *(a) identifying the customer;*
>
> *(b) verifying the customer's identity using reliable, independent source documents, data or information;*
>
> *(c) establishing whether the customer is acting on behalf of another person;*
>
> *(d) if the customer is acting on behalf of another person (**A**)—the following additional measures:*
>
> *(i) verifying that the customer is authorised to act on behalf of A;*
>
> *(ii) identifying A;*

[8] This rule did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

(iii) verifying A's identity using reliable, independent source documents, data or information;

(e) if the customer is a legal person or legal arrangement—the following additional measures:

*(i) verifying that any person (**B**) purporting to act on behalf of the customer is authorised to act on behalf of the customer;*

(ii) identifying B;

(iii) verifying B's identity using reliable, independent source documents, data or information;

(iv) verifying the legal status of the customer;

(v) taking reasonable measures, on a risk-sensitive basis—

(A) to understand the customer's ownership and control structure; and

(B) to establish the individuals who ultimately own or control the customer, including the individuals who exercise ultimate effective control over the customer;

Note See r 4.3.9 (Extent of CDD—legal persons and arrangements).

(f) establishing whether B is the beneficial owner;

*(g) if B is not the beneficial owner (**C**)—the following additional measures:*

(i) identifying C;

(ii) verifying C's identity using reliable, independent source documents, data or information;

(iii) if C is a legal person or legal arrangement—taking the additional measures mentioned in paragraph (e) (iv) and (v) as if it were the customer;

*Note **Beneficial owner** is defined in r 1.3.5.*

(h) obtaining information about the sources of the customer's wealth and funds;

(i) obtaining information about the purpose and intended nature of the business relationship.

Note For paras (h) and (i), see generally pt 4.6 (Customer identification documentation). For the extent and detail of the information to be obtained, see esp r 4.6.3 (Risks associated with the economic activity—general), r 4.6.4 (2) (Risks associated with the economic activity—source of wealth and funds) and r 4.6.5 (2) (Risks associated with the economic activity—purpose and intended nature of business relationship)."

12. Generally, a firm must conduct CDD before it establishes a business relationship with the customer: AML/CFTR 4.3.5[9].

13. CID fall into two categories: those relating to the *customer*, and those relating to the nature of the customer's *economic activity*: AML/CFTR 4.6.1[10]:

    a) As to the former, CID related to the customer include those establishing the customer's identity, what the customer does and who controls the customer: AML/CFTR 4.1.3; Figure 4.1.3[11];

    b) As to the latter, for CID related to an economic activity:

        i) A firm must properly address the risks associated with money laundering and terrorist financing by taking two steps: identifying the sources of the customer's wealth and funds; and identifying the purpose and intended nature of the business relationship: AML/CFTR 4.6.3(2)[12];

        ii) If the applicant does not have a low risk profile, the firm must:

            a) verify the source of the applicant's wealth and funds (using reliable, independent source documents, data or information); and

            b) document the verification: AML/CFTR 4.6.4(3)[13]; and

        iii) A firm must make and keep a record of all the CID that it obtains in conducting CDD and ongoing monitoring for a customer; and how and

[9] This rule did not change in Versions 4, 5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

[10] This rule did not change in Versions 4, 5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

[11] This rule did not change in Versions 4, 5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

[12] This rule did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

[13] This rule did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

when it satisfactorily completed each of its CDD steps for a customer: AML/CFTR 4.6.2(1), 4.6.2(2)[14].

[14] These rules did not change in Versions 4,5 and 6 of the AML/CFTR (covering the period 1 February 2013 to 31 December 2015).

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