NEWGATE COMPLIANCE

NewGate Swift Updates

1. 3rd August 2023 - Commission granted leave to appeal.

The Commission has been granted leave to appeal the judgment of LB Marshall KC in the case of Domaille, Clarke & Hannis and the Guernsey Financial Services Commission. A copy of the judgment is available on the Guernsey Legal Resources website.

After careful consideration, the Commission decided to appeal the decision of LB Marshall KC because some of the reasoning and interpretation of the law contained in her judgment does not align with our understanding of our statutory duties and powers - as endorsed by the Royal Court and Guernsey Court of Appeal in prior judgments concerning appeals against our enforcement actions. We look forward to the result of the appeal providing us and those we regulate with greater clarity.

On 28 July 2023, Helen Mountfield JA, sitting as a single judge of the Guernsey Court of Appeal, determined, amongst other considerations, that: there was “an important question of law in the context of a regulatory regime affecting a large number of licensed bodies in an important sector of the Guernsey economy” and so concluded that it was proper to grant the Commission leave to appeal LB Marshall KC’s judgment to the Guernsey Court of Appeal, noting, "I consider the appeal raises issues which there is a public interest in being determined at appellate level, and I consider it has reasonable prospects of success."

2. 4th August 2023 Publication of a Notice of the fact of a Prohibition Order and a Discretionary Financial Penalty

On the 4th day of August 2023, the Commission imposed a discretionary financial penalty as follows:

Mr Paul Conway (“Mr Conway”) a financial penalty of £30,000.

Further, on the above date, the Commission imposed a prohibition as follows:

Mr Conway is prohibited from all functions under each of the regulatory laws for a period of three years.

The exemption set out in section 3(1)(g) of The Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the “Fiduciaries Law”) (which would otherwise permit those prohibited to act as a director of not more than six companies) has also been disapplied in respect of Mr Conway for a period of three years.

The above sanctions have been imposed on Mr Conway following his failure to meet the Minimum Criteria for Licensing as set out in Schedule 1 to the Fiduciaries, Law.

3. 9th August 2023 - AML/CFT Guidance for Registered Directors

The Commission has today issued in final draft form guidance for registered directors on their anti-money laundering and counter terrorist financing ("AML/CFT") obligations.

This follows the introduction last month of a director registration regime for individuals using the up to six directorships exemption from fiduciary licensing where no other exemption from registration applies.

This guidance is being issued in draft form to allow for addressing any technical issues with the guidance which could hinder or prevent a registered director complying with their AML/CFT obligations. It will be issued in final form when the AML/CFT obligations upon registered directors, contained in Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, take effect from 1 October 2023

This guidance is for registered directors only as it reflects the very limited activity they can undertake. It takes account of feedback from the consultations held late last year on the establishment of a director registration regime.

4. 10th August 2023 - X, Y, Z and the Guernsey Financial Services Commission

Following publication by the Royal Court, we are making available the anonymised judgment of the Deputy Bailiff in X, Y and Z and the Guernsey Financial Services Commission. The Deputy Bailiff heard an appeal against the sanctions imposed on three individuals by one of the Commission's Senior Decision Makers. The Deputy Bailiff found that the sanctions imposed on the three individuals were within the reasonable responses to the wrongdoing identified and were proportionate in the circumstances. This appeal hearing was previously confidential, having been heard under the auspices of the Commission's enforcement practices and relevant laws which were in place prior to the passage of The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020. The new law removed the prior presumption that appeals against Commission decisions would be held in camera.

This judgment of the Deputy Bailiff has been the subject of an appeal by a party other than the Commission to the Guernsey Court of Appeal. Once the result of that appeal to the Guernsey Court of Appeal becomes known, the Commission plans to issue a further statement on the case, taking into account the verdict of the Court of Appeal.

5. 24th August 2023 - Chamberlain Heritage Services Limited, Mrs Deborah Anne Ellis

Chamberlain Heritage Services Limited ("CHSL")

Deborah Anne Ellis ("Mrs Ellis")

On 20 August 2020, the Guernsey Financial Services Commission (the "Commission") decided:

To impose a financial penalty of £14,000 under section 11D of the Financial Services Commission Law on Mrs Ellis;

To make orders under section 17A of the Fiduciaries Law, Section 34E of the POI Law, Section 28A of the Insurance Business Law, Section 18A of the IMII Law and section 17A of the Banking Law, prohibiting Mrs Ellis from holding the position of director, controller, partner or manager for a period of 1 year and 5 months.

To disapply the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect of Mrs Ellis for a period of 1 year and 5 months.

To issue a public statement under section 11C of the Financial Services Commission Law.

The publication of this public statement was delayed in order to allow other parties to complete the statutory appeal process.

The Commission considered it reasonable, proportionate and necessary to make these decisions having concluded that Mrs Ellis failed to fulfil the minimum criteria for licensing under Schedule 1 to the Fiduciaries Law (and also was not a fit and proper person in terms of Schedule 4 to the POI Law, Schedule 4 to the IMII Law, Schedule 3 to the Banking Supervision Law, and Schedule 7 to the Insurance Business Law, which set out the minimum criteria under these Laws).

Background

Mrs Ellis was a Director of CHSL (an entity licensed to conduct regulated activity under the Fiduciaries Law) from 1 April 2011 to 18 March 2018. She was also the Compliance Officer and Deputy Money Laundering Reporting Officer between 21 October 2014 to 19 March 2018.

The primary activities of CHSL were the management and administration of trusts and companies, provision of individual or corporate directors, provision of individual or corporate secretaries, registered office services and nominee services.

Findings

During the period between April 2011 to March 2018:

Mrs Ellis failed to ensure that adequate enhanced due diligence was obtained for a high risk client, and failed to ensure that this client was subject to ongoing and effective monitoring.

Regulation 5 of the Regulations states that where a financial services business is required to carry out customer due diligence, it must also carry out enhanced due diligence in relation to a business relationship or occasional transaction which has been assessed as a high-risk relationship.

Regulation 11 of the Regulations stipulates that a finance services business shall perform ongoing and effective monitoring of any existing business relationships.

For example, Client A was a high-risk client and had been with CHSL since 1998. The purpose of the client's company was to receive royalty payments from retail products sold in a high-risk country.

The Commission noted during its investigation that Mrs Ellis had personally signed off periodic reviews for this client in 2015, 2016 and 2017; however, the following issues were identified by the Commission:

The source of wealth and source of funds information was inadequate, consisting of documents that were poorly translated, and in some cases undated, expired and unsigned;

There was no documentary evidence to support the provenance of incoming funds;

One periodic review detailed that the fees for the client fell outside the standard parameters of the Firm, and could be considered abnormal for a client with virtually no activities;

The sole point of contact for the client was via a person purportedly acting on behalf of the beneficial owners of the client structure. No due diligence was ever conducted on this person.

Mrs Ellis did not always act in the best interests of beneficiaries.

Principle 4 of the TSP Code states that Trust Service Providers ("TSPs") should treat the interests of beneficiaries as paramount, subject to their legal obligations to other persons or bodies. In particular, TSPs should agree a clear fee structure in advance of taking an appointment and charge fees in accordance with that, and in a fair and transparent manner.

As part of its investigation the Commission looked at five Trust structures relating to one family ("the Family Trusts"). In 2012, the family requested that the Family Trusts be closed down.

The Commission noted during its investigation that Mrs Ellis worked extensively on the closure of the Family Trusts including the taking of closure fees amounting to approximately £287,000. The Commission was concerned to note that the closure fee consisted of a portion of monies already held by CHSL in relation to the Family Trusts, but which was transferred to a bank account that did not appear on CHSL's audited financial statements. This bank account was referred to at times as "the slush fund" by a fellow director.

The Commission was concerned when it identified that the level of fees charged in relation to the closure of the Family Trusts was based on a calculation of 3 years' future fees, with no satisfactory explanation as to why they were calculated in this way.

In relation to the explanation given to the family regarding the level of fees charged, the Commission noted that Mrs Ellis referred in correspondence to the prior correspondence of a fellow director's, that contained a false reference to the Commission's requirement for insurance cover to be in place, as justification for the level of fees charged. Mrs Ellis claimed that she did not recall any specific insurance requirement in respect of the Family Trust assets, and that she had made this reference to her fellow director's prior correspondence on the instructions given to her by the director. The Commission was concerned at the lack of diligence, challenge and soundness of judgement demonstrated by Mrs Ellis in acting on this instruction.

In 2017 Mrs Ellis was involved with another trust client, Client B, where a £60,000 closing fee was taken. There was no documentary evidence to show that Client B was informed that the fee had been taken, nor that an invoice had been issued.

As detailed in the TSP Code, TSPs should provide promptly to clients information to which they are entitled about a trust, which would include the taking of closure fees.

Mrs Ellis failed to ensure that signed client agreements were held for all clients.

Principle 5 of the CSP Code states that a written record of the terms of the business relationship must be kept, including evidence of the client's agreement to those terms.

For example, Client A (high risk client) had been with CHSL since 1998, however Mrs Ellis continually failed to ensure that a signed client agreement was obtained. Mrs Ellis was directly aware of this failing having signed off periodic reviews for the client where the absence of a signed client agreement was raised. The lack of a signed agreement for a high risk client that had been with CHSL for some 19 years further demonstrated a lack of competence, and knowledge and understanding of the legal and professional obligations to be undertaken by Mrs Ellis.

A separate client, Client C was taken on by CHSL in 2012, and again Mrs Ellis (who had direct knowledge of this client) failed to ensure that a signed client agreement was obtained. A completed client agreement obtained at the outset would have confirmed the ownership position and could have prevented the ownership issues that subsequently arose.

Mrs Ellis failed to treat CHSL as a separate legal entity from its shareholders.

Principle 3 of the Directors Code states that directors must treat the company as a separate legal entity from its shareholders, directors and others and avoid conflicts of interest with it or deal with them in accordance with the company's articles of association.

In relation to the activity already detailed regarding the Family Trusts, the Commission was concerned by the manner in which the final closing fees were accounted for, and ultimately distributed. The Commission noted that 11.5% was recorded as income by CHSL and properly accounted for, however a total of 88.5% was distributed directly to the majority shareholder of CHSL, without being recorded as CHSL income or accounted for accordingly.

A series of payments were made to the majority shareholder, or for their benefit in May 2013, December 2013 and a final payment in April 2014. On each occasion Mrs Ellis countersigned the bank instructions with the majority shareholder.

The payment in April 2014 would have represented approximately 26% of CHSL's annual turnover and the Commission was concerned at Mrs Ellis's lack of challenge to the majority shareholder in relation to these payments.

Mrs Ellis was unable to evidence why the fees were split between the majority shareholder and CHSL in the way that they were. As a result Mrs Ellis failed to treat CHSL as a separate legal entity from its shareholders and demonstrated a lack of competence and knowledge and understanding of the legal and professional obligations to be undertaken.

The contraventions and non-fulfilments of Mrs Ellis detailed above are not alleged to be deliberate or malicious.

Aggravating Factors

The contraventions and non-fulfilments of Mrs Ellis were considered serious as they have had a detrimental effect on certain clients of CHSL. With regard to the Family Trusts, they have significantly overpaid for simple closures of trusts and the distribution of the underlying assets. The Commission was concerned by Mrs Ellis's failure to raise adequate challenge to the decision to falsely portray these fees as in any way connected to the requirements of the Commission.

The distribution of these fees to an account referred to as a "slush fund" by a fellow director, demonstrates a lack of judgement on the part of Mrs Ellis; and has undoubtedly damaged the reputation of the Bailiwick as an international finance centre.

Mitigating Factors

Mrs Ellis co-operated with the Commission and agreed to settle an early stage of the process and this has been taken into account by applying a discount in setting the financial, penalty and prohibitions.

6. 24th August 2023 - Chamberlain Heritage Services Limited, Mr Christopher Henry Shaw, Mr John Adam Robilliard, Mr Bruce David McNaught

Chamberlain Heritage Services Limited ("CHSL")

Mr Christopher Henry Shaw ("Mr Shaw")

Mr John Adam Robilliard ("Mr Robilliard")

Mr Bruce David McNaught ("Mr McNaught")

On 23 March 2021, the Guernsey Financial Services Commission (the "Commission") decided:

To impose a financial penalty of £100,000 under section 11D of the Financial Services Commission Law on Mr Shaw;

To make orders under section 17A of the Fiduciaries Law, Section 34E of the POI Law, Section 28A of the Insurance Business Law, Section 18A of the IMII Law and section 17A of the Banking Law, prohibiting Mr Shaw from holding the position of director, controller, partner, or manager for a period of 10 years;

To disapply the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect of Mr Shaw for a period of 10 years;

To impose a financial penalty of £40,000 under section 11D of the Financial Services Commission Law on Mr Robilliard;

To make orders under section 17A of the Fiduciaries Law, Section 34E of the POI Law, Section 28A of the Insurance Business Law, Section 18A of the IMII Law and section 17A of the Banking Law, prohibiting Mr Robilliard from holding the position of director, controller, partner, or manager for a period of 6 years;

To disapply the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect of Mr Robilliard for a period of 6 years;

To impose a financial penalty of £15,000 under section 11D of the Financial Services Commission Law on Mr McNaught; and

To issue this public statement under section 11C of the Financial Services Commission Law.

No prohibition orders were made in respect of Mr McNaught due to the fact he was prohibited under each of the Regulatory Laws from holding the position of director, controller, partner or manager until 8 June 2022 and the exemption set out in section 3(1)(g) of the Fiduciaries Law was also disapplied in respect of Mr McNaught until that date.

But for the fact that CHSL: (i) has been under new ownership since 30 November 2017; (ii) surrendered its licence in October 2019; and (iii) is currently in liquidation; the Commission would, if the circumstances had been different, have imposed a financial penalty of £100,000 on CHSL under section 11D of the Financial Services Commission Law.

The publication of this public statement was delayed in order to allow certain parties to complete the statutory appeal process.

The Commission considered it reasonable, proportionate and necessary to make these decisions having concluded that CHSL, Mr Shaw, Mr Robilliard and Mr McNaught failed to fulfil the minimum criteria for licensing as set out in Schedule 1 to the Fiduciaries Law (and also Schedule 4 to the POI Law, Schedule 4 to the IMII Law, Schedule 3 to the Banking Supervision Law, and Schedule 7 to the Insurance Business Law, which set out the minimum criteria under these Laws).

Background

CHSL is a Guernsey company, incorporated on 26 September 1997. Mr Shaw was the founder, majority shareholder and Managing Director from inception until 30 November 2017. Mr Robilliard was an executive director of CHSL from 22 February 2016 to 16 November 2017. Mr McNaught was an executive director from 4 May 2010 to 7 April 2016, MLRO from 20 December 2001 to 1 January 2007 & 14 November 2014 to 7 April 2016. In addition, Mr McNaught was a controller from 10 December 2013 to 7 April 2016.

CHSL was licensed under the Fiduciaries Law on 4 July 2002 and its primary activities were the management and administration of trusts and companies, provision of individual or corporate directors, provision of individual or corporate secretaries, registered office services and nominee services.

CHSL was acquired by another trust company licensed by the Commission on 30 November 2017. Mr Shaw remained with the new owners as a non-executive director until 22 March 2018.

Following the acquisition of the business of CHSL, the Commission became aware of matters relating to a number of client files which appeared to suggest breaches of the laws, regulations, rules, codes and principles governing the business had occurred.

As a result of the subsequent investigation the Commission identified serious failings in six client relationships which fell into the following categories:

Breaches of the Regulations and the Rules in the Handbook

The Licensee had not properly conducted a relationship risk assessment taking into account relevant high-risk factors, and had not regularly reviewed this assessment;

The Licensee had failed to carry out customer due diligence and enhanced customer due diligence in relation to a high-risk customer, operating in a high-risk jurisdiction, including failure to establish the source of wealth and source of funds;

The Licensee failed to conduct ongoing monitoring of an existing relationship;

The Licensee failed to comply fully with Instruction 6 of 2009; and

The Licensee failed to ensure proper books and records were kept.

Failure to comply with the Principles, the Fiduciaries Law Codes and the Code of Corporate Governance

The Licensee failed to act and conduct its business with integrity;

The Licensee failed to act in the beneficiaries' best interests;

The Licensee failed to obtain client agreements;

Mr Shaw and Mr McNaught failed to treat the company as a separate legal entity from its shareholders; and

The Directors failed to take collective responsibility for directing and supervising the affairs of the business.

Findings

Failure to carry out Customer Due Diligence and Enhanced Customer Due Diligence, failure to comply with Instruction 6 of 2009 and failure to ensure proper books and records were kept.

Client A was a high-risk client of CHSL's since 1998 and was jointly owned by two nationals from a high-risk country. The purpose of the client's company was to receive royalty payments from that high-risk country via an intermediate European company. The royalty payments purportedly related to the manufacture and sale of cosmetic retail products. The sole asset of the company was a c.$7m cash deposit (as at May 2018) which was held in an account in Guernsey. Mr Shaw was a director of Client A along with Mr McNaught and latterly Mr Robilliard.

The point of contact for the client was via a person purportedly acting on behalf of the beneficial owners of the client structure. No due diligence was ever conducted on this person and CHSL relied upon a handwritten note from 1997 which was obtained by the previous administrator as authorisation to accept instructions from this individual. This was a breach of Regulation 4(3)(b) of the Regulations which requires that any person purporting to act on behalf of the customer shall be identified and his identity and his authority to act shall be verified.

Not only was communication with this client conducted with an individual where due diligence had not been undertaken, it was also conducted via personal Hotmail accounts of Mr Shaw.

In utilising non-CHSL email accounts as a sole means of written communication, the complete electronic record of emails exchanged has been lost to CHSL. This is a breach of Regulation 14(4)(a) which provides that documents must be readily retrievable.

The source of wealth and source of funds information on Client A was inadequate, consisting of documents that were poorly translated, and in some cases undated, expired and unsigned. There was no documentary evidence to support the provenance of incoming funds, in particular no active agreement supporting the payment of royalties.

This was a breach of Regulation 5 requiring enhanced due diligence (including obtaining source of wealth and source of funds information) to be conducted for high-risk business. This, together with the breach of Regulation 4(3)(b) demonstrate that the licensee failed to comply with Instruction 6, 2009 which required licensees to review policies, procedures and controls in place in respect of existing customers to ensure that the requirements of regulations 4 and 8 of the Regulations and each of the rules in Chapter 8 of the Handbook were met.

Issues with enhanced due diligence were noted on periodic reviews for the client conducted in 2015, 2016 and 2017. One periodic review also detailed that the fees for the client fell outside the standard parameters of the Firm, and could be considered abnormal for a client with virtually no activities. The Commission noted during its investigation that Mr Shaw, Mr McNaught and a fellow director had personally signed off periodic reviews.

The true ownership of the company was not clearly understood by CHSL. Reference was made to the joint shareholders holding the shares in their capacity as directors of an underlying foundation in the high-risk jurisdiction in which they resided, however, no evidence linking the foundation to Client A was obtained to corroborate this and no due diligence was undertaken on the foundation.

In February 2018, Mr Shaw received a request (which he communicated to another director) to change the ownership of Client A. The request was for one of the equal joint owners to transfer their entire shareholding to the other shareholder. Despite the company holding cash deposits of c.$7m at the time, Mr Shaw instructed a fellow director to arrange for the share transfer without documenting any rationale for the request.

The approach adopted of obtaining signed stock transfer documentation without any clear or coherent explanation for a significant change to the shareholding in Client A demonstrates a lack of prudence, integrity and professional skill, particularly where the client is high-risk and there is a lack of visibility around the source of wealth and source of funds.

Failure to conduct business with integrity.

Client C was a simple cash holding company, with corporate records clearly indicating that ownership lay with an individual resident in a Commonwealth country, whose father (resident in the UK) had also been involved in setting up the company and had provided the funds held in it. Due diligence was conducted on the beneficial owner at the time of take on by CHSL and certified documents verifying her identity were held on file.

Mr McNaught was the relationship manager for Client C until his departure after which time, Mr Shaw reviewed the file and noted that there may be tax implications for the beneficial owner in her country of residence. At this time CHSL held the shares in Client C on behalf of the beneficial owner.

Mr Shaw then embarked on a course of action whereby he portrayed a false scenario to professional tax advisors and accountants in the UK and the aforementioned Commonwealth country who he had engaged to assist with a proposed transfer of ownership. In each case, he provided the professional advisors with information which he knew was false and wholly contradicted the facts held in Client Cs file: namely that the father was in fact the owner of Client C, and was looking to gift it to the documented owner, his daughter. Evidence showed that Mr Shaw knew the true position which was that the documented owner was the daughter and there was therefore no basis for the father to be gifting his daughter her own company, other than to avoid tax.

The Commission found that Mr Shaw demonstrated a lack of probity and soundness of judgement in providing misleading information to professional advisers.

The Commission is extremely concerned by Mr Shaw's behaviour with regards to Client C, which caused CHSL to fail to conduct business with integrity as required by Principle 1 of the Principles and Principle 2 of the CSP Code.

Client D consisted of two property-owning entities which were established for the trading of UK property assets. Mr Robilliard introduced this client to CHSL and was the relationship manager during his time at the company.

During a property transaction, the son of the documented beneficial owner of client D (and the main point of contact for this client) requested that ownership of the two property owning entities should be "cloaked" and someone else put forward to "front" the companies, i.e. deliberately disguise the true ownership of Client D.

Despite Mr Robilliard being aware of the seriousness of what Client D was requesting, in July 2017 he proposed a solution, that the company be beneficially owned by someone else. He then facilitated a change in ownership to an associate of the real beneficial owner and recorded this individual as the new beneficial owner, without any commercial rationale for the change. He also provided specific advice on how the new "owner" should respond to a due diligence request from CHSL about the source of funds to be used. His advice encouraged the supply of inadequate information. The former owner injected funds to facilitate the property acquisitions and continued to instruct CHSL on matters relating to the companies.

Mr Robilliard's actions demonstrate a lack of prudence, integrity, diligence, competence and soundness of judgement, and a lack of knowledge and understanding of the legal and professional obligations of his position as a director of the Firm.

Understanding the beneficial ownership of a company – which includes both the natural person/s that directly or indirectly own the company and those who exert effective control over that company through other means, is a key aspect of the Bailiwick's AML/CFT framework. In this instance other financial and professional firms servicing those transactions, who are also obligated to undertake CDD, were being deliberately misled about the company's beneficial ownership.

Mr Robilliard's behaviour as regards Client D caused CHSL to fail to conduct business with integrity as required by Principle 1 of the Principles and Principle 2 of the CSP Code.

Failure to act in the best interests of beneficiaries.

Principle 4 of the TSP Code states that Trust Service Providers ("TSPs") should treat the interests of beneficiaries as paramount, subject to their legal obligations to other persons or bodies. In particular, TSPs should agree a clear fee structure in advance of taking an appointment and charge fees in accordance with that and in a fair and transparent manner.

As part of its investigation the Commission reviewed five Trust structures relating to one family ("the Family Trusts"). In 2012, the family requested that the Family Trusts be closed down.

Mr Shaw was the relationship manager for these clients and worked on the closure of the Family Trusts, along with Mr McNaught and another fellow director. The work included the taking of closure fees amounting to approximately £290,000. The Commission was concerned to note that the closure fee consisted of a portion of monies already held by CHSL in relation to the Family Trusts, but which was transferred to a bank account that did not appear on CHSL's audited financial statements. This bank account was referred to at times as "the slush fund" by Mr Shaw. This should have put Mr McNaught on alert and caused him to challenge Mr Shaw.

The Commission identified that the level of fees charged in relation to the closure of the Family Trusts was based on a calculation of 3 years' future fees, with no satisfactory explanation as to why they were calculated in this way. In addition, despite the fees being taken in August 2012, it was not until December 2012 that the deeds of appointment, indemnity and termination were fully executed. The Firm thus acted without prudence or integrity.

In explaining to the clients the level of fees charged, Mr Shaw and a fellow director referred in correspondence to a requirement of the Commission for insurance cover to be in place. This false representation was used to justify the high level of fees charged by CHSL. Mr Shaw claimed this was a negotiating tactic. The Commission found his conduct in making false and misleading references to insurance costs in relation to excessive fees charged for the closure of these trusts falls far short of what is required to be considered a fit and proper person.

Client B, another Trust which was also under the management of Mr Shaw was prematurely charged a closure fee in a way that was neither fair nor transparent. During the restructuring process, CHSL did not manage the trust assets professionally and responsibly as there was no documentary evidence to show that Client B was informed that a £60,000 closure fee had been taken, nor that an invoice had been issued. The closure fee was once again placed in the account that did not appear on the CHSL audited financial

statements, and was referred to by Mr Shaw as the "slush fund". This behaviour demonstrates a lack of integrity contributing to the failure of the Firm to meet the minimum criteria for licensing.

As detailed in the TSP Code, TSPs should provide promptly to clients information to which they are entitled about a trust, which would include the taking of closure fees.

Failure to ensure that signed client agreements were held.

Principle 5 of the CSP Code states that a written record of the terms of the business relationship must be kept, including evidence of the client's agreement to those terms.

Client A (a high-risk client) had been a client of CHSL since 1998, however Mr Shaw continually failed to ensure that a signed client agreement was obtained. Mr Shaw was directly aware of this failing having signed off periodic reviews for the client where the absence of a signed client agreement was raised.

Client C was taken on by CHSL in 2012 and initially Mr McNaught and latterly Mr Shaw (who had direct knowledge of this client) failed to ensure that a signed client agreement was obtained. A completed client agreement obtained at the outset would have confirmed the ownership position and could have prevented the ownership issues that subsequently arose.

Failure by Mr Shaw and Mr McNaught to treat CHSL as a separate legal entity from its shareholders.

Principle 3 of the Directors Code states that directors must treat the company as a separate legal entity from its shareholders, directors and others and avoid conflicts of interest with it or deal with them in accordance with the company's articles of association.

In relation to the closing fees paid by the Family Trusts, the Commission was concerned by the manner in which the final closing fees were accounted for, and ultimately distributed. The Commission noted that 11.5% was recorded as income by CHSL and properly accounted for, however a total of 88.5% was distributed directly to Mr Shaw, without being recorded as CHSL income or accounted for accordingly.

A series of payments were made from the "slush fund" to Mr Shaw, or for his benefit in May 2013, December 2013 and a final payment in April 2014. On each occasion a fellow director countersigned the bank instructions with Mr Shaw. Whilst this unusual treatment of fees was taking place, Mr McNaught was a director and signed the CHSL audited accounts during the relevant periods.

The payment in April 2014 would have represented approximately 26% of CHSL's annual turnover yet Mr McNaught, a 24% controller in CHSL at this point, failed to query these payments with Mr Shaw.

Mr Shaw and Mr McNaught were unable to evidence why the fees were split between Mr Shaw and CHSL in the way that they were. As a result, Mr Shaw & Mr McNaught failed to treat CHSL as a separate legal entity from its shareholders and demonstrated a lack of integrity, competence and knowledge and understanding of the legal and professional obligations to be undertaken.

Failure to adequately conduct ongoing and effective monitoring of an existing relationship and a failure to conduct business with integrity.

Client E was established with a view to acquiring specialised investment properties for a small group of investors. Later in the client lifecycle Client E changed from a limited company to a protected cell company.

When this client was first introduced to Mr Robilliard, the proposed beneficial owner had several credible adverse media alerts. These included convictions in absentia for fraud and being sentenced to 15 years' imprisonment. Shortly thereafter, the same client structure was submitted to Mr Robilliard, this time with a different beneficial owner and CHSL on-boarded the client.

The risk rating assigned to the client was standard. Within months of the client relationship being established it became apparent that the original proposed beneficial owner was connected to the structure. A fee relating to the company was paid to CHSL by him. He was clearly an associate of the individual purported to be the beneficial owner and was involved in his business. The association between the two individuals was further evidenced later in the relationship when Mr Robilliard was asked to assist with documentary matters that would enable a bank account for a connected entity to be opened, whereby both individuals would be signatories. Mr Robilliard either failed to recognise these connections, chose to ignore them or failed to adequately address them. This is a failure to comply with Regulation 3 of the Regulations which provides that risk assessments must be changed where required.

In addition to the concerns with ownership, the Commission noted that the introducer of this business had no formal arrangement with CHSL to act in such a capacity. Subsequent to the introduction it was apparent that Mr Robilliard allowed this individual to be the main point of contact for the majority of matters, despite the fact that he was not a shareholder, director or holder of any other official role with Client E or any of the entities connected to Client E. In addition, Mr Robilliard did not hold any authority from the beneficial owner to allow this individual to deal with Mr Robilliard, and a number of other professionals related to Client E.

One of the connected entities to Client E was a Guernsey registered company, originally held out as the sponsor to Client E and detailed as a boutique alternative investment firm based in the heart of Central London. The registered address was a residential one in Guernsey and the sole director and resident agent was the brother of the introducer of Client E to CHSL. The entity had been incorporated by CHSL (Mr McNaught) approximately a year before Client E was taken on.

During the lifecycle of Client E, this entity's role and activity changed from that outlined above to that of a potential substantial investor in Client E, a majority shareholder in the investment manager and the holder of a bank account where the originally proposed and actual beneficial owners of Client E would have been signatories. Again, Mr Robilliard failed to identify the shifting nature of integral parts of Client E and caused CHSL to breach Regulation 11 in regard to performing ongoing and effective monitoring of its business relationships; as well as Regulation 3 in relation to the risk assessment. Given the information held by the Firm, Mr Robilliard should have taken steps to fully understand and document the ownership and ongoing role of the entity in relation to Client E but failed to do so. This complex structure required careful ongoing and effective review and there is no evidence that this was carried out. The on-boarding and subsequent management of Client E was chaotic, reactionary and lacking competence, experience and soundness of judgement.

The Commission concluded that Mr Robilliard either knowingly or recklessly failed to investigate the true extent of the involvement of key individuals in these structures. He should have realised that there was a real risk of reputational damage to the Bailiwick given the proven link between them and the possible cloaking of the true beneficial owner and his substitution. Overall, the actions of Mr Robilliard demonstrate a lack of integrity and soundness of judgement and a lack of competence in his failure to recognise the obvious red flags in relation to this client. His failure to understand the structure he was managing demonstrates a lack of knowledge of his legal and professional obligations.

Aggravating Factors

The contraventions and non-fulfilments of Mr Shaw appear deliberate. Mr Shaw initiated the majority of actions in relation to Client C, Client B and the Family Trusts and the latter two apparently for his own gain.

With regard to the Family Trusts, that conduct is aggravated by the reference to an insurance requirement of the Commission to justify and explain the level of fees being charged to the client.

In assessing Mr Robilliard's conduct, the Commission has considered it an aggravating factor that in respect of Client D, Mr Robilliard suggested the change in ownership of a company so that the real owners cannot be identified by counterparties in property transactions. A similar course of action was followed in respect of Client E.

Mitigating Factors

The individuals detailed in this statement no longer have a role in the Firm, and the new owners have remediated the book of business, and surrendered the licence of the Firm.

7. 24th August 2023 - Commission successful in Guernsey Court of Appeal

On 22 August 2023, the Guernsey Court of Appeal handed down its judgment in the case of John Adam Robilliard and the Chairman of the Guernsey Financial Services Commission.

The Guernsey Court of Appeal heard an appeal brought by Mr Robilliard against a decision of the Deputy Bailiff in the Royal Court who had dismissed Mr Robilliard's previous appeal against a decision of one of the Commission's Senior Decision Makers, Richard Jones KC. The Court of Appeal dismissed Mr Robilliard's appeal against the decision of the Deputy Bailiff finding that none of his grounds of appeal were made out. The Court of Appeal set out its belief that the Senior Decision Maker's decision was within the range of reasonable responses open to him on the issues of dishonesty and lack of probity, or of lack of integrity and it did not consider that the Senior Decision Maker's decision was unfair or unreasonable. Details of the facts of the Commission's case against Mr Robilliard and the sanctions imposed on him by the Senior Decision Maker can be found in the public statement we issued on 24 August 2023.

The Commission welcomes the clarity that the judgment provides to it and its licensees on the fairness of procedure the Commission uses during its enforcement investigation and processes noting that a reasonable investigation had been undertaken.