IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE **Case: FMT 19006**

FINANCIAL MARKETS TRIBUNAL

BETWEEN:

DR MUBASHIR AHMED SHEIKH

Applicant

-and-

THE DUBAI FINANCIAL SERVICES AUTHORITY (DFSA)

Respondent

DECISION

His Honour David Mackie QC

Mr Ali Al Aidarous

Mr Ali Al Hashimi

20 October 2020

1. This is an appeal by the Appellant Dr Sheikh against the DFSA's Decision Notice dated 18 July 2019. Dr Sheikh seeks an order setting aside the Decision Notice and a determination that the DFSA should take no action against him. The case concerns alleged knowing concern in the breach of capital requirements, alleged misleading of colleagues and the DFSA and alleged absence of integrity.

2. This Decision comprises:

INTRODUCTORY - THE ROLE OF THE TRIBUNAL AND THE HEARING

3. **Jurisdiction**. The Financial Markets Tribunal (**FMT**) was created under the Regulatory Law 2004 (DIFC Law No 1 of 2004). It hears and determines References and Regulatory Proceedings. A Reference is a proceeding in front of the FMT to review a decision of the DFSA. The FMT conducts a full merits review of any DFSA decision referred to it. It can take into account any relevant new evidence that came to light after the DFSA's original decision. The FMT may, among other things, affirm, vary or set aside the DFSA's original decision. The FMT can also remit the matter to the DFSA with directions as to how the DFSA should make its decision.

4. **Applicable Law**. The law applicable to the FMT is the law of the DIFC. There is no requirement to follow precedents from any other legal system, whether in

the financial services context or otherwise. However, the FMT, the regulatory framework and indeed the DIFC itself were modelled in large part on the legal and regulatory system of England & Wales, and so precedent from England & Wales (and other Commonwealth jurisdictions as appropriate) has persuasive authority.

5. **Rules**. The FMT Rules describe the procedures that apply generally to the conduct of proceedings but (Rule 4) we have the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings.

6. The overriding objective (Rule 7) of these Rules is to enable the FMT to deal with cases fairly and justly. This includes: (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the FMT effectively; and (e) avoiding delay, so far as compatible with proper consideration of the case. We are not bound by any formal rules of evidence. We bear all these considerations in mind.

7. **Burden and standard of proof**. The FMT conducts in effect a de novo hearing of the process which led to the Decision Notice. The burden of proof lies on the DFSA to prove the case. The standard of proof is the balance of probabilities but as in a previous case (*Waterhouse*, paragraph 219) we proceed on the basis that, given the impact of a finding of lack of integrity on the career of a professional person, such a finding should not be made in the absence of cogent evidence.

8. **Resources and representation**. There is inevitably great disparity in resources of time, money and energy between the DFSA and any individual as opposed to corporate Appellant. We have had close regard to that both in the preparatory stages of the case and in evaluating the evidence. In this case the DFSA had the resource of its experienced legal team and of Mr Farhaz Khan of Counsel from England who presented the case with great skill. While Dr Sheikh had some legal assistance in the early stages he represented himself for most of the case and at the hearing and did so with considerable energy, courtesy and dignity.

9. **The hearing** took place remotely by video conference between 26 and 30 April 2020 at a time when the C-19 virus was afflicting the UAE and other countries

where the parties and their advisers and witnesses were situated. As Dr Sheikh is not able to return to Dubai, part of the hearing would in any event have been by video-conference. Rule 16 requires the hearing to be in public unless the panel orders otherwise. We exercised our power to sit otherwise than by live hearing within the DIFC. The hearing took place by video conference arranged by the DFSA and very skillfully managed by Mr Muhammad Saeed and his team from Lloyd Michaux. We considered that an attempt should be made to provide some public access and a copy of the transcript was placed on the DFSA website each day.

SUMMARY OF THE CASE AND OF DR SHEIKH'S RESPONSE

10. The DFSA says that in May and June 2015, Dr Sheikh secretly withdrew US$512,457 in cash from the bank accounts of MAS Clearsight Ltd (**MAS**), a then PIB Category 4 Authorised Firm, of which Dr Sheikh was a Licensed Director, the Chairman and de facto SEO. He facilitated the withdrawals by orchestrating control of the MAS chequebook and personally signing 15 cheques made out for 'cash' of amounts that were within his limit as a single authorised signatory. The withdrawals caused a significant breach of MAS' Liquid Assets Requirement. Nevertheless, and having been asked to provide bank statements for the purposes of May 2015 month-end reporting to the DFSA, Dr Sheikh told a MAS employee, Mr Salahuddin, and MAS' Finance Officer, Mr Kamath, that there had been no withdrawals from MAS' bank accounts in May 2015, and therefore no deterioration in MAS' capital position. Dr Sheikh's conduct caused MAS to misreport the level of MAS' liquid assets in a financial report submitted to the DFSA, in early June 2015.

11. The DFSA says that Dr Sheikh was thus knowingly concerned in the breach by MAS of capital requirements, he misled and deceived the DFSA and he failed to act with integrity first in making the secret withdrawals secondly by providing MAS senior officers with false information and thirdly by presenting the DFSA with a fabricated version of events during the investigation. Further he failed to act in a fit and proper manner to perform any function in connection with Financial Services in or from the DIFC.

12. Dr Sheikh says that he had given and guaranteed loans to assist MAS which was in financial difficulty. In April 2015 he secured a loan to the business from a Mr Akbar of some US$ 2 million (all subsequent references to dollars are to US dollars), an arrangement secured by a guarantee cheque. MAS was to pay another company nominated by Mr Akbar US$600,000 as advance interest but MAS' cheque bounced so Dr Sheikh set about attempting to pay him in cash hence the withdrawals in May and June. To prevent MAS from breaching its

capital requirements Dr Sheikh says that he had in April also arranged a loan to MAS from a Mr Yer who was to receive 5% of the company and who gave a guarantee cheque. Dr Sheikh thought the money had come in at the end of April so made the May withdrawals. In June 2015 Dr Sheikh learned that both lenders had decided not to proceed so he used the withdrawn money to pay MAS creditors in particular a Mr Zeman for consultancy fees due under an agreement entered into in 2011 and a Mr Ahmed to repay a loan. Dr Sheikh says that this account is true and he did not mislead anybody.

13. **Relevant Legislation**. We attach at Annex 1 a copy of the most relevant legislative and regulatory provisions taken from the much longer list annexed to the Decision Notice.

14. **Investigation and the DMC**. The capital requirements breach by MAS was discovered by MAS Finance and Compliance on 15 June 2015. By this time, Dr Sheikh had left the UAE, and has not since returned. MAS' DIFC licence was suspended on 18 June 2015, the firm was insolvent, and, since November 2015, has been in liquidation. The DFSA commenced its investigation into Dr Sheikh in August 2015, and its Enforcement Division sought information from Dr Sheikh about the withdrawals. Dr Sheikh responded to the Enforcement Division and made representations and submissions to the DFSA, including to the DFSA's Decision Making Committee (**DMC**). The DFSA Enforcement Division carried out interviews with MAS officers and employees in finance, compliance and legal roles including Mr Salahuddin, Mr Awais, Mr Aziz and Mr Kamath as well as a non-executive Licensed Director, Mr Pritchard.

15. On 23 March 2017, the DFSA Enforcement Division sent Dr Sheikh a report setting out the findings in the investigation and invited him to comment on those findings. On 21 June 2017, Dr Sheikh provided a response to the 23 March 2017 investigation report through a memorandum prepared by his lawyers at that time. The DFSA Enforcement Division made recommendations to the DMC on 26 December 2017. The DMC gave Dr Sheikh a Preliminary Notice on 15 May 2018. During the DMC process, Dr Sheikh and his then lawyers made a number of detailed representations, including oral representations, to which the DFSA Enforcement Division responded. The DFSA, acting through the DMC, gave Dr Sheikh the Decision Notice on 18 July 2019.

16. Dr Sheikh referred the Decision Notice to the FMT for review on 17 August 2019. Dr Sheikh seeks a direction that the Decision Notice be set aside in its entirety. The DFSA served its Answer on 19 September 2019. Dr Sheikh

responded to the DFSA's Answer on 14 November 2019 and, after further preparations, the hearing took place.

17. **Penalty**. The DFSA decided to impose upon Dr Sheikh: a direction to pay MAS an amount corresponding to the money withdrawn plus interest, totalling US$614,228 (the **Restitution Direction**); a fine of US$400,000 (the **Fine**); a direction prohibiting Dr Sheikh from holding office or being employed by a DIFC authorised firm etc (the **Prohibition**); and a restriction from performing any functions in connection with the provision of financial services in or from the DIFC (the **Restriction**).

18. **The written and oral evidence**. Neither party is confined to the evidence nor other material used in the previous process. Despite the limited range of the factual disputes between the parties we have had many hundreds of pages of documents in the bundles before us only a small proportion of which have been significant in this case. There have been extensive written submissions, with the Applicant's skeleton argument running to over a hundred pages. We have considered all the evidence and submissions carefully but in the interest of keeping this Decision within an acceptable length we mention only those matters and arguments which we consider to be relevant and significant. We have given references to many documents (although less frequently than the parties in their submissions). The sources of our written information are the pleadings (Bundle B), the witness statements (C), the chronological documents (D), the written and oral submissions of Counsel (G) and the transcripts of the hearings (H). Both sides cite transcripts of interviews (within Bundle A) to support their cases. These are formal interviews under oath or affirmation, usually with lawyers present, they carry weight but not of course as much as live evidence. Statements have been submitted on behalf of witnesses who in the end did not give live evidence. These are admissible and we gave them appropriate weight.

19. **Witnesses and statements**. The DFSA submitted statements from the following who also gave evidence:

    - Mr Gregory Forshaw Pritchard (MAS NED Board member) [C047-0284].

    - Mr Anthony Jensen (Senior Legal Counsel, Legal Division, DFSA) [C050-0323].

    - Ms Katrina Hackett (Senior Manager, Supervision Division, DFSA) [C001-0001].

- Mr Prabhakar Kamath (MAS Finance Officer) [C013-0046].

- Mr Hassan Salahuddin (MAS finance analyst, referred to in the Decision Notice as 'Mr X') [C023-0123] [C086-0783]; and

- Mr Faheem Aziz (CEO of a firm that provided MAS' Compliance Officer on an outsourced basis) [C036-0217].

Dr Sheikh submitted statements from the following:

- Dr Mubashir Sheikh (Applicant) July 2016 [C065-0473] October 2018 [A101-1680] February 2020 [C098-1313 to 1340].

- Mr Atta Ul-Hayee (MAS Aviation director of operations and alleged introducer of investors Mr Akbar and Mr Yer) September 2018 [C087-0789] December 2019 [C092-1154].

- Mr Qasim Shahzad (Employee of MAS who had multiple functions including driving senior executives for their meetings including Dr Sheikh) [C088-0882].

- Mr Muhammad Akbar (referred to in the Decision Notice as 'Investor A', alleged to have agreed to invest US$2m) [C089-0885]. This witness did not testify as we were informed the night before he was due to do so that he had fallen ill. The Applicant relies on Mr Akbar's statement.

- Muhammad Yer (referred to in the Decision Notice as 'Investor B', alleged to have agreed to invest US$600k) [C090-0895].

- Mr Ali Awais (MAS Licensed Director, COO & General Counsel) October 2018 [C091-0905] February 2019 [C096-1311] November 2019 [C093-1160].

- Mr Petr Zeman (businessman) [C095-1300] (The Applicant, sometime before the hearing, informed us that this witness whom he had hoped to call was unavailable having apparently been put into detention somewhere. He asks us to accept the truth of Mr Zeman's statement).

- Mr Khalil Ahmed (an alleged lender) [C099-2630] whose statement was submitted in April 2020.

- Mr Muhammad Wasif (MAS former employee hired to build its corporate finance business) November 2019 [C094-1163], who gave evidence supporting Dr Sheikh's character, and regarding a consulting contract with

Mr Zeman. Mr Wasif was not required by the DFSA to attend for cross examination, and his evidence was therefore fully accepted by the DFSA.

FACTS AGREED OR NOT MUCH IN DISPUTE

20. We adapt the following from Section 4 of the Decision Notice making certain changes.

21. On 27 October 2009, the DFSA authorised MAS as a Category 4 Authorised Firm to provide the Financial Services of Arranging Credit or Deals in Investments, Advising on Financial Products or Credit, and Arranging Custody. MAS' status as an Authorised Firm was subsequently withdrawn on 18 January 2016 and it is currently in liquidation. MAS marketed itself as an investment and corporate banking advisory business that specialised in developing multi-asset class investment strategies, feasibility and analysis, advisory and risk mitigation techniques. Part of its business included providing private banking advisory services and arranging investments for clients with third parties.

22. Dr Sheikh held the majority shareholding in MAS, with approximately 80% of shares. Dr Sheikh was authorised by the DFSA to perform the Licensed Function of SEO at MAS from 27 October 2009 until 1 May 2013. In May and June 2015, Dr Sheikh was a Licensed Director of MAS and chairman of its Board. At that time, Dr Sheikh was not authorised by the DFSA to perform the SEO function. However, in the absence of MAS' previous SEO, Dr Sheikh again performed the SEO role in an acting capacity from April 2015. Dr Sheikh's status as an Authorised Individual was withdrawn on 18 January 2016.

23. MAS outsourced both its Compliance Officer and Finance Officer functions to DIFC-registered consulting firms. The Finance Officer function was performed by Mr Prabhakar Kamath. Mr Kamath reportedly directly to Dr Sheikh and was responsible for MAS' compliance with the applicable DFSA prudential rules and the submission of monthly financial reports to the DFSA to monitor such compliance.

24. **MAS' Liquid Assets Requirement**. As a Category 4 Authorised Firm MAS was required to comply with the applicable Rules set out in the Prudential – Investment, Insurance Intermediation and Banking Module of the DFSA Rulebook (PIB). Pursuant to PIB Rule 3.5.3(1), MAS was required to maintain, at all times Liquid Assets in excess of US$600,000. Liquid Assets include cash in hand and money deposited with a regulated bank or deposit-taker, but do not include cash held in Client Money accounts.

25. After 31 March 2013, due to concerns of the DFSA's Supervision Division (**Supervision**) regarding MAS' weak financial position, MAS was required to submit a monthly financial report to the DFSA within seven days of the end of each month. Each monthly financial report was required to contain MAS' balance sheet, profit and loss statement, and calculation of PIB capital adequacy for that month, including whether MAS had met its Liquid Assets Requirement. During the relevant period from May to June 2015, MAS' Finance Officer, Mr Kamath, was responsible for submitting MAS' monthly financial reports to the DFSA. In preparing MAS' monthly financial reports and to verify the information in them, Mr Kamath or his staff under his direction would obtain and refer to, among other things, MAS' bank account statements for the particular month. Generally, Mr Kamath or his staff would obtain from MAS the bank statements on the first day of the month in which the report was to be submitted, or shortly thereafter. In April 2015, the MAS employee who previously had some day-to-day accounts and finance monitoring duties had departed from MAS. From around 5 April 2015, Dr Sheikh assigned those duties to another MAS employee, Mr Salahuddin, including liaising with MAS' auditors for the external audit for the financial year ending 31 December 2014, and providing documents to Mr Kamath (or Mr Kamath's staff) to assist their preparation of the DFSA monthly financial reports. In this role, Mr Salahuddin reported directly to Dr Sheikh.

26. When Mr Salahuddin received MAS bills or invoices that had to be paid, he would hand them to Mr Kamath or Mr Kamath's staff for processing and entry in MAS' accounting system. As part of his duties, Mr Salahuddin was given temporary access to MAS' internal accounting system, the login details to the website for accessing MAS' bank accounts, for which he had all three levels of transaction approval (maker, authoriser and controller), and possession of the physical chequebook for MAS' AED account. To assist in the preparation of MAS' monthly financial report for the month of April 2015, he accessed MAS' bank account statements by logging in and downloading them from the bank's website.

27. On 7 May 2015, Mr Kamath submitted MAS' monthly financial report for April 2015 to the DFSA. The report showed that MAS' "cash on current account" was US$627,781 which, when combined with cash in hand of US$602, amounted to Liquid Assets of US$628,383. Therefore, because it held Liquid Assets in excess of its EBCM of US$600,000, MAS complied with its Liquid Assets Requirement in April 2015.

28. **Dr Sheikh's signing authority for MAS' bank account**. Dr Sheikh had authority to withdraw up to AED 183,500 at a time from MAS' bank account using his signature alone. Until 14 May 2015, amounts over AED 183,500 required a second signature from an appropriately authorised signatory. However, following a Board Resolution on 14 May 2015, Dr Sheikh became the sole signatory for MAS' bank accounts, with no limits.

29. **MAS' deteriorating financial position.** On 1 December 2014, MAS' Board held a meeting, attended by Dr Sheikh, fellow Licensed Directors, and others. The discussion at the meeting included MAS' deteriorating financial position. Ms Adela Mokra, the company secretary, prepared the minutes of the Board meeting and presented them to Dr Sheikh, who reviewed and circulated them. The Board minutes record "*Dr Mubashir stated that the first two quarters* [of the financial year ending 31 December 2014] *were challenging and the revenues posted till the end of Quarter 3 were a little less than a million dollars while the costs incurred by the Company were USD 4.5million...*". The Board minutes noted that "*Due to few* [sic] *struggling months and to support business continuity Mubashir had loaned USD 1.5million to the Company…*". The Board minutes record that Dr Sheikh had asked Mr Anish Bhatia, the SEO at the time, to consider stepping down from the role as part of restructuring the business. It is unclear whether any other MAS employee acted in the role of MAS' SEO from this point in December 2014 and until April 2015. The Board minutes also recorded discussion about a receivable amount of US$4.7million due from a related party in Pakistan. Dr Sheikh said of that receivable he "*presumes before the audit cycle i.e. end of March 2015 the majority of the receivable shall be received. It is forecasted based on certain activities happening in the Pakistan business.*"

30. On 17 March 2015, MAS' auditors provided MAS (including Dr Sheikh) with its interim report on its audit for the financial year ending 31 December 2014. In the interim report, the auditors highlighted MAS' financial instability by suggesting that MAS needed to provide for negative adjustments of approximately US$3.3m. This included US$2.5m outstanding from the related party in Pakistan, for which Dr Sheikh was majority shareholder. The auditors informed MAS that "*if these adjustments are passed, it may result in deficiency in meeting the company's minimum capital requirement as required by DFSA*". At the meeting of MAS' Board on 26 April 2015, which Dr Sheikh attended, the Board again discussed MAS' ongoing deteriorating financial position. Dr Sheikh informed the Board that the SEO had agreed to step down as SEO and that Dr Sheikh would take over that role until MAS was able to find a suitable candidate for the position. The minutes of the 26 April 2015 Board meeting

also record that Dr Sheikh was given the authority to sell MAS, surrender its licence to the DFSA, or place it into liquidation if MAS could not revive its capital or receivables. The minutes record that "*if all doesn't work in terms of solving the liquidity issues then it leaves no choice but to wind up the company*". The minutes of the 26 April 2015 Board meeting do not contain any reference to an investment agreement, allegedly dated 20 April 2015, or a purported funding arrangement with Mr Akbar and Mr Yer described later or a loan from Mr Ahmed.

31. The DFSA claims (but Dr Sheikh denies) that his knowledge of MAS' deteriorating financial position since at least December 2014 led to his subsequent conduct including his withdrawals of cash from MAS' bank account in May and June 2015, the concealment of those withdrawals including by failing to provide (or provide access to) the bank statements for May 2015 to staff, and his false statement to staff that there were no transactions during May 2015. It also led to Dr Sheikh's directions to Mr Salahuddin on or around 3 May 2015 to transfer MAS' money, hand over MAS' chequebook, and stop using the online banking system.

32. On or around 3 May 2015, Dr Sheikh asked Mr Salahuddin to transfer all funds (US$600,042 or around AED 2,191,955) from MAS' US$ account to its AED account, and Mr Salahuddin did so. Upon completing the transfer, the AED account balance total was AED 2,330,402. After that transfer, on around 4 or 5 May 2015, Dr Sheikh instructed Mr Salahuddin to give him MAS' AED chequebook and not to use the online banking system for MAS' bank accounts. Mr Salahuddin followed Dr Sheikh's instructions, handed over the AED chequebook to Dr Sheikh and did not use the online banking system after that date. From that point, Dr Sheikh was responsible for liaising with the external auditors, Mr Kamath or Mr Kamath's staff, including providing them with bank statements or anything regarding MAS' transactions.

33. **Dr Sheikh's withdrawals and transactions in May 2015, causing MAS to breach its Liquid Assets Requirement**. In the period from 5 to 13 May 2015, Dr Sheikh withdrew AED 1,697,000 (US$462,083) in cash from MAS' AED bank account by personally signing 12 different cheques using MAS' AED chequebook. Dr Sheikh's withdrawals (coupled with MAS' lack of sufficient income) meant that, from 5 May 2015 onwards, MAS' Liquid Assets were significantly less than its EBCM of US$600,000. Therefore, from 5 May 2015, MAS was in breach of its Liquid Assets Requirement.

34. The DFSA says (and Dr Sheikh denies) that when he made these cash withdrawals he either knew that, or was reckless as to whether, his actions

would cause MAS to breach its Liquid Assets Requirement which required it to hold Liquid Assets in excess of its EBCM, which was US$600,000.

35. On around 3 May 2015, he caused Mr Salahuddin to transfer almost all of MAS' funds in its US$ account (US$600,042) to MAS' AED account. This represented approximately 94% of the total of MAS' funds in its bank accounts at that time (US$637,740). His 12 cash withdrawals in the period from 5 to 13 May 2015 amounted to AED 1,697,000 (US$462,083), which was approximately 77% of the amount transferred on 3 May 2015. Due to its ongoing financial difficulties, MAS was unlikely to have enough income coming in, which could make up the significant shortfall between its bank balance and its Liquid Assets Requirement. Dr Sheikh had asked Mr Salahuddin to stop using the online system for MAS' bank accounts and only Dr Sheikh had possession of MAS' chequebook, so Mr Salahuddin was unable to monitor MAS' bank transactions or account balance. Dr Sheikh had not banked any cheques from those investors or received confirmation of any deposits which would have made up the significant shortfall between MAS' bank balance and its Liquid Assets Requirement.

36. The DFSA says (but Dr Sheikh denies) that he did not inform anyone at MAS of his cash withdrawals in May 2015 or the likely effect on MAS' Liquid Assets. In a series of emails between 19 and 25 May 2015, certain members of MAS' Board of Directors asked questions of MAS' senior management, including Dr Sheikh, regarding MAS' financial stability. In particular, in an email dated 26 May 2015, one Licensed Director asked if any payments had been made to MAS by a related party in Pakistan since the last Board meeting on 26 April 2015 and, if not, why no provision for this had been made in MAS' April accounts. Further, if the payment from the related party was "doubtful", the Licensed Director asked whether the DFSA had been advised of the likely regulatory capital deficiency.

37. Dr Sheikh replied later in the day on 26 May 2015, stating that there had been a payment of US$425,500 received from the related party in Pakistan since the last Board meeting on 26 April 2015; and the receivables from the related party in Pakistan were not doubtful, and the "*DFSA is not required to be notified because we have earned revenue of USD576,000 in the current month. Hence, our capital resources for May end reporting will stand at approx. USD1, 211,782 against the Regulatory minimum requirement of USD720, 000*". Both of these statements were false. There was no such payment of US$425,500 from a related party in Pakistan since the last Board meeting and MAS had not earned revenue of US$576,000 in May 2015.

38. **Dr Sheikh's refusal to provide bank statements and his claim that there were no transactions in May 2015**. Dr Sheikh knew that Mr Kamath submitted monthly financial reports to the DFSA, which included a statement of the amount of cash in MAS' bank account and whether this, along with any cash on hand, satisfied MAS' Liquid Assets Requirement. Dr Sheikh also knew that Mr Kamath or his staff needed to see MAS' bank statements each month to verify transactions and the amount of cash in MAS' bank account and to complete the respective monthly financial report. On 7 June 2015 a direct report of Mr Kamath, "Mr Y", asked Mr Salahuddin for the bank statements for the month of May 2015 so that they could prepare the monthly financial report for the DFSA. Mr Salahuddin told Mr Y that he did not have access to the bank statements and that Dr Sheikh could provide them. On or around 4 or 5 May 2015, Dr Sheikh had instructed Mr Salahuddin not to use MAS' online banking system. That day, Mr Salahuddin called Dr Sheikh about the request from Mr Y for the bank statements. He told Dr Sheikh that he needed to provide the bank statements to Mr Y to prepare the financial report for the DFSA. Dr Sheikh told him that he was not in a position to give the bank statements, but assured him that there had been no transactions in May 2015. Mr Y told Mr Salahuddin that he would speak to his boss, Mr Kamath. Later on 7 June 2015, Mr Kamath spoke to Dr Sheikh. Dr Sheikh told Mr Kamath that he did not have online access to the bank account because it had not been given to him, but that there were no transactions in the bank account in May 2015. Mr Kamath initially refused to send the financial report to the DFSA without first seeing the bank statements. However, Mr Kamath then asked Dr Sheikh to send him an email confirming that there were no bank transactions in the month of May 2015. Subsequent to these events and during the DFSA's investigation, Mr Kamath told the DFSA that "*I basically trusted* [Dr Sheikh's] *words*". Later on 7 June 2015, Dr Sheikh spoke to Mr Salahuddin over the phone to say that he had to leave Dubai because of an emergency. Mr Salahuddin again told Dr Sheikh that he needed the bank statements to provide to Mr Kamath's firm for the monthly financial report to be submitted to the DFSA. Dr Sheikh repeated what he told Mr Kamath and said that there had been no transactions in MAS' bank account in May 2015 and instructed Mr Salahuddin to tell Mr Kamath's firm the same by email. Dr Sheikh denies this as detailed earlier in the section above.

39. Mr Salahuddin then sent an email to Mr Kamath that was copied to Dr Sheikh and others. It included this "*I have been advised by Dr. Mubashir that there is no bank transaction in our company's bank account in the month of May 2015*". Dr Sheikh did not respond or reply to that email to Mr Kamath.

40. The DFSA says that Dr Sheikh's statements on 7 June 2015 that there had been no transactions in MAS' bank accounts in May 2015 were false. It says he knew these statements were false because he had personally instructed the transfer of all funds from MAS' US$ account to its AED account and subsequently signed and cashed 12 cheques during May 2015. Subsequent to these events, Dr Sheikh admitted, in both an email to his employees and in a letter to the DFSA that he had indeed withdrawn around US$600,000 during the month of May. The DFSA says that Dr Sheikh knew the May 2015 bank statements were required for the purposes of completing the financial report for that month. He therefore knew, or was reckless as to whether, his false statement that there were no transactions in May 2015 would result in an incorrect and misleading financial report for May 2015 being submitted to the DFSA. The DFSA also considers that Dr Sheikh refused to provide the bank statements because he knew they would reveal his withdrawals in May 2015. Dr Sheikh denies this allegation as detailed above.

41. **Submission of inaccurate May 2015 Financial Report to the DFSA** Mr Kamath subsequently submitted the May 2015 Financial Report to the DFSA on 7 June 2015. The May 2015 Financial Report represented that MAS' current account balance as at 31 May 2015 was the same as the previous month (US$627,781) and that it was therefore meeting its Liquid Assets Requirement. In fact, MAS' current account balance as at 31 May 2015 was only US$8,442. Therefore, the May 2015 Financial Report incorrectly represented to the DFSA that MAS was meeting its Liquid Assets Requirement.

42. **Dr Sheikh's further withdrawals in June 2015**. On 13 and 14 June 2015, Dr Sheikh withdrew a further AED 185, 000 in cash from MAS' bank account using three different cheques, two of which he signed personally. At the time of these further withdrawals, relevant staff at MAS were still unaware of Dr Sheikh's withdrawals in May 2015 or that he had caused MAS to breach its Liquid Assets Requirement. MAS continued to breach its Liquid Assets Requirement throughout June 2015. There is no contemporaneous evidence that Dr Sheikh informed any relevant person at MAS of his cash withdrawals in June 2015 or the likely effect of those on MAS' Liquid Assets, and the DFSA says that he did not.

43. **MAS' disclosure to the DFSA which led to the commencement of the DFSA's investigation**. Over the course of 10 to 12 June 2015, there were a series of exchanges between Dr Sheikh, MAS' Chief Operating Officer (COO) Mr Awais, and a senior representative from the consulting firm which employed MAS' outsourced Compliance Officer (Mr Aziz). A meeting took

place in the evening on 12 June 2015 (with Dr Sheikh attending by phone from London), during which Dr Sheikh revealed that "*there was no money in the company*". However, no-one other than Dr Sheikh was aware at this time that he was referring to there being no funds in MAS' bank account.

44. On 14 June 2015, MAS' Compliance Officer disclosed in an email to Supervision his concerns about the financial resources of MAS. The Compliance Officer's concerns arose following discussions with an independent Licensed Director (Mr Pritchard). In particular, the Compliance Officer referred to receivables from a related Pakistan entity which were currently on MAS' books and which should be written off as bad debt. If this was done, it would mean that MAS was effectively insolvent. The Compliance Officer informed the DFSA that the decision had been made to liquidate MAS and, at its last meeting on 26 April 2015, MAS' Board of Directors had given Dr Sheikh authority to put MAS into liquidation.

45. On 14 June 2015, another meeting took place between Dr Sheikh and MAS' Compliance Officer as well as Mr Aziz (together referred to as the **Compliance Function**), and Mr Awais. Dr Sheikh, again attending the meeting by phone from London, revealed for the first time that there was no money in MAS' bank account. Because MAS had reported to the DFSA that over US$600,000 was in its bank account as at 31 May 2015, MAS' Compliance Function took Dr Sheikh's representation to mean that all MAS's money had been spent from 1 to 14 June 2015. On 15 June 2015, a further meeting took place between Dr Sheikh and MAS' Compliance Function. During that meeting, which Dr Sheikh again attended by phone from London, Dr Sheikh revealed that, in fact, all of MAS' funds had been removed from its bank account during May 2015. In the evening on Monday 15 June 2015, MAS' Compliance Officer sent a further email to Supervision, raising his concern from conversations with Dr Sheikh that there was no liquidity in MAS due to the withdrawal of all MAS' money from its bank accounts from May 2015 onwards. The Compliance Officer indicated that he wanted "*to understand how this can be possible as the Finance Officer had reported to the DFSA on 7th June 2015 that there was $629,000 in the bank as at 30th May 2015*". The Compliance Officer said that MAS' compliance team had "*inquired how can so much money have been spent in only 10 days*" and stated that Dr Sheikh revealed "*that actually the cash in the bank was zero from May on-wards*". Further, the Compliance Officer stated in his email that Dr Sheikh "*admitted that MAS has misreported to the DFSA on 7th June 2015 the financials for the end of May 2015*". The Compliance Officer said the Finance Officer Mr Kamath had asked for bank statements for May 2015 but had not been provided with them.

46. The DFSA met representatives of MAS on 16 and 17 June 2015. Given the concerns about MAS' financial stability, the DFSA conducted an inspection visit at MAS's offices on 18 June 2015. During the visit, the DFSA collected digital and physical documents related to MAS' financial position including copies of MAS' bank account statements. It immediately became apparent to the DFSA that, due to the withdrawals from MAS bank account, MAS had inadequate resources. Accordingly, on 18 June 2015, the DFSA suspended MAS' licence and MAS subsequently applied to the DFSA on 2 July 2015 to withdraw its licence permanently. Following its decision to suspend MAS' licence on 18 June 2015, the DFSA also commenced an investigation into suspected misconduct. On 1 November 2015, MAS applied to the DIFC Courts for a provisional liquidator to be appointed. On 19 November 2015, the DIFC Courts confirmed the appointment of the liquidator and ordered that MAS be wound up.

47. **Dr Sheikh's claims that he attempted in April 2015 to secure funding for MAS from two investors.** Investigation continued. In July 2016, Dr Sheikh claimed to the DFSA that his withdrawals over May and June 2015, which caused MAS' breach of its Liquid Assets Requirement, were part of a genuine, yet ultimately failed, attempt by him to secure funding for MAS from one or more investors. Dr Sheikh claimed that, acting on behalf of MAS, he entered into an investment agreement with an investor, Mr Akbar, on 20 April 2015, whereby he agreed to invest US$2,000,000 in return for the option to acquire up to 51% ownership of MAS (Investment A). Under the purported agreement. Mr Akbar agreed to invest US$2,000,000 for a period of three years. In return, he would receive interest at a rate of 10% per annum (i.e. US$200,000 per year for a total of US$600,000) paid in full at the time of executing the agreement; the interest payment was to be made to a company (India Focus Cardinal FZE, referred to as Company A, as directed by Mr Akbar in the purported investment agreement); and MAS was to pay 2.3% of the investment amount (US$46,000 or around AED 168,935) to Company A within five days of signing the agreement. Dr Sheikh claimed that his direction to Mr Salahuddin on or around 3 May 2015 to transfer around US$600,000 from MAS' US$ account to its AED account was for the purposes of paying the US$600,000 in interest to Mr Akbar. Dr Sheikh claimed that, in connection with Investment A, he received a cheque from Mr Akbar dated 30 April 2015 for AED 7,350,000 (equivalent to around US$2,000,000).

48. Dr Sheikh further claimed that, in connection with Investment A, he signed a cheque dated 3 May 2015 in the amount of AED 2,200,000 (or around US$599,047) for the benefit of Company A. However, when that cheque was

presented to the bank on 4 May 2015, it was returned because it required a second signature. Dr Sheikh claimed that, because the cheque dated 3 May 2015 was returned, he instead went about attempting to provide Company A with US$600,000 in cash. However, Dr Sheikh also signed two cheques that appear to be payable to Company A dated 6 May 2015 in the amount of AED 170,000 each. Dr Sheikh claimed that, to ensure MAS did not breach its minimum capital requirements (by withdrawing the US$600,000 allegedly payable to Company A as interest), he had already arranged a short term loan from a second investor, Mr Yer, for US$600,000 (Investment B). Dr Sheikh claimed that Investment B was evidenced by a loan agreement between MAS and Mr Yer dated 25 April 2015. Dr Sheikh claimed that, under the agreement, Mr Yer agreed to invest US$600,000 in MAS for three months in return for 2% per month interest and a 5% ownership stake in MAS. Dr Sheikh claimed that, in connection with Investment B, he received a cheque from Mr Yer dated 27 April 2015 for PKR 61,110,000 (at the time, equivalent to around US$600,000).

49. Dr Sheikh claimed that, in light of purported Investment B, he believed that MAS had sufficient funds in its bank account and therefore that it would not breach its regulatory capital requirements. In response to a question from the DFSA whether he was aware that MAS had breached its Liquid Assets Requirement, Dr Sheikh said he "*was under the impression that the short term loan money would have been credited to the account*". Dr Sheikh claimed that he was not aware that MAS had breached its Liquid Assets Requirement because he had no access to the online system to view MAS' bank balance, and he had assumed that Mr Yer had deposited the US$600,000 in MAS' bank account during the first week of May 2015. In response to a question from the DFSA whether he informed anyone at MAS or the DFSA of these transactions or the Liquid Assets Requirement breaches, Dr Sheikh said: "*I did inform the management and the compliance officer when I heard from the lender that he did not make the deposit as committed during first week of June 2015. Until that day I was under the impression that the funds were deposited and I had no reason to doubt. I had to leave for England as my mother was unwell and had no access to the account via internet so there was no way for me to know the debit or credit balances. Throughout this time, I was under the impression that the loan funds would have been in the account right from the get go.*"

50. Dr Sheikh claimed that, when the funds did not materialise, he eventually used the withdrawn funds to pay MAS salaries, loan repayments, and other legitimate expenses. In internal emails dated 22 June 2015 and 2 July 2015, he stated: "*Additionally I have made payments from my personal account to some*

employees and creditors during the month of May 2015. Which are in access [sic] *of USD250,000/- details are as follow* [sic] ... ". Dr Sheikh went on to list US$100,524 in purported individual salary payments as well as a payment to an unnamed company creditor of US$150,000. At the end of this list, Dr Sheikh reiterates that these payments were "*from personal accounts*". The 2 July email also said that the purpose of the cash withdrawals was "*…not to conduct any evil act but to use the capital to pay salaries, vendor payments and creditors loan principal/interests all for the greater good of the company*". In referring to how much Dr Sheikh was owed by MAS, Dr Sheikh also stated that the cash he withdrew in May 2015 was "… *due to me as detailed above*".

DR SHEIKH'S DEFENCE

51. Dr Sheikh as a litigant in person understandably presented his case in a way which differed from the usual approach of lawyers placing emphasis on the motives of the DFSA and his personal condition. We therefore set out first an extract from Dr Sheikh's written submissions so that a feel for this approach is on record and secondly what we consider to be a fair summary, prepared by Counsel for the DFSA and adapted slightly by us, of the main grounds of defence. More details of the defence are set out when we deal with the evidence.

52. **Extract from Dr Sheikh's submissions**. *"My intention is that the above listed sections will once and for all demonstrate my innocence in an investigation that was wrongfully started against me five year ago, while I was suffering from the worst possible reality I had ever faced in my adult life. I feel the need to express the emotions I felt at that time, because some of my decisions in the coming sections were driven under the most extremist circumstances of stress and so weren't always the most logical. But that does not mean that they were carried out with any ill intent or that my truth is flawed. It is a truth universally acknowledged that incredibly high levels of stress can cause a person to make decisions hastily, and unfortunately that happened to me in late spring/early summer months of 2015. The DFSA used a lot of words against me in their decision notice under the guise of my "misrepresenting" information to them during their investigation, when that couldn't be farther from the truth. In my emotionally devastated mind, I answered them to the best of my ability. At times, mistakes were made (in that I did not properly communicate things) and when I tried to rectify those mistakes, the DFSA believed me to be: dishonest, lacking in integrity, falsifying documentation, inspiring witnesses to lie under oath, and then submitting those untruths to save myself from what they believe is a crime of fraud that I have carried out.*

Before I even go into the reasons why this decision notice should be brought down and my name cleared of all charges, I would like to state the most important one of all: ***I am not guilty of any of the fraudulent misconduct that the DFSA has accused me of****. I have only ever tried to save the company that I founded and to now be told that I did wrong by it is devastating. The DFSA has strung up some of the facts (without knowing their proper context) and used unreliable witnesses to concoct a ridiculous story that has no validity. The DFSA has not done their proper research in this investigation. And when they could not find clarity, they assumed and fabricated a series of allegations that they could push on me, because they felt that it adequately filled in the gaps of the narrative.* ***These allegations are absolutely false.***

The DFSA has gone on to say that I was the cause of the breach that occurred in the MAS account in the month of May 2015 and their suspected reasons for this is that I wanted to take back money that the company "owed to me". If that was in fact the case, I wonder if the DFSA has considered the fact that in the month of May 2015, I took money from my own account to pay MAS staff's salaries. ***Does a man who intends to defraud a company, use his own money to pay its fixed costs?***

Furthermore, does a man who intends to covertly withdraw funds from the company account go and declare that there has been a breach one month after the fact? If I was making efforts to conceal my withdrawals, and went through so much trouble to ensure no one on the MAS staff looked at the bank statements, why in the world would I tell DFSA of the breach? None of these things make any sense, the withdrawals would all be traced back to me. And the reason that this makes no sense is simple: ***I was never trying to hide what I was doing. I never told anyone to refrain from accessing the company accounts.*** *The moment I became aware of the breach, I made instant efforts to have the breach declared. The only thing the DFSA should have done when the breach was declared was to find the company for the breach and move on, but no such thing happened. Instead they started an investigation into me personally.*"

53. Dr Sheikh then sets out in over a hundred pages his detailed position on the issues.

54. **Summary of defences**. Dr Sheikh says that he did not fail to act with integrity and remains a fit and proper person under the Regulatory Law. Dr Sheikh was justified in unilaterally withdrawing the money, about which others at MAS were aware, and acted with the authority of the Board (granted at the 26 April 2015 Board meeting) to secure investment in MAS, in order to save the

company. The agreements with Mr Akbar and Mr Yer were real but did not materialise.

55. Dr Sheikh gave a genuine explanation of events to the DFSA, supported by documentary and witness evidence including from Mr Akbar and Mr Yer. Dr Sheikh sent an email dated 26 May 2015 to MAS senior officers and directors stating MAS Pakistan had paid MAS US$425,000, but Dr Sheikh relied upon information given to him by others and believed the information was accurate.

56. The May and June 2015 withdrawals caused an unfortunate breach of MAS' capital requirements. Dr Sheikh was unaware of this at the time because he assumed Mr Yer had transferred the loan amount to MAS. Therefore, Dr Sheikh was not knowingly concerned in MAS' breach of capital requirements about which he only became aware in June 2015, at which time he disclosed this to MAS compliance.

57. Whilst Dr Sheikh was aware MAS month-end reports to the DFSA contained a statement about capital adequacy, at the relevant time (early June 2015) Dr Sheikh had left the UAE for personal reasons, and it was the responsibility of others at MAS to discharge their roles. They did not do so causing the DFSA to be misled. In any event, Dr Sheikh did not mislead and deceive the DFSA.

THE EVIDENCE

58. We turn to the witnesses beginning with those called by the DFSA.

59. **Ms Hackett** was a Senior Manager, in the Supervision Division at the DFSA who dealt with MAS when its difficulties became apparent following a request to extend the time for the company to submit its accounts and then in June when the insolvency was reported and an investigation began including a visit on 18 June. Ms Hackett was asked questions for clarification but no issue relevant to the issues arose on her obviously truthful and accurate evidence.

60. **Mr Pritchard** is an English Chartered Accountant who at one point ran a compliance firm and who introduced Dr Sheikh to the opportunity to purchase what became MAS. He became a non-executive director in 2013 and attended quarterly board meetings. He took a close interest in the company particularly at the time difficulties arose. He was residing in the UK, and hence only visited the MAS offices three or four times a year for a day or two. He had not heard of Mr Akbar or Mr Yer or of any loans or investments involving them. There was no mention of this at the April 2015 board meeting or at any other time. He had heard nothing of Mr Zeman. Mr Bhatia, the previous CEO, had, as Mr

Pritchard understood it, in reality left by April 2015 and was not at the board meeting that month. Mr Pritchard too was an obviously truthful and accurate witness whose evidence accorded with the written record.

61. **Mr Jensen** gave evidence about the entirety of the investigation and decision making process at the DFSA and the truth of his statement was not seriously questioned.

62. **Mr Kamath** is the managing director of KPI, a business advisory and accounting firm located in Business Bay, Dubai. He is also the Audit Principal of KPI Ahli Chartered Accountants, and from 30 October 2014 until 18 January 2016 he was authorised by the DFSA to perform the Licensed Functions of Finance Officer and Senior Manager at MAS, ceasing in practice in June 2015. MAS outsourced these roles to him on a consultancy basis in 2014. His primary responsibility as Finance Officer at MAS was to monitor the capital adequacy of MAS in accordance with DFSA Rules. He was assisted in his role by an audit manager. His main points of contact at MAS to obtain documents were Ali Awais, the Chief Operating Officer, Amit Bhojwani the Deputy Compliance Officer or , for a short period between around April and June 2015, Hassan Salahuddin. Mr Kamath confirmed that his role was as summarised above. He was clear that Dr Sheikh had told him on 7 June on the telephone that there had been no withdrawals from the account in May. He received a Decision Notice with a censure from the DFSA for not verifying adequately the balance in the MAS accounts. He had never heard of Mr Akbar or Mr Yer or Mr Zeman or any of the financial activities involving any of them now alleged by Dr Sheikh. We bear in mind that Mr Kamath will not be well disposed towards Dr Sheikh having suffered a professional penalty as a result of putting trust in him but his evidence seemed to us entirely truthful and consistent both with the written contemporaneous record and what Dr Sheikh appears to have told others.

63. **Mr Salahuddin** currently holds the position of Head of Financial Control at a consultancy firm specialising in IT, governance, risk and compliance. He worked at MAS as a financial analyst but in April 2015, following the departure of Mr Bhojwani, was asked by Dr Sheikh to take over some of the day-to-day work on finances including assistance with audit and reporting to the DFSA. He was still a junior employee. His evidence confirmed his role in events summarised above.

64. Dr Sheikh is critical of Mr Salahuddin in various respects. He challenged Mr Salahuddin on being aware of the transactions in May, to which the witness responded:

"*A: Sir, you asked me to transfer funds from USD to AED account and it's the same MAS bank account. It's not a transfer outside the business. It's internal transfer, where the funds are in USD or AED. So funds can only deplete once it goes out from the company. It never went out from the company. I made transaction from USD to AED on your instructions, sir...*"

65. Dr Sheikh also sought to place blame on Mr Salahuddin for sending the 7 June 2015 email which misled Mr Kamath. Dr Sheikh did not suggest a reason why Mr Salahuddin would be motivated to do this. When challenged by Dr Sheikh as to why he sent the email, Mr Salahuddin replied:

"*A…And I didn't have access to banking system or, you know, for the bank statements. How can I confirm? Because I spoke to you and you told me that, tell come, that there is no transaction. You remember, sir? I spoke to you on the phone and only then I sent email to Kamath*"

66. The answers to the questions contained in the 26 May email were drafted by Mr Salahuddin. Those answers were dictated over the telephone to him by Dr Sheikh, which Mr Salahuddin then sent to Dr Sheikh in an email. In his skeleton argument, Dr Sheikh sought to blame Mr Salahuddin for the misrepresentation contained in the email. But in his opening he accepted that he did provide the MAS Pakistan receivables figures to Mr Salahuddin, and took responsibility for the information contained in the email, although later in evidence saw the latter as still responsible for what he claimed to be confusion with the dates. Mr Salahuddin rejected the criticisms.

67. Mr Salahuddin rejected in his second witness statement claims by Mr Shahzad (whose evidence we disbelieve for reasons we will come to) that he had heard Dr Sheikh tell Mr Salahuddin about the investment deal and the withdrawals in a car before and after lunch at Mini Chinese in Bur Dubai, around the same time Dr Sheikh spoke to Mr Bhatia. He also denied Mr Shahzad's allegation that he overheard another detailed discussion later that day while standing outside Dr Sheikh's office. He said that he had never been in the car or to lunch at the restaurant with Dr Sheikh. (Oddly Dr Sheikh's own witness statement does not mention these events.)

68. Mr Salahuddin was a straightforward and we believe entirely honest witness whose evidence we accept. His account of his role, which was a junior one, is consistent with commercial common sense and the documentary record. Further one would not expect him to be responsible for the matters alleged by Dr Sheikh. He would have no reason to behave in that manner and he has no reason for not telling the truth to the FMT. The allegations against him depend

on the unsupported claims of two witnesses whom we disbelieve on various matters.

69. **Mr Aziz** was head of a company providing compliance services which supplied Mr Haider as outsourced Compliance Officer from April 2015. His evidence was not challenged about any matter directly relevant to the issues. The role of Mr Haider summarised above does not appear to be in issue.

70. We turn next to the witnesses called by Dr Sheikh.

71. **Mr Ul-Hayee** has a background in finance and banking. He joined MAS in 2012 to carry out middle and back office management tasks, and to support and improve client relationships. In 2013 he moved to support MAS Pakistan. At the end of 2013 he moved to MAS Aviation but says that he retained a role at MAS itself. Mr Ul-Hayee states that when it became clear in March 2015 that MAS was in difficulties he introduced Mr Akbar and Mr Yer, whom he had known for more than 10 years, to Dr Sheikh and was present at meetings in March with the former and April 2015 with the latter. Following two days of negotiations between Dr Sheikh and Mr Akbar it was agreed that Mr Akbar would invest US$2,000,000 for a period of three years, in exchange for an option of fifty-one per cent of the Company and an annual payment of ten per cent on account by way of interest, the first such payment to be paid in full. He was also present during the meeting that Dr Sheikh had with Mr Yer. Seeing that Mr Akbar had agreed to invest in MAS, Mr Yer wanted to part of the investment opportunity. During the meeting with Mr Yer, Dr Sheikh agreed to a short-term loan from Mr Yer of US$600,000 with a monthly interest rate of two per cent for a period of three months in addition to five per cent of the ownership in MAS in order to ensure that the company's liquid assets requirements remained intact.

72. At the time, it was clear to Mr Ul-Hayee that Mr Yer had agreed to the short-term loan knowing full well that his investment was secured as Mr Akbar was investing. He suggests that the proposed investments were known to MAS staff who by this stage seemed somewhat mutinous and that he informed Mr Salahuddin of them. Mr Ul-Hayee states MAS senior staff were aware of the meetings with Mr Akbar and Mr Yer, and he directly spoke to MAS employees about them. He says that in May Mr Akbar telephoned him and on being told by Mr Ul- Hayee of the poor state of the company’s health decided to withdraw from the deal. He understood that Mr Yer decided to pull out in early June.

73. His first statement is full of sympathy and praise for Dr Sheikh. In his second statement he explains how he came in May and June 2015 to be dealing with

AED 2.4 million some of which went to Mr Khalil Ahmed and a million to someone whose name he cannot remember. The details were all on his computer which was unfortunately lost. He refers to other cash transactions which he handled for Dr Sheikh.

74. When cross examined Mr Ul-Hayee's recollections of these alleged meetings were confused and unclear - see for example the exchanges between pages 180 and 182 of Day 3. His relationship with Dr Sheikh was a close one - after he left Dubai, Dr Sheikh asked Mr Ul-Hayee to sell his property for him under a power of attorney. The DFSA says that Mr Ul-Hayee is an unlikely person to be involved in identifying potential investors in MAS. He had no meaningful background in investment banking in Pakistan; his prior roles at Citi Bank in Pakistan were in operations, and had little if anything to do with day-to-day investment banking activities, where he might have been expected to meet and develop a relationship with investor clients. Mr Ul-Hayee could produce no documents, emails, texts or other evidence to support what he said about the two proposed investors and the dealings and meetings with them. In view of this, the improbabilities in his account, its lack of consistency with the other claims about the alleged transactions and his inability to give a coherent response in cross examination, we do not accept his evidence about the central issues. The style and content of his statement and his compliments about Dr Sheikh were similar to those in other statements.

75. **Mr Shahzad** joined MAS in 2011 as an employee who had multiple functions including driving senior executives such as Dr Sheikh, bringing the post, preparing refreshments and printing and copying work. His statement expresses great admiration for Dr Sheikh in a style similar to that of Mr Ul-Hayee. He said that in May 2015 he had driven Dr Sheikh and Mr Salahuddin to lunch at a restaurant called Mini Chinese in Bur Dubai and overheard them discussing the investment proposals. Later that day he was waiting outside Dr Sheikh's office and happened to hear them discussing the banking. Dr Sheikh had told Mr Salahuddin to support the auditors with all that they needed.

76. Mr Shahzad's knowledge of English is understandably limited but he did not give evidence through an interpreter. His job did not equip him to understand the financial side of the business. It is very doubtful if he really remembered conversations four and half years later. Further of course even if investments had been mentioned to Mr Salahuddin that would not necessarily have been true. Even making allowances for the witness's limited English Mr Shahzad's manner was unconvincing and he was unable to give satisfactory answers to questions. In answer to questions from us he claimed that he and a friend had

prepared his witness statement and had done so in English without discussing what should go into it with Dr Sheikh. This was impossible to believe given Mr Shahzad's limited understanding of the case and the process and the stylistic resemblance between his statement and that of other witnesses called by Dr Sheikh. He was a loyal colleague but not a truthful witness.

77. **Mr Awais** is an experienced lawyer. From 2011 to 2015, he was COO and General Counsel of MAS in Dubai, and from 2012 to 2015 he was a Licensed Director. Since then he has been Legal Counsel for Diaz, Reus & Targ LLP in Dubai and Miami; and from 2017 also Senior Partner of Awais Law in Lahore. He, in the manner of other witnesses, describes several examples of Dr Sheikh acting in a principled and ethical way in MAS transactions. He says that he was told at the time that Dr Sheikh was meeting Mr Akbar and Mr Yer - but apparently he played no part in the meetings or discussions leading to this significant deal for MAS.

78. He was later shocked to hear that Dr Sheikh had withdrawn the capital of the company but understood this when in 2017 Dr Sheikh had told him of the proposed investment which had fallen through. Mr Awais says that at the end of April 2018 he met a client of his firm, Mr Muhammad Akbar who, in the course of discussion found out that he had worked at MAS. To his complete surprise Mr Akbar said "*Then you must know Dr Mubashir*", to which, Mr Awais replied "*Yes, of course*". Mr Akbar then told him about how he almost took over MAS in April 2015 and why he pulled out at the last minute. "*That is when I put together in my head that what Dr. Mubashir had told me in 2017 was true, and that indeed he had then been trying to save the Company against the background of a committed substantial investor or investors in the business*". He produced additional statements dealing with an email about pay and with the April 2015 board meeting.

79. It was put to Mr Awais that if the investors had indeed been mentioned to him in April 2015 and the transactions been real then as General Counsel with wide commercial experience he would obviously have been involved in negotiations. He had no answer other than to say "*it shouldn't have happened like that*". The DFSA says that the remarkably coincidental meeting with Mr Akbar in Pakistan is a fabrication to bolster the claims about the investment deals.

80. Mr Awais' claim to have been told of Mr Akbar and Mr Yer in April 2015 yet without being involved in the alleged transaction is not credible. His witness statement references to his discussion with Dr Sheikh in 2017 indeed rather suggest he was not told in 2015 because otherwise the account of the abortive investment would not have been news to him. Despite the improbability of an

experienced professional person giving inaccurate evidence we are sure that Mr Awais is mistaken about these matters and over loyal to Dr Sheikh. As at so many points in the case there is a most surprising and complete absence of contemporaneous record to support what the witness said.

81. **Mr Yer** is self employed as a dairy farmer in Pakistan and says in his statement that he made investments from time to time with the advice of his friend Mr Akbar. They both met Dr Sheikh, apparently in Dubai, in March 2015 to discuss a transaction by which Mr Yer would make a short term loan which would be repaid from Mr Akbar's investment with interest at 2% per month and receive 5% of MAS. On 27 April he 'provided' Dr Sheikh with a guarantee cheque and on that and the next day assured him that the money would be transferred. Mr Yer seemed to say that his lawyer had been present but there is no record of this or of the alleged legal work. It was also Mr Yer's first visit to Dubai. At the beginning of May Mr Yer had a business meeting with Mr Akbar and learned of doubts about the condition of MAS. Mr Yer anxiously called the bank to ask about the April transfer and was relieved to find that for some reason the payment had not been made. He is glad that "*by a stroke of luck*" his money was saved by the bank's mishandling.

82. Mr Yer did not produce a single contemporaneous document, email, text or other record of any aspect of this proposed transaction or of the meetings and discussions which led to it.

83. Mr Yer's command of English was poor. There had been no suggestion that he required an interpreter. It was obvious from cross examination about investment banking that Mr Yer did not have sufficient command of English to understand the contents of the statement but also that his knowledge of investment practice was limited. Furthermore, it was clear (because the microphone picked it up so that all participants in the case could hear it) that someone was in the room seeking to provide or assist Mr Yer with answers to questions during his evidence. Mr Yer appeared to deny even this.

84. **Mr Akbar** did not give live evidence. We were informed that he was ill shortly before he was due to do so. He did however provide a witness statement which outlines his role in events as described above. It does not explain the apparent paradox of agreeing to invest, after detailed examination, in a company with difficulties one month but withdrawing because of virtually the same difficulties the next month, the absence of any written record other than the alleged agreement or the reason why there was a need for Mr Yer to become involved other than apparently his wish to participate. He does not exhibit any of the routine documents which the transaction he describes would generate.

As the statement was not clarified by cross examination and we did not see or hear this witness its value was very limited.

85. There were other signs that Mr Akbar and Mr Yer had perhaps not understood the purpose of giving live evidence or the importance of doing so truthfully. Both had declined to be interviewed in Dubai or to have a constructive dialogue with the DFSA. Dr Sheikh had initially proposed that they both give evidence through a lawyer but we declined to allow this.

86. **Mr Zeman** did not give evidence apparently because, according to Dr Sheikh, he has been detained somewhere over criminal allegations. There is a statement from him in which he says that he entered into a consultancy agreement with MAS in 2011 and then a further agreement which provided valuable contacts in Central and East Europe. He does not explain what business eventuated for MAS. He dealt only with Dr Sheikh. There was not much work in 2014 or 2015 but he contacted Dr Sheikh in June 2015 because his fee of US$450,000 was due then. He did not wish to exercise a call option and after a meeting in London agreed to settle for US$350,000 which was paid to him in cash in August in Dubai. Mr Zeman produced a copy of the 2011 Zeman consultancy agreement (but not of the further agreement under which the fee was allegedly due) and an invoice dated 15 August 2015 for the US$350,000 allegedly received.

87. **Mr Khalil Ahmed** provided a witness statement only in April 2020 but we permitted his evidence and only because Dr Sheikh is a litigant in person. Apparently Mr Ahmed had previously declined to help because he was owed money. In his statement he says that Dr Sheikh asked that he give MAS a loan of US$300,000 for two months at a monthly interest of 5% payable upon maturity. "*I asked him what if the Company was unable to raise capital than he gave me the comfort that he is in parallel trying to sell his property in Pakistan which is of a significant value… agreed to lend MAS ClearSight DIFC entity the money but I told him that the liquidity I have is in Pakistan and not in Dubai. I further told him that I can give him money in Pakistan in Pak Rupees and he will return back the loan and the agreed interest in Dubai in UAE or in USD*". The Agreement was allegedly signed in mid-March 2015 and the loan made in Rupees. By May Mr Ahmed had got to know Mr Ul-Hayee. In June he found that his loan was not repaid. He was told that this was because an investment had fallen through. He pressed for repayment and through a Mr Ul-Hayee received back cash, initially of some US$37,500 and then of the remainder apart from US$50,000 which remains due. He does not have a copy of the loan agreement but it may be with his belongings in Dubai.

88. The DFSA points out that there is no documentary evidence of the dealings between the parties or the agreement alleged to have been made between MAS and Mr Ahmed. Mr Ahmed admitted he exchanged Whatsapp messages with Dr Sheikh at the material times but had no record of them. At one point in the evidence when it was unclear why Mr Ahmed had not pursued recovery of the loan when MAS ceased trading he added this suggesting that it had not been made to the company at all: *"So that's why I did agreement to Dr Sheikh, not his company. Because I know very well Dr Sheikh will return my money at any cost.*"

89. Mr Ahmed seemed unexpectedly unclear and uncertain in telling us about what he claimed was a straightforward loan. This witness too was unable to produce any records of or about the discussions, the payment or the repayment of this alleged loan. Further doubt is cast upon the accuracy of his evidence and that of other witnesses when it is seen in the light of matters and events outside his knowledge taking place at the time.

90. **Dr Sheikh** chose to give evidence last. He has provided three witness statements of which the most important is that submitted into this as opposed to the previous processes. He sets out details of his impressive background and career in financial services. He explains the background to his creation of MAS and the substantial sums he contributed to it and the personal obligations he incurred on its behalf. He exhibits quite a number of documents about these matters. He did not inform this colleagues or the board of the Akbar deal because of its confidentiality. He said that he went straight to Mr Bhatia to disclose the details of these arrangements and of his proposed withdrawals and did the same with Mr Salahuddin who he blames for damaging the morale of the staff and for spreading rumours. He explains his subsequent actions on having believed that Mr Yer had paid in the money. When he found out the limitations on his power to withdraw money on a single signature he did not seek a second signature because of the risk to staff morale.

91. He attributes some of the alleged inconsistencies between his account of events and his actions at the time to his stress and confusion caused by the collapse of MAS, personal difficulties such as his ill health and that of his mother and the need to preserve his professional stature and the morale of his colleagues. This, he said explained, for example, his 2 July email. He describes his efforts to find investors among those such as Mr Zeman. When he met Mr Zeman in London in the summer of 2015 he asked him for a copy of the current consultancy agreement but he did not have this. Dr Sheikh did not have a copy either and he describes elaborate efforts to find it through Mr Ul-Hayee.

Despite this he arranged for Mr Ul-Hayee to pay US$350,000 in cash in Dubai. Mr Ahmed was paid off similarly. Dr Sheikh exhibits many documents to his statement, many about matters not directly relevant. These do include an apparent Agreement in 2011 with Mr Zeman and an apparent receipt. There are however no other documents evidencing contact between Mr Zeman and Dr Sheikh.

92. Dr Sheikh was cross examined on all these matters. We will mention only a few of the issues discussed. Despite his case at points turning on very detailed matters, his answer when shown to be apparently inconsistent was to say that he is not a detail orientated person and sometimes makes careless mistakes.

93. He was unable to explain why it was that if he could find texts from 2015 from Mr Salahuddin that he thought might help his case but no others relating to critical events at that time.

94. Dr Sheikh was asked about his claim, first made only as recently as February 2020 that he had kept the Akbar deal in 2015 from the MAS board for reasons of confidentiality. It was pointed out that the alleged agreement had MAS itself as a party so that it was odd that not even the directors could be told. Mr Akbar's own witness statement did not mention confidentiality. Despite the alleged confidentiality Dr Sheikh claimed to have disclosed the matters to junior employees (including his driver), to Mr Ul-Hayee, to Mr Ahmed another alleged lender and Mr Awais. He could not explain why Mr Akbar wanted the fact that he was taking a controlling interest and appointing new directors to be concealed from the board. There were no adequate answers. There was also this exchange:

"*MR AL AIDAROUS: Fair enough. What you mean by "confidential", this is confidential from -- to be disclosed to a third party, not to the officers and the board of MAS. Am I correct to conclude that?*

A. Yes, that is correct to conclude, regarding the Peter Zeman agreement. But Mr Akbar agreement, it had an additional element of personal agreement, which was very clearly communicated between both of us, that we will keep -- Mr Akbar wanted for this transaction to remain absolutely --…"

from which it appeared that confidentiality was also said to explain the lack of material for Mr Zeman.

95. He was asked about his claim, also first made in February 2020 and without producing any contemporaneous record, that he had told Mr Bhatia, the

departing SEO, about the proposed US$600,000 withdrawal. Given that the board had received an indication as early as December 2014 that Mr Bhatia was on his way out of MAS why not inform an active director who was remaining on the board and do so in writing to remove the risk of misunderstanding? There ensued a debate that did not much inform the issue about when Mr Bhatia had actually left.

96. He was asked why the alleged confidentiality had to be maintained after the alleged investors had withdrawn in June. Why did Dr Sheikh not cash the guarantee cheques or pursue MAS' rights under the alleged agreements? If the withdrawal caused the collapse of MAS why would Dr Sheikh do nothing? On this and other issues Dr Sheikh said that he took what he called the 'morally high road'.

97. Dr Sheikh was asked to explain how his account was consistent with other documents at the time. His 26 May 2015 email to Mr Pritchard and others at MAS, which responds to specific requests for an update on MAS' liquid asset position, states that money had been received from MAS Pakistan (which was untrue), but did not mention the US$600,000 which (on his case) MAS was due to have received earlier in May. Dr Sheikh's 22 June email to Mr Kamath and other MAS directors explains that he was owed in total US$647,000 by MAS for salary and vendor payments he had paid, "*versus the capital I withdrew in May 600K*", apparently justifying the withdrawals on the basis that he was personally owed the money by MAS. His email of 25 August 2015 says "*The company had capital breach due to the fact that payment had to be made for salaries for some staff and the company loans instalments instalment* [sic] *was to be made*". He appeared to blame others for misunderstandings, his stress and a wish to preserve the morale of staff for these inconsistencies.

98. Dr Sheikh appeared to accept that some features of the Akbar agreement were unusual. For example MAS Holders, the shareholder giving up equity under the Akbar agreement (at the option of Mr Akbar), is not a party to the agreement or a related agreement which provides for this. Dr Sheikh also accepted that the requirement for Mr Akbar to be paid the up-front interest in US$ was a mistake, given he (allegedly) lived in Pakistan (where the currency in circulation is Pakistani Rupees) and Dr Sheikh's alleged first attempt to pay India Focus Cardinal (**IFC**) the US$600,000, was made using an AED cheque. The agreement provided for Dr Sheikh to step down as Chairman and granted Mr Akbar as majority shareholder the right to appoint a new chairman and three directors, despite the evidence contained in Mr Akbar's witness statement that he invested in MAS because of his respect and regard for Dr Sheikh (and having

no ostensible interest in or knowledge of MAS' business). The DFSA suggested and Dr Sheikh denied that these anomalies came about because he had taken some previous agreement and adapted it dishonestly to look like a real contract with Mr Akbar.

99. Dr Sheikh appeared to accept that the overall deal made limited commercial sense. MAS agreed to borrow US$2 million a condition precedent of which was that MAS would pay IFC US$600,000 up-front, and a further 2.3% of the loan amount, but at the very outset. The DFSA suggested but Dr Sheikh denied that these terms were 'reverse engineering' to explain his attempts to withdraw money from MAS by paying cheques to IFC on 3 and 6 May 2015 (a cheque for AED 2.2 million which was returned, and a second cheque for AED 170,000 which was paid to IFC, but never repaid to MAS after Mr Akbar reneged on the deal).

100. Dr Sheikh was asked about the 'guarantee' cheque Mr Akbar allegedly provided to underwrite the investment deal which was on a bank account that had been closed down three years prior to April 2015, when it was written. The DFSA suggested that Dr Sheikh has previous experience of dishonestly relying upon defunct cheques. This arose in connection with Mr Ali's agreement to take a small equity stake in MAS. In 2014 MAS had written security cheques in favour of Mr Ali. After MAS failed to make loan repayments to Mr Ali, he threatened to have the cheques "bounced". Mr Ali emailed Dr Sheikh to state that the investor cheque was from a closed down bank account and worthless. Dr Sheikh did not appear to deny the truth of this allegation.

101. Counsel put to Dr Sheikh, and he denied, that the Zeman agreement was not genuine and that the odd provision that payment would be made on the 4th anniversary of its execution, that is, on 6 August 2015 was designed to fit the timing of events.

102. Dr Sheikh did not seem to be able to explain, except on the basis of his stress and confusion at a most difficult time other features of this alleged deal. There was no mention of the Zeman agreement (and the considerable financial commitment on MAS to pay fees) in financial documents, as confirmed by MAS' auditors at the time. There was no reference to such an agreement, liability, and part payment of the liability, in the 2015 emails sent by Dr Sheikh to Mr Pritchard and employees, explaining how he used the money. There was no mention of the Zeman agreement in Dr Sheikh's 25 August 2015 email to the DFSA (sent only 10 days after the payment invoice was received from Mr Zeman), Dr Sheikh's response to the Art. 80 Notices, his first witness statements or representations to the DFSA, until 13 March 2019.

103. When asked about the work done by Mr Zeman Dr Sheikh explained that he had made many useful introductions particularly in relation to a project in Batumi.

104. Dr Sheikh was asked why there was no mention of any liability to Mr Zeman in the documents presented to the DIFC Courts in respect of the petition for MAS to be wound up, including the statement he himself had signed on 6 August 2015 at a time when the issue must have been at the forefront of his mind. After some replies that did not answer the question he responded that his sworn statement to the court was inaccurate and the debt had already been paid by the company "*in my mind*".

105. We asked Dr Sheikh this: "*…PRESIDENT: The only question I wanted to ask was a relatively simple one, which is why it was that you chose to pay what you tell us was the company's money to pay a debt due to Mr Zeman, when there is no written evidence that he was pressing for payment? Why it would be that you would want Mr Zeman to be paid even though a consequence of that or as part of that some of your own staff would not be paid?*" Dr Sheikh seemed to suggest that Mr Zeman was paid to encourage him to make an investment but there was no contemporaneous material to support this improbable prospect.

106. Dr Sheikh accepted that he knew that but for the alleged proposed payment from Mr Yer the company would in May be in breach of its liquid assets requirement. He also confirmed that he instructed Mr Ul-Hayee to transfer and then withdraw the money on and around 13 June thus effectively emptying the bank account. At that point the May withdrawals had left virtually nothing in the MAS bank accounts. On 13 June the US$ account received some money, which was immediately transferred to the AED account and on the same day withdrawn by Mr Ul-Hayee. Dr Sheikh could not give any justification for taking the money out two days after he knew that the Akbar deal had collapsed and that Mr Yer's money had not gone in.

107. The evidence of Dr Sheikh was unsatisfactory and we regret that we did not believe what he said about the matters in dispute.

CONCLUSIONS ABOUT THE FACTS

108. As we have set out the issues in some detail above we can record our unanimous views shortly. The central issue is in substance whether the DFSA has proved that the claims of Dr Sheikh are wrong and that the picture is in truth that presented by the contemporaneous records assisted by the recollections of objective observers. We are quite sure that the DFSA is correct. We set out

our views below and for brevity do not repeat most of the detail we have already referred to.

109. **General points**. Dr Sheikh seeks to brush aside the obvious flaws in his account of events. The claims he makes are, in a context of financial services where contemporaneous records are common (as they are elsewhere in this case), supported either by nothing or by isolated questionable documents missing all the conventional texts, emails, bills, receipts, lawyers' fees, meeting arrangements that accompany genuine transactions. Yet when it suits Dr Sheikh he produces a text exchange in 2015 with Mr Salahuddin (and one with a Ms Mokra).

110. The claims he makes are generally not only unsupported by the genuine records but are inconsistent with the reasonably full documentary record. The claims often make no commercial sense and some seem designed to fit such records as are produced such as the cheques.

111. Dr Sheikh's answers often look at a matter the wrong way round. Thus in his submissions he argues that the Company A/IFC transactions prove that the Agreement referring to them must have been real. But of course it is equally (and in our view much more) likely that the Agreement was invented to explain the transactions. Similarly he often argues a point only part of the way. He devotes energy to claiming that, despite what was said at the December 2014 board meeting and the silence from him on the record, Mr Bhatia was still in place in April. This is of itself unconvincing but only part of the point - which is whether he told Mr Bhatia about the alleged Akbar transactions. As we see it he clearly did not. Mr Bhatia was no longer in place in practical terms whatever the technical position might have been; the obvious email or other record is missing and clearly this gentlemen if notified would obviously have told others.

112. Some of Dr Sheikh's claims were not mentioned at all in 2015 but have been produced (in our view fabricated) much later, the Akbar claim in 2016, the Zeman claim in 2019 and the Ahmed claim in 2020.

113. When faced with obvious flaws in the claims Dr Sheikh seeks to explain this away by reference to stress, misunderstanding and even at times (and remarkably) his supposed wish to take a high moral position. His words "*my ethics and moral compass would not allow me to engage in such an act*" will have a hollow ring for the unpaid creditors, including it seems employees, of MAS.

114. Had these features applied only to one or two aspects of the matter we might have hesitated before rejecting Dr Sheikh's account but they form a pattern which pervades the elaborate and improbable story he puts forward. The same, and other, features explain why the evidence of the witnesses put forward by Dr Sheikh are generally unconvincing.

115. **The Akbar/Yer deal** consists of a document that makes no commercial sense - for example why have money going both ways at the start? It is technically incompetent but it is unclear whether lawyers were involved (as Mr Yer says) or not. Dr Sheikh himself refers to the supposed lenders' lawyer Mr Qureshi but no records have been made available from him. The cheques are, literally, dubious. There is no documentation of all the usual steps taken to make contact, to travel, to meet, to negotiate, to retain and correspond with advisers, to celebrate the deal or when it all collapses, attend to that. The idea of concealing the existence of a major deal that rescues the company from its directors (especially when the company is a party to the legal contract) is absurd so the absence of disclosure alone makes the allegation incredible. After all Dr Sheikh was an experienced senior executive of wide experience. The genuine email correspondence that does exist is inconsistent with the alleged agreement having been reached.

116. We are sure, as is clear from what we say about Mr Shahzad's evidence, that Dr Sheikh put his former driver up to tell an untrue story about overhearing conversations that never happened. On this we accept the clear and convincing evidence of Mr Salahuddin, a junior employee who had no motive or reason to act as Dr Sheikh asserts or not to tell the FMT the truth. Mr Akbar did not give evidence and his statement is too vague and lacking in detail or documentary support to be believed. Mr Yer's evidence is incredible for the reasons we have given. His account has no corroboration, he is most unlikely to have wanted to enter into a deal along the lines suggested and the circumstance in which he gave evidence are concerning. Mr Ul-Hayee is a close colleague of Dr Sheikh and we do not believe his evidence about the deal which again is unsupported by a single record of his dealings with the supposed lenders and is improbable for the reasons given in the DFSA Closing Argument. As appears from our discussion of his evidence, the claims by Mr Awais about his knowledge of the deal are unconvincing.

117. The suggestion that Dr Sheikh somehow assumed, without checking before drawing money out, that Mr Yer had paid in the US$600,000 defies common sense. No competent financial services executive, however generally fuzzy on detail, would make such an assumption. The suggestion that somehow Dr

Sheikh, directly or through a colleague, could not find a way to check the balance at the bank, is absurd.

118. A further indication that the alleged deal is a fabrication is the fact that it was first mentioned not in May 2015 but only in July 2016. Dr Sheikh knew full well, because his story of the deal is a lie that his withdrawals were causing a breach of the restriction on liquid assets and he concedes that he knew that from 11 June when, on his case, he learned that Mr Akbar would not proceed.

119. The circumstances and the facts prior to withdrawal, during the withdrawal and post withdrawal as proven by the evidence, indicate beyond any doubt that Dr Sheikh was fully aware of the poor position of the company's account and that any withdrawal from the account would cause a breach of the liquid assets requirement.

120. **Withdrawals**. It is obvious that Dr Sheikh sought to empty the accounts of most of what they contained and once it was clear that he needed another signature to take out larger amounts he kept to small ones. The suggestion that he did this to protect staff morale is improbable - there would have been plenty of ways of avoiding that demoralisation which was unsurprisingly being brought on by other factors.

121. We consider that Dr Sheikh was probably stripping the company of whatever he could before his prompt and final departure from Dubai. He had no doubt invested large sums and incurred obligations to fund this venture. Once it was obviously failing he wished to retrieve what he could of what he wrongly saw as his money. He may well have wanted to pay from the money he took a few of the smaller company debts to employees and other small creditors but this sentiment sits oddly with the fact that, on his untruthful account, he was content to let some of these go unpaid by attending instead to the alleged debts due to Mr Zeman and Mr Ahmed. It is improbable and would certainly have been very reprehensible of Dr Sheikh to pay these alleged creditors with money which could have gone towards the US$789,000 owed to his loyal staff.

122. Even if this story had been true, when Dr Sheikh learned that the US$600k from Mr Yer had not reached MAS's account in early June 2015 he ought to have returned what he had drawn out. Instead, he made a further withdrawal of AED 185k on 13 June 2015.

123. Dr Sheikh does not seem to appreciate that if what he claims about using the money to pay creditors selectively were true these would have been unlawful

preferences and very wrong, prejudicing all the other creditors, liable to be set aside and exposing him to personal responsibility.

124. **Mr Zeman**. It is correct that Mr Zeman had a relationship with MAS at some point as a witness statement from Mr Wasif makes clear but it is not the document produced by Dr Sheikh which contains the slightly odd, but convenient, provision for payment in August 2015. The document and the receipt are exhibited in isolation, there are no surrounding records of any dealings of the kind which would accompany genuine transactions and payment is said to be in cash. The transaction is not consistent with what was being said at the time in emails. Mr Zeman is apparently in detention for a criminal matter. He did not give evidence. The account in his statement is not consistent with that of Dr Sheikh - see paragraph 68 of the DFSA's closing submission. Finally if Dr Sheikh had been telling the truth about Mr Zeman he would have been guilty of misleading the insolvency court, perhaps of contempt of court. Another reason which suggests that the Zeman story is untrue is that the claim was not put forward by Dr Sheikh until 2019.

125. **Mr Ahmed**. The alleged debt due to Mr Ahmed was never mentioned until April 2020 except in two lines in Dr Sheikh's last witness statement. There is no agreement and no contemporaneous record. The claim was never mentioned by Dr Sheikh in 2015 and appears in no record or in the insolvency proceedings. Mr Ahmed's evidence was unconvincing and at one point he thought his debt was owed by Dr Sheikh not MAS. It is remarkable that Dr Sheikh could ever have expected anyone to believe such a claim.

126. It follows from our conclusions that Dr Sheikh seriously misled both his fellow directors and the DFSA when answering their inquiries.

127. Having carried out a fresh examination of all the facts without reference to the process of the DMC we record that we are in agreement with their conclusions of fact except where these are overtaken by subsequent events.

APPLICATION OF FINDINGS OF FACT TO THE CONTRAVENTIONS ALLEGED BY THE DFSA

128. We consider this issue on the basis of the facts that we have found and which we consider to be clearly proved. It is therefore unnecessary for us to consider the alternative cases put forward on the basis of, for example, alleged recklessness.

129. **Article 86**. This provides that if a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly. 86(1) relates to a person knowingly concerned in a contravention and 86(2) relates to an officer of a body corporate knowingly concerned in a contravention. 86(7) describes four circumstances in which a person is knowingly concerned in a contravention. This includes 86(7)(c), which provides a person is knowingly concerned in a contravention if he or she, "*has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention…*".

130. Counsel for the DFSA draws attention to some English cases dealing with "*knowingly concerned*". In *SIB v Pantell (No 2)* [1993] Ch 256 at [264D-E] at first instance, Browne-Wilkinson VC stated of "*knowingly concerned*": "*The most obvious example of a person "knowingly concerned" in a contravention will be a person who is the moving light behind a company which is carrying on investment business in an unlawful manner. Professor Gower in his report, which was the basis on which the Act was introduced, specifically pointed out the mischief of directors hiding behind the corporate veil of companies… If, as is often the case, the company is not worth powder and shot, it is obviously just to enable the Court, as part of the statutory remedy of quasi-rescission, to order the individual who is running that company in an unlawful manner to recoup those who have paid money to the company under an unlawful transaction.*"

131. In the Court of Appeal in *SIB v Pantell* [1993] Ch. 256 at [283]. Steyn LJ held that: "*…"Knowingly concerned" is not defined. In my judgment it is clear that proof of actual knowledge is essential but not enough. Mere passive knowledge will not be sufficient: actual involvement in the contravention must be established.*"

132. Given the definition of knowingly concerned in Art. 86(7), and having regard to the principles as identified in the *SIB* cases, the DFSA submits that a person is knowingly concerned in a contravention committed by another person if he or she has in any way, by act or omission, directly or indirectly been knowingly involved in or party to the contravention, where the relevant knowledge means actual knowledge of the facts upon which the contravention depends. The FMT must therefore determine in the present case whether or not Dr Sheikh was by act or omission, directly or indirectly, knowingly involved in or party to the contravention, where the relevant knowledge means actual knowledge of the following facts. At the time the withdrawals were made in May and June 2015

MAS was required at all times to maintain Liquid Assets of US$600,000; and Dr Sheikh's withdrawals caused MAS to breach its capital requirements.

133. Bearing in mind that Dr Sheikh is not legally represented we have checked this carefully and as we see it that analysis is correct. The main controversy with the English counterpart to this provision concerns the question of whether someone contravenes this provision if they are aware of the relevant facts but not that these give rise to any wrong doing. The answer to the question - Yes - does not arise in this case and would not assist Dr Sheikh if it did.

134. For the reasons we have given it is clear beyond doubt that Dr Sheikh was aware of the requirement to maintain Liquid Assets of at least US$600,000 and that his withdrawals caused MAS to breach it. He has therefore contravened the provision.

135. **Article 66** provides that a person shall not provide information which is false, misleading or deceptive to the DFSA (Art. 66(1)), or conceal information where the concealment of such information is likely to mislead or deceive the DFSA (Art. 66(2)).

136. Dr Sheikh admitted he knew Mr Kamath submitted month-end financial reports to the DFSA on behalf of MAS which included a statement of how much cash MAS held in bank accounts and whether or not this satisfied capital requirements, and that Mr Kamath or his staff needed to see the bank statements to confirm the information. The April 2015 report stated that, as at month-end April 2015, MAS had a little more than the minimum capital requirement of US$600, 000. Dr Sheikh withdrew the vast majority of MAS' liquid assets from its bank account between 5 and 13 May 2015 but concealed this as described above by essentially taking control of the accounts and information about them and causing Mr Kamath to report as he did on 7 June. The May report stated that MAS' bank accounts contained the same amount of available liquid assets as stated in the April report (US$627,781). The May report also stated that MAS held liquid assets in excess of its capital requirements (EBCM). In fact, MAS' bank accounts had been massively depleted by the May 2015 withdrawals causing a breach of MAS' capital requirements. As Mr Kamath put it in evidence:

"*A:…I took it as an official representation from the company and its officials that there were no transactions. And as the CFO, I'm expected, I can rely on you, I can, because, at that stage, I didn't have any doubt as to why I should not trust your words.*"

137. Dr Sheikh clearly contravened this provision. He knew well that the withdrawals were stripping MAS of its funds and he wanted to keep this concealed for as long as possible. He therefore intended to mislead the DFSA and did so.

138. **Integrity**. Dr Sheikh was a Licensed Director of MAS at the material times, and Chairman. He was also de facto SEO. As an Authorised Individual, Dr Sheikh was required to comply with the DFSA's Principles for Authorised Individuals when carrying out his Licensed Functions. The Principles include a duty to observe high standards of integrity and fair dealing in carrying out a Licensed Function (Prin 1; GEN 4.4.1).

139. There is no apparent issue about the meaning of integrity about which the FMT said and adopted this in *Waterhouse*, paragraph 226: "*The proper approach to questions of integrity has recently been clarified in the context of professional disciplinary proceedings by the Court of Appeal of England and Wales in Wingate v SRA [2018] 1 WLR 3969; [2018] EWCA Civ 266. In that case, Jackson LJ confirmed that the concept of integrity is broader than that of dishonesty (para 95). It is "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members" (para 97) ..."Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead" (para 100)*".

140. Honesty is a word in common use in everyday language and its meaning is usually clear. The DFSA cites the leading English case of *Ivey v Genting Casinos (UK) Limited* [2017] 3 WLR 1212, Lord Hughes said, at [74], that when dishonesty is in issue "[T]*he fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*"

141. This means, the DFSA submits and we accept, that the court should determine what a defendant actually knew or believed, and then appraise his conduct in light of that knowledge or belief against the objective standards of ordinary decent people.

142. The DFSA says that Dr Sheikh acted dishonestly and without integrity in relation to concealment of the withdrawals from the board of MAS and from the DFSA. We agree for the reasons we have given. It also says he acted dishonestly and without integrity in his email of 26 May 2015 to MAS senior management and directors in answer to questions posed by Mr Pritchard concerning among other things money owed to MAS by MAS Pakistan. The context was that at the December 2014 and April 2015 Board meetings, directors had enquired about MAS Pakistan, if it had paid its debt to MAS, and if not, whether or not that was due. Dr Sheikh is recorded as stating that "*some more receivables from MAS Pakistan…soon and that would improve the Capital structure…*". MAS' external auditors had suggested it be written off as a bad debt. Dr Sheikh said that MAS Pakistan had paid MAS US$425,000.

143. This was false and Dr Sheikh knew it. We agree with the DFSA's submission for the reasons already given.

144. The Decision Notice, but not the DFSA's closing submissions, relies also on the fabrication and submission of the story of the Akbar/Yer deal. We agree for reasons we have given that this too demonstrates a clear absence of integrity. Of course nothing should deter any party from putting forward whatever claims he or she reasonably believes can arguably be made when dealing with the DFSA and the FMT should always be willing to give a party the benefit of any doubt. In this case however the facts are very clear and very serious amounting as we see it to an absence of integrity.

145. It follows that all the contraventions alleged by the DFSA are proved.

SANCTIONS

146. We sent a draft Decision on the questions of liability to the parties on 4 July asking for submissions on penalty from the DFSA by 15 July and from Dr Sheikh by 29 July, a date extended at the latter's request until 12 August. On 13 August, having received Dr Sheikh's submissions we asked further questions to which he responded on 23 August. This caused us to make further enquiries of the DFSA, which replied on 31 August.

147. **Interpreter.** We made those further enquiries because Dr Sheikh had raised matters which, as he is a litigant in person, we agreed to re- examine. Two of these matters are dealt with below when we discuss penalty but the third was a complaint that an interpreter for his witnesses had been required, had been requested but refused. As Dr Sheikh is not legally represented we thought we should consider, without being asked by him to do so, whether there was any basis for inviting him to apply for witnesses he had mentioned to be recalled and to give evidence in another language through an interpreter. We are sure there is no such basis.

148. First Dr Sheikh's submissions about this in his 23 August message are comprehensively and correctly refuted in the DFSA's document of 31 August. In addition, if the witnesses had given fluent answers in their first language, this could have made no difference given the commercial background and material and the absence of reliable documents - see 82, 83, 85, and 116 above. There has been no identification of any material evidence not being before the FMT or of what these witnesses could have said additionally to make any difference. Moreover cases of this kind are not decided on the demeanour of a witness. If, for example, all the three witnesses, namely, Mr Qasim Shahzad, Mr Khalil Ahmed and Mr Yer had come over as impressive in their delivery and demeanour it would have added nothing to Dr Sheikh's case given the other shortcomings identified above.

149. Dr Sheikh has overlooked logic as well as evidential principle in his approach to the evaluation of live witnesses. When evaluating a disputed commercial context it is useful to bear in mind the following from Leggatt J, now a judge of the UK Supreme Court, in *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at §§15-22, "*the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*"

150. **Sanctions imposed by the DMC.** The DMC ordered the following sanctions and the DFSA submits that the FMT should uphold these:

    a. a direction that Dr Sheikh pay MAS an amount corresponding to the money withdrawn plus interest, totalling US$638,382 (the **Restitution Direction**)(updated and increased by applying interest at a daily rate);

    b. Dr Sheikh be subject to a fine of US$400,000 (the **Fine**);

    c. a direction prohibiting Dr Sheikh from holding office in or being employed by a DIFC Authorised Firm etc (the **Prohibition**); and

    d. a restriction upon Dr Sheikh from performing any functions in connection with the provision of financial services from the DIFC (the **Restriction**).

151. Dr Sheikh disagrees with the imposition of any penalty because he argues in detail in his submission on penalty that the FMT's decision on his liability is wrong and biased.

152. **The relevant legal and regulatory provisions.** Article 29(4) of the Regulatory Law provides: *"At the conclusion of a reference, the FMT may do one or more of the following: (a) affirm the original decision of the DFSA which is the subject of the reference; (b) vary that original decision; (c) set aside all or part of that original decision and make a decision in substitution; (d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive; (e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of the DFSA's regulatory objectives or otherwise in the interests of the DIFC; or (f) issue directions for giving effect to its decision, save that such directions may not require the DFSA to take any step which it would not otherwise have the power to take.*" Thus the FMT is free to retake the decision about sanctions if it considers it appropriate to do so. In a case where the FMT has reached substantially the same conclusions as the DMC it may well be sufficient for us to review the submissions of the parties about the penalty and then affirm or vary that decision. Where there are significant differences between the conclusions of the DMC and those of the FMT then we will often re-take the sanctions decision.

153. The powers to impose a sanction for a contravention are set out in Article 90(2) of the Regulatory Law. Under that provision the DFSA may, among other things, "*fine the person such amount as it considers appropriate in respect of the contravention*" (Article 90(2)(a)); "*make a direction requiring the person*

to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct" (Article 90(2)(c)); or, "*make a direction prohibiting the person from holding office in or being an employee of any Authorised Person* […]" (Article 90(2)(g)).

154. Article 59 ("*Restricting persons from performing functions in the DIFC*") provides, among other things: "*(1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions. (2) A restriction under this Article may relate to a function whether or not it is a Licensed Function. (3) The DFSA may vary or withdraw a restriction imposed under this Article. (4) A person who performs a function in breach of a restriction under this Article commits a contravention.*"

155. Article 59(3) provides for the possibility of future review of the imposition of a restriction by the DFSA. There is no provision for the restriction itself to be limited in time and the regime allows someone restricted to return in due course with evidence that (for example) they no longer pose any risk to users of financial services, and to ask the DFSA to revisit the restriction.

156. **Fine.** Article 90(6) requires the DFSA to prepare, publish and maintain a statement of policy as to how the power to impose fines is to be exercised. That statement of policy is set out in the Regulatory Policy and Process (**RPP**) Sourcebook, and RPP 6-6 prescribes the manner in which that process will be applied in the case of a financial penalty imposed on an individual.

157. RPP 6-2 provides that the decision as to penalty will be made with regard to a number of factors such as (i) the nature, seriousness and impact of the contravention, (ii) the difficulty involved in detecting and investigating the contravention, (iii) any benefit gained or loss avoided as a result of the contravention, and (iv) the need for the penalty to serve as a deterrent for others. RPP 6-2-2 provides that, in the case of Key Persons, the DFSA will have regard to their position and responsibilities. The more senior the person responsible for the misconduct, the more seriously the DFSA is likely to view the misconduct and the more likely it is to take action.

158. In addition to this summary two points require emphasis. First, RPP 6 is quite lengthy and we have at each point had regard to the detail as well as the summary. Secondly the detail has to be read subject to the general requirements in 6-4-3 "*The DFSA recognises that a penalty must be proportionate to the*

contravention. These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6)" and 6-4-4 "*The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.*"

159. **Restitution.** The DFSA seeks restitution for the benefit of MAS and its creditors by way of a Restitution Direction. It argues that Dr Sheikh withdrew US$512,457 from MAS and has retained it, thereby gaining a direct economic benefit, at the expense of others, from his misconduct (RPP 6-5-1). The FMT held that the facts of Dr Sheikh's cash withdrawals in May and June 2015 were either agreed or not much in dispute. The DFSA also seeks interest on the principal updated to the appropriate date at a rate of US$66.54 per day, since the date of the withdrawals.

160. Dr Sheikh responds that the money he used was to cover MAS' legitimate expenses and unless the DFSA can show by hard evidence that he benefited from the withdrawals the demand for restitution is wrong and should not be followed. In paragraphs 29-37 of the submission of 23 August he repeats the case we have rejected but also again points to specific sums that he claims to have paid on the company's behalf. We do not repeat what we have said above as we are sure that Dr Sheikh is wrong and, despite being given yet another opportunity, he has not come up with new material to substantiate his claims about salary payments and other sums.

161. There is no doubt that Dr Sheikh withdrew the money in breach of DFSA requirements and that it belonged to the company. We, like the DMC, are sure, for the reasons given above, that Dr Sheikh did not apply that money to paying Mr Zeman and Mr Ahmed. There is no reliable evidence that he used the money to pay other debts of the company. It follows that we agree with the DMC that Dr Sheikh should repay what he took and do so with interest. The rate of interest is not apparently disputed.

162. **Fine.** The DFSA submits the following by reference to the five steps set out above. Step 1 does not apply. As to Step 2 it says Dr Sheikh's misconduct is of the most serious kind (RPP 6-6-2 to 6-6-6). He failed to act with integrity, including by seeking systematically and repeatedly to deceive MAS senior managers and officers, the DFSA investigation team, the DMC, and now also the FMT. This was misconduct of a very clear and serious kind, deliberate and involving systematic dishonesty and a lack of integrity (paragraphs 130, 143-145). The DFSA relies also on Dr Sheikh's drawing of other individuals into

his deceit by requesting that they give false evidence to the FMT. The DFSA also relies on the facts that he intended to and did personally benefit from the contraventions, that he caused or contributed to contraventions of others, namely MAS and Mr Kamath, and his lack of remorse. Given Step 3 (aggravating factors) and Step 4 (deterrent factor), the fine decided by the DMC is proportionate and arguably the least necessary to achieve sufficient deterrence given the seriousness of the misconduct.

163. Dr Sheikh submits that the fine proposed is far too high. MAS is a PIB Category 4 firm which is advising and arranging only so by the nature of its authorisations a low risk. He was acting under the authority explicitly given by the Board of Directors of MAS on 26 April 2015. Withdrawing funds from a MAS bank account was not illegal and was within his special authorization he had from the Board. He was at the time a non-executive Director and Chairman of the Board. The monitoring of capital adequacy and day to day running of business was the responsibility of others not him. He had no motive to make MAS breach its capital requirements and had been lending it money since 2013 by covering legal and other expenses. A comparison with the case of Arun Panchariya DFSA number 1002975, a fine for the misconduct for misrepresenting and misleading DFSA of US$12,000 shows that the proposed fine here is absurdly high. The DFSA has misled the FMT by rationalising their inappropriate and unjustified fine by citing examples of misconduct of firms which are a different level of authorisation and poses different level of risk. He also submits that it is irrational and a sign of prejudice for the DMC to have simply doubled the fine they first arrived at from US$200,000 to US$400,000.

164. We do not accept most of Dr Sheikh's submissions. The category of a firm in this context is of limited weight, the issue being the behaviour of an individual withdrawing money not the risk to investors of the company's activity. On the other hand, the money misappropriated was not investors' money. We have pointed out above why it was clear that Dr Sheikh not others had responsibility. We have also found above that his motive for withdrawing the money was not the good of the company. The suggestion that the board resolution justified or that directors approved of the removal of the company's money in breach of the capital restriction and its use for purposes other than the company's business is clearly wrong.

165. Dr Sheikh denies all the charges but he does, and this is relevant to mitigation, admit that he was careless both in taking out the money without checking that

funds had been received and in giving misleading answers to the DFSA over a period when he says he did not have access to the relevant documents.

166. Dr Sheikh says that he is destitute, has no savings and is dependent solely on Swiss social benefits. As the DFSA points out, he has however not disclosed full details of his financial position. He is aware of what the DFSA will require if he is to rely on this alleged destitution when seeking time to pay or other accommodation. We bear in mind to a degree that he is apparently of limited means and not a prosperous financial institution.

167. The relevance of financial hardship is addressed in RPP 6-7. This states at 6-7-3: "*There may be cases where, even though the individual or firm has satisfied the DFSA that payment of the financial penalty would cause serious financial hardship, the DFSA considers the contravention to be so serious that it is not appropriate to reduce the financial penalty*". We consider that this is one of those serious cases where the penalty is primarily to deter others and to protect the public and cannot properly be reduced to suit an applicant's means.

168. The order of restitution simply requires the return of money that does not belong to Dr Sheikh. The fine is the penal element. We see the force of the reasoning behind the decision of the DMC to arrive at the starting figure of US$200,000. It must reflect to a degree the size of the sum removed and where it went. It would be odd if someone who has improperly removed over US$500,000 should not have to do more as a financial penalty than simply repay it. We also agree that for the reasons set out in our decision the fine should reflect the aggravating circumstances and the need for deterrence. Against those circumstances Dr Sheikh was probably under the strain of financial catastrophe in 2015, this was one dishonest set of steps aggravated by devious acts to try to conceal and cover up over a long period. His actions since the start of his case before the FMT would go more to a request for costs than an increase in the fine. We have regard to the more plausible points he makes in mitigation. Moreover, while Dr Sheikh has so far not been candid about his financial position he is clearly in reduced circumstances and not a financial institution still in the market, able to pay a fine. As we have pointed out this is not a reason to reduce a fine to his capacity to pay but it is a consideration to which we should have some regard. In all the circumstances we agree with the DMC that the starting point should be US$200,000, but in our own assessment this would already reflect some of the factors which would then cause the fine to be raised by the subsequent steps in the process. Standing back we do not think it necessary for the DMC's starting sum to be doubled and having regard

to all the circumstances of the case we consider that a fine of US$225,000 is appropriate and we will vary the DMC's order accordingly.

169. **Prohibition and Restriction.** The DFSA submits that as a result of committing the contraventions alleged, and for the same reasons as those summarised above, Dr Sheikh should be prohibited from holding office in or being employed by a regulated firm and is not a fit and proper person and falls to be restricted from performing any functions in connection with the provision of Financial Services in or from the DIFC (Article 59, RPP 2-3). In the DFSA's view, a person who is prepared to commit contraventions such as those found to have been committed by Dr Sheikh, and conduct themselves in the manner he has done subsequently in attempting to mislead the DFSA and the FMT demonstrates that he should have no place in relation to Financial Services in the DIFC.

170. Dr Sheikh says that this sanction is inappropriate. He is an individual who acted with honesty and integrity under the authority given to him by the Board of Directors of a PIB Category 4 firm. This is an incredibly disproportionate sanction compared to the minor human error which he has already confessed to of unknowingly causing MAS to breach its capital requirements.

171. As is clear from all our findings we reject Dr Sheikh's characterisation of his conduct. We will impose a Prohibition and Restriction for the reasons given by the DMC. Dr Sheikh's improper conduct and, just as importantly, his subsequent refusal to acknowledge its true extent and his attempts to conceal the truth from the DFSA make it clear that he cannot be trusted to engage in financial services within the DIFC. After a period Dr Sheikh will be free to apply in due course for removal of the restriction if he wishes to do so.

172. **Permission to appeal.** Dr Sheikh has made it clear that he wishes to appeal this decision and we have explained the procedure to him and informed him that we will not grant permission. As we see it the issues he seeks to challenge, like those he appealed from the DMC, are questions of fact, now decided twice, and not of law. Dr Sheikh is free to apply to the Court for permission and should give the DFSA notice if he decides to do so.

COSTS

173. We sent our decision on sanctions to the parties on 14 September and invited them to make and respond to any applications for costs. On 24 September the DFSA applied for costs and, after an extension of time, Dr Sheikh responded on 8 October.

174. **Filing fee.** The DFSA first applies that Dr Sheikh be ordered to pay the filing fee of US$5,000. Rule 4.2.1 of the Fees Module of the DFSA Rulebook provides that "*A fee of $5,000 must be paid to the DFSA before a reference to the FMT is considered filed with the FMT*." Rule 4.2.2 says that "*The president of the FMT may waive all or part of the $5,000 filing fee if the Person commencing the reference is an individual and if, in the circumstances, the president considers it is equitable to do so.*" In August 2019 when Dr Sheikh made his application he applied for a waiver which the President granted on this basis: "*The Tribunal will waive the fee for the time being subject to the right of the DFSA to apply to set aside this direction. Further if the application fails it will be open to the DFSA, if appropriate, to claim that the fee, or an equivalent sum, should be paid by the* [Applicant] *at that later stage*."

175. The DFSA now asks for this to be paid as what it says is an important point of principle that users of the FMT should pay a contribution towards the costs of the FMT process. Dr Sheikh has given no reason, apart from his poor financial position why this fee should not be paid. It is clear to us from the conclusions we have reached that this fee should be paid and, irrespective of Dr Sheikh's financial position now it is right, as a matter of principle, that we should order its payment.

176. **Costs of the case.** The FMT has the power under Article 31(9) of the Regulatory Law to order a party to pay costs: "*At the conclusion of a proceeding, the FMT may also make an order requiring a party to the proceedings to pay a specified amount, being all or part of the costs of the proceedings, including those of any party*."

177. The DFSA has served helpful submissions on the question of how the FMT should exercise its discretion as to costs. The DFSA submits that costs should follow the event as in England and Wales and some other jurisdictions and that they should not be awarded only when one party has acted unreasonably.

178. The DFSA says that Dr Sheikh has in any event acted unreasonably in bringing an appeal which he knew could not succeed. It relies on the criticisms we have made above of his conduct in the course of bringing forward the case.

179. The DFSA seeks payment of US$116,228, being US$99,389 for outside counsel's fees and US$16,839 for Lloyd Michaux's costs.

180. Dr Sheikh in response first provides some more information about his financial position submitting that he is simply unable to pay the filing fee or any costs. Secondly he reformulates and expands on his criticisms of what he sees as the

unfairness and injustice he has experienced at the hands of the DFSA, the DMC and the FMT. His third and fourth main points amplify these concerns. Understandably, as a litigant in person, he is not able to deal with technical legal arguments about costs.

181. We also bear in mind FMT Rule 74 which states: "*The FMT may not make an order for costs against a person (the "paying person") without first: (a) giving that person an opportunity to make representations; and (b) if the paying person is an individual, considering that person's financial means*."

182. We do not need to decide between the approaches discussed by the DFSA for two reasons.

183. First, the FMT has been given a broad discretion which does not oblige it to adopt either a traditional 'costs follow the event' approach or one set out in a UK statute. The FMT needs to take a flexible approach to deal with the very varied and international range of issues it may have to deal with. While some cases may merit a 'costs follow the event' approach others may not. There may well in the future be cases where an applicant is unsuccessful in an appeal brought in good faith on reasonable grounds and no order for costs is made.

184. Secondly, in our view, Dr Sheikh's case has, for the reasons we have given above, been unreasonably conducted throughout. We accept of course that he has been courteous and we would not hold against a litigant in person an absence of legal or procedural knowledge. As we see it, however, any intelligent lay person, and Dr Sheikh is highly intelligent, would have known that this case was bound to fail and that it was inappropriate to attempt to present the facts in the manner adopted by the Applicant here.

185. If the Applicant had been a person or company of financial substance we would have ordered him to pay all the costs sought by the DFSA. We must however consider his means. That consideration does not mean that we do not order costs simply because a party cannot afford to pay them. There may be cases where it is right that an obligation to pay costs be treated no differently from any other debt that someone cannot afford to pay.

186. Dr Sheikh appears, on the limited information we have available, to be in considerable financial difficulty and is liable to make the repayment we have ordered and to pay a fine. In those circumstances we will order him to pay, in addition to the filing fee, the limited sum of US$10,000 toward the costs of the DFSA. The DFSA may apply to the FMT to seek to increase the order for costs

if it transpires (and we have no reason to believe that it will) that Dr Sheikh has substantially greater means than those so far disclosed.

CONCLUSION

187. The FMT upholds the decision of the DMC that Dr Sheikh should make restitution in the sum of what is at today's date US$644,836 plus interest at US$66.54 per day from today until payment, and be subject to a Prohibition and Restriction. The FMT reduces the fine from US$400,000 to US$225,000 and orders Dr Sheikh to pay US$15,000 (inclusive of the equivalent of the filing fee) toward the costs of these proceedings.