IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE **Case: FMT 21014**

FINANCIAL MARKETS TRIBUNAL

BETWEEN:

GILLES ROLLET

Applicant

-and-

THE DUBAI FINANCIAL SERVICES AUTHORITY (DFSA)

Respondent

DECISION

Mr Ali Al Hashimi

His Honour David Mackie QC

Mr Patrick Storey

12 January 2022

INTRODUCTORY.

1. This is an appeal by the Applicant Mr Rollet against the DFSA's Decision Notice ("DN") dated 29 December 2020. Mr Rollet seeks an order setting aside the DN. The case concerns alleged knowing concern by Mr Rollet in the breach by his then employer La Tresorerie Limited ("LT") of the Principles for Authorised Firms, alleged breach by him of the Principles for Authorised Individuals and allegations of misleading the DFSA. Mr Rollet strongly denies these allegations. Many of the facts are agreed or not much in dispute, the issues turning on the knowledge and degree of participation in events of Mr Rollet and others.

2. The DFSA decided to impose on Mr Rollet a fine of USD 175,000, to prohibit him from holding office in, or being an employee of, any Authorised Person, and to restrict him from performing any function in connection with the provision of Financial Services in or from the DIFC.

3. This Decision comprises -

THE ROLE OF THE TRIBUNAL AND THE HEARING.

4. **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.

5. **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.

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

7. **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.

8. **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 previous cases (e.g. Waterhouse (FMT

17004), 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.

9. **Representation**. We have been greatly assisted by the lawyers for the parties: Ms Saima Hanif QC and Afridi & Angell for the Applicant and Mr Simon Pritchard and the DFSA legal department for the Respondent.

10. **The hearing** took place remotely by video conference on 31 October and 2 and 3 November 2021. As some restrictions are still in force internationally as regards the Covid-19 virus, the Tribunal agreed to the request of the parties not to hold a live hearing in Dubai.

THE POSITIONS OF THE PARTIES.

11. **The DFSA** makes essentially three allegations:

(1) Mr Rollet was knowingly concerned in the following three contraventions committed by LT (which it is also alleged constituted breaches by LT of Principles 1 and 9 of the Principles for Authorised Persons as set out in section 4 of the DFSA Rulebook General Module ("GEN")):

(a) between 19 February 2015 and 11 January 2017, LT provided a physical cash withdrawal service to its customers, contrary to Article 41(1) of the Regulatory Law;

(b) between 13 November 2015 and 11 January 2017, LT used false invoices to facilitate the cash service, contrary to Article 41B of the Regulatory Law; and

(c) between 18 September 2015 and 11 January 2017, in relation to Client Money paid out as part of the cash service, LT failed to hold certain amounts of Segregated Client's Client Money in a Client Bank Account, contrary to Rule A5.8.2 of the DFSA Rulebook, Conduct of Business Module ("COB");

(2) in being knowingly concerned in the above contraventions, Mr Rollet breached Principles 1, 5 and 6 of the Principles for Authorised Individuals (as contained in section 4.4 of GEN); and

(3) the DFSA alleges that Mr Rollet misled the DFSA during a voluntary interview on 28 and 29 March 2019, thereby contravening Article 66 of the Regulatory Law.

12. **Mr Rollet** denies that he was 'knowingly concerned' as alleged or at all in LT's contraventions. In particular, he contends that:

(1) In respect of the cash services allegation, at all times, he reasonably relied on internal and external advisors in concluding that it was permissible to provide the cash service. He did not hide the fact that LT was providing this service, either from the staff of LT, external consultants such as PwC or the DFSA. There were no objections by the experts. He was not knowingly concerned in LT's breaches;

(2) In respect of the false invoices allegation, Mr Rollet had no involvement with the content of the alleged 'false invoices' – he did not request them, create them and was not asked to advise on their contents; nor did he even see the invoices at the material time. The mere fact that Mr Rollet was copied into an email which enclosed the invoices (an email which he did not even open) cannot constitute 'knowing concern'.

13. He also submits as regards the non-compliance with the Client Money provisions in COB, in circumstances where the compliance team at LT was aware of the practice adopted by LT and effectively endorsed that practice, it is not credible to suggest that Mr Rollet was 'knowingly concerned' in LT's contraventions. The same reasons apply to the allegations that Mr Rollet breached Principles 1, 5 and 6 in GEN.

14. Mr Rollet denies that he misled the DFSA deliberately or recklessly. Insofar as the information provided by Mr Rollet during the interview proved to be incorrect, these errors were made genuinely and in good faith – there was no intention to mislead the DFSA, as alleged or at all.

15. Ms Hanif contends that in essence what this case turns on is the extent to which a senior individual can be held culpable in circumstances where they have taken reasonable steps to appraise themselves of the correct situation. She says that, based on the case law and a fair reading of the regulatory framework, where a senior individual has in fact taken reasonable steps to inform himself as to the correctness of a situation, they cannot be penalised should it subsequently transpire that the information provided to them at the material time was incorrect.

16. The facts of the relevant transactions as evidenced by the underlying documentation and of the contraventions by LT are largely not in dispute. What is in dispute however, as Mr Rollet sees it, is the knowledge and involvement of other parties such as LT's compliance team and PWC, - the characterisation of Mr Rollet's involvement and the extent to which – if at all - it is permissible for the DFSA to draw the general adverse inferences that it has from the documentation.

17. A claim by Mr Rollet that the claim was, at least in part, time barred was not proceeded with. He is also much aggrieved that he has been proceeded against alone when, as he sees it, if blame is to be attributed, it should be to his former colleagues and not to him. It is for the DFSA to decide what if any proceedings to bring against particular firms and individuals and the absence of action against others is not a matter for us in a case such as this.

THE WRITTEN AND ORAL EVIDENCE.

18. Neither party is confined to the evidence and other material used in the previous process. The sources of our written information are the pleadings, the witness statements, some 1,750 pages of chronological documents, the written and oral submissions of Counsel and the transcripts of the hearings. Both sides cite transcripts of interviews to support their cases. These are formal interviews mostly under oath or affirmation, usually with lawyers present, they carry weight but not of course as much as live evidence.

19. The DFSA relied on six witnesses:

    - Ms Fiona Paddon from the DFSA submitted two witness statements dealing with her role in the investigation of the issues.

    - Mr Christian Cameron, from the DFSA's supervision division, submitted a statement discussing money laundering risks, the DFSA's client money rules and the DFSA's supervision of LT.

    - Ms Toni Morgan, LT's former compliance officer ("CO") and money laundering reporting officer ("MLRO") submitted two statements describing her role at LT and responding to points made by the Applicant.

    - Mr Ewan Sherriff, Ms Morgan's replacement at LT, submitted two statements describing his role at LT and responding to the Applicant.

    - Mr Mark Henny, an asset manager engaged by LT, submitted a statement describing his activities whilst engaged by LT.

    - Mr Hinesh Shah, a chartered accountant previously employed by PwC, submitted two statements explaining the services he and PwC provided to LT and responding to the Applicant's evidence about him.

20. The Applicant submitted two statements setting out his position in relation to the matters in the DN and responding to evidence given by the DFSA's witnesses. He also relied on:

    - Ms Anastasiia Liashchenko, a client service assistant and client relations associate at LT, who submitted a statement explaining her role at LT and her experience of some matters set out in the DN.

    - Mr Rafael Blanco, a businessman and former regulator with experience in the financial services sector who submitted a witness statement in support of the Applicant.

21. All the witnesses apart from Mr Blanco gave live evidence. The DFSA did not require Mr Blanco to give live evidence on the basis that he could not

give useful evidence to the FMT because he was not involved, directly or indirectly, in the matters in the DN, a position that the Applicant does not accept. Mr Blanco no doubt gave his evidence in good faith wishing to be helpful but it contains nothing relevant to the facts in issue or the judgments we have to make. That is no doubt why his statement is not referred to in either party's closing submissions.

THE RELEVANT REGULATORY STANDARDS APPLYING TO LT AS AN AUTHORISED FIRM.

22. It is not possible to evaluate Mr Rollet's role in these events without being clear about the nature and extent of the breaches by LT. The rules broken by LT are these.

23. **Financial Services Prohibition**. By Article 41(1) of the Regulatory Law, a person is prohibited from carrying on a 'Financial Service' in or from the DIFC. Article 41(1) is subject to Article 42(3) which explains that a person may carry on a 'Financial Service' (and therefore Article 41(1) is not breached) where an 'Authorised Firm' has a 'Licence' authorising it to carry on the relevant 'Financial Service'. The constituent parts of a breach of Article 41(1) are therefore that a firm is carrying on a 'Financial Service' from the DIFC.

24. Under Rule 2.2.1 of GEN, an activity constitutes a 'Financial Service' if it is: (i) an activity specified in GEN Rule 2.2.2; and (ii) carried on by way of business. By GEN Rule 2.2.2(c), 'Providing Money Services' is a 'Financial Service'. At the relevant time, GEN Rule 2.6.1 defined the activity of 'Providing Money Services' as "…providing currency exchange or money transmission", with "money transmission" being defined as, amongst other things "receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC".

25. At the relevant time, GEN Rule 2.2.4 provided that "an Authorised Firm may carry on one or more Financial Services other than Providing Money

Services". Hence, carrying on the Financial Service of 'Providing Money Services' by way of business was prohibited from the DIFC. With effect from 1 April 2020, that prohibition was lifted but not in relation to physical cash.

26. **Misleading or deceptive conduct**. Article 41B of the Regulatory Law prohibits a person from engaging in conduct, in or from the DIFC, in connection with a financial product or a financial service that is: (a) misleading or deceptive or likely to mislead or deceive; (b) fraudulent; or (c) dishonest.

27. **The client money rules** govern client money that an Authorised Firm holds on behalf of its clients ("the client money rules"). Those rules are contained in COB and they require, amongst other things, that client money is held in a dedicated client money account and separated (segregated) from the firm's own money.

28. By COB Rule A5.4.1, a 'Client Account' in relation to 'Client Money' is (in summary) an account which is (a) held with a third party firm or institution, (b) established to hold 'Client Money' and client investments, (c) is maintained in the name of the relevant Authorised Firm; and (d) includes the words 'Client Account' in its title. As explained at COB Rule 6.12.1, the term 'Client Money' includes "all Money held or controlled on behalf of a Client…". Subject to a limited number of exceptions, none of which apply here, Authorised Firms must have procedures for ensuring that all withdrawals from a client account are authorised (COB Rule A5.8.1). The rules explain that client money can only be removed from a client account in limited circumstances, including where it is: (i) due and payable to the Authorised Firm; (ii) paid to the client on whose behalf the client money is held; and (iii) paid out in accordance with an instruction from the client on whose behalf the client money is held (COB Rule A5.8.2). Subject to Rule A5.8.3, a Segregated Client's Client Money must remain in a Client Account until it is: (a) due and payable to the Authorised Firm; (b) paid to the Client on whose behalf the Client Money is held; (c) paid in accordance with a Client instruction on whose behalf the Client Money is held; (d) required to meet the payment obligations of the Client

on whose behalf the Client Money is held; or (e) paid out in circumstances that are otherwise authorised by the DFSA.

29. A breach of COB Rule A5.8.2 therefore arises whenever client money does not remain in a client account, unless one of the exceptions to that general rule applies. The rules explain that a 'Segregated Client' includes clients categorised as a 'Retail Client' and clients categorised as a 'Professional Client' (therefore encompassing LT's clients who were all 'Professional Clients').

30. The client money rules seek to ensure that in the event of insolvency client money is returned to clients. Client money must not be treated as part of the firm's assets (see COB Rule A5.13.2).

31. **Authorised Firm Principle 1 (Integrity).** Under GEN Rule 4.2.1, Authorised Firms must observe high standards of integrity and fair dealing. The requirements of integrity are discussed at paragraphs 37to 41 below.

32. **Authorised Firm Principle 9 (Customer assets and money).** Under GEN Rule 4.2.9, an Authorised Firm with control of, or otherwise responsible for, assets or money belonging to a customer which it is required to safeguard, must arrange proper protection for the assets or money in accordance with the responsibility it has accepted.

RULES THAT THE DFSA CONTENDS WERE BROKEN BY MR ROLLET.

33. **Knowing concern.** Article 86(2) of the Regulatory Law provides that an officer of a body corporate commits a contravention if they are knowingly concerned with contraventions committed by the body corporate. Article 86(6) of the Regulatory Law explains that "officer" means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a

person purporting to act in such capacity, and an individual who is a controller of the body. Mr Rollet was an "officer" of LT.

34. Article 86(7) explains, a person can be knowingly concerned in a contravention in a number of ways, including if that person has, "aided, abetted, counselled or procured the contravention" or "if the person has in any way (whether by act or omission and whether directly or indirectly) been knowingly involved in or been party to the contravention." In the DIFC we apply a defined meaning to an expression which in the UK has its meaning shaped by case law.

35. The DFSA cites much case law about the concept of being knowingly concerned. As there is little dispute about the extent of the concept and, given the conclusions we reach later, none that is relevant, we touch on the UK cases only briefly. It is enough to refer to what the Tribunal said in Al Masah (FMT 19007) at [323-324] and the cases mentioned there and, as the cases decided by Deputy Judges cited by the DFSA do, to the guidance of Neville J in Burton v Bevan [1908] 2 Ch 240 at p. 247 which has stood the test of time: *"I think that 'knowingly' means with knowledge of the facts upon which the contravention depends. I think it is immaterial whether the director had knowledge of the law or not. I think he is bound to know what the law is, and the only question is, did he know the facts which made the act complained of a contravention of the statute?"*

36. **Article 66** of the Regulatory Law prohibits any person from: (a) providing information which is false, misleading or deceptive to the DFSA; or (b) concealing information where the concealment of such information is likely to mislead or deceive the DFSA.

37. **Authorised Individual Principle 1 (Integrity)**. By GEN Rule 4.4.1, an 'Authorised Individual' must observe high standards of integrity and fair dealing in carrying out every 'Licensed Function'. By GEN Rule 7.4.2, the Senior Executive Officer ("SEO") function held by Mr Rollet is a 'Licensed Function': The SEO function is carried out by an individual who: (a) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and

control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and (b) is a Director, Partner or Senior Manager of the Authorised Firm.

38. The requirements of integrity are not in dispute. They were explained by the FMT in Waterhouse (FMT 17004) at [226-8]: "*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)."*

39. The DFSA submits that integrity therefore connotes steadfast adherence to proper ethical standards, and people lack integrity even if their departure from those standards is the result of a failure to understand what ethical standards require (or as the Upper Tribunal in the UK has put it, lack of an "ethical compass": Tinney v FCA [2019] UKUT 227 (TCC) [12]).

40. Honesty is an aspect of integrity, but it is not the only aspect. A lack of integrity can also arise from reckless conduct – see in the UK Roberts and Wilkins v FCA [2015] UKUT 0408 (TCC) at [47]. It is unnecessary to examine different UK approaches to the concept of recklessness, which is essentially knowingly taking an unreasonable risk. Indeed one can act with a lack of integrity without being dishonest or meeting a particular standard of recklessness as one of us pointed out in Vukelic v FSA at para 16-23 FIN 0002/2008:

"In an area of life giving rise to circumstances of great variety and complexity there may well be many other circumstances in which the FSA could fairly conclude that an applicant lacked integrity, a concept elusive to define in a vacuum but still readily recognisable by those with specialist knowledge and/or experience in a particular market."

41. What is clear is that an absence of integrity does not require (and therefore does not necessarily involve) a finding of dishonesty.

42. **Authorised Individual Principle 5 (Management, systems and control)**. By GEN Rule 4.4.5, an Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the firm for which they are responsible is organised so that it can be managed and controlled effectively.

43. **Authorised Individual Principle 6 (Compliance)**. By GEN Rule 4.4.6, an Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the firm for which they are responsible complies with any legislation applicable in the DIFC.

44. **Sanction.** The DN imposes sanctions on Mr Rollet under Articles 90 and 59. Article 90 provides that where the DFSA considers that any person has contravened a provision of legislation administered by the DFSA, the DFSA may, amongst other things, impose a fine and make a prohibition order. The DFSA may (a) fine the person such amount as it considers appropriate… (g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.

45. Article 59 provides that the DFSA may restrict *"a person"* from performing *"any functions in connection with the provision of Financial Services in or from the DIFC*" if it believes on reasonable grounds that the person is not a fit and proper person to perform those functions, *"whether or not [the function in question] is a Licensed Function".*

FACTS AGREED OR NOT MUCH IN DISPUTE.

46. This section is taken from apparently uncontroversial passages in the documents, evidence and DN.

47. LT, a DIFC company, was licensed by the DFSA on 4 February 2014 as a PIB Category 3C Authorised Firm to provide the Financial Services of advising on Financial Products or Credit, arranging Credit or Deals in Investments, arranging Custody and Managing Assets. LT was also granted a Licence Endorsement for Holding or Controlling Client Assets.

48. Mr Rollet was the SEO and a Licensed Director of LT from 4 February 2014 to 30 January 2017, effectively ceasing to perform those functions according to the DFSA, on 12 January 2017. During that time he was ultimately responsible for the day-to-day management, supervision and control of LT's financial services business carried on in or from the DIFC. He was also a Controller of LT, which is owned 100% by La Tresorerie Management ("LTM"). At the material time, the ultimate beneficial owners of LTM were Mr Rollet, who held 49% and his business partner Mr Sylvain Vieujot, who held 51%. In late December 2016, the business relationship between Mr Rollet and Mr Vieujot deteriorated, such that Mr Rollet was removed from the Board of LT on 26 December 2016. On 11 January 2017, Mr Rollet transferred his shareholding in LTM to Mr Vieujot.

49. **Contraventions by LT.** By a DN dated 9 April 2020, the DFSA made findings, which Mr Rollet does not appear to dispute, that LT committed the following contraventions:

    (1) between 19 February 2015 and 11 January 2017, LT provided a physical cash withdrawal service to its customers ("Cash Service"), and by doing so, carried on the Financial Service of Providing Money Services in or from the DIFC without a Licence authorising it to do so, contrary to Article 41(1) of the Regulatory Law;

    (2) between 13 November 2015 and 11 January 2017, LT used false invoices to facilitate the Cash Service, and by doing so, engaged in

conduct in connection with a Financial Service that was dishonest, misleading and deceptive, contrary to Article 41B of the Regulatory Law;

(3) between 18 September 2015 and 11 January 2017, in relation to Client Money paid out as part of the Cash Service, LT failed to hold certain amounts of Segregated Client's Client Money in a Client Bank Account, contrary to Rule A5.8.2 in COB; and

(4) in conducting its business activities as an Authorised Firm, failed to act with integrity, contrary to Authorised Firm Principle 1 (Integrity) in GEN Rule 4.2.1, by making payments from Client Money it held or controlled on the basis of invoices that it knew to be false, and in circumstances that gave rise to an increased risk of money laundering; and while controlling, or otherwise being responsible for, assets or money belonging to a customer which it was required to safeguard, failed to arrange proper protection for them in accordance with the responsibility it had accepted, contrary to Authorised Firm Principle 9 (Customer assets and money) in GEN Rule 4.2.9. It did this by failing to hold amounts of Client Money in a Client Account at all times when required and making payments from its Client Accounts otherwise than in accordance with the client's instructions.

50. **The business of LT**. In February 2015, a risk assessment carried out by the DFSA revealed a number of deficiencies within LT's compliance and anti-money laundering ("AML") framework relating to rules around customer due diligence and on-boarding. In April 2015, the DFSA sent a letter to LT containing the DFSA's key findings and the requirement to undertake a risk mitigation programme ("RMP"). The RMP included 29 different actions that LT was required to address by 31 July 2015 in the areas of compliance arrangements, financial crime related risks and corporate governance. On 31 July 2015, LT provided a letter to the DFSA detailing the status in respect of the matters requiring action raised by the DFSA (seven of which remained incomplete) and an overview of the work completed by LT as at that date.

51. In January 2016, the DFSA sent a letter to LT which set out the findings of a focused risk assessment, which had looked at on-boarding of clients in the wake of the work LT had undertaken under the RMP. The letter noted significant deficiencies in LT's approach to on-boarding clients in terms of general conduct of business and combating financial crime. The letter required LT to take action by 31 March 2016 to ensure compliance with the DFSA's rules around AML and client classification. This led to ongoing work by LT.

52. For the RMP and the follow-up work, LT engaged PwC, a firm of consultants, to assist it in carrying out the review and actions required by the DFSA.

53. In and around November 2016, a shareholder dispute arose within LT and various concerns about governance were raised with the DFSA. In late December 2016, the DFSA was informed that a resolution had been made to remove Mr Rollet as SEO and Licensed Director from the Board of LT. A change in the control of LT occurred on or around 12 January 2017, followed by the appointment of a new SEO and CO and MLRO. Mr Rollet points out that as he was removed from the board on 26 December 2016 he cannot be responsible for what happened after that.

54. On 19 February 2017, the DFSA sent a letter to the Board of Licensed Directors of LT setting out various supervisory concerns arising from firm visits and interviews with staff of LT. Based on these concerns, the letter requested LT to voluntarily consent to restricting its business activities and transactions. LT agreed and on 2 August 2017, a written resolution of the Board of Licensed Directors of LT was made to commence the withdrawal of the Licence of LT.

55. **DFSA Investigation**. On 1 May 2017 LT reported to the DFSA suspicions regarding transactions indicating possible money laundering. LT's suspicions related to multiple withdrawals of large amounts of physical cash made by LT customers from LT's Client Money Account, rather than by electronic transfer, an unusual activity for a firm such as it to provide. LT's report of its suspicions detailed that it had identified 47 different

customers who had received 81 physical cash withdrawals, between 13 November 2015 and 29 December 2016 to a total value of USD 5,890,826. (It turned out to be over USD 7,300,000.) On 4 July 2017 the DFSA commenced an investigation.

56. **The cash activity.** Cash, in a commercial context, usually has the broad meaning of readily realisable funds available to a business but may have the narrower one of physical cash. When reading documents in this case it is important to identify which category is being discussed. In this case, according to what Mr Rollet said in interview and he and Mr Henny said in evidence, LT's customers, at least those who were brought to LT by the asset managers, Mr Henny and Ms Shamim Adam, asked for a physical cash withdrawal service for certain transactions. Mr Rollet says that he asked LT's custodian banks to provide such a service but they declined and the following procedures were then adopted.

57. Client Money held on behalf of the customer would be transferred from the relevant LT Client Money account to one of a number of facilitator accounts, from which physical cash would then be provided to the customer by LT. The process evolved over time. The earliest evidenced cash withdrawal was completed on 19 February 2015. It is not clear how this was provided by LT.

58. Around 18 September 2015, a non-Client Account bank account in the name of Mr Rollet was used to facilitate the Cash Service for two different customers. As Mr Rollet puts it in his statement *"In a limited number of instances … Mr Henny and I used our personal accounts to withdraw cash, to deliver the same to the clients…"*. Mr Rollet says that he was assured by this team that this was a correct procedure.

59. This process is also referred to in LT's "Transaction Monitoring Program" which is a policy/process document dated 28 September 2015 ("TMP"). The Introduction and first section are clear about the risk of cash:

"Given that the Firm operates in the financial services sector and receives deposits from clients and makes payments on behalf of clients, LT is

exposed to the risk of being used as a conduit to money laundering and terrorist financing. In order to mitigate this risk, the Firm has developed a Transaction Monitoring Program to ensure that all business lines and support functions work in a streamlined fashion to monitor all transactions going in and out of the Firm, and highlighting any suspicious transactions to Compliance.

Cash Deposits and Cash Withdrawals. LT receives deposits from clients and makes payments on behalf of clients. These types of transactions pose a higher money laundering risk exposure to LT. The key AML and terrorist financing risks which LT is exposed to are:

Cash deposits (including allocated and unallocated),

Cash withdrawals

The monitoring will also cover internal transfers between clients and internal account transfers."

60. A footnote reads: *"On occasion, clients deposit and withdraw cash amounts".* Later an instruction provides that: *"Any physical cash withdrawal that does not have a client instruction in an acceptable format and which involves a transfer of funds from an LT custodian account to an account of an LT employee must be automatically escalated to Compliance."*

61. From around 13 November 2015, cash withdrawals were made using the transfer of Client Money to one of two unregulated third-party companies based in Dubai outside the DIFC (Cosmic General Trading Ltd ("Cosmic") or New World Impex General Trading Inc ("New World")) to facilitate the Cash Service. This process was then employed by LT for the remainder of the period in issue. These companies sent funds for LT to collect in cash from a third company, Economic Exchange Centre ("EEC") which operated a regulated money exchange business within Dubai to which they were apparently connected via common ownership.

62. The first stages of any withdrawal or transfer of money out of LT's Client Account, including electronic withdrawals and third party payments were as set out in the TMP. The customer would submit a request to LT by telephone, letter or email, for a withdrawal from their account to be made in cash. LT would generally require a signed instruction from the customer. A "Withdrawal Checklist" would be completed by the Client Management team. If necessary, the transaction would be referred to LT's Compliance team for approval. The TMP sets out the circumstances in which such referral is required, including if the reason for withdrawal is not in line with the customer's profile and if the withdrawal is greater than USD 100,000. Although it is not stated in the TMP, the practice at LT was that all physical cash withdrawals were referred to Compliance for approval.

63. From that point the physical cash steps were not as set out in the TMP. Compliance would either approve the transaction and send it to the Finance team for payment or refer back to the Client Management team if not approved. LT would then request that what it is right to call a false invoice be provided on behalf of Cosmic or New World in the amount of cash requested by the customer. The request would be made via an external asset manager who introduced and acted on behalf of several customers of LT, and who was connected to Cosmic or New World via a relative. The individual would liaise with Cosmic or New World and provide the relevant false invoice to LT via email. The false invoices would be addressed to the customer name or account number care of LT and an additional 2% would be added to the invoice, the fee payable to Cosmic or New World for its part in the Cash Service. LT would then make an electronic transfer of the funds from the relevant Client Account to Cosmic or New World, using the false invoice as the basis for the payment.

64. Once the funds had been received by Cosmic or New World, a staff member of LT would go to the currency exchange offices of EEC in Dubai (outside the DIFC) to collect the cash. LT would hold the cash at a safe within its office in the DIFC until the customer came to collect the cash,

or other delivery arrangements were made. LT would issue a receipt to the client for signature, to confirm receipt of the cash. This receipt would be kept in a hard copy folder at LT, which also contained other documents related to customer requests for cash withdrawals.

65. Overall, LT charged its customers 5% of the value of the request for the Cash Service, of which LT retained 3%, after paying Cosmic or New World its 2% fee.

66. Mr Rollet accepted that he was aware of the use of the companies and the invoices but not of the details of how the scheme worked. He says that he was informed of it by Ms Jennifer Adams, who was in charge of LT's operations, and 'Compliance' and assured by them that it was in order. There is no record of this but Mr Rollet said that the matter was discussed at weekly management meetings. He says that he relied on his senior people as physical cash was a minor part of the business and the amounts not substantial in relation to the business as a whole.

67. **Total Cash Amounts.** The Cash Service during the period in question at LT resulted in 122 transactions, ranging in value from EUR 2,560 to EUR 500,000. The total amount of physical cash provided by LT under the Cash Service has been calculated to be the equivalent of USD 7,325,767, over 122 transactions, and the fees it received were the equivalent of USD 219,773.

68. **False Invoices.** Client Money held by LT on behalf of its customers was held in a number of Client Accounts at various custodian banks, none of which provided LT with access to physical cash. The use of false invoices provided a route through which physical cash could be made available to LT's customers from LT's Client Account, as part of a documented transaction. The invoices were false, in that they did not reflect the true nature of the transaction to which they related. For example, an invoice dated 4 December 2015 for a total of EUR 102,000 issued by Cosmic was for *"Our services pertaining to investment in Dubai Real estate"* and for the amount of EUR 9,200 as *"Travel"*. The customer received no such services, but instead received physical cash from LT as a result of the

payment of this invoice, as that customer had instructed. The invoices of New World did not include a description of specific services, instead referring to *"our invoice as per our agreement"*. There was no agreement between the LT customer and New World. There is no written evidence that use of these companies was known to the customers of LT. Mr Rollet was not aware that customers knew. Mr Henny said that his customers did know.

69. **Fee Schedule**. Mr Rollet contends that the Fee Schedule for clients drew an express distinction between cash withdrawals and outgoing wire payments – the former being charged at a higher rate and that this shows that the cash service was presented openly and not concealed. The Schedule for clients comprised two pages. It does not refer to physical cash. The version that was received by the DFSA in 2015 was dated 1 July 2015. On the second page, it refers to "Cash and Commodities Fees" of "5.00% per transaction" for "Cash Deposits and Withdrawals". On 9 November 2015, Mark Henny emailed Jennifer Adams and asked that the physical cash service be given a *"more obvious description*" in the Fee Schedule. Ms Adams replied explaining why the wording needed to be cryptic: *"On the cash one we have to leave that as it is as we can't use many other words, eg deposit, physical receipts"*. Mr Rollet himself explained in interview that the schedule was deliberately drafted to hide from certain clients the fact that LT offered a physical cash service. The Fee Schedule whether taken on its own or in context with other material does not suggest the existence of a physical cash operation.

70. **Transportation and Delivery of Cash**. Physical cash was delivered to the relevant LT customers in various ways. The customer might go to the offices of EEC with a staff member of LT to collect the money. Delivery might be made to the customer at a location in Dubai (either inside, or outside, the DIFC). Physical cash was also being transported from the UAE to a foreign country for delivery to the customer by Mr Rollet or Mr Henny.

71. To facilitate the transportation of a large amount of physical cash from Dubai to Switzerland, Mr Henny devised a template letter on the headed

paper of LT and signed by Mr Rollet. This was taken by the individual carrying the cash to provide to the customs authorities in the case of query. This template was used by Mr Rollet at least once.

72. On one occasion in September 2016, the letter was taken by Mr Henny who was carrying EUR 716,000, which represented several physical cash withdrawals obtained via the Cash Service, through Dubai International Airport and on to Switzerland. The Cash Letter incorrectly stated that the cash funds being carried were beneficially owned by LT. As Client Money, the funds were in fact beneficially owned by LT's customers.

73. On another occasion, in November 2016, the cash letter was used by Mr Rollet when he was stopped by a customs official at Dubai International Airport on his way to Switzerland, to support his explanation as to why he was carrying a large amount of cash. In interview with the DFSA, Mr Rollet accepted that the template letter was incorrect on the point of beneficial ownership of the cash, and claimed that he would have amended this part of the letter before using it, but did not appear to remember doing so. His recollection and understanding of this aspect have changed since his interview.

74. Mr Rollet took physical cash to clients outside the DIFC on other occasions. On 9 October 2015 he gave a client EUR 10,000 at Port Palace, Monaco and on 30 October 2016 he gave a client EUR 10,000 at Hotel Costes, Paris. In interview, Samar Aouad (LT's former Head of Client Management at LT) confirmed that the cash receipts for these payments were written in Mr Rollet's's handwriting.

75. **Use of Safe in Switzerland**. LT had a large number of customers who were based in Western Europe and to facilitate the delivery of physical cash to those customers as part of the cash service, it hired a physical safe that was located in Locarno in Switzerland ("Swiss Safe"). The Swiss Safe was also used by customers who wished to deposit physical cash with LT, since the custodians which held LT's Client Accounts would not accept physical cash.

76. The Swiss Safe was used to store Client Money in the form of physical cash, either as a result of a deposit by a customer, or after the cash process had been used and the cash transported from the UAE to Switzerland by Mr Rollet or a colleague. In order for a customer to deposit into, or obtain a physical cash withdrawal from, the Swiss Safe, he or she would attend the office where the Swiss Safe was located with Mr Rollet who was the authorised signatory for the Swiss Safe.

77. In order to account for the Client Money in the Swiss Safe, LT created an entity in its accounting system that was treated in the same way as its custodian banks. In this way, LT treated the money in the Swiss Safe as being part of the pooled Client Money resource of LT up until the point at which it was received by a customer who had made a request to receive physical cash to be delivered in Switzerland from the UAE, and a signed receipt had been obtained. Ms Morgan and Mr Sherriff say that they were unaware of the existence of the safe until after they had left LT.

78. **Interview**. On 26 and 27 March 2019, two and a quarter years after the last of the events in question, Mr Rollet was interviewed by the DFSA, accompanied by his lawyer. He was told in advance what the interview was about and was sent a bundle of relevant documents. The interview was voluntary.

79. The passages relied on by the DFSA in its claim that Mr Rollet provided information which was false, misleading and deceptive are as follows:

"A: … I don't recall this, except that I know that Mark was sometimes using his account at Emirates NBD to get money for his clients. Certainly I never used my account at Emirates NBD for clients, but I know he was doing that. Q: Okay, well in this email he's saying – he's asking you to use your account, I would say. A: Yeah, and I definitely would not do that, no. Q: So just to be clear, you're – do you accept that this email implies that your account is going to be used, your account… A: Yeah, but I certainly didn't – never agreed to that".

80. In response to questions about the delivery of cash to LT clients and the transportation of cash to the safe in Switzerland, Mr Rollet said that he once delivered cash to a client in Dubai (outside the DIFC) and that that was the only instance of him delivering cash. Mr Rollet said that he was aware of others at LT delivering cash in Switzerland and that the only time he took money to the safe in Switzerland was when a client was depositing cash. However, that was untrue. For example, an email exchange between Mr Rollet and Mr Henny describes the former as carrying cash through Dubai airport and being stopped and searched by the authorities. When shown this email in interview, Mr Rollet accepted that he had, on that occasion, transported approximately EUR 150,000 in physical cash to the safe in Switzerland.

81. There is no record of Mr Rollet asking for a transcript of the interview to check its accuracy. He now says he asked for this but did not receive it. In the earlier proceedings his lawyers had said only that he should not be criticised for not asking for a transcript.

82. **LT's Operations and management.** Mr Rollet submits that under his leadership LT was run by a strong team of individuals and had in place a proper management structure with appropriate systems and controls. He points out that the DN does not allege any breach of Principle 3 (management, systems and controls), Principle 4 (Resources) or Principle 11 (Compliance with high standards of corporate governance) of the Principles for Authorised Firms. He submits that this means that at all material times LT had adequate systems, controls and financial resources and a corporate governance framework. The DFSA submits correctly that the absence of regulatory action is not of itself any acceptance that a particular practice is lawful or appropriate.

83. **The structure and staff at LT**. The board consisted of Mr Rollet, Mr Vieujot and the Corporate Secretary. In addition, the CO was always present at Board meetings. Ms Morgan was in attendance in her dual capacity as Corporate Secretary and CO until late 2016. Thereafter, Mr Ewan Sherriff attended as the CO. As a Board member, Mr. Vieujot was

also a DFSA Licensed Director of LT. In addition to the Board, LT says that it engaged the following staff.

84. Ms Morgan was an experienced outsourced CO who also acted as the MLRO, until the appointment of Mr Sherriff on 1 October 2015. She was not an employee but a freelance consultant. After Mr Sherriff's appointment she continued to work as a compliance consultant until the end of 2016. Ms Morgan was assisted by Ms Melanie Fuller (the Compliance Assistant and Deputy MLRO). Ms Morgan reported directly to the Board on any compliance-related issue. Ms Morgan is now a DFSA regulated Chief Compliance Officer and also has her own consultancy company.

85. Ewan Sherriff was appointed as the Head of Legal and Chief Compliance Officer, on 1 October 2015. His job description describes his role as: *"A full-time senior management position that has the responsibility to administer and oversee the Company's Legal, Compliance and AML Framework as a wealth advisory firm. The Head of Legal & CCO will ensure…the Company is aware of, and complies with, all legal, regulatory and internal business requirements as they relate to Corporate Governance, Compliance, AML and Sanctions obligations…"* A specific objective for Mr Sherriff was to *"ensure fulfilment of the regulatory requirements and adherence to the Company's standards and the DFSA rules and regulations."* Mr Sherriff was also LT's MLRO. He reported directly to the Board. He was not an employee of LT but retained by Ms Morgan's company. Mr Sheriff is we understand a solicitor qualified in Scotland but as neither side raised the matter, we do not know what his qualifications for and prior experience in this sort of role were.

86. Moapha Sharif was appointed as the Compliance Executive on 6 July 2015. He reported directly to Ms Morgan and then to Mr Sherriff. Jennifer Adams was appointed on 27 April 2015 and was in charge of LT's operations and Ms Adams had regular contact with the DFSA. Mark Henny was the Managing Director of Wealth Management and worked for LT over the period January 2014 to 2017 on behalf of the client base he brought in.

87. Baasab Deyb was a partner at RSM Dahman Auditors UAE. He was appointed as the CFO and Risk Officer on an outsourced basis in April 2015. Josep Mestres was the Finance Officer and he assisted Mr Deyb. Mr Mestres was assisted by a financial/operational analyst, Chiara Milan. The client department was run by Ms Samar Aouad, assisted by Anastasiia Liashchenko.

88. Mr Rollet says that these individuals were all experienced and capable, and worked closely together as a team. There is no suggestion in the DN that they were not competent and honest employees. The chain of command within LT was a simple and conventional model, namely that the individual in question would provide feedback to their direct line manager and/or the Board, as appropriate, in respect of the activities for which they were responsible. The complement of staff, including those not employed does not ever seem to exceed 12.

89. The firm occupied an open plan office with two meeting rooms.

WITNESS EVIDENCE.

90. Brief details of each witness have been given above.

91. **Ms Paddon** gave an account of the investigation which was largely uncontroversial. She did not recall Mr Rollet asking her for a transcript of his interview and had no record of this. She explained that the DFSA has limited resources and cannot proceed against all those who may be responsible for contraventions. She was asked why she did not interview a Mr Turner and she explained that he did not seem central to the investigation and that there was a sound written record of what he had done. She accepted that she would have expected Ms Morgan to inform the DFSA of aspects of the cash service with which she was unhappy. She agreed that in general terms an SEO was entitled to rely on other people's expertise, *"…subject to appropriate oversight and understanding of what is going on in the firm…"* This witness gave straightforward and clearly truthful evidence.

92. **Mr Cameron.** The essence of his evidence was that while working at the DFSA on the remediation of LT, *"There was a conversation very early in the remediation programme where I sought confirmation around cash coming in and out of the business and had got a confirmation that said that that was not the case".* He said: *"our mindset was never of the place where there was cash coming in and out of the business in the DIFC. It was always in relation to a client account held by a third party custodian or custodians, and that's -- that was the mindset throughout that entire process"*. He accepted that LT had repeatedly referred to the TMP as a key part of their remediation activities. He did not suggest that the delegation envisaged by the TMP was inappropriate. Mr Cameron was an obviously truthful witness with no reason not to tell the truth and indeed is relied on to some extent by Mr Rollet.

93. **Ms Morgan** was LT's outsourced DFSA authorised CO and MLRO from June 2015 until succeeded by Mr Sherriff in January 2016. She then remained as a Compliance Consultant until late 2016. She said that she initially did not know that there were physical cash transactions at LT, except for two documented physical cash deposits that were discussed with the DFSA. She also told Mr Rollet (as he accepted although recalling that she said this jokingly) that she did not ever want to see cash in the offices of LT. Her recollection of this seems more probable than his. It would have been an odd sort of joke.

94. She accepted that at some point she became generally aware that there were physical cash withdrawals going on within LT but she could not recollect when she gained that awareness, although she thought it was in 2016, by which time her role had changed. In her witness statement Ms Morgan said that she became aware of the cash service because Mr Sherriff had expressed concern to her that he did not have the full picture and that there was some form of arrangement between LT and EEC whereby cash came in and out of LT. She said that she responded that she did not understand the arrangement and she did not know whether EEC was a custodian bank. (It was not.) She recalled that she only became aware of the safe in Switzerland in 2017 after the events in question.

95. In cross-examination Ms Morgan seemed uneasy at times, for example when answering questions about her interview. She accepted that the draft of the TMP was expressly discussed with her, she provided comments, and these comments were incorporated into versions of the TMP which referred to cash withdrawals and in a footnote to physical cash. She was also asked about the fee schedule. In November 2015 she drafted a report for the Board of LT which expressly stated at section 5 under the heading *"Compliance Monitoring 1. Transaction Monitoring"* that LT had *"…implemented a transaction monitoring programme that assesses and pre-approves all incoming and outgoing cash…transfers…"*

96. Ms Morgan accepted that on 23 December 2015, she was sent an email which made it plain that on three instances that month, there had been physical cash withdrawals. Ms Hanif put a range of documents to Ms Morgan from which it seemed clear that her knowledge of the cash withdrawals may have been more extensive and longer lasting than she had first accepted. Some of these were documents which clearly referred to cash in its usual wider sense.

97. It was put to Ms Morgan that she was also aware that LT was using an intermediary to facilitate the physical cash withdrawal requests: for example, an email thread which took place on 14 – 15 December 2015, which specially referenced Cosmic. Ms Morgan accepted in cross-examination that it was clear from the email that Mr Henny was being open about the fact that he wanted to facilitate a cash withdrawal. Ms Morgan accepted that she never raised any concerns with her colleagues as to whether or not LT should be engaging with cash activity, or told anyone at LT that this was unacceptable. She accepted that she did not inform the DFSA. She did not record any of these matters in the Breaches Register.

98. We do not accept the severe criticisms of Ms Hanif of Ms Morgan's evidence. We believe that her evidence was honest but that her first recollection of her knowledge of the cash transactions understated the true position as it emerged from cross-examination. It seems surprising that she did not look more closely into the question of physical cash but as she

is neither a party to the case nor represented and we lack the full facts as they relate to her we make no criticism of her. Furthermore, as with Mr Sherriff, the detail of the extent of their knowledge of the matters in issue is not very significant given our overall conclusions in this case.

99. **Mr Sherriff** was DFSA Authorised CO and MLRO from January 2016 until his departure in 2017. He is also described as Head of Legal. He was throughout an employee of Ms Morgan's company. He was visibly unwell when giving evidence and could reasonably have declined to do so. His oral evidence needs to be seen in that light.

100. In interview he explained that when he arrived he considered that LT was in a mess and that as most clients came through third party agents there was no direct relationship with them. He did not personally approve the process by which the physical cash service operated as it was in place before he joined LT. He recalled that it had been explained to him in general terms by Ms Morgan. In cross-examination he referred to the fact that he understood that the process had been designed before he arrived at LT by PwC (about which he was largely mistaken). His work was focused on client on-boarding issues and not transaction monitoring. Like Ms Morgan he understood that EEC was a custodian bank (which it was not). He said that it was openly known within LT that it was providing a physical cash withdrawal service and was not a secret. He believed that it was permissible, *"subject to enhanced due diligence being done…"*. It is unclear what enhanced due diligence the cash transactions received. The client management team occasionally brought the compliance checklist which was attached to the TMP for him to sign and he would approve or not. He also accepted that he was aware that Cosmic/EEC were being used to facilitate physical cash withdrawals and did not register any concerns about this or the fact that the false invoices described transactions that did not exist to Mr Rollet.

101. Ms Hanif emphasised aspects of Mr Sherriff's evidence to support a submission that we do not accept, that PwC were aware that LT was carrying out a physical cash withdrawal service and at no point indicated that there was anything untoward with this and were involved with the

amendments to the TMP which resulted in a version addressing cash. She also relies on his evidence that the internal auditors KPI were provided with a copy of the TMP and carried out a review of the cash transaction monitoring process but did not raise any concerns in respect of physical cash withdrawals. She also relies on Mr Sheriff's agreement that on 8 December 2016 he sent Ernst & Young a copy of the TMP but they did not raise any concerns about physical cash withdrawals.

102. Mr Sherriff seemed to us to be a bluff but honest witness whose grasp of events six years ago was limited. It seems surprising that he did not look more closely into the question of physical cash but as he is neither a party to the case nor represented and we lack the full facts as they relate to him we make no criticism of him. While submitting in closing that Mr Sheriff's evidence is useful and to be relied upon, Mr Rollet, in his fourth witness statement, makes a serious attack on his credibility and integrity. In opening Ms Hanif had submitted that there were *"serious doubts as to the character and reliability of Mr Sherriff and it is concerning that the DFSA has sought to produce him as a witness".*

103. **Mr Henny** was an asset manager with clients of his own whom he introduced to LT in return for payment. He said that his employment contract was disregarded by mutual consent and he was treated not as a staff member but as a referrer of business and paid a fee. His clients saw LT as a private bank. Like those of his colleague Ms Adam, his clients required a cash service which he asked Mr Rollet to introduce. The first such scheme involved the use of the personal bank accounts of Mr Rollet and himself. Mr Henny also devised the cash letter the first copy of which is dated 25 September 2016. He confirmed that that version of the cash template letter was used by him when he was carrying EUR 716,000 of client money through Dubai airport. Mr Henny said that Mr Rollet signed a hard-copy and on 31 October 2016 asked him to forward it to him so that he could use it himself. As Mr Rollet put it in an email on 2 November 2016: *"This was more than helpful as they picked up in the scan the money at Dubai airport!".*

104. He described Mr Rollet as very "*hands-on across the business"* and *"his ultimate approval was required for everything that was done at LT…"* . He explained how his clients used the cash service. He said that his clients knew that an intermediary was being used and that the whole service was a hundred per cent known to Compliance. He said that no one from Compliance told him to stop using the service. He also said that he would not have expected Compliance to speak to him about the service even if they did have concerns. Mr Henny said that he could not know what others did or did not know, and he described having limited contact with Compliance and PwC.

105. Mr Henny was a frank witness but one who tended to see matters from which he has moved on in broad terms. We generally accept his evidence.

106. **Mr Shah** was employed at PwC and was based at LT on the remediation project from its outset in 2015. Essentially, as he put it, *"No one at LT discussed with me any procedure or process that involved providing physical cash to clients. I am not aware of anyone else at PwC being asked to assist with the design of any procedure or process that involved providing physical cash to clients at LT. If someone at PwC had been asked, I would have expected them to communicate this to me, given my role as the engagement manager"*.

107. He explained that PWC assisted LT with the initial drafting of the policy document underpinning transaction monitoring (the TMP) but was not involved in the process once transaction monitoring went "live". He did not know about the physical cash service. He acknowledged that he once heard the phrase "*physical cash"* within LT's offices. He said that he remembers those particular words because, in his experience, they were unusual ones to hear within a financial institution. He said that without having heard any broader context as to the conversation that was taking place, he did not know what was actually being discussed and therefore did not do anything further. In cross-examination it was suggested to him that he and his firm would be more engaged with LT's everyday activities. He conceded *"…if, for example, Ewan was not around and someone*

wanted to check with me whether a transaction needs to be reviewed or not, or if it is following the TMP I would have advised on that…"

108. As he explained, he was comfortable with the fact that the TMP envisaged a theoretical prospect of a physical cash withdrawal *"…depending on if the appropriate due diligence was done and the financial crime risks were mitigated appropriately…"*. This was used to support a submission on behalf of Mr Rollet that PwC were aware that LT was providing a physical cash service to its clients, and that PwC did not raise any concern with this at the time. As we see it they plainly were not. If they had been there would have been a record and even this would have been irrelevant unless they had considered and approved the entire scheme at the heart of this case.

109. Mr Shah was an obviously frank and truthful witness who had no motive not to be honest in his evidence. Further he no longer works for PwC but for a major law firm in the UK.

110. **Ms Liashchenko** was a junior employee carrying out the guidance and instruction of her seniors and was not able to provide much relevant information. We have no doubt that she was doing her best to be of assistance to us. She is now a director of Blue Ocean International Bank of which Mr Rollet is the founder. In cross-examination she accepted that her statement was wrong to seek to portray Mr Rollet as having not been *"directly involved"* in the cash withdrawal process. Her evidence was not relied upon by Ms Hanif in her closing.

111. **The documents most relied on by Mr Rollet.** Mr Rollet's argument around the knowledge of the DFSA and various advisers of the physical cash service relies upon six documents in particular. We have explained why the Fee Schedule does not support the argument. We have also mentioned the TMP but need to refer to other aspects of that document.

112. The TMP was created as part of LT's risk mitigation programme following the unsatisfactory regulatory review by the DFSA in 2015. The document was drafted with some high-level support from PwC. Over time, different versions of the TMP were created. It refers generally to a process

for monitoring *"cash deposits and cash withdrawals"* which also *"covers internal transfers between clients and internal account transfers"*. The document is not referring simply to physical cash. The document sets out a monitoring process for all transactions that involve the asset class of cash. The TMP says that the monitoring process is applicable to *"all transactions going in and out of the Firm"* (p1). It then includes three specific types of transaction: (i) cash deposits (allocated); (ii) cash deposits (unallocated); and (iii) cash withdrawals. The flow diagrams show that it is concerned with transactions involving cash generally (not just physical cash). The cash withdrawals section also refers to the "destination" of the sums being withdrawn and the possibility that the money might be "going to a third party" - that cannot be referring to a service where physical cash was paid to the client directly. Mr Rollet himself explained to the DFSA in interview that the primary reason for the TMP was not physical cash and the reference to "cash withdrawals" encompassed more than that. *Q: So in terms of the term "cash withdrawal", if somebody was using that in [LT], what would that refer to as far as you're concerned? A: Well, cash withdrawal, it's a general term, so it could have been – it could have been both physical cash or a transfer out of cash"*. This is consistent with the evidence of Mr Shah. No fair minded observer familiar with financial services or indeed corporate matters generally could read the TMP as addressing a physical cash service.

113. We do not address the other four documents in detail because, as we see it, they do not begin to support Mr Rollet's argument which depends on unjustifiably reading references to cash as being not to the natural wider meaning the context shows but to physical cash. Those documents are an AML business risk assessment, a compliance monitoring document, a spreadsheet relating to LT's transaction monitoring and a Compliance report for the LT board meeting on 16 November 2015. The documents do not evidence the existence of the physical cash service or contain information from which it could be inferred, even in the most general terms, that LT was offering this facility.

114. **Mr Rollet's evidence** is primarily set out in his third and fourth witness statements, the central features of which are summarised at paragraphs 12 to 14 above and alluded to in discussion of other witnesses. He gave oral evidence in similar terms. Essentially, he believed all to be above board on the basis of the advice he received from those to whom he delegated such matters and from the advisers consulted. He relied on *"my compliance department, finance and operations..."*, *"on the various senior people that I hired…"* Mr Pritchard prepared what we consider to be a fair summary of Mr Rollet's most significant answers in cross examination.

115. In a case where so much is agreed or not much in dispute the issue of Mr Rollet's credibility as a witness is perhaps the central one. We now set out our findings about his evidence which must of course be seen in context and in the light of all the other material available. We also bear in mind the standard of proof referred to above.

116. Mr Rollet was prone to making statements that turned out to be untrue. This might have been due to an extent to forgetfulness about matters back in 2015 and 2016 and a lack of detailed preparation. He accepted, as he had to, that he had not considered all the relevant documents when preparing his witness statement. (For example, his claim that he had not been copied into correspondence regarding the physical cash service.) We bear those considerations in mind. Mr Rollet rightly pointed out that these matters took placed some time ago and that it was easy to forget the detail. However his memory was unconvincingly selective. He could remember the detail of the drafting of Mr Henny's cash letter but not that that EUR 150,000 of clients' money had gone through his own bank account on its way to becoming cash.

117. The conclusions we reach about Mr Rollet's knowledge and involvement in the matters in issue having read and heard all the evidence in this case are as follows.

118. Mr Rollet is a senior banker who in 2015 had some 25 years' experience in his profession. He is well aware of compliance matters having written,

as he said in interview, LT's compliance manual, including the section containing the money laundering policy. He was SEO of a small but growing company that was undergoing remediation at the behest of the DFSA. He should have been particularly watchful about all matters of regulation. Any experienced person in the industry would be aware as Mr Rollet was, and accepted in evidence, of the special dangers involved in dealing with physical cash and its use in the most serious crime. He needed new business for this venture and obtained it through third parties like Mr Henny who wanted physical cash facilities from what they saw as a private bank. Mr Rollet tried to provide this through the custodian banks which held the money of LT's clients but they declined. This was of itself a reminder about the rules of dealing with physical cash but Mr Rollet took no advice before embarking on either of the two schemes.

119. Mr Rollet must have been closely and personally involved with the two main schemes for withdrawing cash. The first involved use of his own personal private bank account and he must have understood the detail. He accepted that he knew of the involvement of Cosmic and the other companies in the second scheme but not of the false invoices. It would be odd and wrong for an SEO to know that much but not go on and find out more about such an unusual method of obtaining cash from the accounts of clients. It is not possible to accept that the false invoices were unknown in an atmosphere where *"Q: The Cosmic process was in place to allow this type of very large transaction to take place. That was the problem you were trying to solve, wasn't it? A. As I have said before, the use of personal bank account was complicated, and the use of this new process that Shamim proposed was a smoother process, as I understood it at the time, and – Q: Can you expand on, when you say "complicated", do you mean you couldn't keep going to your bank branch down the road and asking for hundreds of thousands of euros? Is that what made the process complicated? A. Yes, of course"*.

120. He did not take, or ask his team to take, outside advice about this or even to put in writing a record of what was happening and their view of it. We are however sure that he knew the detail or deliberately chose not to know

some of it. He was involved in the detail personally delivering large sums of cash. In doing that he kept a close enough eye on the details to be aware that Mr Henny had a form of letter that he used to get through airports and to ask to use it himself. He signed Mr Henny's letters (or, Mr Rollet suggested unconvincingly, Mr Henny sometimes just used the stamp). He even, according to the account he gave until his evidence to us, took a close enough interest to amend the passage dealing with beneficial ownership. It is hard to see how he could take a view about that without knowing the full details of the transaction. (In evidence he said that this was no longer his position and that in fact the version of the letter he had been sent by Mr Henny was accurate and that he, Mr Rollet, had been responsible for drafting parts of it).

121. Mr Rollet was in a senior position and entitled to rely to some degree on subordinates but in the context of a small concern not a large institution. Mr Rollet spoke in terms that would have been appropriate to the head of a worldwide bank. This led to a submission in his closing argument that "*a SEO of an organisation cannot be expected to, and invariably does not, personally carry out the various 'on-the-ground' activities which a business requires. Mr Rollet therefore reasonably relied on his team members".* LT had 12 staff situated in one open plan room with a couple of meeting rooms. Indeed when it suited him Mr Rollet relied on the fact that this was a small team. He was inevitably 'hands on' as Mr Henny saw it, literally so in terms of delivery of cash. Mr Rollet was SEO but as we have pointed out he also sometimes carried out some of the "*'on-the-ground' activities"* such as delivering physical cash to clients. At that point he must have taken a close interest in the detail. He not only failed to control and prevent his colleagues from running an improper scheme, he actively participated in it. Claims such that Mr Rollet "*reasonably relied on, inter alia, the Head of Legal who was also the Chief Compliance Officer, who took the view that LT's activities were lawful"* are inappropriate. They give a false impression of the size of the business and Mr Sherriff's limited role. Mr Sherriff does not claim in his statement to have been Head of Legal. There was no in house legal department.

122. It was irresponsible of Mr Rollet to suggest that because the amount and numbers of transactions in cash were small (albeit more than USD 7 million) in relation to other activity he had less reason to concern himself with it. A small but extremely vulnerable aspect of the business is just what the SEO should be watching carefully.

123. Mr Rollet's alleged reliance on his colleagues was expressed in general terms supported by no reliable detail. Further while relying on his colleagues as being senior and experienced professionals he simultaneously relies on their alleged shortcomings. Those who Mr Rollet says made him "comfortable" say they either did not fully understand how the physical cash service operated such as Ms Morgan and Mr Sherriff (who were not employees but providing consultancy services), or were unaware of it, such as Mr Shah of PwC.

124. The written record provides no support for Mr Rollet's claims. He did not instruct anyone (internally or externally) to advise on the propriety of the physical cash processes at LT. The documents that he claims gave him reassurance could have done no such thing for the reasons we have given and highlight the absence of any genuine investigation at the time of the propriety of the physical cash schemes. Once a banker with Mr Rollet's experience gave thought to the details of either cash scheme, it would have been obvious that professional advice, if taken, would be to stop at once.

125. Mr Rollet relies in his Opening statement on LT seeking the input of five sets of outside experts at "critical points" these being PwC, the auditors Ernst & Young (who would have been deceived by the false invoices), KPI the internal auditors, CGS Legal and Allen & Overy. We have addressed the position of PwC. There is no sign of advice on the physical cash schemes being sought from any of the other four firms at any point.

126. Similarly the materials sent to the DFSA did not begin to amount to disclosure of the cash schemes so as to receive regulator's approval or to justify some claim that they were not objected to. We prefer the DFSA's position about what was actually received but the position is precisely the same if Mr Rollet is right. A firm cannot, by simply sending a document

to the regulator containing reference to a product, expect or assume that absence of comment means approval. The Applicant points out that the DFSA should be particularly watchful when reading documents submitted as part of the remediation process. That may or may not be correct but it would make no difference on the facts of this case given what was in fact submitted. It is not the job of the regulator to plough through every document it is sent and chase up every possible problem that might arise with any matter referred to. An applicant cannot rely on disclosure to the DFSA unless the issue has been fully and fairly disclosed to the regulator and actively approved. For similar reasons we reject the argument that Mr Rollet can rely on the fact that the DFSA did *"not express any concern with respect to the competency of the Compliance Team within LT".*

127. We have referred to the details of Mr Rollet's interview in 2019 at 78 to 81 above. We are sure that Mr Rollet was not simply forgetting things. The events had happened three and four years previously but it was a voluntary interview for which he had received an opportunity to prepare, read relevant papers and been legally assisted and advised. We do not believe that he would forget such large sums of clients' money going through his account. If there was any doubt at all in his mind he would not twice have used the word *"certainly."* We do not believe that he forgot about taking EUR 150,000 to Switzerland either. It is unclear to us whether the DFSA already knew the answers to be false at the time Mr Rollet gave them.

128. In summary we reject Mr Rollet's claims. He set up a business which he was understandably keen to expand. One way to do this was to take on clients who wanted to be able to withdraw physical cash. The refusal of the custodian banks reminded him of what he must have known already, that the service was likely to be unlawful. The details of the two schemes in which he personally participated must have continually reminded him of their elaborate and dubious nature. He chose not to take any outside advice about the details of these schemes, probably because he knew what the answer would be. As a result client's money was put at risk once it left the banks (as far as Mr Rollet knew without their knowledge) and a

substantial amount of cash may have gone to questionable or even dangerous ends. Further this kind of improper activity creates unfair competition with the vast majority of firms who take pride in operating in accordance with the rules and carries with it the risk of tempting them to lower their standards.

CONCLUSIONS ON LIABILITY.

129. We are sure that Mr Rollet was knowingly concerned in the breaches by LT which are set out above. He led them, knew about them and at times actively participated in them. The debate about whether knowing concern requires knowledge not just of the relevant facts but that they amount to wrongdoing does not arise as we consider that Mr Rollet was aware of both.

130. We also conclude that as an Authorised Individual in the conduct set out above Mr Rollet, failed to observe high standards of integrity and fair dealing, contrary to Principle 1 (Integrity) in GEN Rule 4.4.1. Mr Rollet knew what he was doing and that it was wrong. We do not need to characterise his conduct further beyond finding that it is clearly within the requirements set out at Paragraph 38 above.

131. We also conclude from our findings above about the schemes and Mr Rollet's role in them that as an Authorised Individual who had significant responsibility, he failed to take reasonable care to ensure that the business of the Authorised Firm for which he was responsible was organised so that it could be managed and controlled effectively, contrary to Principle 5 (Management, systems and control) in GEN Rule 4.4.5. He also failed to ensure that it complied with DIFC legislation, contrary to Principle 6 (Compliance) in GEN Rule 4.4.6.

132. We also conclude that Mr Rollet broke Article 66 of the Regulatory Law by providing false and misleading information to the DFSA.

PENALTY.

133. Article 90 of the Regulatory Law 2004 empowers the DFSA to impose certain sanctions and directions. Under Article 90(2), the DFSA may, among other things, "*fine the person such amount as it considers appropriate in respect of the* contravention*"* (Article 90(2)(a)); and/or *"make a direction prohibiting the person from holding office in or being an employee of any Authorised Person ...*". Article 90(6) of the Regulatory Law 2004 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 is set out in the 'Regulatory Policy and Process' Sourcebook ("RPP"). By reference to that policy the DFSA has in its submissions about sanction prepared detailed calculations which produce a figure of just under USD250,000. The Decision Making Committee ("DMC") reduced the figure to USD175,000 apparently without explaining why. While the DFSA points to comparables which appear to justify its original proposed figure, it invites us to impose a fine and affirm the DMC's figure of USD 175,000.

134. Under Article 59 of the Regulatory Law the DFSA may restrict persons from performing functions in the DIFC if it 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. A restriction can be imposed whether or not the individual has committed any contraventions, whereas a prohibition depends upon a finding that there has been a contravention. The DFSA's power to impose a prohibition arises under Article 90(2)(g) of the Regulatory Law where a person has been found to have committed a contravention.

135. The DFSA's policy regarding its power to restrict individuals is set out in the RPP. The DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN and RPP section 2-3. The RPP does not directly consider the power to impose a prohibition. In either case, the DFSA submits, the key question is whether the misconduct demonstrates a lack of fitness and propriety. Key to this is the

integrity of the individual. That is because persons who perform functions in relation to financial services must, in practice, be trusted to discharge their duties and comply with the rules with integrity. Once it is shown that a person is prepared to act otherwise, there will be a strong public interest in ensuring that they are not permitted to carry on in that position of trust. We accept that submission.

136. The DFSA submits that a person who is prepared to commit contraventions such as those found to have been committed by Mr Rollet, and conduct themselves in the manner he has done subsequently by providing false and misleading information to the DFSA, demonstrates that he should have no place in relation to Financial Services in the DIFC; either as an officer or employee, or as a person performing functions in connection with financial services.

137. Mr Rollet responds on this issue by reference to Paragraphs 62 and 63 of his closing submissions. First these point to aspects of the facts in issue which we have found to be misconceived. Mr Rollet claims that he had in place a competent and experienced senior management team, points out that Mr Sherriff and Ms Morgan did not consider the activities to be unlawful and submits that PwC and others were 'comfortable' with LT's approach to cash. As we see it these factors carry little weight. The quality of the compliance function was demonstrably very low, the claims about the outside professionals are wrong and the positions taken by Mr Sherriff and Ms Morgan were under informed and do not detract from the responsibility of Mr Rollet.

138. Mr Rollet points out that he has had no disciplinary issues before and suggests that the fallout with LT, which led to his departure, is punishment enough. The events in question are now entirely historic and took place many years ago. Mr Rollet's lawyers submit that it is plain from Paragraphs 63 – 64 of his third witness statement, that he has learned from the problems that took place at LT. They say that where, as here, a person has effectively corrected their omissions, neither a prohibition nor a restriction is warranted.

139. In those Paragraphs 63 and 64 Mr Rollet says, amongst other things: "*While I maintain my innocence with regard to the circumstances which led to the issuance of the decision notice, I regret that there was room for such action to be taken against me. Accordingly, I have redoubled my efforts to ensure that such a situation would not arise in the future. In that regard…I have forbidden employees from facilitating physical transactions at my main business, Blue Ocean International Bank (BOIB), a regulated entity in Puerto Rico from its inception; I have implemented regular compliance/AML training for the employees of BOIB and the board which I personally attend. I have required all senior management at BOIB to complete ACAMS examinations and I am personally undertaking ACAMS examinations. The Decision Notice has the potential to severely affect my livelihood and career as well as third parties and if I am not allowed to function as a regulated person, I would be forced out of my current businesses and would have no direct source of income.*"

140. We bear all these considerations in mind and do not repeat our conclusions about Mr Rollet's lack of integrity beyond addressing the suggestion that this was a relatively minor matter which occurred long in the past, now corrected by experience and more intensive compliance training. Mr Rollet, a senior banker, did not need compliance training to know full well that these cash schemes were obviously improper and a potential vehicle for serious crime. This was a brazen disregard of important principles by a senior executive. The financial system only works if its key players are fit and proper and Mr Rollet demonstrated to us that in these matters he was neither. There has been no recognition by Mr Rollet of the seriousness of these matters.

141. In those circumstances we impose a fine of USD 175,000. We also direct that there be a restriction and a prohibition in the terms sought by the DFSA.

COSTS.

142. The DFSA seeks an order for payment by Mr Rollet of its external costs of some USD 73,000 and online and transcription fees of USD 10,446. 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.*" FMT Rule 74 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.*"

143. The DFSA submits that Mr Rollet should pay these costs. Costs should follow the event, there is no reason for the Government of Dubai to have to meet this expense and Mr Rollet acted unreasonably in some of the points he took. He ran arguments that had no factual basis and failed to reflect properly on the contemporaneous documentary evidence before putting together his witness statement. It also argues that Mr Rollet improperly blamed others for his own errors.

144. Mr Rollet responds that the fact that an applicant has been unsuccessful is not itself a basis upon which to award costs. There must be something more so as to take the conduct of the proceedings out of the ordinary, and into the realm of the exceptional. The conduct of the proceedings before the FMT was efficient and sensible, and genuine efforts were made to limit cross-examination to areas which were relevant to the pleaded case. He points to aspects of his case that were substantiated and to the quality of the evidence of the Compliance witnesses. He also points to the fact that despite substantially succeeding in his privacy application he incurred costs which the DFSA was not ordered to pay. On the question of amount his lawyers point to *Kazakhstan Kagazy PLC v Zhunus* [2015] WEHC 404 (Comm) where Leggatt J observed that: "*The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order*

to have its case conducted and presented proficiently, having regard to all the relevant circumstances."

145. The FMT has been given a discretion. If it had been intended that costs should follow the event the Rules would have said so. This is a broad discretion but a useful question to ask in some cases is whether an unsuccessful applicant has acted unreasonably in the way the case has been conducted. We bear in mind all the considerations drawn to our attention in the submissions and statements about this issue and mention only some of them specifically.

146. Some of the factors invoked by the DFSA have already been taken into account by the FMT in imposing the penalty. Others do not seem to us to carry weight. In particular, while Mr Rollet must take responsibility for the LT Compliance operation, in a situation where he alone was being proceeded against, he was entitled to explore the responsibility of the two compliance professionals whose performance (and evidence) were unimpressive. Further, unlike some others who have brought cases before the Tribunal, Mr Rollet instructed and followed the advice of experienced lawyers including a Queens Counsel who then conducted the case professionally and appropriately. It is easy at the end of the case to point with hindsight at aspects which turned out to be wasteful. Against that, points were taken but abandoned and others were obviously hopeless as soon as the documents were examined closely. Mr Rollet has given us two statements as to his means but these are not as comprehensive as they might have been. There is some force in the argument that the level of external cost was a bit high but the DFSA has not claimed, as it might have done, anything for the time of its very professional in house legal team.

147. Taking all the matters submitted to us into consideration we order that Mr Rollet pay fifty per cent (50%) of the costs put forward by the DFSA.

CONCLUSION.

148. Mr Rollet's application is dismissed. We impose a fine of USD 175, 000. We direct that there be a restriction and a prohibition in the terms sought by the DFSA. In effect we uphold the Decision Notice and order Mr Rollet to pay fifty per cent of the DFSA's costs of the appeal.