UT Neutral citation number: **[2024] UKUT 00254 (TCC)**

UT (Tax & Chancery) Case Number: UT-2022-0000150

Upper Tribunal
(Tax and Chancery Chamber)

FINANCIAL SERVICES – Decision Notice issued on basis that the Authority not satisfied an individual was "fit and proper" to perform Chief Executive and Executive Director functions – Decision Notice referred to Tribunal – possible overlap with references made by Barclays – – Decision Notice based in part on findings of other court and Tribunal hearings – whether admissible – whether Tribunal should place weight on them – no witnesses called by the Authority – whether individual dishonest and/or lacked candour when responding to questions asked by the Authority during interviews in 2013 and 2014 – held, yes – whether Tribunal should also make other findings based on evidence put forward by Applicant – yes – if remitted to consider new facts, the outcome would inevitably be the same – Reference dismissed

Heard on 8-10 July 2024
Judgment given on: 27 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ANNE REDSTON
MS SUSAN DALE
MR PETER FREEMAN

Between

SARANAC PARTNERS LIMITED

Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

Respondent

Representation:

For the Applicant: Ian Winter KC, instructed by CMS Cameron McKenna Nabarro Olswang LLP

For the Respondent: Paul Stanley KC, instructed by the Financial Conduct Authority

DECISION

INTRODUCTION AND SUMMARY

1. Saranac Partners Limited ("Saranac"), the Applicant in these proceedings, is a wealth and investment management firm founded in 2015 by Mr Thomas Llewellyn Kalaris. Mr Kalaris had previously been employed by Barclays Bank plc, a subsidiary of Barclays plc[1].

2. On 21 September 2020, Saranac applied to the Financial Conduct Authority[2] ("the Authority") for approval under s 60 of the Financial Services and Markets Act 2000 ("FSMA") for Mr Kalaris to perform the Chief Executive and Executive Director functions for Saranac ("the Application").

3. On 17 November 2022, the Authority set out its decision in a decision notice (the "Decision" and the "Decision Notice") refusing the Application on the grounds that the Authority was not satisfied Mr Kalaris was a fit and proper person to perform those functions.

4. In making the Decision, the Authority relied on the responses given by Mr Kalaris during two interviews with the Authority ("the Interviews"). The first took place in 2013 ("the 2013 Interview"), and related to a capital raising exercise conducted by Barclays in June 2008 and the Advisory Services Agreement ("ASA") entered into on the same day. The second took place in 2014 ("the 2014 Interview"), and related to a report produced for Barclays by a consultancy called Genesis Ventures ("GenVen" and "the GenVen Report" respectively). This was produced in March 2012 but only disclosed to Barclays' regulators in December 2012.

5. On 9 December 2022, Saranac referred the Decision Notice to the Tribunal ("the Reference" or "the Saranac Reference"). When hearing a reference against this type of Decision Notice, the Tribunal has a supervisory jurisdiction, so that:

> (1) if the Decision was within the range of reasonable decisions open to the Authority, the Tribunal must refuse the Reference;
>
> (2) if the Decision was not within the range of reasonable decisions, the Tribunal must allow the Reference and remit the matter to the Authority for it to make a new decision in the light of our findings; but
>
> (3) if the Tribunal makes findings which are inconsistent with those on which the Authority based the Decision, but if the matter were remitted, the Authority would inevitably come to the same conclusion, the Tribunal must refuse the Reference.

6. In relation to the capital raising, the Decision was based on Mr Kalaris's responses to four questions asked during the 2013 Interview. We made findings of fact based on the same documentary evidence as that considered by the Authority, together with Mr Kalaris's witness evidence. We went on to agree with the Authority that Mr Kalaris had not been candid in his answers to three of the questions and that one of his answers was dishonest.

7. In relation to the GenVen Report, the Authority decided that certain of the answers given by Mr Kalaris during the 2014 Interview had been false and/or misleading. It came to that conclusion on the basis of findings made in another Tribunal judgment, together with evidence in a contemporaneous meeting note.

8. For the reasons given at §52ff, we decided not to place reliance on the findings of that other Tribunal judgment, or the meeting note. However, having considered documentary

[1] In this judgment we have not distinguished between Barclays plc and Barclays Bank plc unless it is necessary to do so, but have instead used the abbreviation "Barclays".

[2] References in this judgment to "the Authority" also include the Financial Services Authority, as the Financial Conduct Authority was previously known.

evidence which was not in dispute, together with Mr Kalaris's witness evidence, we found that he knowingly gave false evidence when he told the Authority in the course of the 2014 Interview that he first became aware of that GenVen Report when shown a copy during a meeting on 17 December 2012, and so acted dishonestly.

9. We went on to make further findings on the basis of other evidence available at this hearing, which had not been taken into account by the Authority, and some of those findings are favourable to Mr Kalaris. However, they are significantly outweighed by our findings about the Interviews. We are in no doubt that if the matter were remitted to the Authority, it would inevitably come to the same conclusion, namely that it is not satisfied Mr Kalaris is fit and proper to perform the Chief Executive and Executive Director functions for Saranac. Furthermore, we find that the position would be the same if we had made a finding of dishonesty in relation to only one of the Interviews. We therefore dismiss the Reference. Our decision is unanimous.

10. Before moving on to the substantive body of this judgment, we explain a procedural issue considered at the beginning of the hearing which related to two decision notices issued to Barclays.

THE BARCLAYS REFERENCES

11. On 23 September 2022, the Authority issued a decision notice to Barclays plc, imposing a penalty of £40m for breaching the Listing Rules in relation to the June 2008 capital raising. On the same day, the Authority issued a decision notice to Barclays Bank plc imposing a related penalty of £10m. Both references were referred to the Tribunal ("the Barclays References").

12. On 19 April 2023, the Authority contacted Saranac's representative, CMS Cameron McKenna Nabarro Olswang LLP ("CMS"), inviting that firm to consider how the possible "overlap" between the two sets of proceedings should be managed, and suggesting that Saranac's Reference might be decided "at the same time" as the Barclays References.

13. On 24 April 2023, CMS objected to Saranac's Reference being joined to the Barclays References "or in any way determined at the same time", for reasons which included the following:

(1) so far as the June 2008 capital raising was concerned, the case against Mr Kalaris related to the responses he gave in the 2013 Interview, while the case against Barclays related to whether there had been a failure to comply with the Listing Rules;

(2) the Authority had accepted that Mr Kalaris had no responsibility for Barclays' decisions relating to the Listing Rules;

(3) the Saranac Reference includes the GenVen issue, which is not part of the Barclays References, while the Barclays References also relate to the further capital raising in October 2008, which is not part of Saranac's Reference; and

(4) Saranac would suffer further delay and an increase in costs if the two cases were joined.

14. In a later email dated 25 April 2023, CMS said that if the Authority wished to take this matter further, it should make a formal application to the Tribunal, which Saranac would oppose.

15. On 2 May 2023, the Authority wrote to the Tribunal, copying both Saranac and Barclays, setting out extracts from the Saranac Reference and the Barclays References, and then saying:

> "Whilst significant parts of the two sets of proceedings do not overlap, it is clear that in both sets of proceedings what the FCA alleges was the primary/ substantial/true purpose of the June Agreement is not accepted by the

> respective Applicants. It is therefore likely that in due course the Tribunal will be called on to determine the nature and purpose of the June Agreement in the two separate sets of proceedings. The FCA considers it appropriate to flag this issue to the Tribunal now so that it can consider whether any particular steps should be taken to minimise the chance of inconsistent outcomes. In this regard the FCA has already written to Saranac to seek its views as to whether its reference should be determined at the same time as (but not joined with) the Barclays references. Saranac has indicated a strong preference that its reference is heard separately and before the Barclays references, as it considers its references would otherwise likely be unduly delayed.
>
> The FCA is neutral on this issue and is not seeking any directions in relation to it. Nevertheless we consider it appropriate that both the Tribunal, and all the relevant Applicants, are made aware of the overlap."

16. In May 2023, with the consent of the Authority, Barclays and Saranac exchanged redacted copies of the Statements of Case issued by the Authority, and redacted copies of their respective Replies.

17. On 14 June 2023, Barclays wrote to the Tribunal submitting that the Saranac Reference should not be "heard or resolved at the same time" as the Barclays References, for essentially similar reasons to those given by CMS on 24 April 2023.

18. Mr Stanley's skeleton argument on behalf of the Authority was filed and served a week before this hearing. It included the following passage:

> "…there are ongoing, related, proceedings between Barclays and the FCA (in relation to the June 2008 capital raising, but also an October 2008 capital raising) for which a three-week substantive hearing is due to take place starting 25 November 2025 [an error for 2024]. The Authority has ensured that Saranac and Barclays (as well as the Tribunal) are aware of this overlap and has provided appropriate cross-disclosure. Saranac's position is that its reference should proceed and be determined separately from the references of Barclays {CB/270/4047}. The Authority does not object to this provided it is not necessary for the Tribunal to make findings in this case on matters that are directly in issue in the Barclays references, and which might therefore lead to inconsistent outcomes on critical points. The Authority considers that is likely to be possible because this reference focuses on whether the factual account that Mr Kalaris gave when interviewed was accurate and candid, not on whether the prospectus was properly compliant with the Listing Rules. However, depending on how the case develops it is a point that needs to be kept under review."

19. In the light of that passage, we asked the parties to set out their understanding of the potential for an overlap between (a) findings of fact made in this judgment and (b) disputed matters about which findings may need to be made in the Barclays References. We drew attention to Mr Stanley's suggestion that the possibility of overlap "needs to be kept under review" as the hearing progressed.

20. On behalf of Saranac, Mr Winter said:

(1) there was now no dispute between the parties on the "overlapping" points and so any related findings would be uncontentious;

(2) Mr Kalaris was not a witness in relation to the Barclays References; and

(3) it was in any event too late for the cases to be joined.

21. Mr Stanley's position was that "the issues touch" such that Mr Kalaris's evidence might therefore be relevant to the Barclays References. He submitted that "it was never too late for the Tribunal to stay the proceedings", but that if he considered the procedure during the hearing was unfair to the Authority, he would make an appropriate application.

22. We asked if any representative from Barclays was attending the hearing, but there was no response. Mr Stanley noted that Barclays were well represented, and observed that they might have connected to the hearing remotely.

The Tribunal's view

23. Having considered the documents summarised above and the submissions made by Mr Winter and Mr Stanley, we decided it was in the interests of justice to continue the proceedings and hear the Saranac Reference. This was for the following reasons:

(1) Each party was aware of the case being put by the other parties.

(2) No application had been made by any party before the beginning of this hearing for the Saranac Reference to be joined to the Barclays References.

(3) Both Saranac and Barclays had objected to joinder.

(4) FSMA s 133 set out at §32 below provides that once a reference has been made, it "must" be determined by the Tribunal.

(5) As set out in the email from CMS summarised at §13 above, there are many differences between the Saranac Reference and the Barclays References. Nevertheless, some findings of fact which are required to determine Saranac's Reference are likely also to be relevant to the Barclays References. It may well be that those findings are uncontroversial, as Mr Winter said would be the position. However, we could not determine whether he was correct, because we had only the redacted copies of the Barclays Statement of Case and their Reply, and no related submissions.

24. We advised those present that we would proceed, and would make the findings necessary to decide the Saranac Reference, whether or not there was a risk of overlap with the Barclays References.

Subsequently

25. Once the hearing was under way, neither Mr Winter nor Mr Stanley applied for the proceedings to be adjourned, and no such application was received from Barclays.

26. At the end of the second day of the hearing, Barclays made an application to the Tribunal to be provided with transcripts. Neither Saranac nor the Authority objected, and we gave permission.

LEGISLATION, CASE LAW AND THE HANDBOOK

27. Unless otherwise stated, all references to legislation in this judgment are to the FSMA, and all references to Rule or Rules are to the Tribunal Procedure (Upper Tribunal) Rules 2008.

The legislation and related case law

28. Section 59 requires regulated financial services firms to obtain the Authority's prior approval for an individual to carry out certain "controlled functions". These are set out in the chapter relating to "Supervision" in the Authority's Handbook, and include the Chief Executive function and the Executive Director function; the former is given the code number SMF1 and the latter SMF3.

29. Section 60 requires the application for approval to be made in the manner directed by the Authority, and to contain the information the Authority may reasonably require, together with other specific matters.

30. Section 61 reads, so far as relevant to this case:

> "The regulator to which an application for approval is made under section 60 may grant the application only if—
>
> (a) it is satisfied that the person in respect of whom the application is made ("the candidate") is a fit and proper person to perform the function to which the application relates…"

31. In *Thomas v FSA* [2004] FIN/2004/0006 at [99], Judge Brice held that on such a reference, the Authority "does not have to prove that the Applicant is not fit and proper but rather that it is not satisfied that the Applicant is fit and proper". In *Köksal v FCA* [2016] UKUT 0478 (TCC) ("*Kôksal*") at [37] the Tribunal endorsed that reading of the legislation, and we respectfully concur.

32. Section 55Z3(1) provides that "an applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal". Section 133 is headed "Proceedings before the Tribunal: general provisions". It specifies the UT's jurisdiction in certain types of references, including in relation to disciplinary matters, and then provides:

> "(6) In any other case, the Tribunal must determine the reference or appeal by either—
>
> (a) dismissing it; or
>
> (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.
>
> (6A) The findings mentioned in subsection (6)(b) are limited to findings as to—
>
> (a) issues of fact or law;
>
> (b) the matters to be, or not to be, taken into account in making the decision; and
>
> (c) the procedural or other steps to be taken in connection with the making of the decision.
>
> (7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal."

33. Those subsections therefore provide that, where the reference relates to a non-disciplinary matter, the Tribunal has a supervisory jurisdiction. In *Carrimjee v FCA* [2016] UKUT 0447 (TCC) ("*Carrimjee*"), the Tribunal explained how that jurisdiction operates:

> "[38] If, having reviewed all the evidence and the factors taken into account by the Authority in making its decision, and having made findings of fact in relation to that evidence and such other findings of law that are relevant, the Tribunal concludes that the decision to prohibit is one that is reasonably open to the Authority then the correct course is to dismiss the reference.
>
> [39] Alternatively, if the Tribunal is not satisfied that in the light of its findings that the decision is one that in all the circumstances is within the range of reasonable decisions open to the Authority, the correct course is to remit the matter with a direction to reconsider the decision in the light of those findings. For example, that course would also be necessary were the Tribunal to make

> findings of fact that were clearly at variance with the findings made by the Authority and which formed the basis of its decision. That course would also be necessary had there been a change of circumstance regarding the applicant which indicated that the original findings made on which the decision was based, for example as to his competence to undertake particular activities, had been overtaken by further developments, such as new evidence which clearly demonstrated the applicant's proficiency in relation to the relevant matters. Such a course would not usurp the Authority's role in making the overall assessment as to fitness and propriety but would ensure that it reconsidered its decision on a fully informed basis…"

34. Although *Carrimjee* concerned the imposition of a prohibition order, the Tribunal has confirmed that the principles to be applied are the same in an authorisation case: see *Lewis Alexander Ltd v FCA* at [33] to [34], *Köksal* at [25] to [28] and *Soszynski v FCA* [2022] UKUT 00247 (TCC) ("*Soszynski*") at [33].

35. In *Soszynski* the Tribunal went on to say:

> "[34] …the Upper Tribunal must dismiss the Reference unless it makes findings of fact and/or law which lead to a conclusion that the Decision was not one that was reasonably open to the Authority.
>
> [35] Furthermore, even if the Tribunal finds flaws in the Authority's decision-making process, for example by making findings of fact which contradict or are inconsistent with the findings on which the Authority based its decision, it should not remit the Reference if it is of the view that despite such failings, it is inevitable that if the matter were remitted, the Authority would come to the same conclusion."

The Handbook

36. The part of the Authority's Handbook entitled "Fit and Proper test for Employees and Senior Personnel" ("FIT") sets out the factors to which the Authority will have regard when assessing the fitness and propriety of a candidate whom a firm is putting forward for approval. The candidate's honesty, integrity and reputation are among the most important considerations to which the Authority will have regard (FIT 1.3.1B G) and in carrying out that exercise the Authority will consider following matters:

(1) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate (FIT 2.1.3G(2));

(2) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G(3));

(3) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G(4));

(4) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G(10));

(5) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to

comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

37. If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).

THE DECISION NOTICE

38. Paragraph 3 of the Decision Notice is headed "summary of reasons", and reads:

> "On the basis of the facts and matters described below, the Authority is not satisfied that Mr Kalaris is a fit and proper person to perform the controlled functions to which the Application relates. This is because there are reasonable grounds for considering that in interviews with the Authority in relation to two different investigations Mr Kalaris failed to be open and cooperative and gave untrue and misleading evidence. The Authority is therefore not satisfied as to his honesty and integrity."

39. The "facts and matters" set out details of the capital raising exercise conducted by Barclays in June and October 2008, including the Authority's view that further disclosure should have been made in the related prospectus and other documents; that Barclays' failure to make those disclosures was "misleading, false and/or deceptive", and that Mr Kalaris was "involved" in the transactions.

40. However, in subsequent correspondence, the Authority stated that it was not alleging Mr Kalaris had behaved improperly in relation to the capital raising itself, but rather that the answers he gave during the 2013 Interview relating the June 2008 exercise had lacked candour and/or were untrue.

41. In relation to the GenVen Report, the Decision Notice states, and the Authority subsequently confirmed, that the Decision was based on the answers given by Mr Kalaris during the 2014 Interview, and not on Mr Kalaris having acted improperly by suppressing the GenVen Report.

EVIDENCE

42. The Tribunal's powers in relation to admitting or refusing to admit evidence are given by Rule 15(2), which provides:

> "The Upper Tribunal may—
>
> (a) admit evidence whether or not—
>
> (i) the evidence would be admissible in a civil trial in the United Kingdom; or
>
> (ii) the evidence was available to a previous decision maker; or
>
> (b) exclude evidence that would otherwise be admissible where—
>
> (i)-(ii)…
>
> (iii) it would otherwise be unfair to admit the evidence".

43. The Tribunal was provided with a "core bundle" of 4,431 pages and a "non-core bundle" of 12,710 pages (together "the Bundle"). In the course of the hearing, Mr Stanley applied for part of the transcript relating to Mr Kalaris's criminal trial to be admitted; Mr Winter did not object and we gave permission.

44. Mr Kalaris provided a witness statement and gave oral evidence on oath over one and a half days. He was cross-examined by Mr Stanley and re-examined by Mr Winter. No other witnesses gave evidence.

The evidence on the capital raising issue

45. Our findings on the capital raising issue are based on the evidence given by Mr Kalaris, either in his witness statement or under cross-examination at this hearing, and on the following documentary evidence, none of which was in dispute:

(1) the Prospectus for the capital raising, and the text of the Advisory Services Agreement ("ASA") entered into by Barclays, both of which Mr Kalaris accepted he had seen before the 2013 Interview;

(2) contemporaneous emails sent or received by Mr Kalaris;

(3) the content of other contemporaneous emails, which Mr Kalaris accepted in oral evidence he had been aware of at the time of the 2013 Interview;

(4) transcripts of contemporaneous conversations to which Mr Kalaris had been a party; and

(5) the transcript of the 2013 Interview. An earlier version sent to Mr Kalaris and his lawyers had been returned with proposed changes, the majority of which were minor clarifications. Neither Mr Kalaris nor Mr Winter suggested that any part of the transcript was an incorrect record of what had been said.

46. Both parties also referred to the judgment of Waksman J in *PCP Capital Partners LLP and another v Barclays Bank plc* [2021] EWHC 307 (Comm) ("*PCP*"), see further §108. Mr Stanley submitted that it was entirely reasonable for the Authority to have regard to the factual findings made by Waksman J. He cited *Henton v FSA* [2007] FIN/2006/0017 ("*Henton*"), in which Judge Brice had considered whether the Authority could put forward an earlier High Court decision ("*Sphere Drake*") relating to the same applicant. She held at [48]:

> "I bear in mind the legislative framework within which the Tribunal operates and that it is the task of the Tribunal to decide whether the Applicant is a fit and proper person within the meaning of section 56 of the 2000 Act. The legislative framework includes section 133 and Rule 19(3) as a result of which the findings in *Sphere Drake* may be put before the Tribunal by the Authority as evidence and the Tribunal is free to make such use of those findings as is proper in the circumstances. However, the Tribunal will also have regard to any other evidence which is adduced before it, including any evidence of the Applicant or of witnesses on his behalf. For example, if the Applicant wishes to adduce evidence to support his contention that what he did was the normal practice of the market then he may do so. The Tribunal will also have regard to any argument put forward by either party."

47. That summary of the legal position was endorsed in *Barry Williams v FSA* [2011] FIN/2010/0006 at [8], and we respectfully agree. In any event, Mr Winter did not challenge the admissibility of any of the factual findings made by Waksman J.

Mr Beauchamp

48. The 2013 Interview was conducted on behalf of the Authority by Mr Bob Beauchamp. Mr Winter submitted that the Authority could not make good its case that Mr Kalaris had given misleading replies in the course of that Interview, because it had not called Mr Beauchamp to give evidence and so could not show he had been misled.

49. Mr Stanley responded by saying:

> "The question is not whether anyone was in fact misled by Mr Kalaris…the question is whether Mr Kalaris gave honest answers and, for that purpose, the right thing to do is to read the transcript."

50. We agree with Mr Stanley. The issue we have to decide is whether Mr Kalaris was candid and truthful in the answers he gave during the 2013 Interview, not whether Mr Beauchamp himself believed Mr Kalaris's replies.

The GenVen Report

51. The parties disagreed as to the evidence which we should take into account when making our findings in relation to the GenVen Report, as we explain below.

Mr Tinney

52. In *Andrew Tinney v FCA* [2018] UKUT 0435 (TCC) ("*Tinney*") the Tribunal made findings of fact about some of the events which are relevant to the Saranac Reference.

53. Mr Winter submitted that the Tribunal's findings in *Tinney* should be disregarded, because:

(1) Mr Kalaris had not been a witness in *Tinney*;

(2) Mr Tinney is not a witness in this hearing;

(3) had Mr Tinney been tendered as a witness, Mr Winter would have wanted to cross-examine him; and

(4) the Authority's position during the *Tinney* hearing was that Mr Tinney had acted without integrity. It was therefore inappropriate for the Authority now to rely on his evidence or on the findings made by the Tribunal on the basis of that evidence.

54. Despite that overall submission, Mr Winter also asked us in closing to find facts about Mr Tinney's motive and reasons, by reference to the findings in *Tinney.*

55. Mr Stanley started from Rule 15(2), which as set out above, allows the Tribunal to admit evidence whether or not it "would be admissible in a civil trial in the United Kingdom". He added that it was clear from *Henton* that the Authority could put *Tinney* before this Tribunal as evidence of fact. In response to Mr Winter's third point, he said that although the Authority originally considered Mr Tinney to have acted without integrity, it now accepted the Tribunal's finding to the contrary.

56. For the reasons given by Mr Stanley, we agree that the findings of *Tinney* are admissible. However, we also agreed with Mr Winter that it would be unfair to place weight on those findings, given that Mr Tinney was not a witness in these proceedings, and so could not be cross-examined. We took the same approach in relation to the transcript of Mr Tinney's interview with the Authority.

57. We considered the finding on which Mr Winter asked us to place reliance. However, it appeared to be based on evidence given by Mr Tinney during his interview with the Authority. Mr Kalaris was taken to that evidence in cross-examination and he denied it was accurate. We have therefore not placed any weight on that finding, or any other finding made in *Tinney.*

Mr Perry

58. The Bundle contained emails and notes written by Mr Duncan Perry, General Counsel of Barclays Wealth at the relevant time, together with copies of recordings he had made and answers he gave in interviews. Mr Winter submitted that the Tribunal should disregard that evidence because:

(1) Mr Perry had not been called as a witness;

(2) had he been called, Mr Winter would have wanted to cross-examine him; and

(3) in *Tinney,* the Tribunal had refused to admit the same or similar evidence, unless it had been corroborated by Mr Tinney.

59. Mr Stanley submitted that the evidence was admissible, and in response to Mr Winter's third point, said there was a difference between Saranac's Reference and that in *Tinney,* because the issue in this case was whether the Authority had acted reasonably in deciding Mr Kalaris was not "fit and proper", whereas in *Tinney* the Authority had the burden of proving Mr Tinney had acted without integrity.

60. We agree with Mr Stanley both that this evidence was admissible, and that in *Tinney* the Authority had the burden of proving that Mr Tinney was not fit and proper, which is not the position in the Saranac Reference.

61. However, our task is to find the facts on the basis of the evidence, and then to consider, in the light of those facts, whether the Decision was one which was reasonably open to the Authority. Given that Mr Perry had not been tendered as a witness, we decided it would be unfair to place weight on his evidence when making those findings, unless Mr Kalaris had accepted that evidence.

Mr Mason

62. Mr Mason was Mr Tinney's Chief of Staff at the relevant time, and the Bundle contained his contemporaneous notes and the transcript of an interview by the Authority.

63. In the course of the hearing, Mr Kalaris said the notes related to two meetings, one of which he accepted was "a fair review of the position", but that he had not attended the second meeting. Mr Stanley accepted this may have been the position. We have therefore not placed any weight on the notes of that second meeting, or on the transcript of Mr Mason's interview, because he too was not available for cross-examination.

Mr Biesinger

64. Mr Biesinger was one of the authors of the GenVen Report, and the Bundle included the transcript of his interview by the Authority. Mr Winter asked that reliance be placed on one small part of that evidence, but submitted that the Tribunal should refuse to place any weight on the rest, given that Mr Biesinger had not been called as a witness and could not be cross-examined.

65. Because Mr Biesinger had not been called as a witness, we have not placed reliance on his evidence when making our findings of fact. The part of the evidence to which Mr Winter did not object was half a sentence without the rest of the passage. We decided it was not fair to the Authority for us to have regard only to a half sentence taken out of its context, and have not done so.

Findings of fact

66. On the basis of the evidence summarised above, we make the findings of fact in this judgment. We begin with background findings, followed by findings about both the 2013 and 2014 Interviews and about other matters.

BACKGROUND FINDINGS OF FACT

67. The background findings relate for the most part to Mr Kalaris, the criminal case, and Saranac.

Mr Kalaris

68. In 1976, Mr Kalaris graduated from Dickinson College in Pennsylvania with a degree in Economics. He subsequently undertook a postgraduate course at the University of Chicago and completed an MBA in 1978. He worked for JP Morgan in the US from 1977 to 1986,

beginning on the trading floor and ending as Managing Director and Global Head of Fixed Income Research, Sales & Trading, and then as Head of Investment Client Management

69. In September 1996 Mr Kalaris joined Barclays, a well-known major global financial services provider, with operations in many countries including the UK and the USA. Barclays has a number of divisions, including Barclays Capital ("Barcap"). From 1997 until the end of 2005 Mr Kalaris was Chief Executive of Barclays in the Americas; he also served as Chairman of the Bond Market Association and sat on the Treasury Borrowing Advisory Committee, a formal advisory committee to the US Treasury.

70. Mr Kalaris moved to London in 2006 as Chief Executive of Wealth and Investment Management; in 2009 he joined Barclays' Group Executive Committee, and in 2012 was appointed Barclays Group Executive Chairman of the Americas. Between 1 November 2007 and 1 May 2013, he was an approved person, holding the CF29 (Significant Management) function at Barclays.

71. We agree with Mr Stanley that Mr Kalaris is a highly intelligent man with a deep understanding of the markets in which he operated. Having heard him give evidence over one and half days and read his witness statement, we also agree that he is well able to express himself with precision.

Capital raising, GenVen and the Interviews

72. Mr Kalaris was involved in the capital raising exercises which took place in June and October 2008. In 2012 his direct report, Mr Tinney, engaged GenVen to carry out a cultural audit. There are further findings about the capital raising and GenVen later in this judgment.

73. The 2013 Interview took place on 15 March 2013 and concerned the capital raising. On 1 May 2013, Mr Kalaris left Barclays (although he remained on garden leave for a year). The 2014 Interview took place on 26 September 2014 and related to the GenVen Report. We also make further findings about both Interviews later in this judgment.

The criminal proceedings

74. In 2014 and 2016 Mr Kalaris provided pre-prepared statements for the Serious Fraud Office ("SFO") about the capital raising, and on 19 and 20 September 2016 was interviewed by the SFO on a voluntary basis. He provided a third statement on 26 October 2016.

75. On 20 June 2017 Mr Kalaris and four other senior Barclays executives were charged with conspiracy to commit fraud by false representation in relation to the June and October 2008 capital raising; the trial began in January 2019. In April 2019, the charges were dismissed by the judge on the basis that there was no case to answer. In June 2019, the Court of Appeal allowed an appeal, and Mr Kalaris and two other executives were retried. That hearing began in October 2019 and ended on 28 February 2020, when all three were acquitted.

Saranac

76. Meanwhile, in 2015 Mr Kalaris had founded Saranac. In July 2016, Saranac applied to the Authority for Mr Kalaris to be authorised to perform the CF1 Director and CF3 Chief Executive functions, and for him to be approved to hold more than 10% of its voting rights (and so be a "controller" of the firm as defined by FSMA s 181). On 8 April 2016, the Authority said it was minded to refuse that application, and it was withdrawn.

77. Saranac then restructured its share capital, introducing a new class of shares held only by Mr Kalaris, which were restricted to less than 10% of the votes. As a result, Mr Kalaris held 39% of Saranac's shares by capital value, but only 9.99% of the votes.

78. Saranac made a further application for authorisation in 2016, but did not apply for Mr Kalaris to perform a controlled function. On 3 May 2017, the Authority granted authorisation

to Saranac on condition that the Chair, Mr Robert Elliott, attested on an ongoing monthly basis that Mr Kalaris did not have, and did not exercise, significant influence over Saranac. That condition was removed in March 2020 following Mr Kalaris's acquittal in the criminal trial. In the period before Saranac was authorised, Mr Kalaris invested over £20m in the business.

79. On 28 July 2020 Saranac certified Mr Kalaris as fit and proper to act as a client adviser under a contract of employment. On 21 September 2020, Saranac made the Application to the Authority for Mr Kalaris to be approved to perform the Chief Executive and Executive Director functions. On 17 November 2022, the Authority issued the Decision Notice refusing the Application, on the grounds that it was not satisfied Mr Kalaris was a fit and proper person to perform those functions. On 9 December 2022, Saranac referred the Decision Notice to the Tribunal.

THE 2013 INTERVIEW

FINDINGS OF FACT

80. On the basis of the evidence summarised at §45 we make the following findings of fact about the capital raising exercises and the related 2013 Interview.

The SWF initiative

81. In 2007, Mr Kalaris was asked by Mr Bob Diamond, President of Barclays, to participate in Barclays' "Sovereign Wealth Fund" ("SWF") initiative. Its purpose was to analyse opportunities arising from closer interaction with SWFs, in particular those in the Middle East, and devise a strategy to expand Barclays' opportunities and client base in the region. The SWF initiative continued into 2008.

The economic situation

82. There were signs of a financial crash in early 2008, and by May of that year it was evident that the world was on the brink of a crisis, and that financial institutions needed to raise capital to avoid risking collapse. At the time, Mr John Varley was Barclays' CEO, Mr Chris Lucas was its CFO and Mr Paul Emney its COO.

83. Barclays' Board decided that very large sums of money needed to be raised to support the bank, and in June 2008 undertook to raise capital. The exercise was engineered by the Barclays Corporate Development team and its Capital Markets team, led by Mr Richard Boath. Mr Kalaris was brought in to help co-ordinate the process, which involved ensuring, in his own words, that "everything and everyone was as joined up as possible and that all relevant senior management were kept informed and all relevant people were involved in any decisions to be made".

84. Barclays' strategy was to try and secure a lead SWF investor to participate in the capital raising, because it was felt that as soon as one significant investor committed, others would have the confidence to follow suit. Barclays approached a number of possible SWFs, including the Qatar Investment Authority ("the Qataris"). The potential investors were given code names based on species of bird, with the Qataris being "Quail".

85. On 28 May 2008, Barclays decided it would pay 1.5% underwriting commission on the capital raising. However, by at least 15 May 2008, it was also considering ways of "sweetening" the deal for "cornerstone investors", including by using a memorandum of understanding ("MoU") specific to the investor in question.

The ASA

86. On 3 June 2008, Mr Jenkins, Mr Boath and Mr Kalaris attended a meeting with Dr Hussain, a lead negotiator for the Qataris, at which Dr Hussain said that "before committing" to the capital raising, the Qataris "need a fee of 3.75%". Mr Boath did a note of that meeting,

which ends with action points, including "decide on fee". There was thus a gap between the fee the Qataris were looking for and the commission on which the Board had already decided. Mr Kalaris described this in his evidence as the "value gap".

87. Mr Kalaris spoke to Mr Varley the same day, and then called Mr Boath to report that Mr Varley had said "he could live with 3.5% if he had to", and that he had told Mr Varley that "the answer" was maybe "an agreed upon joint venture of some sort". Mr Kalaris also spoke to Mr Diamond. Following those conversations, Mr Kalaris understood that the additional value would need to be provided by a side agreement.

88. On 5 June 2008, Mr Kalaris informed Mr Boath that Mr Varley had approved the 3.5% and at some point the Qataris agreed to a total of 3.5% rather than the 3.75% originally put forward by Dr Hussain.

89. Over the next few days, various ways of filling the "value gap" were considered. On 11 June 2008, Mr Jenkins suggested to Mr Kalaris that they use an agreement under which the Qataris would provide Barclays with access to their network of contacts and to sponsorship in the region, in exchange for the further money they required. Mr Kalaris agreed under cross-examination that this discussion was the origin of the idea to use an ASA.

90. Mr Kalaris had a telephone conversation with Mr Boath the same day. The transcript of that call incudes the following

> "*Mr Kalaris*: I told him [Mark Harding, Barclays General Counsel] I expected him to review all these documents…[and that] I don't want to go to jail, so Mark you've got to make sure you're comfortable…
>
> *Mr Boath*: What exactly are you going to propose to them?
>
> *Mr Kalaris*: What we're proposing to them is that we – that a week or ten days or whatever from now, once we sign the subscription, that we will then enter into an agreement where we pay for – we set up a joint venture and also paid for advice on the entire region.
>
> *Mr Boath*: Right.
>
> *Mr Kalaris*: And that that joint venture goes to [Paul] Emney and two or three other guys and their cost gets subtracted from the joint venture – sorry gets subtracted from the 35 [3.5].
>
> *Mr Boath*: I see.
>
> *Mr Kalaris*: And so what we have is that we have [inaudible] and that the joint venture is intended to advice [advise] and support our whole efforts in that region and frankly something, if you said to me pay the money and do it just on a pure arm's length basis. Do I think I could make it work for the next, you know, the next two years, where if I had a commitment on the part of that client in that institution, absolutely right. I think I would do it at arm's length.
> …
>
> *Mr Kalaris*: …You know, we need to think about what are the worst case scenarios, right. The worst case scenario is someone says well it's not economic, and I say, bullshit, we're paying this amount of money, in this relationship, with these guys, we're delighted to do it.
>
> *Mr Boath*: Yeah, I mean obviously the jeopardy is you know we're rumbled and people say well that was bullshit, you know this is just a fee through the backdoor and –
>
> *Mr Kalaris*: Yeah. But what would you say about Penguin [another potential investor]?

Mr Boath: I don't know – It's an MOU and its been disclosed…"

91. When asked about this exchange during cross-examination, Mr Kalaris said that he was American; that in the US the word "rumble" means "fight", and that he hadn't understand the word as used by Mr Boath to have "the British connotation" of "found out".

92. We agree with Mr Stanley that this evidence was not credible, for two reasons:

(1) In the context used by Mr Boath, "fight" makes no sense: the sentence would then read "the jeopardy is you know we're *fought* and people say…". The only possible meaning of "rumbled" in the sentence used by Mr Boath is "found out".

(2) Mr Kalaris referred to the same passage when giving evidence to the SFO in 2016. At that time, he said he understood Mr Boath to have meant "if people appreciated…ie that they rumbled that there was a link…they would conclude that it was a disguised fee". Had he misunderstood the meaning of "rumbled" when it was used by Mr Boath, he would have informed the SFO.

93. Mr Boath and Mr Kalaris spoke again later on 11 June 2008; their conversation included the following exchange:

> "*Mr Kalaris*: …what we're paying for is we're paying for the advice and other things like that, right, so we can make that clear and separate...
>
> …
>
> I mean I guess the question when we actually go down this path, you know…we need to make sure that [Mark Harding] is comfortable
>
> …
>
> *Mr Boath*: …he might say it's okay, right, because whatever we do, right, you know, will not be related to this subscription agreement, but frankly we all know that whatever we enter into we are entering into in exchange for the subscription agreement. So, you know, he's got to get his head round it.
>
> *Mr Kalaris*: Yeah. Yeah that's right. None of us wants to go to jail here…"

94. In his oral evidence, Mr Kalaris said that Mr Boath "mis-spoke" when he said the extra 2% was "in exchange for the subscription agreement". He added that "we all knew" the 2% was "part of an overall package with the Qataris". When Mr Stanley asked "do you agree with me that it was a fact that the advisory agreement was connected with the Qatari investment in the first capital raising?", Mr Kalaris replied "Yes, I do".

95. A later exchange during Mr Kalaris's cross-examination was as follows:

> "*Mr Stanley*: The advisory agreement was the means by which Qatar would receive the value that it wanted as a result of its investment, albeit by providing services under the agreement. Do you agree with that?
>
> *Mr Kalaris*: The Qataris had a view as to what they wanted to receive from the overall relationship with Barclays. That had two component parts to it. One was the participation at 1.5 per cent and the balance was the advisory service agreement. That provided the Qataris with the value that they wanted. The two were done in conjunction with each other.
>
> *Mr Stanley*: It was the means by which Qatar would receive the value it wanted, correct?
>
> *Mr Kalaris*: It was a means, yes. It was a legitimate means."

96. Mr Stanley then put to Mr Kalaris that the ASA "secured…the Qataris participating in the subscription, because it delivered to the Qataris the further value which they were seeking

while providing value for money for the bank at the same time?", to which Mr Kalaris replied "that's correct".

97. When Mr Kalaris was asked to agree that the Qataris would not have participated in the capital raising had they not also received the 2% under the ASA, he said that it had been "evident from the beginning" that the Qataris "wanted extra value for the relationship with Barclays". In his statement to the SFO, he had said in relation to his conversation with Mr Boath on 4 June 2008 that (our emphasis):

> "…my understanding [was] that the Qataris wanted additional value for their investment to that paid into the first capital raise, and that the bank <u>if it wanted to proceed</u> would need to consider a legitimate way of transferring added value to them."

98. We find as a fact that the Qataris would not have participated in the capital raising had Barclays not agreed to pay the further sum under the ASA. This was clear from the first conversation with Mr Hussain; it underpins the entire approach taken by Barclays in response; and it is also explicit in Mr Kalaris's evidence.

99. Mr Kalaris was not involved in working out the exact sum to be paid to the Qataris in order to fill the "value gap" between the 1.5% commission amount and the amount they were seeking. His consistent evidence, which we accepted, was that he considered that the 2% was worth paying in exchange for access to the Qataris' network, and to obtain their support in developing Barclays' presence in the Middle East, and he would have been open to doing the same deal on an arm's length basis. That evidence is supported by his exchange with Mr Boath already set out at §90. We also accepted Mr Kalaris's evidence that he had been looking for a method of filling the value gap which was "legal and commercial and practical".

The link between the ASA and the capital raising

100. On the basis of the foregoing, we summarise our key findings about the link between the ASA and the capital raising as follows:

(1) Barclays' Board had decided that the commission payable for participating in the capital raising was 1.5%.

(2) The Qataris would only participate in the capital raising exercise if they received a total of 3.5%.

(3) Barclays looked for a way of delivering the extra 2%, and decided on the ASA.

(4) The ASA was a side deal to fill the value gap between the 1.5% fixed by Barclays' Board and the 3.5% required by the Qataris. The ASA and the Qataris' contribution to the capital raising formed a package and were connected.

The text of the ASA

101. On 25 June 2008, Barclays sent the ASA to the Qataris. It consisted of a single page, which read as follows:

> "We are extremely pleased and honoured to be writing to you in connection with a new advisory agreement between our two institutions.
>
> You agree to provide various services to us, as an intermediary, in connection with the development of our business in the Middle East. You will provide these services over a period of 36 months to a total value of £42,000,000 [handwritten]. In return, we will pay you the sum of £42,000,000 [handwritten] in four equal instalments, the first within two weeks of signing, the second on 1 October 2008, the third on 1 January 2009 and the last on 1 April 2009. We have discussed the type and scale of services you will provide

> to deliver value in exchange for this fee and we know this will need to be refined by mutual agreement as our relationship develops further. Both parties will monitor and review this arrangement and act in good faith in connection with the formulation and arrangement of the services to be provided. We are not creating a partnership or agency arrangement and neither party may make any commitment on behalf of the other without express instructions from the party intending to be bound.
>
> This letter and the arrangements contemplated by it will be governed by English law."

The Prospectus

102. Also on 25 June 2008, Barclays announced that it was raising new capital. Of the total £4bn raised, the Qataris invested about £1.4bn and received a 6.4% stake in Barclays. Both the announcement of the share issue, and the related Prospectus included this passage:

> "SMBC [Sumitomo Mitsui Banking Corporation] has agreed to subscribe for the Firm Placed Shares and Qatar Investment Authority, Challenger, China Development Bank, Temasek and the Further Placees have agreed to subscribe for the Open Offer Shares to the extent, other than in the case of China Development Bank's Open Offer Entitlement, not taken up by Qualifying Shareholders. The Board believes that this is an important endorsement of Barclays longterm strategy and vision, and underscores the confidence of these institutions in Barclays and in its management team. Barclays is also pleased to have entered into an agreement for the provision of advisory services by Qatar Investment Authority to Barclays in the Middle East and to have agreed to explore opportunities for a co-operative business relationship with SMBC. The Board welcomes the support of Qatar Investment Authority, Challenger, SMBC, China Development Bank and Temasek as important investors while ensuring that the Open Offer structure allows existing Shareholders to participate in the issue of the Open Offer Shares on a pre-emptive basis."

103. As Mr Kalaris accepted in the course of cross-examination, this passage in the Prospectus simply recorded that an agreement had been made between Barclays and the Qataris for the latter to provide advisory services.

104. Under the heading "Further information on the Investors", the Prospectus included this passage:

> "**Qatar Investment Authority**
>
> Qatar Investment Authority was originally founded by the State of Qatar in 2005 to strengthen the country's economy by diversifying into new asset classes. Building upon the heritage of investments dating back more than three decades, its growing portfolio of long-term strategic investments complement the State of Qatar's wealth in natural resources. Qatar Investment Authority's investment in Barclays is being made by its wholly owned subsidiary Qatar Holding, which was incorporated in April 2006 within the jurisdiction of Qatar Financial Centre as the prime vehicle for strategic and direct investments by the State of Qatar. Headquartered in the Qatar Financial Centre, Qatar Holding is structured to operate at the very highest levels of global investing, with a planned presence in all major capital markets. Barclays and Qatar Holding have entered into an agreement for the provision of advisory services by Qatar Holding to Barclays in the Middle East."

105. Under the heading "Material Contracts", the Prospectus first explained what was meant by that term:

> "The following are all of the contracts (not being contracts entered into in the ordinary course of business) that have been entered into by members of the Group: (i) within the two years immediately preceding the date of this document which are, or may be, material to the Group; or (ii) at any time and contain obligations or entitlements which are, or may be, material to the Group as at the date of this document."

106. The Prospectus then described the subscription agreements entered into by SMBC and China Development Bank. This passage then followed:

> "***Qatar Subscription Agreement***
>
> On 25 June 2008 Barclays and Qatar Holding entered into a subscription agreement (the "Qatar Subscription Agreement"). The Qatar Subscription Agreement sets out the terms and conditions pursuant to which Barclays will, conditional only upon Admission, allot to Qatar Holding the Qatar Subscription Shares at the Issue Price of 282 pence per share. In consideration for agreeing to subscribe for the Qatar Subscription Shares, Barclays undertakes to pay Qatar Holding a commission equal to the product of 1.5 per cent. and the maximum number of Open Offer Shares for which Qatar Holding might be obliged to subscribe, being 625,426,689 New Ordinary Shares, at the Issue Price. The consideration for the allotment and issue of the Qatar Subscription Shares shall be the payment by Qatar Holding of an amount equal to the product of the Issue Price and the number of Qatar Subscription Shares. The Qatar Subscription Agreement contains customary warranties and undertakings."

107. The Prospectus did not include the ASA as a "material contract". As set out above, it contained two, essentially identical, statements about the ASA:

(1) Barclays had "entered into an agreement for the provision of advisory services by Qatar Investment Authority to Barclays in the Middle East"; and

(2) "Barclays and Qatar Holding have entered into an agreement for the provision of advisory services by Qatar Holding to Barclays in the Middle East".

The second capital raising and PCP

108. In October 2008, Barclays carried out a second capital raising exercise in which the Qataris also participated. Barclays also paid a further sum to a Qatar entity which was said to be under an extension to the ASA ("ASA 2"). No similar sum was paid to other investors, including special purpose vehicles ("SPVs") owned by PCP Capital Partners LLP and PCP International Finance Ltd (together, "PCP").

109. PCP subsequently lost control of the SPVs but later negotiated a fee relating to the work it had carried out in relation to the second capital raising exercise. In January 2016, PCP sued Barclays on the basis that:

(1) the ASA was a sham;

(2) the Qatar entities had been paid disguised fees in exchange for making their investments in Barclays; and

(3) PCP's commission was lower than it would have been, had it been based on the true fees paid by Barclays to the Qataris.

110. The case was heard between July and October 2020, and judgment was handed down on 26 February 2021. Waksman J held at [363] that the ASA was not "a fully detailed service agreement, with ordinary commercial terms for payment" but instead "a virtually worthless piece of paper, save for the payment of the £42m". He added that "Qatar barely had to do

anything to perform it and while Barclays had the obligation to pay, it did not have much if anything by way of entitlement under the agreement anyway". We agree with and adopt those factual findings.

111. Waksman J went on to find that the ASA was not a sham, which he described at [368] as a "highly specific and narrow doctrine", saying at [366]:

> "The agreement, as executed, may well be regarded as uncommon or artificial or even perhaps reflective of a breach of fiduciary duty on the part of those who were involved in its production on Barclays' side including, perhaps, Mr Varley who signed it. It might be regarded as a transaction at an undervalue. On any view the whole process looked 'smelly' or 'dodgy'. But none of that meant that the parties each intended not to be bound by what they signed."

The 2013 Interview

112. On 9 July 2012, the Authority appointed three investigators, one of whom was Mr Beauchamp. The Memorandum of Appointment ("the Memorandum") said that the investigation had been instigated because there were "circumstances suggesting that Barclays Bank plc may have been [sic] contravened Rule 1.3.3 of the Listing Rules", and continued:

> "These circumstances arise in relation to announcements, a circular and prospectuses issued by Barclays plc and Barclays Bank pc in relation to capital raising exercises announced by Barclays plc on 25 June 2008 and 31 October 200, and in relation to fees payable to Qatar Holding LLC under agreements dated 25 June 2008 and 31 October 2008 which may have related to the capital raising and which were not referred to in the announcements, a circular and prospectuses."

113. The Memorandum was provided to Barclays and to its lawyers, Clifford Chance LLP ("Clifford Chance"). The 2013 Interview with Mr Kalaris was carried out as part of that investigation. He had been made aware before the Interview began as to the "circumstances" being considered by the Authority.

114. The 2013 Interview was conducted under FSMA s 171; subsection (1) of that section provides that an investigator "may require" a person "connected with the person under investigation" to "attend before the investigator at a specified time and place and answer questions". It was thus what is known as a "compelled" interview. Mr Kalaris was warned by Mr Beauchamp that a failure "to comply fully" with the requirement that he answer questions could be drawn to the attention of the court, which if satisfied that he had failed without reasonable excuse to comply, could take the same action as if he had been in contempt.

115. Mr Kalaris was accompanied by two solicitors from Clifford Chance, and was told at its inception that he could stop the interview at any time in order to consult with those solicitors. He was also provided with a bundle of documents ("the Interview Bundle") which contained the following:

(1) An email from Mr Kalaris dated 16 May 2008, which listed the potential investors in the June capital raising, including the Qataris.

(2) An email from Mr Kalaris dated 22 May 2008, setting out the "running order" for the meeting with the Qataris which was to take place the following day. In that email, Mr Kalaris suggested to Mr Varley that he tell the Qataris that Barclays very much wanted to partner with them and that this would be "more than a financial partnership, a strategic one as well".

(3) An email from Mr Kalaris dated 25 May 2008, summarising that meeting. It included the comments that "our fee and mechanism for the underwriting is fine" and "all the soft stuff, secondment etc is agreed".

(4) An email dated 3 June 2008 from Mr Boath to Mr Kalaris and Mr Jenkins, in which he summarised the meeting in which Dr Hussain had stated that the Qataris were seeking a "fee of 3.75%".

(5) An email of the same date to Mr Boath from Mr Leighton of Barclays' Financial Institutions Group, setting out the financial implications if commission was paid at 1.5%, 3.25% and 3.5%, and the copy of that email forwarded to Mr Kalaris.

(6) An email chain dated 24 June 2008:

(a) from Mr Jenkins to Mr Kalaris saying "assume I am signing advisory letter with q [the Qataris]";

(b) Mr Kalaris's forwarding of that email to Mr Harding, with the text "Answer is yes?".

(c) Mr Harding's reply, in which he said "Assume so. Don't think it needs any other authorisation. Suggest Roger [Jenkins] doesn't sign until Qatar signs the subscription agreement".

(7) A copy of the ASA**.**

What Mr Kalaris knew

116. On the basis of the findings already made, we further find that at the time of the 2013 Interview, Mr Kalaris knew that:

(1) the ASA and the Qataris' contribution to the capital raising together formed a "package", see §94;

(2) the ASA was a "side deal" to fill the "value gap" between the 1.5% commission agreed by the Board in relation to the capital raising, and the 3.5% required by the Qataris, see §87;

(3) the Qataris would not have participated in the capital raising had Barclays had not met that economic gap, see §97 - §98; and

(4) the ASA and the capital raising were thus "connected", see §94.

117. Mr Stanley submitted that none of the above could "reasonably [have] been forgotten or overlooked" by Mr Kalaris at the time of the 2013 Interview. Mr Winter did not take issue with any of the four particular points set out above, but he nevertheless suggested that Mr Kalaris had been disadvantaged at the time of the 2013 Interview (a) because he had not had access to various items of legally privileged correspondence, and (b) because the events had taken place nearly five years previously.

118. We agree with Mr Stanley. The facts set out at §116 were key to the transaction which Mr Kalaris was co-ordinating; they are not points of detail which required access to privileged documents. Moreover, Mr Kalaris himself did not give evidence that, at the time of the 2013 Interview, he had forgotten any of those key facts.

What the Authority knew

119. At the time of the 2013 Interview, the Authority knew the following facts:

(1) from the Prospectus, that Barclays had entered into an ASA with the Qataris;

(2) from the Interview Bundle provided to Mr Kalaris for the hearing, see §115, that the Qataris were seeking a "fee of 3.75%"; and

(3) from the ASA, that it had been entered into on 25 June 2008, the same day as Barclays launched the capital raising exercise.

120. It was part of Saranac's case that, at the time of the 2013 Interview, "everybody" including the Authority, knew the ASA and the capital raising were connected, and that this could be seen from the Prospectus. Mr Winter said:

> "We are not dealing with stupid people reading prospectuses. They would have known, as is obvious, that Qatar was being paid for the provision of advisory services…"

121. However, we have already found as facts that:

(1) The Prospectus simply recorded that the ASA had been entered into; there were no details, and the ASA was not disclosed as a material contract.

(2) Although the Authority had a copy of the ASA, this consisted of a single page with no reference to the capital raising.

(3) None of the emails in the Interview Bundle explained that the ASA and the Qataris contribution to the capital raising formed a "single package" or that the two were "connected", see §115.

122. Mr Winter also relied on the Memorandum, submitting that "the Authority had made clear that it was investigating whether the ASA was a sham or a cover for what was actually an additional payment for participation in the capital raisings, in breach of the Listing Rules". However, the Memorandum said that the Authority was investigating (our emphasis):

> "fees payable to Qatar Holding LLC under [the ASA] which *may have related to the capital raising* and which were not referred to in the announcements, a circular and prospectuses."

123. It is of course true that the context of the Authority's investigation was Barclays' possible breach of the Listing Rules, but at the time of the 2013 Interview, the Authority plainly did not know that the ASA *did* relate to the capital raising: that was the very issue they were investigating. Neither Mr Kalaris nor Mr Winter identified any evidence to which the Authority had had access before the 2013 Interview which would have enabled it to know the two were connected. Mr Beauchamp did not say, at any point during the 2013 Interview, that the Authority knew that the ASA and the Qataris' contribution to the capital raising were "connected", that they were a "package" or that the Authority knew the Qataris would not have participated in the capital raising had Barclays not met the "value gap".

124. We therefore find as facts that at the time of the 2013 Interview the Authority was investigating whether the ASA was linked to the capital raising and did not know:

(1) that the ASA and the Qataris' contribution to the capital raising were "factually connected" because they formed a "package" under which the ASA filled the "value gap" between the 1.5% and the 3.5% required by the Qataris; or

(2) that Qataris would not have participated in the capital raising had Barclays had not met that value gap.

What Mr Kalaris believed about the Authority's knowledge

125. It was common ground that Mr Kalaris knew that the Authority had seen the Prospectus, the related announcement and the emails referred to at §115.

126. However, it was also a key part of Saranac's case that, at the time of the 2013 Interview, Mr Kalaris believed the Authority already knew there to be a factual connection between the ASA and the capital raising. The following exchanges took place in the course of cross-examination:

> *Mr Kalaris*: …it was evident that the two – the two elements, the capital raise percentage for placement, and the ASA were – were linked from a practical perspective. And I went into this conversation with the FSA knowing that, and the FSA knew that.
>
> *Mr Stanley*: When had the FSA ever said anything to you which suggested they had that knowledge?
>
> *Mr Kalaris*: It's in the Prospectus.
>
> *Mr Stanley*: So the answer is, they never had. You would have had no discussions with the FSA at all, had you, at which the FSA had said "we know this is to bridge the value gap…"
>
> *Mr Kalaris*: I did not, no.
>
> …
>
> *Mr Stanley*: In fact all that was disclosed [in the Prospectus] wasn't it, [was] that there was a strategic relationship?
>
> *Mr Kalaris*: Yes, it was, and it was not up to me to decide what was to be disclosed.
>
> *Mr Stanley*: So, when the Authority asked you whether there was a connection, they couldn't have known more than that, could they?
>
> *Mr Kalaris*: The Authority knew and the people in the room [at the time of the 2013 Interview] knew what was in the Prospectus and that there was a factual connection, which is very clear from both the prospectus and the announcement you showed to me. There was not a legal connection."

127. We do not find it credible that the time of the 2013 Interview Mr Kalaris believed, on the basis of (a) the Prospectus; (b) the announcement about the capital raising; (c) the Memorandum; (d) the documents in the Interview Bundle; and/or the earlier questions and answers during the Interview, that the Authority knew that the ASA formed a "package" with the Qataris' contribution to the capital raising so as to fill the value gap. We reject Mr Kalaris's evidence that he had that belief.

MR KALARIS'S RESPONSES RELIED ON BY THE AUTHORITY

128. In so far as the capital raising was concerned, the Authority's Decision that it was not satisfied Mr Kalaris was a fit and proper person to perform the Chief Executive and Executive Director functions for Saranac rested on his responses to four questions ("the Questions") in the course of the 2013 Interview, to which we now turn.

QUESTION 1: THE "GENESIS OF THE AGREEMENT"

129. Question 1 ("Q1") came after Mr Beauchamp had taken Mr Kalaris to the emails listed at §115, and to the text of the ASA. Mr Beauchamp then asked "so what was your understanding as to the genesis of the agreement?", to which Mr Kalaris replied:

> "I don't believe I have any understanding or knowledge of what the genesis was, nothing. Sorry let me rephrase that, if you take the continuum of the discussions over a period of a month about we're going down two paths, one path is the capital raising and the other path is the strategic relationship. Now the capital raising dominated it, dominated the dialogue and maybe it's 95% of it in the last 5% as a strategic relationship at the time perhaps, in terms of

> thinking, because the capital raising was more immediate, the strategic relationship was more strategic. But fundamentally we were delighted, now I was delighted that we had a strategic relationship with the Qataris and were moving to that because I felt that, as I said earlier I felt that our presence in the Middle East was third rate. Our sponsorship from the Qataris, advice and first call in a way, was a tremendous advantage to have so I would have looked at, looked at this as a win for us that, this strategic relationship."

130. That exchange was followed by this question and answer:

> "*Mr Beauchamp*: But you don't, is this right, you don't know the genesis of it, how it originated beyond the general time line?
>
> *Mr Kalaris*: No. We knew we won't have [wanted?] a strategic relationship. I don't know who put this first draft together frankly, I don't know whether it was Roger or whether it was John's office or whether it was the Qataris. A draft was shared with me and I don't know the author…"

Q1: The Authority's position

131. The Authority's position was that Mr Kalaris had given untrue evidence by denying any understanding or knowledge of the genesis of the ASA other than in connection with a strategic relationship, when in fact he knew its genesis lay in (a) the Qataris' demands for additional money, and (b) the ASA was a way of meeting those demands. At the hearing, Mr Stanley said Mr Kalaris's reply to Q1 was "not the complete truth" and that his failure to tell the complete truth was deliberate.

Q1: Saranac's position

132. Mr Kalaris put forward various explanations about his response to Q1, which we set out below.

Who came up with the idea?

133. Mr Kalaris said in his witness statement that his reply to Q1 had been both honest and candid, because he had "interpreted that question as asking who had come up with the idea of the ASA and not as asking why the ASA was entered into".

134. However, as Mr Stanley pointed out in cross-examination, that explanation is inconsistent with the reply Mr Kalaris actually gave. He did not say "It wasn't my idea" or "I didn't draft the document". Instead, he initially said: "I don't believe I have any understanding or knowledge of the genesis" and then there were two paths, the capital raising and the strategic relationship.

135. Mr Stanley suggested to Mr Kalaris that he had in fact correctly understood Q1 as meaning "how did it happen", and Mr Kalaris in terms agreed, saying:

> "…the idea about the genesis of this that I was trying to express at the time was that it was part of a longer term strategic positioning for the institution in the region and that I felt that that in and of itself made the advisory service arrangement, the ASA, legitimate and fit for purpose."

136. In re-examination, Mr Kalaris said that at the time of the 2013 Interview he had understood the word "genesis" to have two meanings, the first being the origin of the ASA itself, and the second being the origin of the document setting out the ASA.

The two paths

137. Mr Kalaris also said in his witness statement that he had been correct to tell Mr Beauchamp that the ASA was one of two paths being followed by Barclays, because the ASA and the capital raising were "parallel".

Strategic relationship

138. In addition, Mr Kalaris explained his answer by saying from the witness box:

> "The genesis of the agreement comes from the desire to have a strategic relationship with the Qataris to the extent that it become—it is a mechanism of filling the value gap, that was evident and helpful, but it is - the absolute starting point is, do we want to have this strategic relationship with the Qataris?"

Unnecessary?

139. When asked by Mr Stanley why he did not tell Mr Beauchamp that the genesis of the ASA was to fill the value gap, Mr Kalaris said this was not necessary, because it was "very clear" from the Prospectus and "the documents around the transaction" which the Authority had already seen, that the two were factually connected.

The Tribunal's findings

140. We make our findings on Q1 in the light of Mr Kalaris's evidence and relevant submissions made by Mr Stanley and/or Mr Winter.

141. We find that Mr Kalaris knew Mr Beauchamp was asking him about the origin of the ASA; this is clear from his initial reply to Q1, which was focused on Barclays' desire for a strategic relationship and not on the identity of the person who had drafted the document. It is also clear from the first part of his response to Mr Beauchamp's next question, where he reiterates that Barclays wanted a strategic relationship with the Qataris. Moreover, as noted above,

(1) Mr Kalaris accepted under cross-examination that he had had that understanding; and

(2) on re-examination, he said he had understood "genesis" to have two meanings, one of which was "origin".

142. We accept that Barclays wanted a strategic relationship with the Qataris, but this was only part of the picture. Mr Kalaris did not explain that to Mr Beauchamp that the ASA and the capital raising formed a "single package" and were "factually connected" because the ASA was the way in which the value gap was filled. Instead, he said there were "two paths". Mr Stanley submitted that this was incomplete and misleading because there was only one path, or at best two intertwined paths which were neither "separate" nor "parallel", and Mr Kalaris knew this was the case. We agree.

143. The only remaining explanation given by Mr Kalaris for his failure to tell Mr Beauchamp about the connection between the ASA and the capital raising was his evidence that he believed Mr Beauchamp already knew about that connection. However, we have already rejected that evidence, see §126 - §127.

144. We also reviewed each of Mr Kalaris's replies to earlier questions asked by Mr Beauchamp, in other words, in the part of the Interview which preceded Q1, and found that at no point did Mr Kalaris explain the connection between the ASA and the capital raising.

145. Having considered each of Mr Kalaris's explanations and justifications for his reply to Q1, we agree with Mr Stanley that he gave "a fundamentally misleading, incomplete, and partial explanation of the position", and his response therefore lacked candour.

QUESTION 2: THE PURPOSE

146. Question 2 ("Q2") was as follows:

> ”In terms of the purpose of this agreement, what was your understanding at the time as to its purpose?”

147. Mr Kalaris replied:

> “Well if you think about this, about the, a written commitment, a written agreement helps reinforce what is a friends and families, friends and family relationship so, as if, we would always hope that a shareholder would be, would have a commitment to doing more business with Barclays. A personal relationship helps that because it helps obviously in a dialogue and having a relationship that is committed and on paper, for advice, for sponsorship, for relationship, for the entire relationship, further reinforces that. So that was the purpose of this, I, you know, I would have been, it’s, it’s, this sort of MOU is a very good way of extending the relationship and the sponsorship and the brand value of this to me was quite high”.

Q2: The Authority’s position

148. The Authority’s position was that this was “at best a half-truth”. Although Mr Kalaris had described one of the purposes of the ASA, he had failed to say that its other purpose was also to fill the value gap: in other words, that the payment made by Barclays under the ASA gave the Qataris the extra 2%, without which they would not have entered into the capital raising exercise.

Q2: Saranac’s position

149. Mr Kalaris said in his witness statement that his reply to Q2 was “entirely accurate” and that:

> “whilst the ASA also allowed Barclays to bridge the ‘value gap’ between the fees the Qataris wanted to be paid for their participation in the June Capital Raise compared to what Barclays would pay them, the purpose of the ASA was a commercial standalone arrangement for the provision of advisory services and for securing the long term strategic relationship with the Qataris.”

150. Mr Kalaris also said he had understood the Authority to be investigating “whether the ASA was a ‘sham’ agreement and a device in order to conceal fees paid to the Qataris” and therefore “felt it was important to convey [his] understanding that the ASA was not a ‘sham’ or an illegal device”.

151. In closing submissions, Mr Winter referred to Mr Beauchamp’s follow-up questions, which were:

> “would you have regarded the agreement as fit for purpose, I mean if that was the purpose does this fit that purpose?” and “so this [agreement] would be followed up with substantive work to take it forward?”

152. Mr Winter submitted that these further questions show that in Q2 the Authority was “not interested” in whether the ASA had another purpose, but only on whether it delivered value to Barclays in exchange for the £42m paid to the Qataris.

Q2: The Tribunal’s findings

153. We have already found as a fact that Mr Kalaris knew that the ASA had another purpose, namely to fill the value gap, and it is plain that Mr Kalaris failed to refer to that purpose.

154. We reject Mr Winter’s submission that Mr Kalaris’s answer to Q2 should be read in the light of Mr Beauchamp’s subsequent questions. Those *followed* Mr Kalaris’s answer to Q2, and picked up on Mr Kalaris’s focus on the value the Qataris would provide in exchange for the ASA. Q2 was a straightforward open question, to which Mr Kalaris gave an incomplete reply, despite knowing the full picture.

155. We therefore agree with the Authority that Mr Kalaris's answer was incomplete and a half-truth; it therefore lacked candour.

QUESTION 3: THE CALCULATION

156. Question 3 ("Q3") was follows:

> "*Mr Beauchamp*: Did you know how the fee was calculated?
>
> *Mr Kalaris*: I don't, no. I can tell you how we think about these things commercially, I don't know how this specific fee was calculated.
>
> *Mr Beauchamp*: Well, that would be helpful.
>
> *Mr Kalaris*: We'd look at what is the opportunity set in the region. We'd look – what is the opportunity. We look at whether our, what is our, what is our product. We'd look at for the region. We look at what is our - how well are our competitors doing, we'd say what is a reasonable sum of money that we think we could return over time in this region and how much when you back that out, how much will you be willing to pay for it in the context of the, the region, the explosion in what was going on with oil prices at the time, the position and the promise of the Qataris, 40 million a year for that, for that sponsorship. I think the calculus would have been quite clean and simple."

Q3: The Authority's position

157. The Authority accepted that Mr Kalaris did not know how Barclays had worked out the exact figure payable to the Qataris in order to ensure they were paid the 3.5% required to enter into the capital raising.

158. However, the Authority's position was that Mr Kalaris's responses were designed to give the impression that the fee had been calculated by reference to an assessment of the economic value of the services to be provided under the ASA, when he knew that was not the case. Instead of saying that the fee had been calculated to bridge the value gap, he implied that it had been worked out on a "bottom-up" basis, by considering the opportunity, the product, the region, the competition and the return Barclays could make over time.

159. The Authority therefore decided that Mr Kalaris's response to Q3 was not the complete truth; Mr Stanley described Mr Kalaris's description of the methodology as a "smokescreen" and a "distraction".

Q3: Saranac's position

160. In his witness statement, Mr Kalaris emphasised that he did not know how Barclays had calculated the amount to be paid under the ASA, but said he had "tried to assist by explaining based on [his] experience how it may have been thought of in a commercial and general sense". Under cross-examination he added that the amount paid to the Qataris was justifiable in terms of value for money.

161. In closing, Mr Winter again placed reliance on Mr Beauchamp's follow-up questions, which were about the lack of specifics in the ASA and whether it provided Barclays with anything additional to the stakeholder relationship which had been developed over the course of the capital raising. Mr Winter submitted that it was clear from those questions that Mr Beauchamp was not asking about whether the sum paid was calculated by reference to the capital raising, but instead asking whether genuine services were to be provided under the ASA.

Q3: The Tribunal's findings

162. We agree with the Authority that although Mr Kalaris's response was true – he did not know the detail as to how the exact sum paid had been calculated – it nevertheless lacked candour, because he failed to say that it was designed to fill the value gap.

163. Mr Kalaris's subsequent description as to how Barclays would normally go about calculating the value to be paid under advisory agreements was, as Mr Stanley said, a smokescreen and a distraction: he knew perfectly well that the fee payable under the ASA had not been calculated in that manner.

164. We again reject Mr Winter's submission that Mr Kalaris's answer to Q3 should be read in the light of Mr Beauchamp's subsequent questions. Those questions followed Mr Kalaris's answers and picked up on the points he had made; they do not retrospectively justify Mr Kalaris's reply to Q3.

QUESTION 4: CONNECTION

165. Question 4 ("Q4") was:

> "Was there any connection between either the Agreement or the fees paid under it and the Qataris' participation in the capital raising so far as you were aware at the time?"

166. Mr Kalaris responded "No. Not in my view".

Q4: The Authority's position

167. The Authority's position was that this statement was untrue: in cross-examination, Mr Stanley asked Mr Kalaris: "you are lying in that answer, aren't you?".

Q4: Saranac's position

168. Mr Kalaris's evidence was that when he said there was "no connection", he did not mean there was "no linkage at all" between the ASA and the capital raising, but instead that there was "no legal connection". He said he did not think it necessary to tell Mr Beauchamp there was a factual connection, because this had already been disclosed in the Prospectus, and because he had already said, in response to Q1 that Barclays was going down "two paths" with the Qataris, being a strategic partnership and an investment relationship, and so had understood the factual connection was already clear.

Q4: The Tribunal's findings

169. Q4 was (our emphasis) "was there *any connection* between either the Agreement or the fees paid under it and the Qataris' participation in the capital raising". Mr Beauchamp did not ask "was there a legal connection".

170. Mr Kalaris responded by saying "No. Not in my view". He did not qualify his answer, or say "there is a factual connection" or "there is no legal connection". He gave a one line, unequivocal answer.

171. We do not accept Mr Kalaris's evidence that he gave that response because he had understood Mr Beauchamp already to be aware of the factual connection between the ASA and the capital raising, because:

(1) We have already found (see §124ff) that the Authority did not know before the 2013 Interview:

(a) that the ASA and the Qataris' contribution to the capital raising were "factually connected because they formed a "package" under which the ASA filled the "value gap" between the 1.5% and the 3.5% required by the Qataris; or

(b) that the Qataris would not have participated in the capital raising had Barclays not met the value gap.

(2) We have also already found (see §127) that, at the time of the 2013 Interview, Mr Kalaris did not believe the Authority was already aware of those connections between the ASA and the capital raising.

(3) Nowhere in the earlier part of the 2013 Interview did Mr Beauchamp say that the Authority knew the two were factually connected, and none of Mr Kalaris's responses to those earlier questions provided the Authority with that information. Mr Kalaris sought to rely on his response to Q1 with its reference to two paths, but he said there were two *separate* paths, and that was not the position.

(4) Mr Kalaris is not a lawyer, and there is no suggestion anywhere in the transcript that Mr Beauchamp was asking for Mr Kalaris's opinion on the legality of what had happened. It is not credible that Mr Kalaris thought Q4 was "Was there *a legal* connection between either the Agreement or the fees paid under it and the Qataris' participation in the capital raising".

172. The Authority's position was that Mr Kalaris had deliberately given an untrue answer to Q4, and Mr Winter rightly recognised that this was an accusation of dishonesty. In *Ivey v Genting Casinos UK Ltd* [2017] UKSC 67 at [74], Lord Hughes said:

> "When dishonesty is in question the 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."

173. Mr Kalaris was asked a simple and straightforward question, to which he knew the answer was "yes". He nevertheless replied "No. Not in my view". We find that his reply was dishonest by the standards of ordinary decent people.

MOTIVE?

174. In coming to the above findings, we have not ignored Mr Winter's submission that the Tribunal could not conclude that Mr Kalaris had given dishonest, misleading, incomplete and/or partial replies to the Questions because:

> "there simply is no motive established about why Mr Kalaris would be trying to pretend [the ASA and the capital raising] are coincidental events when they are obviously not."

175. However, that submission was based on Saranac's case that at the time of the 2013 Interview the Authority already knew the ASA was connected to the capital raising exercise. We have already found as a fact that this was not the position, see §120 to §127.

176. We instead agree with Mr Stanley that, on the balance of probabilities, Mr Kalaris's motive was to give the Authority the impression that the ASA was not "tightly coupled" to the capital raising. That is consistent with:

(1) our finding that the Authority did not know, at the time of the 2013 Interview, that the ASA and the capital raising were "factually connected" and a "single package";

(2) our finding that Mr Kalaris did not believe the Authority to have that knowledge;

(3) Mr Kalaris's reply to Q1, in particular his reference to "separate paths"; and

(4) his reply to Q4, in which he stated there was "no connection" between the two.

OVERALL CONCLUSION ON THE 2013 INTERVIEW

177. In relation to Mr Kalaris's replies to the four Questions on which reliance was placed by the Authority when issuing its Decision Notice, we have found that:

(1) Mr Kalaris's response to Q1 was a fundamentally misleading, incomplete and partial explanation of the position, and so lacked candour;

(2) his response to Q2 was a half-truth and lacked candour;

(3) his response to Q3 lacked candour, and was followed by an explanation which served as a smokescreen and a distraction; and

(4) his response to Q4 was dishonest.

THE 2014 INTERVIEW

FINDINGS OF FACT

178. For the reasons explained earlier in this judgment, we have made our findings of fact about the GenVen Report without placing reliance on the findings in *Tinney*, or on any of the following, unless accepted by Mr Kalaris:

(1) Mr Perry's notes;

(2) Mr Mason's meeting notes; or

(3) transcripts of interviews given by Mr Tinney, Mr Mason and Mr Biesinger.

The culture at Barclays Wealth Americas

179. In September 2008, Barclays acquired Lehman Brothers' wealth management business, and renamed it Barclays Wealth Americas ("BWA"). As Mr Kalaris was Barclays' Chief Executive of Wealth and Investment Management, the integration of the Lehman business came under his remit. To assist with that process, new management was hired from Merrill Lynch; including Mr Mitch Cox and some of his team members.

180. In 2011, a number of problems surfaced:

(1) BWA's approach to regulatory compliance fell below the expected standard;

(2) there were cultural issues and "battles" between BWA's legacy staff about revenue splits and responsibilities; and

(3) the management style of certain new hires, including Mr Cox and his team, was perceived to be overly aggressive.

181. In the same year, the US Securities and Exchange Commission ("SEC") undertook a comprehensive regulatory review of BWA. Barclays became aware that the SEC had identified fundamental problems with BWA's infrastructure, and that their findings would be negative. On 25 January 2012, the SEC issued BWA with a deficiency letter ("the SEC Letter"), which identified issues relating to regulatory controls.

The cultural audit

182. Mr Tinney was the Chief Operating Officer of Barclays Wealth, reporting to Mr Kalaris. Mr Kalaris asked Mr Tinney to oversee Barclays' overall response to the SEC Letter. Mr Tinney updated Mr Kalaris from time to time, and Mr Kalaris attended one or two meetings of the steering committee set up by Mr Tinney.

183. As part of Barclays' response to the SEC Letter, it was decided that a "cultural audit" of BWA should be carried out. On 16 February 2012, Mr Kalaris met with Ms Chaly of the Federal Reserve Bank of New York ("the Fed"), Barclays' primary regulator in the US. Mr Kalaris told Ms Chaly that he had commissioned a cultural audit which he anticipated would be completed in around a month, and said the Fed would be kept updated.

184. Mr Tinney hired GenVen, a consultancy run by Mr Tom Biesinger and Mr Ross Wall, to carry out a "top-down" audit by interviewing BWA's management committee and their direct reports. He also hired Erin Hilgart LLC, a consultancy run by Ms Hilgart, to carry out a "bottom-up" audit by interviewing more junior staff.

185. By 28 March 2012, GenVen had completed their cultural audit and produced the GenVen Report; this was a written report of their findings, headed "Barclays Wealth America – Cultural Assessment". The contents page sets out the headings of seven sections, of which section 2 is a summary and section 4 covers "BWA Core Cultural Issues". It ends with an appendix headed "Detailed Themes & Anecdotal Evidence".

186. The "summary" chapter sets out the overall conclusions:

> "BWA was largely brought together in the crucible of the Lehmans' collapse, subsequent acquisition by Barclays and survival instinct of the financial crisis. Whilst these factors made initial integration efforts difficult, current BWA leadership have chosen the party line of 'we didn't know it was that bad'.
>
> In our opinion, the preponderance of documentary evidence and the corroborating anecdotal trends attests otherwise. The current leadership team, largely 'Mitch's Merrill team' have pursued a course of 'revenue at all costs'; taken a conscious decision to ignore support functions, reinforced a culture that is high risk and actively hostile to compliance, and ruled with an iron fist to remove any intervention from those who speak up in opposition.
>
> The culture is fragmented, built on the carcasses of cultures that were indifferent at best to these issues, and no positive culture change has taken place under his leadership.
>
> In its siloed state, BWA has not been influenced by positive culture from any of the other Barclays companies or regions. On this course, failure of the SEC exam was inevitable and further failures are also inevitable unless a concerted effort is made to change the broken culture at BWA and make the necessary investments.
>
> The issue now becomes two fold; how deep do you cut and how to quarantine the contagion?"

187. The section headed "BWA Core Cultural Issues" consisted of five points, each followed by an explanatory narrative and five or seven quotations from interviewees. The five points were:

(1) Management made a conscious decision to ignore/under-invest in a weak infrastructure in favour of business growth objectives.

(2) Merrill leadership have driven a culture of fear.

(3) Deficient, fragmented culture has not changed.

(4) Management have created a culture that actively undermines compliance.

(5) Normal checks and balances are ineffective or absent.

188. At the end of that list, the Chapter says "For additional cultural factors affecting BWA see Appendix A". That Appendix contains 15 pages, each of which has a heading, a brief summary and list of quotations from interviews. The headings were as follows;

(1) Culture of Fear.

(2) Lack of Escalation.

(3) Weak Compliance Focus and Lack of Empowerment.

(4) Weak Compliance Team and Mismanagement of Compliance Staff.

(5) Weak HR Support in Areas of Culture, Risk and People Management.

(6) Lack of Senior Management Understanding of Aspects of the Business.

(7) Lack of Senior Management Understanding of Technology and Operations.

(8) Overextension of Delivery from Supply Lines.

(9) Culture of Avoidance and Collusion.

(10) Poor Management of the SEC and Other Officials.

(11) Not Taking Regulation Seriously – Challenging Regulators to Intervene.

(12) Disproportional Risk Appetite.

(13) Siloed Organization Failing to Communicate Effectively.

(14) Misalignment with BarCap.

(15) Culture that Inhibits Internal Execution.

The pre-meeting communications

189. On Friday 30 March 2012 at 8.22am, Ms Griffiths, Mr Tinney's Chief of Staff, emailed Ms Hogan, a secretary within Barclays saying:

> "Tom B[iesinger] is going to send the Culture report direct to Andrew [Tinney]'s house today so he has it over the weekend direct from him."

190. At 11.39am, Mr Biesinger emailed Ms Griffiths, with copies to Ms Hogan and Mr Tinney, saying "I suspect you want this to go to TK [Mr Kalaris] at the same time? If so, can we have his NY details so we can arrange courier?"

191. Ms Griffiths replied at 12.20, saying:

> "I thought you were sending to AT and bringing in hard copy Monday for both. (TK is travelling this weekend – Boston today, then NY, then London Monday morning). If you wish, perhaps you send a copy here for his attention and he can look through early Monday morning when he flies in."

192. On Friday 30 March 2012 at 12.36pm, Mr Biesinger emailed Ms Griffiths, attaching the earlier emails from Ms Hogan, and saying:

> "Rachel stated TK would be in NY, see below. Is this the case or not. That's why I was suggesting Courier to NY. Whatever the case I was wanting to ensure TK felt he also had an opportunity to see prior to meet."

193. There was then a sequence of emails the same day:

(1) Ms Griffiths emailed Ms Hogan at 1.32pm, saying "Rachel – please can you send Tom B the address to send report to TK".

(2) Ms Hogan emailed Ms Hannah Barry, Mr Kalaris's personal assistant, at 1.35pm, saying "Tom and Ross would like to courier some papers to Tom at the weekend, will he be at his home address? Please can you send the full address if okay".

(3) Ms Barry replied at 1.39pm, saying "could we possibly send to the office address in 200 Park Avenue – he should get them first thing Monday morning", giving that address and them saying "alternatively you can send them to me this afternoon and I will arrange for them to be printed out".

(4) At 1.52pm Mr Tinney emailed Ms Hogan and Ms Griffiths, saying "relaxed about TK, have told him we will catch him up when he is back in London, which I think is Tuesday."

(5) Ms Griffiths emailed Ms Barry and Ms Hogan at 2.03pm, saying "per earlier email, we'll have the meeting in London so per discussion with AT no need to send to NY".

194. We find as a fact on the basis of these emails that the existence of the GenVen Report was known to Ms Griffiths, Ms Hogan and Mr Tinney, as well as of course to Mr Biesinger and Mr Wall of GenVen, and that Ms Barry, Ms Kalaris's personal assistant, knew GenVen had "some papers" to send to Mr Kalaris.

195. Under cross-examination, Mr Kalaris denied knowing about any of those communications; he also denied knowing that the GenVen Report was originally going to be sent to him at an address in the USA. Mr Stanley did not challenge that evidence and we have accepted it.

Briefing and the subsequent meetings

196. On 2 April 2012, Mr Kalaris received a briefing from Mr Tinney. In the course of the 2014 Interview, Mr Kalaris answered questions about this briefing, and we make related findings later in this judgment.

197. There was then a subsequent LRC meeting; the initials stood for "legal, regulatory and compliance". Mr Perry's note of this meeting recorded that Mr Kalaris "flew off the handle" saying "you need to tell [GenVen] I'll close them down if they stray outside their brief". Under cross-examination, Mr Kalaris said he didn't recall the meeting. There was then this exchange:

> "*Mr Stanley*: It wouldn't surprise you, would it, if you went off the handle about Gen Ven exceeding their remit?
>
> *Mr Kalaris* It wouldn't surprise me, no."

198. We find that it was not out of character for Mr Kalaris to have reacted angrily to the approach taken by GenVen to the audit they had been instructed to carry out. We make no finding as to whether Mr Kalaris attended this meeting.

199. On 5 April 2012, a meeting took place at Barclays' London office. Mr Kalaris, Mr Tinney, Ms Michelle Witter (Mr Kalaris's Chief of Staff) all attended in person; Mr Perry attended by phone. Mr Biesinger and Mr Wall also attended, one of them by phone. Mr Perry made a note of this meeting, which Mr Stanley read to him in the course of cross-examination. It included this exchange:

> "*Mr Stanley*: …and then you said
>
> > 'Look, you guys, we asked you to focus on BWA. We're about to get slammed by the SEC already. I don't want to hear what you think of me, AT [Andrew Tinney], wealth outside BWA, or my ManCo [Management Committee]. I just want to hear about Mitch [Cox] and his management team in the BWA.'

And it's likely, isn't it, that that would have been your reaction?

Mr Kalaris: It is likely that that was my reaction."

200. Mr Kalaris also agreed that in the course of the meeting, "there was challenge and discussion about the interviews [with staff]"; that Mr Wall was "reading from something" and was "not giving us this information off the top of his head"; and that the conclusion of the meeting was that GenVen should use the information "as input into a workshop that would bring together all aspects of the cultural audit workstream", including the work being carried out by Ms Hilgart. We make further findings of fact later in this judgment.

201. On 18 April 2012, a further meeting took place in New York, attended by Mr Kalaris, Mr Tinney and Mr Wall.

Ms Hilgart

202. On 19 April 2012, Ms Hilgart emailed Ms Barry and Ms Griffiths: the subject line of the email says "Barclays Culture Interviews Executive Summary final April 2012". The text said "below is the paper for our meeting tomorrow". A soft copy of that executive summary was attached. The email with the attachment was forwarded to Mr Kalaris.

The Cultural Workshop

203. The Cultural Workshop took place on 29 May 2012 in New York. Mr Tinney and Mr Cox's team were in attendance, along with others. Mr Kalaris attended "the end of the workshop".

204. Included in the Bundle was a slide deck which Mr Kalaris accepted had been used at the Cultural Workshop. The first slide was the title, the second an agenda, and the third was in two columns, with the left hand side headed "senior level interviews – conducted by GenVen" and the right hand headed "mid-junior level review – conducted by Erin Hilgart LLC".

205. The GenVen column had 18 headings. The first five of these were almost exact copies of the "BWA Core Cultural Issues" set out at section 4 of the GenVen Report. The remaining 18 headings were taken verbatim from the Appendix, with the exception of one (culture of fear) which was omitted because it duplicated one of the five Core Cultural Issues. In addition, the heading "Lack of Senior Management Understanding of Technology and Operations" was omitted. Mr Kalaris accepted he had seen this slide at the time of the Cultural Workshop.

The Whistleblower email

206. On 25 September 2012, Mr Marcus Agius, Barclays' Chairman, received an anonymous email ("the Whistleblower email"). As Mr Kalaris accepted, the Whistleblower email referred to many of the issues identified in the GenVen Report. It also included the statement that:

> "…a Wealth cultural audit report, mandated earlier this year by Kalaris and prepared by an independent third party consultancy, is being withheld from Bar Cap and those on the internal SEC workstreams."

207. On 26 September 2012, Mr Agius forwarded the Whistleblower email to Mr Kalaris, who on-forwarded it to Mr Tinney and Mr Perry. A conversation then took place between those three individuals. Mr Kalaris accepted in cross-examination that Mr Perry had correctly recorded the conversation. His note said:

> "TK [Mr Kalaris] - I want to find out who the F WB [whistle-blower] is – there's a certain style of writing and grammar in this email which is consistent in the other anonymous WB's. I'm sure its that idiot [initials] – we should get investigators on to this. I want a search of the email system – I want the language/the grammar + the structure of writing/phraseology + writing style examined – there are ways to identify this F. I want to find him...

> AT [Mr Tinney] – there may be issues with that approach Tom but we'll look into it.
>
> TK – was not happy AT ALL.
>
> AT – OK – I'll talk to my IT guys + get back to you.
>
> DP – I tried to persuade TK not to – WBs are protected – could be a criminal offence under SOX [the Sarbanes-Oxley Act].
>
> TK – note to AJ – make clear – its all complete bullshit – there's no R[report] being suppressed + tell him that all these points have been seen beforehand addressed + we're all over it."

208. Mr Kalaris said in oral evidence that he had been "angry" and had an "emotional reaction" to the Whistleblower email, but that one or more of the others had calmed him down, and he had accepted there wasn't anything he could do about the email.

209. As indicated at the end of Mr Perry's note, Mr Kalaris asked Mr Tinney and Mr Perry to prepare a response for Mr Anthony Jenkins, who had recently replaced Mr Diamond as Barclays' CEO. That response went through some 12 drafts before being finalised. Some of the drafts included this text, which was seen by Mr Kalaris:

> "Erin Hilgart provided a summary of her interviews in writing. Genesis Ventures provided verbal input by reference to their interview notes and working papers. There has never been a 'Wealth Cultural Audit Report'."

210. That passage was later removed; there was no suggestion that Mr Kalaris had any involvement in its removal. The final version of the response said that GenVen and Erin Hilgart had undertaken "data gathering interviews" following which a workshop had been held and key actions identified. Mr Kalaris sent that version to Mr Jenkins on 2 October 2012.

The Fed update

211. In early December 2012, Ms Erin Mansfield, the head of BWA's regulatory interface, informed Mr Kalaris and Mr Tinney that the Fed believed a culture audit report existed but that it had not been provided to them.

212. On 10 December 2012, Mr Kalaris held a meeting with Ms Mansfield, Mr Tinney and Mr David Mason, Mr Tinney's new chief of staff. Brief notes of that meeting were taken by Mr Mason, which Mr Kalaris accepted were "a fair review of the discussion". Mr Mason recorded that Erin Hilgart's paper was to be sent to the Fed, and that Mr Tinney was to meet with them.

213. On Saturday 15 December 2012, Mr Michael Roemer, global head of Barclays' Internal Audit department, emailed Mr Kalaris saying the Fed knew "an outside party" had been hired earlier in the year to assess culture and/or control and that the Fed also believed a report had been produced. Mr Roemer said the Fed "view the delay in receiving the report as a red flag". In oral evidence Mr Kalaris said that "the alarm bells went off at this point".

214. Mr Kalaris forwarded Mr Roemer's email to Mr Tinney without adding any text or comment. During that weekend of 15-16 December 2012, Mr Kalaris and Mr Tinney spoke on the phone. On 15 December 2012 at 5.21pm, Mr Kalaris emailed Mr Roemer, saying:

> "Mike, this is incredibly concerning to me as we've been aggressively managing the entire issue with the SEC, including doing this cultural work well before it became de rigueur, but seem to be getting no credit for it. And where is the internal noise coming from?

> The purpose of what we did was to deal with any issues in an open constructive fashion. We had two sets of consultants, one who produced working papers rather than a report and one that did not.
>
> The Fed received a verbal update some time ago (Staff level)…"

215. Mr Kalaris was not clear on whether this email was sent before or after his conversation with Mr Tinney, but confirmed that he did not sent an email to Mr Roemer to inform him of that conversation.

216. On Sunday 16 December 2012, Mr Kalaris emailed Mr Harding and copied Mr Tinney, saying in relation to the "cultural look at BWA" that "we do not have a formal document" and as a result would be providing the Fed with the slide deck. He did not inform Mr Harding about the call he had had with Mr Tinney and he also did not inform anyone else at Barclays.

217. We make further findings of fact about what happened between 14 and 16 December 2012 at §239ff.

218. On Monday 17 December 2012, Mr Kalaris and Mr Harding attended a meeting called by Mr Jenkins. Mr Kalaris was handed a copy of the GenVen Report and asked if he had seen it before, which he denied. Mr Kalaris was also told that Mr Tinney had a copy of the GenVen Report; Mr Kalaris said he had been unaware this was the case. When asked what should be done next, Mr Kalaris said "we have to dismiss Andrew [Tinney]". Mr Jenkins and Mr Harding agreed.

The 2014 Interview

219. The Authority opened an investigation into Mr Tinney, and on 26 September 2014, Mr Kalaris was interviewed in connection with that investigation by Ms Yasmin Yazdani and Mr Harsh Trivedi of the Authority. Mr Kalaris was accompanied by two solicitors from Ashurst LLP, Ms Hollie Motley and Mr Edward Sparrow.

220. The 2014 Interview was conducted under FSMA s 172; by subsection (2), an investigator may require a person who is not under investigation, or connected with the person under investigation to "attend before the investigator at a specified time and place and answer questions". It was thus a "compelled" interview, and Mr Kalaris was given the same warning about the consequences of failing "to comply fully" with the statutory requirement that he answer the questions put to him as he had been given in advance of the 2013 Interview.

221. Mr Kalaris was subsequently provided with a copy of a draft transcript of the 2014 Interview. As well as being asked to make any typographical corrections, he was invited to provide any additional comments for the Authority's consideration. He returned the transcript on 29 October 2014 and the passages quoted below are taken from the finalised transcript.

222. In the course of the 2014 Interview, Mr Kalaris said that the first time he was aware of the GenVen Report was when he was shown a copy at the meeting on 17 December 2012. The exchanges were as follows:

> "*Mr Kalaris*: And I did not know of the Genesis report until I came, until it was shown to me by Antony and Mark Harding two weeks later, some...
>
> *Ms Yazdani*: Yes
>
> *Mr Kalaris*: Whenever the – whenever it kind of came by, 17th, 20th, one of those days.
>
> *Ms Yazdani*: Okay. So if I can use this expression, when were you brought over the wall on this issue?

> *Mr Kalaris*: So if I have the date right – I think its 17th of December…[it was a] nine o'clock meeting. They showed me the – I think it was a blue deck and said 'Have you seen this before?' and I said 'No. And that was the first time I was aware of – that there was a Genesis report."

THE POSITION OF THE PARTIES

223. The Authority accepted that Mr Kalaris had not *seen* a copy of the GenVen Report before the meeting on 17 December 2012, when he was shown it by Mr Jenkins and Mr Harding. However, the Authority's position was that Mr Kalaris knew that the GenVen Report existed before that meeting, and that he had therefore given false and/or misleading evidence during the 2014 Interview, and that he knew that evidence was untrue and/or misleading at the time he gave it.

224. Saranac's position was that Mr Kalaris had given honest evidence to the Authority in the course of the 2014 Interview, because he did not know the GenVen Report existed until he was shown a copy during the meeting on 17 December 2012, because Mr Tinney had decided to conceal the existence of the Report from him and from Barclays more generally.

DISCUSSION AND CONSIDERATION

225. In the course of the 2014 Interview, Mr Kalaris told the Authority he did not know, until the meeting on 17 December 2012, that (a) the GenVen Report existed, and (b) there were any "notes or documents".

226. We next consider and make further findings about Mr Tinney's briefing of Mr Kalaris on 30 March 2012; the meetings on 5 April 2012 and 10 December 2012, and finally about the weekend of 14-15 December 2012.

The briefing on 30 March 2012

227. On 30 March 2012, Mr Kalaris was briefed by Mr Tinney, who told him that GenVen's findings were "ugly". Ms Yazdani asked Mr Kalaris "what sort of detail did he [Mr Tinney] give you", to which Mr Kalaris replied:

> "It would have been that. I wouldn't have asked for a whole lot more necessarily because I knew I was going to meet the guys."

228. The conversation continued:

> "*Ms Yazdani*: Did he explain why it was going to be a difficult conversation?
>
> *Mr Kalaris*: I don't recall him specifically saying why.
>
> *Ms Yazdani*: He said it was going to be ugly but you didn't ask. Is that your recollection, you didn't ask him why it would be ugly?
>
> *Mr Kalaris*: I believe although I can't recall the specific conversation that I would have been given and had a heads up that it was going to ugly, difficult…I definitely don't recall going into any detail and I was not given any specific detail until I actually heard the explanation by Tom [Biesinger] or Ross [Wall].
>
> …
>
> *Mr Trivedi*: In the context of an SEC that's interested in this workstream and Andrew saying "this is going to be ugly"…I find it interesting to know that you didn't just ask him why.
>
> *Mr Kalaris*: …I'll just repeat what I said…
>
> *Mr Sparrow* (of Ashurst): …Did Andrew, when he gave you the heads up, do you remember him giving you any indication that he'd had a report or that he knew the detail of what Genesis Ventures had concluded?

Mr Kalaris: No."

229. Under cross-examination Mr Kalaris maintained that his responses during the 2014 Interview had been correct: he said Mr Tinney had given him "some small sense" that the findings were ugly, and as a result he had "a very clear sense of the direction they were going".

230. The Authority's position, with which we agree, was that it was not credible that Mr Kalaris did not ask for more information when told the findings were "ugly" and that he instead waited until the meeting with GenVen on 5 April 2012. We placed weight on the following:

(1) The cultural audit was initiated after the SEC issued Barclays with a deficiency letter, which was an extremely serious matter.

(2) Mr Kalaris asked Mr Tinney to oversee Barclays' overall response to the SEC letter, but Mr Tinney reported to Mr Kalaris; and

(3) it was Mr Kalaris who told Ms Chaly that he had commissioned the audit and that the Fed would be kept updated. His own words during the 2014 Interview were that:

> "I knew we had made a promise -- I had made a promise to the Fed in terms of us addressing these issues and I wanted to be in a position where I could deliver against those."

231. The next point was whether, as Mr Kalaris said was the case, Mr Tinney did not tell him during the briefing that GenVen had produced a report, and instead concealed its existence. That evidence, too, lacks credibility. Mr Tinney knew Mr Kalaris was going to meet Mr Biesinger and Mr Wall, the authors of the Report, a few days later and there is no evidence that either of those individuals was planning to hide the existence of the GenVen Report from Mr Kalaris. Thus, even if Mr Tinney *had* wanted to hide the existence of the Report, he would have known Mr Kalaris would have found out about it a few days later.

The meeting on 5 April

232. During the 2014 Interview, Mr Trivedi asked Mr Kalaris about the meeting on 5 April 2012, and whether he remembered people referring to a report or to sections of the presentation. Mr Kalaris said no to those questions. He was also asked "with respect to the [interview] quotes, do you recall them referring to the quotes as being written down or documented" and Mr Kalaris again said "no".

233. Mr Trivedi then asked "how did you think they were presenting the information or the quotes to you?", to which Mr Kalaris responded:

> "it never struck me to think about it – I wouldn't have been paying a whole lot of attention to where it came from. I would have taken it as the set of conclusions or specific points that were being made as part of a briefing."

234. Our starting point was that the meeting was attended by Mr Biesinger and Mr Wall as well as Mr Tinney, and all of those individuals knew the GenVen Report existed. Consistently with our conclusions about the briefing, we find that:

(1) even if Mr Tinney *had* decided to conceal the existence of the GenVen Report (as Mr Kalaris said was the case), there is no evidence that both Mr Biesinger and Mr Wall were complicit in that concealment: and

(2) it is not credible that throughout this meeting, none of those individuals referred to the fact that the GenVen Report existed.

235. In addition, Mr Kalaris accepted under cross-examination that "there was challenge and discussion about the interviews"; that Mr Wall was "reading from something" and was "not

giving us this information off the top of his head" and that he had referred to specific quotations from the interviews. The level of detail and the type of information is consistent with a report.

The meeting on 10 December 2012

236. When Ms Yazdani asked Mr Kalaris about his meeting with Ms Mansfield, Mr Tinney and Mr Mason on 10 December 2012, the following exchange took place:

> "*Ms Yazdani*: How did Mr Tinney described Genesis Ventures' output at this meeting?
>
> *Mr Kalaris*: The only thing I do recall is that he was clear that there was not a report. I don't recall how he described or if he described anything other than that detail."
>
> *Ms Yazdani*: Did you get the impression that there were some sort of notes or any sort of physical document in existence?
>
> *Mr Kalaris*: I did not, no.
>
> *Ms Yazdani*: You didn't get that impression?
>
> *Mr Kalaris*: No. No."

237. However, Mr Kalaris accepted under cross-examination that:

(1) at the meeting on 5 April 2012, he knew that either Mr Biesinger or Mr Wall were "going through a document or notes" on the phone;

(2) at the meeting on 18 April 2012, he knew Mr Wall was "reading from something" and was "not giving us this information off the top of his head"; and

(3) in relation to the draft letter to Mr Jenkins, which had referred to GenVen's "interview notes and working papers", when Mr Stanley asked him "You certainly knew there had been interview notes and working papers in existence", Mr Kalaris responded "I presume that would be the case, of course, as any consultant would have had".

238. We accept that Mr Kalaris may have understood Ms Yazdani's questions as relating to the meeting on 10 December 2012, and it may therefore be true that Mr Kalaris did not obtain any information from Mr Tinney about notes or documents at that meeting. Nevertheless, at that time he already knew there were notes and documents in existence, and his reply therefore lacked candour.

The weekend of 14-15 December 2012

239. We have already found the following facts:

(1) on Saturday 15 December 2012, Mr Roemer emailed Mr Kalaris saying that the Fed knew "an outside party" had been hired earlier in the year to assess culture and/or control and believed a report had been produced, and "view the delay in receiving the report as a red flag".

(2) Mr Kalaris forwarded that email to Mr Tinney without any comment.

(3) He spoke to Mr Tinney on the phone over the weekend.

(4) On 15 December 2012, he emailed Mr Roemer and said there were "two sets of consultants, one who produced working papers rather than a report and one that did not".

(5) On 16 December 2012, Mr Kalaris emailed Mr Harding and copied Mr Tinney, saying in relation to the "cultural look at BWA" that "we do not have a formal document".

240. During the 2014 Interview, the following exchange took place about Mr Kalaris's conversation with Mr Tinney:

"*Ms Yazdani*: You forwarded it [the email from Mr Roemer] on…

Mr Kalaris: Yes, I did, yes.

Ms Yazdani: …to him without any comment.

Mr Kalaris: Yes,

Ms Yazdani: So I am just wondering if you talked about it.

Mr Kalaris: …I had a conversation with [Mr Tinney]…where he said to me that he had what he called, received working papers or he had working papers and he said that he'd received them. And that was the only conversation I had with him about this.

Ms Yazdani: How did the working papers come up in conversation, what was the context?

Mr Kalaris: He told me.

Ms Yazdani: As in, just out of the blue or you…

Mr Kalaris: It was in – as part of like a "what's going on here" question. And that was the first time I was aware that there were even working papers, that he had something….

Ms Yazdani: Did he say how he came by the notes?...

Mr Kalaris: No. No, I don't recall that at all."

241. Mr Kalaris's witness statement says:

> "Mr Tinney called me, and I asked him if he knew what was going on and he told me that he had previously received something to his home address from GenVen, in the form of 'working papers' and that he was going to share these with Mr Jonathan Peddie (who was the Group legal officer in charge of investigating the Whistleblowing Email at that time)."

242. Under cross-examination, Mr Kalaris's evidence was that this was the only conversation he had with Mr Tinney about Mr Roemer's email; that following the call, he did not inform anyone at Barclays that Mr Tinney had GenVen "working papers"; and

> "had no reason at this point in time to think that there was [anything] other than perhaps some carelessness when Andrew said to me, 'I've got the working papers'."

243. Mr Stanley submitted that what happened over this weekend was inconsistent with Mr Kalaris being ignorant of the GenVen Report, and we agree. We have italicised particular points of emphasis:

(1) Mr Kalaris received the email from Mr Roemer saying the Fed knew there was a report, and regarded this as a "red flag", and *he forwarded the email to Mr Tinney without any comment.*

(2) In the course of the subsequent phone call, Mr Tinney told Mr Kalaris that he had "working papers" *but Mr Kalaris did not ask him anything about those "working papers".*

(3) Mr Kalaris emailed Mr Roemer on 15 December *and did not tell him Mr Tinney had "working papers".*

(4) Mr Kalaris emailed Mr Harding on 16 December *and did not tell him Mr Tinney had "working papers".*

244. In assessing the credibility of Mr Kalaris's evidence, we also take into account our earlier findings that:

(1) it was not out of character for Mr Kalaris to have reacted angrily to the approach GenVen had taken to the audit;

(2) he was aggressive during the meeting on 5 April 2012; and

(3) he was furious when he received the email from the Whistleblower.

245. Taking into account both the seriousness of the allegation made by Barclay's regulator and Mr Kalaris's personality, we find that had he not known about the existence of the GenVen Report before receiving the email from Mr Roemer on 15 December 2012:

(1) He would have been surprised by the allegation in that email, and made some comment to that effect when he forwarded it to Mr Tinney.

(2) He would have been shocked and angry when Mr Tinney told him he had "working papers".

(3) He would have asked Mr Tinney for details of the nature and content of those working papers, given that this issue was being regarded as a "red flag" by the Fed.

(4) He would not have thought that Mr Tinney had been merely "careless" in withholding information and documents from him.

(5) He would have informed Mr Roemer and Mr Harding that Mr Tinney had "working papers".

246. Mr Kalaris did none of those things. We agree with Mr Stanley that the actions he took are only consistent with Mr Kalaris already knowing about the GenVen Report, and they are not consistent with him being ignorant of its existence.

Overall findings

247. Mr Kalaris lacked candour when he told Ms Yazdani that he did not have the impression that there were "some sort of notes or any sort of physical document in existence". His responses to questions about the briefing, the meeting on 5 April, and the events during the weekend of 15-16 December lack credibility.

248. On the basis of those findings, we find as a fact that Mr Kalaris knew the GenVen Report existed before the meeting on 17 December 2012. His statement to the contrary during the 2014 Interview was thus untrue; Mr Kalaris knew it was untrue, and he thus acted dishonestly.

OTHER FINDINGS

249. We have therefore found as follows:

(1) in relation to the capital raising, that Mr Kalaris had not been candid in his answers to three of the questions asked by the Authority during the 2013 Interview and that one of his answers was dishonest; and

(2) in relation to the GenVen Report, that Mr Kalaris was dishonest when he told the Authority in the course of the 2014 Interview that he first became aware of that Report at the meeting on 17 December 2012.

250. Mr Stanley's position was those findings were sufficient for us to dismiss the Reference, because it was clearly reasonable for the Authority to have decided it was not satisfied Mr Kalaris was fit and proper.

251. Saranac's position was that the Tribunal had to decide whether the Decision was one which was reasonably open to the Authority on the basis of all relevant findings of fact and not

simply those which related to the Interviews. Mr Winter emphasised that the Authority had decided that Mr Kalaris was not "fit and proper now", and had come to that Decision based on events which happened around a decade ago. In his submission, those events were "plainly incapable of robbing him of [his] integrity in 2024".

252. In *Köksal*, the Tribunal considered a similar submission, and took s 55Z3(1) as their starting point. That section provides that "an applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal".

253. The Tribunal said at [31]:

> "In our view it is clear that in this context 'the matter' in question is whether the Authority can be satisfied that if the Variation Application were approved Dr Köksal would satisfy the Threshold Conditions [for authorisation]. Consequently, the extent of what the Tribunal may examine in considering the matter referred will be prescribed by the issues raised in the pleadings and the evidence sought to be adduced to support the competing contentions made by the parties in those pleadings."

254. In Saranac's Reference, "the matter" is the Decision that the Authority cannot be satisfied Mr Kalaris is fit and proper so as to perform the Chief Executive and Executive Director functions. The Decision was made on 17 November 2022, but the Authority did not change its position between that date and this hearing.

255. The Tribunal in *Köksal* continued:

> "[33] In our view there is nothing in principle that would prevent us taking into account the further information provided by Dr Köksal since the giving of the Decision Notice in coming to a decision as to whether or not to remit the matter back to the Authority in the light of the findings that we make in relation to that evidence. In our view to take this course is entirely consistent with the wording of both s 55Z3 (1) and s 133 20 (4) FSMA. It is also consistent with the approach taken by this Tribunal in the case of *Stephen Robert Allen v The Financial Services Authority (*2013) FS/2012/0019 where the Authority sought to substitute new and distinct allegations which it contended established that Mr Allen was not a fit and proper person from those originally contained in its decision notice. The Tribunal said this at [19] of its decision:
>
> > "The allegation in the Decision Notice was that Mr Allen is not a fit and proper person to perform any function in relation to regulated activities generally because he lacks honesty and integrity. Any evidence that relates to Mr Allen's honesty and integrity, whether or not it was available to the Authority at the time of the Decision Notice, may be considered by the Upper Tribunal."
>
> [34] Although this decision pre-dates the coming into force of s 133 (6) and (6A) FSMA, we see nothing in the new provisions which would affect it.
>
> [35] We are therefore of the view that if we were to make findings of fact in relation to the new evidence provided by Dr Köksal which indicated that the original findings made on which the decision was based had been overtaken by further developments, such as new evidence which clearly demonstrated that in substance the further information requested by the Authority in relation to the Application had in fact now been provided, then that finding could lead the Tribunal to conclude that the matter should be remitted to the Authority for further consideration in the light of those findings. This would ensure that the Authority reconsidered its decision on a fully informed basis."

256. We respectfully agree, and find that in determining the Reference, we may examine "any evidence that relates to [Mr Kalaris's] honesty and integrity, whether or not it was available to the Authority at the time of the Decision Notice".

THE OTHER EVIDENCE

257. We considered two sources of other evidence: that contained within the assessment of Mr Kalaris's fitness and propriety carried out by Saranac on 9 March 2023 ("the Saranac assessment"), and personal references provided by a number of individuals.

The Saranac assessment

258. The Saranac assessment concluded that Mr Kalaris was fit and proper based on:

(1) his compliance with the restrictions imposed on him by the Authority in the period up to March 2020;

(2) training he had carried out since he set up Saranac;

(3) the standing and reputation of Saranac's non-executive directors ("NEDs");

(4) Mr Kalaris's work while at Saranac;

(5) his experience in the financial services industry over four decades; and

(6) Saranac's view that Mr Kalaris's conduct during the 2013 and 2014 Interviews "does not negatively impact his fitness and properness".

259. We consider all but the last of those points below. We have disregarded Saranac's view as to Mr Kalaris's conduct during the Interviews, because we have already made our own findings on those matters.

The personal references

260. The Bundle included personal references for Mr Kalaris given by four of the NEDs between December 2022 and January 2023, together with copies of witness statements from seven other individuals dated February 2019 given for the purposes of Mr Kalaris's criminal trial. The Bundle also included a letter dated June 2021 from Mr Elliott, the Chair of Saranac, in support of the Application. In this judgment, we have combined all of those documents under the heading "personal references".

FINDINGS OF FACT BASED ON THE OTHER EVIDENCE

261. On the basis of that other evidence, we make the findings of fact set out below.

The capital raising and the GenVen Report

262. Many of the referees stated that in their view Mr Kalaris had acted with fitness and propriety in relation to the capital raising and/or the GenVen Report. For example, one said there were "reasonable grounds for assuming that both Barclays' capital raisings had been conducted properly", and another commented that having conducted "due diligence" on the capital raising issue, his "assessment was that Tom had acted in an open and cooperative manner during the FCA and SFO process".

263. We did not make any further findings in the light of this evidence, because:

(1) the Authority's case was based on Mr Kalaris's responses in the Interviews, not on Mr Kalaris having acted improperly in relation to either the capital raising or the GenVen Report; and

(2) to the extent that the referees were expressing their opinion as to Mr Kalaris's approach in the Interviews, we have already carried out our own analysis.

Financial services experience

264. We have already made findings about Mr Kalaris's experience in the financial services sector before he set up Saranac, see §68ff. It is clear from the Decision Notice that this information was also known to the Authority before it made the Decision, and was taken into account when it concluded that Mr Kalaris was not "fit and proper".

Mr Kalaris's approach to regulatory requirements in the past

265. Some of the references included statements that Mr Kalaris had been supportive of regulatory compliance during the years before 2014. For example, Mr Chester B Feldberg. who worked with Mr Kalaris between 2000 and 2008 in his role as Chairman of Barclays' Governance and Control Committee, said he could rely on Mr Kalaris to "take prompt and effective action" to address any weaknesses in Barclays' governance procedures. Sir David Walker, Barclays' Chairman from 2012, said Mr Kalaris had "an acute and well-developed capacity to determine and chart the ethically right course in any business situation even where this might have at least short-term negative consequences", and gave two examples. Mr Richard Berliand, who had previously worked under Mr Kalaris at JP Morgan, said he "consistently promoted a culture of regulatory respect and compliance".

266. However, none of the referees were called as witnesses in these proceedings and so could not be cross-examined. Moreover, this evidence all relates to the period before the Interviews, in the course of which we have found Mr Kalaris to have been dishonest and lacking candour. We find that the evidence given by the referees as to Mr Kalaris's approach to regulatory compliance in the period before 2014 does not form a reliable basis for making a finding of fact about Mr Kalaris's fitness and propriety at the time of the Decision or, indeed, at the time of this judgment.

Compliance with restrictions

267. Both Saranac and some of the personal referees stated Mr Kalaris had complied with the restrictions imposed on him by the Authority in the period up to March 2020. This was not in dispute and we find it to be a fact.

Training

268. In 2016 and 2017, Mr Kalaris completed a number of training courses provided by the Chartered Institute for Securities and Investments ("CISI"), including one called "UK Regulation and Professional Integrity". In September and October 2020, he completed the following further training, delivered by a CISI accredited provider:

(1) Evidencing the effectiveness of good governance;

(2) Evidencing effective board reporting;

(3) Risk Management Oversight; and

(4) Culture - The board's secret weapon.

269. In *Carrimjee*, the Tribunal made findings about the training carried out by Mr Carrimjee after the Authority had issued his decision notice. Mr Carrimjee had filed a witness statement, as had Mr Goh, the managing director of the firm which provided the training. The Tribunal concluded at [86] that the course Mr Carrimjee had undergone had been "rigorous". In making its decision, the Tribunal placed some weight on the fact that Mr Carrimjee had undertaken that training.

270. In contrast, Saranac has provided no information about Mr Kalaris's training, other than the names of the modules. His witness statement contains no related evidence. Although we

find as a fact that he carried out further training after the Interviews, we make no finding as to its content or consequences.

The standing of the NEDs

271. The following individuals accepted office as Saranac's NEDs:

(1) Robert Elliott, former Chair of Linklaters LLP ("Linklaters");

(2) Richard Berliand, Chair of TP ICAP PLC and formerly the Managing Director of JP Morgan;

(3) Gordon Neilly, former Chief of Staff and Head of Strategy at Standard Life Aberdeen PLC;

(4) Martin Gilbert, former CEO of Aberdeen Asset Management and joint CEO of Standard Life Aberdeen PLC ("Aberdeen");

(5) Jeffrey Walsh of Jupiter Capital Partners LLC; and

(6) David Bloom, Founder of Goldacre Ventures and a partner of the Noé Group.

272. Saranac's position is that individuals of that calibre would not have accepted a NED role unless they regarded Mr Kalaris to be a fit and proper person; the Saranac assessment emphasises that all but one of the NEDs had accepted the role when Mr Kalaris was still facing criminal charges.

273. However, the mere fact that an individual accepted a NED role in Saranac does not lead to the necessary inference that he also regards Mr Kalaris as a fit and proper person. Apart from Mr Elliott and Mr Neilly, whose references we consider below, none of the NEDs had explained why they had accepted the role. We therefore make no finding based on the standing of the NEDs.

Mr Kalaris's work at Saranac

274. The references provided by Mr Elliott and Mr Neilly did include evidence about the work carried out by Mr Kalaris at Saranac.

Mr Elliott

275. Mr Elliott stepped down from being Chairman and Senior Partner at Linklaters in September 2016, and was appointed as Saranac's Chair in February 2017. In his letter of 11 June 2021, he commended the governance structure put in place by Mr Kalaris, saying it was "fit for purpose and robust", and gave a particular example:

> "Mr Kalaris was very definite in his views that the pricing of subsequent capital raises from investors should be absolutely fair to those investors, having regard to the progress being made by the Firm in implementing its business plan."

Mr Neilly

276. Mr Neilly first met Mr Kalaris in 2016, when Aberdeen (later "Abrdn") was considering investing in Saranac. Mr Neilly said:

> "When Abrdn indicated its willingness to consider an investment, I recall the professionalism, fairness and transparency of the documentation relating to the business constitution, shareholder agreement and shareholder protections."

277. He continued:

> "When I agreed to join the Board, initially as an investor representative, I was heartened by the quality and broad experience of the Board of Directors Tom

> had assembled, his desire for strong governance and challenge and his utmost respect for the regulatory environment in which the business would operate. Recruitment, customer proposition and the operating environment reflected Tom's belief [that] clients would expect, as a minimum, strong business ethics, adherence to regulatory discipline, service excellence and a best-in-class operating environment to protect the assets which they were entrusting to the stewardship of Saranac."

278. Mr Neilly concluded by saying that Mr Kalaris "is a person of great integrity" who can be relied upon to provide "honest advice and feedback no matter the situation".

The Tribunal's conclusion

279. We do place weight on Mr Elliott's evidence and that of Mr Neilly. Unlike many of the other referees, their assessments were not based on the period leading up to the Interviews. We recognise that neither individual was available for cross-examination, but Mr Stanley did not submit that no weight should be given to them. We find as a fact that Mr Kalaris demonstrated his fitness and propriety to both Mr Neilly and Mr Elliott in the course of his work for Saranac.

THE TRIBUNAL'S DECISION

280. The Authority refused the Application because it was not satisfied that Mr Kalaris was a fit and proper person to perform the Chief Executive and Executive Director functions for Saranac. The Decision was based on the replies given by Mr Kalaris during the Interviews in relation to the capital raising and the GenVen Report.

281. In relation to the capital raising, we made findings of fact based on the same documentary evidence as that considered by the Authority, together with Mr Kalaris's witness evidence. Having done so, we found Mr Kalaris had not been candid in his answers to three of the questions asked by the Authority during the 2013 Interview and that one of his answers was dishonest. Our conclusion was thus the same as that of the Authority.

282. In relation to the GenVen Report, the Decision was based on:

(1) the findings in *Tinney* that Mr Kalaris knew about the GenVen Report before the meeting on 17 December 2012; and

(2) a contemporaneous note made by Mr Mason, which referred to Mr Kalaris not wanting "a litigation trail".

283. For the reasons given at §52ff, we rejected Mr Stanley's submission that we should place weight on *Tinney*, and we also did not take Mr Mason's note into account, see §62. However, having considered the other documentary evidence (which was not in dispute) together with Mr Kalaris's witness evidence, we decided he had given dishonest responses in the course of the 2014 Interview. This too was the same conclusion as that reached by the Authority.

284. In *Tinney*, the Tribunal recorded that Mr Tinney had "been reflecting on his conduct in that time and that his remorse is genuine". Mr Stanley rightly pointed out that was not the position taken by Mr Kalaris, who had instead reiterated that he had acted entirely appropriately. In relation to the 2013 Interview he said "I did not (and still do not) consider I had done anything wrong", and in relation to the 2014 Interview that "I believe I was completely honest and open with the Authority". Mr Stanley contrasted this with a (hypothetical) applicant who might have said:

> "Well, I don't think that actually was the correct answer at the time. I'm sorry that I got that wrong. I made a mistake. I wouldn't do that again."

285. Having considered the Interviews, and Mr Kalaris's approach at the hearing to those Interviews, we went on to make the following findings on the basis of evidence which had not been taken into account by the Authority.

(1) Mr Kalaris complied with the restrictions imposed on him by the Authority in the period up to March 2020. The Handbook confirms at FIT 2.1.3G(13) that a relevant factor when assessing a person's fitness and propriety is "whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system. However, we also take into account that both Saranac and Mr Kalaris were *mandated* to comply with the attestation process as a condition of Saranac's authorisation, and a failure to comply would have had serious consequences for that firm.

(2) In the course of his work for Saranac, Mr Elliott and Mr Neilly observed Mr Kalaris acting with fitness and propriety.

286. It is true that those findings are inconsistent with the Decision reached by the Authority. However, they are significantly outweighed by the seriousness of our findings about Mr Kalaris's dishonesty and lack of candour. We are in no doubt that if the matter were remitted, the Authority would inevitably come to the same conclusion, see *Soszynski* at [35] cited earlier in this judgment. Furthermore, we find that the position would be the same if we had made a finding of dishonesty in relation to only one of the Interviews. The Reference is therefore dismissed. Our decision is unanimous.

287. We are grateful to Mr Stanley and Mr Winter for their helpful oral and written submissions. We also thank the members of their legal teams, who prepared the case for the hearing, including the comprehensive Bundle.

ANNE REDSTON
UPPER TRIBUNAL JUDGE

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