Neutral Citation: **[2026] UKUT 00047 (TCC)**

Case Number: UT/2023/000014-17

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London EC4A 1NL

FINANCIAL SERVICES – whether a firm failed to conduct its business with integrity – whether director and employees lacked integrity in preparing a document describing a strategy of market manipulation – whether part of the firm's business – whether conduct of the individuals could be attributed to the firm – whether a junior employee was subject to the Authority's Individual Conduct Rules – whether penalties should be reduced – reasonableness of prohibition orders

Heard on:15-19, 22, 23, 25 and 30 September 2025 and 1-3 October 2025
Judgment date: 03 February 2026

Before

UPPER TRIBUNAL JUDGE JONATHAN CANNAN
MR MARTIN FRAENKEL
MR JOHN WOODMAN

Between

(1) RANGECOURT SA (Formerly Banque Havilland SA)

(2) EDMUND LLOYD ROWLAND

(3) VLADIMIR BOLELYY

Applicants

and

THE FINANCIAL CONDUCT AUTHORITY

Respondent

and

DAVID JOHN ROWLAND

Third Party Rights Applicant

Representation:

For the First Applicant: Alex Bailin KC and Jason Mansell of counsel instructed by Kingsley Napley LLP

For the Second Applicant: Andrew George KC and Simon Pritchard of counsel instructed by Peters & Peters LLP

For the Third Applicant: Rhys Meggy of counsel instructed by Hickman & Rose

For the Third Party Rights Applicant: Fraser Campbell KC instructed by Forsters LLP

For the Respondent: James Purchas, Catherine Vaughan-Neil and Ajay Ratan of counsel instructed by the Financial Conduct Authority

DECISION

INTRODUCTION

1. These references arise out of the production of a document in 2017 which all parties agree was a wholly improper document ("the Disputed Document"). The Disputed Document was produced by employees of the First Applicant ("the Bank"). The Third Applicant ("Mr Bolelyy") accepts that he was involved in producing the Disputed Document. Mr David Weller, another employee accepts that he was involved in producing the Disputed Document. Mr Weller has also been the subject of enforcement action by the Financial Conduct Authority ("the Authority"). He is not a party to these proceedings but he did give evidence having been summoned as a witness by the Authority. The Second Applicant ("Mr Rowland") was an employee and director of the Bank. He denies any direct involvement in the production of the Disputed Document or any knowledge about its contents at any material times.

2. The Disputed Document was prepared in September 2017, at a time when certain states in the Middle East including the United Arab Emirates ("the UAE") were imposing sanctions including economic sanctions on the State of Qatar. The Disputed Document purported to describe a strategy involving market manipulation to put pressure on the Qatari currency with a view to breaking the peg between the Qatari Riyal and the US dollar. The Authority's case is that the Disputed Document was a presentation intended to market the Bank to a UAE sovereign wealth fund called Mubadala Investment Company ("Mubadala"). It is said that the Disputed Document was intended to signal to Mubadala that the Bank was willing to go to significant lengths including countenancing involvement in improper market conduct.

3. The circumstances in which the Disputed Document came into the public domain in October 2017 are in issue. The Authority subsequently investigated the production of the Disputed Document. Warning Notices were issued to the Bank, Mr Rowland, Mr Bolelyy and Mr Weller on 14 October 2021. Following proceedings before the Authority's Regulatory Decisions Committee ("the RDC"), Decision Notices were issued on 17 January 2023. The Bank, Mr Rowland and Mr Bolelyy have referred their Decision Notices to this Tribunal. Mr Weller told us that he did not refer his Decision Notice to the Tribunal for personal reasons but in his evidence he does challenge the findings against him in his Decision Notice.

4. We briefly summarise in the following paragraphs the regulatory action pursued by the Authority and the position of the subjects of that regulatory action.

5. The Decision Notice to the Bank asserts that the Bank acted without integrity in breach of Principle 1 of the FCA Handbook by creating and disseminating the Disputed Document. The Authority therefore decided to impose a financial penalty on the Bank of £10m.

6. The Bank asserts that the alleged conduct relied on by the Authority does not engage Principle 1, including because it was not part of the Bank's business. Alternatively, it is said that the penalty is arbitrary and disproportionate.

7. The Decision Notice to Mr Rowland asserts that he played a key role in the production and dissemination of the Disputed Document. He was willing to be involved in a manipulative trading strategy and to allow the Bank to be used to facilitate potentially unlawful activities. As such he failed to act with integrity in breach of Rule 1 of the Authority's Individual Conduct Rules and demonstrated that he is not a fit and proper person to perform any function in relation to any regulated activities. The Authority therefore decided to impose a financial penalty of £352,000 on Mr Rowland and to make an order prohibiting him from performing any function in relation to any regulated activities.

8. Mr Rowland asserts that his conduct did not display a lack of integrity and that the Authority was wrong to conclude that he is not a fit and proper person to perform functions in relation to regulated activities. His only involvement with the Disputed Document was to give instructions for a hedging note to be prepared setting out a strategy whereby UAE banks could hedge against the risk of a loss in value of their holdings in Qatari bonds. He contends that the Disputed Document was never disseminated. He also contends that Rule 1 does not apply to the conduct relied on by the Authority. Alternatively, he contends that the penalty imposed is disproportionate.

9. The Decision Notice to Mr Bolelyy asserts that he created and disseminated the Disputed Document and thereby failed to act with integrity and demonstrated that he is not a fit and proper person to perform any function in relation to any regulated activities. The Authority therefore decided to impose a financial penalty of £14,200 on Mr Bolelyy and to make an order prohibiting him from performing any function in relation to any regulated activities.

10. Mr Bolelyy asserts that his conduct did not display a lack of integrity and that the Authority was wrong to conclude that he is not a fit and proper person to perform functions in relation to regulated activities. His only involvement with the Disputed Document was in his role as Mr Rowland's personal assistant. He produced the Disputed Document incorporating material provided to him by Mr Weller who was a senior employee of the Bank. He understood the Disputed Document set out a legitimate hedging strategy whereby UAE banks could hedge against the risk of a loss in value of their holdings in Qatari bonds. He contends that the Disputed Document was never disseminated. He also contends that Rule 1 does not apply to conduct in his role as a personal assistant and that in any event in his circumstances no prohibition or disciplinary action is required.

11. The Decision Notice to Mr Weller asserts that he played a key role in the production of the Disputed Document and thereby failed to act with integrity and demonstrated that he is not a fit and proper person to perform any function in relation to any regulated activities. The Authority therefore decided to impose a financial penalty of £54,000 on Mr Weller and to make an order prohibiting him from performing any function in relation to any regulated activities.

12. As stated above, Mr Weller has not challenged his Decision Notice. His evidence however is that he had very limited involvement in producing the Disputed Document. He says that he did not consider the Disputed Document was a serious task and was unaware that it would be disseminated outside the Bank or the family of Mr David Rowland.

13. Mr David Rowland is the father of Mr Rowland and the protector of a family trust which owns the Bank. We refer to him as Mr David Rowland to avoid confusion with Mr Rowland. On occasion we refer to Mr David Rowland and Mr Rowland by reference to their relationship as father and son. Mr David Rowland is a wealthy businessman with various business interests

including interests in the Middle East. He has claimed third party rights in connection with all the Decision Notices referred and also the Decision Notice addressed to Mr Weller.

14. It is only fair to say at the outset that the Authority made no allegations and we make no criticism of or adverse findings against Mubadala or anyone connected with Mubadala. There is no evidence that anyone connected with Mubadala ever requested, endorsed or sought to implement the improper strategy described in the Disputed Document. The Authority did ask us to confirm what might be described as adverse findings concerning Mr David Rowland in the Decision Notices. For reasons given later we make no adverse findings against Mr David Rowland and nothing in this decision should be taken as a criticism of his conduct.

15. The structure of this decision is as follows:

(1) An outline of the undisputed facts.

(2) An outline of the issues raised by the references.

(3) Our approach to the evidence and the various witnesses.

(4) Our principal findings of fact on the factual issues.

(5) Our consideration of the Authority's case against each Applicant including our findings on the legal issues.

(6) Consideration of Mr David Rowland's reference.

(7) A summary of our conclusions on each reference.

16. Despite the length of this decision, we have not dealt with every aspect of the evidence or the parties' submissions. We have taken everything into account and have sought to explain our reasoning by reference to the most significant evidence and the parties' principal submissions. Where we refer to a party's submission, those submissions were made by counsel on behalf of their client. We have been greatly assisted in our task by the quality of the oral and written submissions from counsel and by the constructive way in which counsel and the parties' legal teams prepared for and conducted the hearing.

(1) OUTLINE OF THE UNDISPUTED FACTS

17. In this section we outline the undisputed facts and provide background to the factual and legal issues we must decide. Where appropriate we identify any associated issues of fact.

The Bank and its relevant employees

18. The Bank was a privately-owned bank registered in Luxembourg. It was established in 2009 with its head office in Luxembourg and was regulated by the Commission de Surveillance du Secteur Financier ("the CSSF"). The Bank was established following the restructuring of Kaupthing Bank Luxembourg using finance from a family trust of which Mr David Rowland was the protector. Mr David Rowland was also described as the Honorary President of the Bank. The Bank's website describes the formation of the Bank and its services as follows:

> A SOUND & TRADITIONAL BANK
>
> Established in 2009 by the Rowland family, Banque Havilland emerged from the family's desire to create a private bank that they would like to bank with. The family has many years of professional experience in the finance and investment sector and views the ownership of the Bank as a natural progression.
>
> The Bank is managed with the financial conservatism that has been the hallmark of the family. Banque Havilland will strive to offer the excellent and discreet service that as a high net worth family one would expect from a private bank.

BECOME PART OF THE FAMILY'S NETWORK

Through the Bank, the Family can share with you its business network and facilitate access to new people, new locations and investment opportunities.

We offer you access to our personal and professional networks comprising our most trusted and capable banking, asset management and wealth structuring professionals.

INDEPENDENT & FAMILY OWNED

Our independence brings many benefits - the means to adapt quickly to the needs of our clients; not to be constrained by the cumbersome infrastructures that characterise a large banking group and, importantly, the ability to provide private banking and wealth management services that meet the individual circumstances of the client without being restricted to predefined products.

Family ownership also provides stability and longevity to the business - the Bank is an integral part of the Family's interests on both a professional and personal level.

19. The Bank's management structure comprised a Board of Directors and an Executive Committee ("ExCo") reporting to the Board. The Bank had a UK Branch with offices at 5 Savile Row, London which was regulated by the Authority. We understand that on 1 August 2024, the European Central Bank withdrew the Bank's banking licence. That decision is being challenged before the General Court of the European Union. As a result, the Bank changed its name to Rangecourt SA on 10 September 2025.

20. Mr Rowland was at all material times a Board director of the Bank and a member of ExCo. He also held the title of Chief Executive Officer of the UK Branch between September 2014 and April 2017. In April 2017 he relinquished the title of CEO which was then held by Mr Oliver Selwyn until Mr Selwyn resigned in September 2017. Mr Selwyn had previously been the deputy CEO. Mr Rowland was reappointed as CEO on 26 September 2017 until he resigned from all positions at the Bank on 13 December 2017 following events in connection with the Disputed Document.

21. Mr Rowland was employed by the Bank as CEO of the UK Branch pursuant to an employment contract dated 30 April 2013. He was paid £44,000 per annum. His duties were expressed to include all the duties one might expect of the CEO of a private bank UK branch. This included identifying and sourcing prospective new clients and marketing the Bank's products and services to new and existing clients. He was subject to a restriction preventing him from carrying on any other work save with the prior written consent of the Board. A clause provided that the Bank's internet and email systems were provided solely for Bank use. Another clause provided that he must not disclose any information concerning the Rowland Family, their friends or acquaintances. It was not disputed that Mr Rowland's salary was not commensurate with his duties as CEO of the UK Branch. Mr Rowland had no other source of income although he did receive gifts from his father.

22. Mr Weller was employed by the Bank as its Head of Asset Management (UK Branch). He held this role from November 2012 until he was dismissed by the Bank on 10 April 2018. Mr Weller had been suspended in December 2017 and was dismissed following a disciplinary process in connection with the Disputed Document. His annual salary at that time was approximately £200,000. His contract of employment contained similar restrictions to those in Mr Rowland's contract. Initially Mr Weller's role involved both discretionary portfolio management and advisory work. The portfolio management work involved asset allocation, devising investment strategies, monitoring markets for risks and opportunities, selecting investments and associated research. He was a member of the Bank's Investment Committee

and acted as its de facto chair. He would write research reports and a quarterly newsletter for clients called Compass. Mr Weller's advisory work for clients was moved to Luxembourg at some stage when the Bank recruited Mr Stefano Torti for that role.

23. Mr Rowland, Mr Weller and Mr Selwyn were approved by the Authority as holders of the Bank's senior management function (SMF21) for regulatory purposes from 7 March 2016 onwards. There is an issue as to whether Mr Rowland's continued approval as such in the period when he was not the CEO was an error or not.

24. Mr Bolelyy was employed by the Bank from October 2016 until his resignation on 9 November 2017 following events in connection with the Disputed Document. It is common ground that he was Mr Rowland's personal assistant but the precise extent of his role is in issue. Mr Bolelyy's employment contract is dated 21 September 2016 and contained similar restrictions to those in Mr Rowland's contract save that his obligation to work exclusively for the Bank was not subject to any exception for written consent.

25. It is worth identifying a number of other directors and employees of the Bank who are referred to later in the decision.

26. Mr Peter Lang was the CEO of the Bank, based in Luxembourg. At all material times he was a member of ExCo.

27. Mr Juho Hiltunen was the Deputy CEO of the Bank and at all material times he was a member of ExCo. He had worked for Kaupthing Bank Luxembourg from October 2007 and joined the Bank when Kaupthing was restructured as the Bank in 2009.

28. Mr Peter Rose was a non-executive director on the Board.

29. Mr Jean-François Willems was CEO of the Bank from 2013 to May 2017 at which stage he became CEO of Havilland Group SA, the direct shareholder of the Bank. He was also a board member of a Swiss subsidiary of the Bank, from June 2016 onwards. He had been employed by Kaupthing Bank Luxembourg prior to joining the Bank.

30. Mr Harley Rowland is one of Mr David Rowland's sons. At all material times he was a Board director of the Bank and Head of Asset Management for the Bank as a whole. He chaired ExCo.

31. Mr Jonathan Unwin was the Deputy Head of Asset Management (UK Branch) reporting to Mr Weller.

32. Ms Margaret Morrow was employed at the Bank's UK Branch. She was an office administrator and in some respects acted as Mr David Rowland's personal assistant.

33. Mr David Henry was not an employee of the Bank but he worked for Liwathon Limited, a Rowland Family business. He had a desk at the Bank's UK Branch premises.

34. Mr William Tricks was not an employee of the Bank. He was appointed as a consultant to the Bank on 18 April 2017 for which he was paid a monthly fee of $10,000.

General background

35. In 2017 Mr Khaldoon Al Mubarak ("Mr Al Mubarak") was the Managing Director and Group CEO of Mubadala. Mubadala is a sovereign wealth fund of the Emirate of Abu Dhabi. It acts on its own behalf and as agent for Abu Dhabi as an investor or potential investor through other UAE sovereign controlled entities. Mr David Rowland had a longstanding connection with Mr Al Mubarak, having been introduced to him and the then Crown Prince of Abu Dhabi by Mr Tricks in the early 2000s. Mr Tricks was a special adviser to the Crown Prince and a long standing and trusted adviser to Mr David Rowland. Mr David Rowland went on to develop

what he describes as a "long and respectful acquaintance relationship" with Mr Al Mubarak and the Crown Prince.

36. In 2017, Mr David Rowland and Mubadala were pursuing a joint venture to set up a new bank to be known as the Anglo-Gulf Trade Bank ("AGTB"). Mr Rowland was heavily involved in this process and in seeking regulatory approval from the Abu Dhabi Financial Services Regulatory Authority. Significant time and money had been spent on this project with professional support from Deloitte and Allen & Overy. There is an issue as to the relationship between the Bank and this joint venture.

37. Also in early 2017, the Bank had been involved in exploratory discussions with Mubadala to purchase the private banking assets of Falcon Bank, a Swiss private bank owned by Mubadala.

38. In April 2017 Mr Tricks was appointed as a consultant to the Bank. His contract stated that the Bank intended to develop its activities in the UAE and recited that Mr Tricks was an expert in the UAE and the wider Middle East. The Bank had a representative office in Dubai and Mr Tricks was to provide assistance in developing the Bank in the UAE. This was to include in particular expanding the undertaking of the Bank in the UAE and broader Middle East with specific assistance in terms of strategic marketing and local networking.

39. In 2017 a Saudi Arabian-led coalition of Gulf States including the UAE severed diplomatic relations with Qatar, citing as the main reason Qatar's alleged support for terrorism. The severance of diplomatic relations was accompanied by trade and economic sanctions. It is against the backdrop of this ongoing diplomatic crisis that the events in issue in these proceedings took place. The crisis continued for several years until January 2021.

40. There was a considerable amount of media coverage about the Qatar diplomatic crisis from June 2017 onwards. Mr Rowland and other members of the Rowland family exchanged emails referencing the media coverage in June 2017. Mr Bolelyy was copied in to some of these emails. Media coverage referred to trading in the Qatari Riyal being at its lowest level in the decade and to its peg to the dollar.

41. On or about 31 August 2017, Harley Rowland asked Mr Weller how profit might be made from political tensions around Qatar. It was part of Mr Weller's role to monitor global news and he said that he would give it some consideration. He provided his thoughts to Harley Rowland by email dated 31 August 2017, to the effect that stocks would not work and also discounting put options against the Riyal. He said that he had asked an "oil mate" and would see what he said. His conclusion in this email was:

> CDS is perhaps going to be your way ahead for the near term.

42. The reference to "CDS" was a reference to credit default swaps and we shall adopt the same shorthand. A CDS is a financial derivative which can act as an insurance policy against the risk of a borrower defaulting on a debt. They can be used for investment purposes and also as a hedge against the risk of loss by lenders and bondholders if the borrower were to default.

43. Mr Weller emailed a friend of his who worked in commodities on the same date with the heading "Gas Gas Gas". He asked: if "things were to go wobbly in Qatar" similar to June, "what tradeable gas product would you use to get exposure?". The response was as follows:

> Market didn't care back then, probably won't again. Even though there were diplomatic ties cut, the different countries were still doing co-loads with each other. Similar to Europe placing economic sanctions on Russia, but still gladly accepting their natgas. Buy gold.

44. Mr Weller forwarded this email to Harley Rowland on 31 August 2017, simply saying "fair analogy".

45. We note at this stage that a business trip to Abu Dhabi had been arranged for Thursday 21 September 2017 to Monday 25 September 2017. The itinerary for the trip indicated that Mr Rowland, his father and Mr Bolelyy would fly out to Abu Dhabi on the Thursday by private jet via Luxembourg to collect Mr Willems. Various meetings were planned, including a meeting with Mr Al Mubarak on Sunday at 3pm, dinner that night with Allen & Overy and a meeting with the Abu Dhabi regulatory authority on the Monday at 11am. The latter two meetings at least were in connection with AGTB. The party was scheduled to depart from Abu Dhabi at 2pm on the Monday.

Meeting on 30 August 2017

46. On 30 August 2017, a meeting took place at the Bulgari Hotel in Knightsbridge ("the August Meeting"). Present were Mr Al Mubarak accompanied by an unidentified individual, Mr David Rowland and Mr Rowland. It is not disputed that at the end of this meeting Mr Al Mubarak made a request to Mr Rowland. There is a dispute as to the precise nature of the request but it related to protecting the value of investments held by UAE banks in Qatari assets. The Authority does not suggest that the request made by Mr Al Mubarak was in any way improper.

47. In an email dated 31 August 2017 to Allen & Overy, Mr Rowland confirmed that he had had a meeting the previous day with Mr Al Mubarak to discuss the AGTB project. The Abu Dhabi regulatory authority had contacted the CSSF who were the Bank's regulator. Mr Rowland stressed to Allen & Overy that AGTB was a "standalone" bank with no connection to the Bank. AGTB was described as a "standalone strategic investment" between Mr David Rowland and Mubadala.

Mr Rowland's instructions following the August Meeting

48. On or about 12 September 2017, and prompted by Mr Al Mubarak's request, Mr Rowland tasked Mr Bolelyy with preparing a document intended at least to be a response to the request. Again, there is an issue as to exactly what instructions Mr Rowland gave to Mr Bolelyy.

49. What is common ground is that Mr Bolelyy went on to prepare a wholly improper document setting out a strategy to harm the Qatari economy using unlawful manipulative trading. It is common ground that Mr Weller assisted Mr Bolelyy in producing the Disputed Document but there is conflicting evidence as to the extent of his involvement.

Mr Bolelyy's Email to Self

50. Mr Bolelyy sent an email to himself on Tuesday 12 September 2017 at 09.48 ("the Email to Self") with the following content:

> **Qatar**
>
> Bond exposure
> What natters is western view (sic)
> Foreign reserves
>
> Currency peg break
>
> Cash to pay for insurance
>
> "Sanctions don't work unless everyone is doing it"
> Currency peg pressure is effective when thought by everyone
>
> Avoid jargon
> Segregated vehicle

51. It is common ground that the Email to Self was the genesis of the Disputed Document. Immediately after sending the email, Mr Bolelyy created version 1 (v1) of the Disputed Document. He copied and pasted the content of the Email to Self into a PowerPoint presentation. On the same morning he created v2 and v3, and that afternoon he created v4. Later versions were created in the days that followed as set out below, culminating in v12 which was the final version created on Monday 18 September 2017 in time for Mr Rowland's trip to Abu Dhabi later that week.

52. There is a significant issue as to whether the Email to Self was sent immediately following a group meeting at which Mr Rowland outlined the instructions he had given to Mr Bolelyy with others present, or whether it was sent following a discussion between Mr Bolelyy and Mr Weller about instructions he had previously been given by Mr Rowland. Either way, it is not disputed that there was a group meeting at which the task was discussed on or about 12 or 13 September 2017 ("the First September Meeting").

53. At 12 noon on 12 September 2017, Mr Bolelyy saved a Financial Times article which he had found during his research titled "Qatari riyal under new pressure despite credit rating reprieve".

54. Mr Bolelyy emailed Mr Weller and Mr Henry at 09.44 on 13 September 2017 suggesting they sit down in an hour or so at 11am to discuss the "special sit", meaning the special situation. Mr Weller responded by sending an article to Mr Bolelyy and Mr Henry from the Times titled "Qatar seek Jewish help in Saudi row". This article referred to Qatar lobbying Jewish American groups in relation to its diplomatic row with Saudi Arabia. It was said to have spent $500,000 hiring a Washington-based PR company.

55. At 13.02 Mr Bolelyy emailed Mr Henry, Mr Weller and Mr Unwin, copying in Mr Rowland with the heading "Special Sit". He stated:

> Gentlemen,
>
> I would really like us to assemble one or two credible, high-level ideas re: a possible transaction structure.
>
> The "winning idea" will then go into a presentation that will be shared and discussed at a high level, so I am aiming to have the first draft this Friday.
>
> I will take care of how this content will be presented but, for now, I would really like for all of us to sit down and jot something coherent down.
>
> Please have a think and let's reconvene tomorrow.

56. At 14.12, Mr Weller sent Mr Bolelyy an article he had seen on Bloomberg titled "Qatar Fund Plans US Deals to Diversify Assets" which referred to Qatar diversifying its assets by investing in the US as the diplomatic stand-off in the Gulf entered its third month.

The Group Meeting(s)

57. The First September Meeting was at the Bank's offices and was attended by Mr Rowland, Mr Bolelyy, Mr Weller, Mr Unwin and Mr Henry. It is a matter of dispute as to whether this meeting was prompted by the resignation of Mr Selwyn or was intended by Mr Rowland to discuss matters in connection with his instructions to Mr Bolelyy. It is common ground that matters in connection with those instructions were discussed by at least some of those present. The extent to which individuals at the meeting were involved in those discussions and what was said is a matter of dispute.

58. There is some evidence of a second meeting to discuss Mr Bolelyy's task but it is a matter of dispute as to whether there was a second meeting.

Further versions of the Disputed Document

59. Mr Bolelyy created v5 and v6 on Thursday 14 September 2017.

60. Mr Bolelyy sent v5 of the Disputed Document to Mr Rowland by email dated 14 September 2017 sent at 12.48. The email stated:

> Attached is a work in progress based on fragments of information exchanged so far.
>
> As discussed yesterday, it will be useful for all of us to sit down and nail down the basic skeleton.
>
> When can you do today?

61. At 16.43 on 14 September 2017 Mr Weller sent Mr Bolelyy a document entitled "Setting Fire to the neighbours house Fund". It was described during the hearing as the "SFNH Document" and we shall retain that description. It is common ground that this document contained the first detailed description of the improper strategy which eventually became the final version of the Disputed Document. It is a significant document and we include a copy taken from a report of the Bank's subsequent internal investigation at Appendix 1. At this stage we note the following:

(1) It outlines various preparatory steps, including making sure "lines are in place everywhere to trade".

(2) It refers to purchasing "Qatar paper" and "old school account painting" to "[get] some ownership", and there is a reference to "control the yield curve".

(3) "Qatar paper" was a reference to Qatari bonds which were to be "bought by a buyer acting in concert" and there is a reference to "crossing amongst yourselves".

(4) There is a reference to slowly purchasing CDS, "just enough to move the price to make it newsworthy" and then "fire up the PR machine" to remind people that there is a problem with Qatar.

(5) There is then a "PR wave two" with a narrative that "market appears to take the view that despite the massive [sovereign wealth fund], pressure is building that could see Qatar having restricted access to the Dollar … with the long term future of the country now in doubt".

(6) The document anticipates that the Riyal peg to the US $ would not break but that credit markets "will be looking shambolic".

(7) The document concludes: "once fire fully alight, clear out the [UAE Dirham] specs for a profit".

(8) At the end of the document there is a cartoon showing a map of the Middle East with individuals cutting off Qatar with a saw.

62. Mr Weller confirmed, and there is no dispute, that his reference to "old school account painting" was a reference to "misrepresenting trades". The term is not in general use and appears to be one used solely by Mr Weller in place of the more widely used term of "painting the tape" which is a type of market manipulation. Mr Weller also confirmed and there is no dispute that the reference to "crossing amongst yourselves" was a reference to what is also known as "wash trading", where a trader buys and sells the same security in order to generate misleading market information. It is common ground that both these forms of trading are improper and would be unlawful.

63. Version 7 of the Disputed Document was created by Mr Bolelyy on 14 September 2017 after he had received Mr Weller's SFNH Document. Versions 8 to 11 were created on 15 September 2017 and v12 was created on Monday 18 September 2017.

64. Mr Bolelyy stored all versions of the Disputed Document in his personal folder on the Bank's IT systems.

Final Version of the Disputed Document

65. On 18 September 2017 at 08.58, Mr Weller sent an email to Mr Rowland, Mr Bolelyy and Mr Henry including an article from Bloomberg about Qatar buying 24 Typhoon Jets to "beef up" its UK defence partnership and referring to the blockade. Mr Rowland replied, "I think they call that, hedging all bets".

66. The file of the final version of the Disputed Document had an electronic document name: "Qatar Opportunity v12.pptx" and was last modified at lunchtime on 18 September 2017. We attach as Appendix 2 all the slides from the PowerPoint presentation which comprised the Disputed Document in its final version. Again, these are taken from the Bank's internal investigation.

67. It is common ground that the Disputed Document outlined an improper trading strategy which if followed would involve manipulating the market in Qatari bonds. Anyone following the strategy would be intending to "control the yield curve" for Qatari bonds. The strategy included "crossing transaction arrangements" between connected parties to give a false impression of the market. A "protected cell company" was to be established into which existing holdings of Qatari bonds from multiple sources were to be transferred. CDS were to be purchased with a view to moving the price of Qatari bonds. A "PR Machine" was to be utilised "to add more fuel to the fire". This would result in "currency peg pressure" whereby Qatar would be forced to use foreign reserves to maintain the peg between the Riyal and the US $. There was a slide headed "FIFA Option" which noted that if Qatar was spending its reserves on supporting its currency, then its ability to host the 2022 World Cup would be called into question and FIFA could switch the tournament to the region as a whole ("the FIFA Slide").

Communication and Dissemination of the Disputed Document

68. We preface this section of the undisputed facts by noting Mr Rowland's evidence, which the Authority challenges, that he was not aware of the contents of the Disputed Document and did not read any version of it until 9 November 2017 when extracts from it were published as set out below.

69. On Monday 18 September 2017, prior to the planned trip to Abu Dhabi later that week, there was an email chain between Mr Bolelyy and Mr Rowland in the morning which started as follows:

> Edmund,
>
> Before we leave on Thursday, let me know what materials (if any) you would like me to print (+ no. of copies) to take with us to Abu Dhabi.
>
> Regards,
>
> Vlad

70. Mr Rowland requested the latest Deloitte reports which were in connection with AGTB and the "Qatar report" both of which he described as presentations. Mr Bolelyy asked whether he wanted 5 copies of each but Mr Rowland replied that two of each was enough.

71. At 19.49 on the same date Mr Rowland emailed Mr Bolelyy:

> can you send me the Qatar presentation in the morning

72. Mr Bolelyy replied at 19.58:

> Sure. Attached is the latest and same version I gave you this afternoon for review.

73. It is not disputed that Mr Bolelyy had left a hard copy of the Disputed Document on Mr Rowland's desk that afternoon.

74. Upon receiving Mr Bolelyy's email, Mr Rowland immediately sent electronic copies of the Disputed Document to Mr David Rowland and Mr Tricks by email. The separate emails were headed "Private & Confidential". The attachments were "Qatar Opportunity (Draft).pdf" and there was no message in the bodies of the emails.

75. There is a significant dispute as to whether Mr Bolelyy or Mr Rowland provided a copy of the Disputed Document to anyone at Mubadala during the course of their trip to Abu Dhabi. That is the dissemination relied on by the Authority.

76. There is no evidence of any discussion about the Disputed Document following the Abu Dhabi trip and no suggestion that any subsequent amendment was made to v12. The next reference to the Disputed Document in the evidence follows publication of an article in an Indian newspaper.

Publication of the Disputed Document

77. The Business Standard is an Indian daily newspaper. On 12 October 2017 it published an article entitled "Gulf Crisis may affect Qatar's security, India's economic interests" ("the Indian Article"). It referred to leaked emails of the UAE Ambassador to the United States, Yousef Al Otaida and an economic warfare strategy against Qatar in the following terms:

> The economic warfare strategy is allegedly being deployed by David Rowland, a U.K. real-estate tycoon and billionaire who sources say could be serving U.A.E.'s interests in the ongoing spat. He is the man behind the meteoric rise of Banque Havilland. He founded the bank in 2009 with the remainder of Kaupthing, the Icelandic bank that went bust. His requirement: a bank to manage his money.
>
> Havilland has a presence in Luxembourg, London, Monaco, Liechtenstein, Bahamas, Moscow and Dubai and Rowland especially has a habit of buying weak banks. Sources say Rowland's banks are covertly attempting to buy Certificate of Deposits (CDs) of Qatari banks and selling it back to original sellers at a lower rate.
>
> It's a complex tactic
>
> The economic warfare strategy involves setting up a confidential commercial entity with sizeable size to buy certificate of deposits (CDs) of Qatari banks, then selling the CDs back to original sellers at a lower price, thereby reducing the market pricing. Negative global public relations campaign is done, showing instability in Qatar as a key reason for this downward pressure on CDs pricing. This will ultimately either force Qatar's financial ministry to either break the currency peg, or at least spend a lot of dollar reserves to maintain their pricing when panic initiates global buyers to sell Qatari Riyal…

78. Mr Weller sent an email to Mr Rowland on 12 October 2017 with a link to the Indian Article. Mr Rowland replied a few minutes later saying, "Made me laugh". Later that day Mr Weller sent another email to Mr Rowland saying "Trending on Qatari Twitter as I type" with a screen shot of a tweet as follows:

> #UAE targeted #Qatar's Economy using UK ex-MP Rowland's Banque Havilland amid #GulfCrisis …

79. It should be noted that Mr David Rowland has never been an MP although he acknowledges in his witness statement that he did have connections to the Conservative Party.

80. There is a transcript of a telephone conversation between Mr Rowland (ER) and Mr David Rowland (DR) at 16.10 on the same afternoon which included a discussion about the Indian Article:

DR: What about that thing in the Indian paper? How do you think that got there?

ER: Uh, Probably, I assume - probably a leak from their office I would imagine.

DR: Yeah.

ER: Never been talked to anyone else, so.

DR: Yeah.

ER: So, don't matter. Use it as a badge of honour when we go and see them next time.

81. It is common ground that Mr Rowland's reference to "their office" was a reference to Mubadala.

82. On the evening of 12 October 2017 Mr Ryan Grim, a journalist with The Intercept, a US online media outlet, called Mr Rowland wanting to discuss Qatar. Mr Rowland told him that he did not speak to the media and the call ended there. The following day Mr Grim contacted Mr Herbert Kozlov by email. Mr Kozlov was a US lawyer retained by the Bank in connection with an unrelated property dispute. They must have had some prior contact, but in this email Mr Grim indicated that he had a copy of the Disputed Document but was reluctant to share it. He suggested a search of the Bank's systems using various search terms such as "Qatar Opportunity" and "Distressed Countries Fund" would reveal it. Mr Kozlov forwarded the email to Mr Rowland and Harley Rowland.

83. Mr Rowland connected Mr Grim's enquiries to the work he had tasked to Mr Bolelyy. He spoke with Mr David Rowland on the evening of 13 October 2017 and discussed Mr Grim's enquiries. There was a discussion about hacking and the possibility of just telling Mr Grim, "I don't know what you're talking about". Mr Rowland then said:

> Nothing wrong, if you look at the two things they've got, there's nothing wrong with the two things, so. Harley don't sound so worried about the two things now, those two things because they're actually not. There's nothing in them.

84. There was then a discussion about what Mr Kozlov would be instructed to say.

> ER: Well there are two things, my plan was just to go out with what I say that Banque Havilland does not trade in Bonds, Securities [unclear] instruments and Qatar names and has no plans to, Banque Havilland is a prestigious private banking group and will make no further comments on politically motivated story lines.
>
> DR: I like that.

85. Following this telephone conversation, Mr Rowland emailed Mr Kozlov instructing him to provide the following comment and to ask Mr Grim not to contact the Bank any further:

> Banque Havilland SA does not trade in bonds, securities, CDS or any instruments of Qatar names and has no plans to.
>
> Banque Havilland SA is a prestigious private banking group and will make no further comments on politically motivated storylines.

86. Mr Kozlov emailed later that evening to confirm that he had given Mr Grim the statement and that Mr Grim had told him that he had accessed the documents through a hack of the UAE Ambassador. He noted that the documents had now been posted online and that he suspected the story would run soon.

87. On 18 October 2017 Mr Grim emailed Mr Kozlov again indicating that the documents in his possession had been created by Mr Bolelyy. Mr Kozlov forwarded the email to Mr Rowland who responded that Mr Grim should be ignored because they had made their comment and there was nothing else to say.

88. Mr Rowland spoke to his father on 18 October 2017 and during the conversation Mr Rowland indicated that Mr Grim had phoned again. The conversation continued:

> ER: Know what he said about some — well, he — they've obviously only got the attachment -
>
> DR: Yeah.
>
> ER: - because he said, oh we read the metadata and it was for my ex person, not -
>
> …
>
> ER: And we said, then there's no story. So they've obviously not talked to anyone. He's obviously just — the attachments, that's all they have.
>
> DR: Yeah.
>
> ER: You can — you can tell by the way he has written to them we have got the metadata, so they've obviously not talked to anyone at all, so it might be
>
> DR: - what I'd have reckoned, is it's been hacked somewhere?
>
> ER: Yeah.
>
> DR: Some hacking group have put it on the web, they've read it and
>
> ER: — and trying to take the story from it.
>
> DR: They're trying to take the story from it.
>
> ER: That's what I think's happened.
>
> …
>
> ER: Someone has hacked it and they've got no story. They're just hanging around with an attachment.

89. Later that evening, Mr Grim emailed Mr Kozlov with some specific questions in relation to the Disputed Document. The questions included: Has the outlined plan been commenced; did the idea originate with Abu Dhabi or the Bank; what was Mr Bolelyy's role in designing and implementing the plan; how did the Bank plan on finalising the project without serious losses; is there any relationship between this project and AGTB; is the Bank helping the UAE undermine the economy of Qatar so that the UAE can gain diplomatic advantage.

90. Mr Kozlov forwarded the email to Harley Rowland and Margaret Morrow. Harley Rowland forwarded it to Mr Rowland and his father. Shortly afterwards, Margaret Morrow twice copied Mr Rowland in to email chains which included Mr Grim's questions. There is an issue as to whether Mr Rowland read Mr Grim's questions.

91. Mr Rowland spoke with his father on 19 October 2017. There was a discussion about hacking followed by the following exchanges:

> ER: How would you have all of their internal ones and all of our ones? But they don't know the story, so. To me I don't actually think they have any, which is why I said to Will, make sure you don't make a story out somewhere there ain't one.
>
> …
>
> DR: You can, we can capitalise on this.
>
> ER: Yes.
>
> DR: We can.
>
> ER: Yes, with [unclear].
>
> DR: But I want Harley to have an email that he looks at…
>
> ER: Yes.

DR: …And we don't put any – don't let's put anything on the Bank emails.

ER: Nothing, no I agree. So we'll cut out that and then we'll just separate...

DR: And you can put that Vladimir, make him have one on, with Liwathon.

ER: Liwathon, yes.

DR: And as soon as we can we take him off the Bank's payroll…

ER: And transfer him across, yes.

…

DR: Because the [FCA – referred to by way of expletive] might come in and cause us trouble. All we've got to do is play by the [expletive] rules.

ER: Yes.

DR: And we have, we've not broken any [expletive] laws.

ER: No. the answer is if they ever write to you, you just say, all you've got to say to them, is that the Bank was not involved in anything. But the principal is asked of hedging strategies to protect their 15-billion-dollar investment. That's all you've got to say.

DR: Yes, I like that.

ER: Yes. We know that's what your allowed to – and if you look at the presentation that's all it says. This is how you protect the value of your 15-billion-dollar investment. And then everyone will understand, even the jokers down there.

DR: Yes.

But there's definitely, if you get the chance to go tomorrow or the next day, just go, then see him and come back.

ER: Yes.

DR: You know go down first class. But I think that, I think that - I said to Will save me in reserve, because all I want you. I said no…

ER: No.

DR: …Let Edmund do it and then keep me in as – you know behind the goal post.

92. The reference to "just go, then see him and come back" was to a proposed trip by Mr Rowland to see Mr Al Mubarak. In the event Mr Rowland did not make the proposed trip.

93. The Intercept published its article on 9 November 2017 under the headline: "Leaked Documents Expose Stunning Plan to Wage Financial War on Qatar – and Steal the World Cup" ("the Intercept Article"). It contained copies of slides from the Disputed Document and the following extracts of commentary:

> A plan for the United Arab Emirates to wage financial war against its Gulf rival Qatar was found in the task folder of an email account belonging to UAE Ambassador to the United States Yousef al-Otaiba and subsequently obtained by The Intercept.
>
> The economic warfare involved an attack on Qatar's currency using bond and derivatives manipulation. The plan, laid out in a slide deck provided to The Intercept through the group Global Leaks, was aimed at tanking Qatar's economy, according to documents drawn up by a bank outlining the strategy.
>
> The outline, prepared by Banque Havilland, a private Luxembourg-based bank owned by the family of controversial British financier David Rowland, laid out a scheme to drive down the value of Qatar's bonds and increase the cost of insuring them, with the ultimate goal of creating a currency crisis that would drain the country's cash reserves.

> The plan the document presents is far-fetched and appeared to have been put together by someone with little or no experience trading in credit and currency markets, two industry veterans who reviewed the plan for the Intercept said. Both were granted anonymity because speaking to the press could jeopardize their employment. "I can't believe they put this on paper," one of the credit veterans added. "They are talking about colluding to manipulate markets"
>
> Rather than outline specifics, the document speaks in a vague, somewhat harebrained tone: It doesn't contain any analysis of Qatari bond, derivative, or currency markets or an estimate of the total economic firepower the UAE can put behind the plan, nor does it address how much of Qatar's $68 billion in outstanding debt the UAE and its allies already own; how to respond when as is likely to happen relatively quickly in these lightly traded markets, the Qataris see strange trades and apply pressure to markets in the opposite direction…

94. The article included the statement Mr Kozlov had been instructed to provide to Mr Grim and identified Mr Bolelyy, whom it described as "an analyst with Banque Havilland", as the creator of the Disputed Document. An academic is quoted as saying:

> "This belongs in a James Bond movie, but probably wouldn't work very well in practice."

Events following publication

95. Mr Rowland became aware of the Intercept Article at about lunchtime on 9 November 2017. Shortly afterwards he spoke to Mr Bolelyy in the boardroom and at this meeting Mr Bolelyy handed Mr Rowland a letter of resignation. The letter simply stated:

> Due to increasing stress at work and to look at opportunities outside of financial services, I hereby resign from my position as an investment analyst with the Bank, effective immediately.

96. Later that afternoon, Mr Weller emailed Mr Rowland indicating that Al Jazeera wanted a copy of the statement put out on behalf of the Bank by Mr Kozlov. Mr Rowland replied "ignore".

97. Also on 9 November 2017, Mr Rowland spoke with Mr Lang by telephone. The following is an extract from their conversation:

> PL: So I think we can agree that there is nothing good in the [Intercept] article.
>
> ER: No, nothing good, nothing – nothing bad. I would just say that its not –
>
> PL: No, it's very bad, Edmund, it is very bad. It's – it's very bad
>
> ER: Yeah
>
> PL: This is a fully-fledged PR scandal, trust me. It's – it's worse than you maybe think.
>
> ER: Yeah
>
> PL: But above all, I – I'm – I'm asking you for one single reason why Vladimir Bolelyy should see the light of day in this office still.
>
> ER: We have already dealt with that.
>
> PL: Yeah, okay. So he's – he – I want him out.
>
> ER: Yeah. He's gone
>
> PL: He's gone?
>
> ER: Yeah, we've already dealt with that.
>
> PL: Okay, that was the first thing that should have been done.

98. In the afternoon and evening of 9 November 2017, Mr Weller and Mr Bolelyy exchanged WhatsApp messages:

DW: You okay dude?

VB: Da Horosho [Yes, okay in Russian]

[then 2 hours later]

VB: Just realised: forgot the butt plug!

DW: Ha ha. Aljezeera have upload a you tube clip of their tv show talking about stuff. Nothing mentioned by name

VB: [sends a link to an Al Jazeera website news story]

VB: Made it to Al Jazeera. Thanks to you, mate! Love it how they link the whole plot to Fifa!

DW: No names mentioned in it.

VB: Frigging misspellings everywhere. They could not even copy the names correctly

VB: Yes, the video. No, the article.

DW I wouldn't believe the shi'ite they have on al jazeera.

VB: Me neither. Crazy how they can fake and inflate this stuff

[then the following day 10 November 2017]

DW: Bank and Rowland named in video now. Only 22 views though, which is probably you. And the office shown on the Telly

VB: somebody has to do the work, it can't be all cushy at BH.

DW: All cool?

VB: Da

99. On 10 November 2017 the Bank informed its Luxembourg regulator, the CSSF that it would be investigating the matter. The CSSF wrote to the Bank on 13 November 2017 with 13 questions to which it wanted answers arising out of the Intercept article. The Bank's board decided PwC should be instructed to conduct an investigation and that the Authority should be notified.

100. Mr Rowland prepared a timeline of events which he sent to Harley Rowland by email on 13 November 2017 with a heading "Legal Privilege – Draft". He gave an account of Mr Al Mubarak's request at the August Meeting, his instructions to Mr Bolelyy and subsequent events. The description was as follows but much of this account is disputed:

> **30th August** - [Mr Al Mubarak] asks [Mr Rowland] if as a favour one of the people can do Macro hedging few pages on how they can protect the value of investment current held in there regulated banks in the UAE and [Kingdom of Saudi Arabia].
>
> while in Abu Dhabi. as a few banks and consulting companies were being asked to produce something on protecting the value of investments currently held. It was nothing to do with BH or any entity related and apart from the Macro Thematic article on hedging nothing else was asked for or requested.
>
> - Shortly after I informed [Mr Bolelyy] to do a non-bank presentation, on macro hedging for potential UAE and KSA bank holdings to protect them. (Mubadala holds no investments itself).
> - No plan was asked to be together and [Mr Bolelyy] did not attempt to construct one himself.
> - [Mr Bolelyy] was told only to put together a few slides on hedging exposure UAE and KSA banks had to protect the current investments they held.

- [Mr Bolelyy] produced the report by himself (he talked to no other parties) – and then provided it to Mr Hurn.
- I did not review or validate any work given to Mr Hurn.
- I do they accept as a non-Bank work/presentation he should have received better oversight.

Sept 21st – [Mr Bolelyy] said he provided the hedging note to Matthew a mid-level Mubadala employee who he knew from AGTB meeting in Abu Dhabi (there was no discussion at the time, or afterwards and nothing was ever mentioned again about hedging).

…

101. Mr Matthew Hurn was an executive employed by Mubadala.

102. On 14 November 2017 Mr Rowland telephoned the Authority to inform them about the Intercept Article and to say that the Bank had commissioned an external forensic investigation.

103. Later that afternoon Mr Rowland messaged Mr Weller:

ER: Shall we do relax beers this week with an old "friend", say Thursday … All is good by the way. Sorted. So relax.

…

DW: A bit late, but happy birthday for yesterday. The first 32 years are always the hardest. Gets much better from here.

ER: I hope so!

104. On 15 November 2017, Mr Rowland emailed various Board directors and members of ExCo with a note of what had happened when Mr Bolelyy had tendered his resignation letter. He stated that the meeting was at about 2.30pm and lasted about half an hour. Mr Bolelyy was described as being shocked, emotional and incoherent. He said that Mr Bolelyy had told him that all he had done was "produce a macro note on hedging potential exposure" and had apologised to Mr Rowland if the note had caused him any stress.

105. On the same day, the Bank wrote to Mr Bolelyy asking him to provide a written statement in respect of his involvement in the Disputed Document as part of a "full investigation by the Bank". The letter was signed by Mr Lang as CEO and Patrizia Fratini the Head of HR. Mr Bolelyy was asked to set out "all the circumstances known to you". The Bank said that this should include but not be limited to various specific questions and the statement should be "clear and as exhaustive as possible". Mr Bolelyy replied in a handwritten letter of the same date. We set out the specific questions with Mr Bolelyy's answers although he addressed the questions in a different order:

Whether the Document and its contents was created by yourself alone or was anyone else in the Bank involved or informed or instructions given to you?	No one at Banque Havilland assisted me in preparing the document. I was told to do a short non-bank macro hedging note on UAE exposures to Qatar. During my internet research, I used some political licence in preparing this hedging note.
In what capacity were you acting when it was created?	
Over what period was the document created?	To the best of my knowledge the document was created over a period of one week.

To whom and by what means was the document distributed?	To the best of my knowledge I provided one single copy to Matthew Hurn at Mubadala a mid-level executive.
Are there any other related documents?	There exist no other related documents.
Have any journalists made contact with you regarding this matter, if so who and what was said?	I have never had any contact with any journalists or anyone mentioned in the Article.

106. Mr Bolelyy's answer as to the capacity in which he was acting appears to be in the previous answer noted above, that is a "non-bank" note. Mr Bolelyy appears to have added after stating that he provided the document to Mr Hurn that "No one has ever discussed this note [ie the hedging note] with me before, during or after".

107. On 16 November 2017, Mr Rowland messaged Mr Weller to indicate that they would meet with Mr Bolelyy the following day. On 17 November 2017 there was the following exchange of messages:

> ER: David can
> Not send any emails on Middle East for the moment.
> Also vlad
> Isn't at BH so has no BH email
>
> DW: Understood

The Bank's investigation

108. The Bank instructed its Luxembourg lawyers, Elvinger Hoss Prussen ("EHP") to investigate allegations in the Intercept Article and for that purpose on 20 November 2017, EHP instructed PwC to support and assist them in a "factual investigation". The PwC report was known as "Project Gulf". The scope of PwC's investigation was essentially to determine if the Disputed Document had been produced by an employee of the Bank, to identify by who, when and how it was created and to identify what parties were involved in receiving, updating, sharing and reading the Disputed Document. PwC was also instructed to support answering the questions posed by the CSSF. The PwC investigation was extensive and we understand that it cost the Bank some £2.5m. The final report was dated 7 June 2018.

109. Mr Rowland produced a handwritten statement dated 25 November 2017 for the main Board describing the events under investigation. The document had been typed up on Harley Rowland's computer the day before and according to Mr Rowland it had been reviewed with others. Mr Rowland's account of events can be summarised as follows:

(1) On 30 August 2017 a meeting was held with executives from Mubadala in relation to AGTB.

(2) At the end of the meeting, the Mubadala executives discussed the situation with Qatar and seemed particularly concerned about substantial exposure of Emirati banks to Qatar in the inter-bank market. The executive briefly discussed carving out that exposure and potentially putting on some sort of hedge.

(3) The numbers involved were so substantial and because this was an area where the Bank had little expertise, it was dismissed out of hand.

(4) Subsequently Mr Rowland discussed the conversation with Mr Bolelyy about what Mubadala were trying to achieve. Mr Bolelyy was interested in looking into it as an intellectual exercise.

(5) Mr Rowland informed Mr Bolelyy that it was not a bank project so he should not spend any real time on it. Mr Rowland thought nothing of it, otherwise he would have asked other departments in the Bank.

(6) About 10 days later, Mr Rowland received an email version of the Disputed Document. He thought nothing of it and dismissed it.

(7) He was subsequently made aware that Mr Bolelyy may have given it to a junior employee at Mubadala.

(8) Subsequent to that Mr Tricks asked for a copy and Mr Rowland also sent a copy to his father.

(9) When the Intercept contacted him by phone, he denied everything as it was so outlandish and nothing to do with the Bank.

(10) When the Intercept Article was published, Mr Bolelyy immediately resigned.

110. On 11 December 2017 the CSSF requested that each Board member, authorised management member, management member of the UK Branch and the shareholder sign declarations of honour. This was to the effect that they had not been involved in any way with the plan in the Intercept article, had not initiated or approved the drafting of the plan and had not learned about the drafting of the plan prior to publication of the Intercept article.

111. Mr Lang signed a declaration of honour on 12 December 2017, qualified by the fact that he had received a Google alert for the Indian Article but had dismissed it due to lack of credibility. Mr Hiltunen signed an unqualified declaration of honour on 12 December 2017.

112. Mr Rowland resigned as an employee of the Bank's UK Branch, as CEO of the UK Branch and from the executive management of the Bank on 13 December 2017. He also resigned as a Board director at or about this time.

113. On 14 December 2017 Mr Lang asked Mr Weller and Mr Gytis Keraitis (the UK Branch compliance officer) to sign the declaration of honour as soon as possible. Mr Weller immediately messaged Mr Rowland saying "we need to have a chat today!" and chased Mr Rowland late in the afternoon.

114. On 18 December 2017, Mr Bolelyy messaged Mr Weller to arrange a meeting between Mr Rowland and Mr Weller at the Guinea Pub in Mayfair. The meeting went ahead between Mr Rowland and Mr Weller. Mr Bolelyy did not attend.

115. Mr Weller was suspended on 19 December 2017. He was interviewed as part of Project Gulf on 21 February 2018.

116. In early 2018, the Bank asked Mr Bolelyy for a signed statement of honour. He provided this on 1 March 2018, and his account of events can be summarised as follows:

(1) Mr Bolelyy was asked by Mr Rowland to produce a "research note to examine different ways of hedging multi-billion asset holdings held in the UAE banking system".

(2) The document was solely designed for internal purposes and never intended to be shared externally.

(3) Mr Bolelyy had not shared or discussed the document with any third party.

(4) Mr Rowland showed no interest in reviewing or commenting on the note.

(5) It appeared to Mr Bolelyy that due to staff changes happening at the bank, Mr Rowland's mind was preoccupied with other, more pertinent matters.

(6) The intent of the research note was purely speculative and never intended to hurt the economic interests of Qatar. The proposed strategies could never be implemented in practice.

(7) Mr Bolelyy declared on his honour not having ordered nor initiated nor approved the drafting of the alleged plan.

117. Mr Bolelyy was interviewed for Project Gulf on 9 March 2018.

118. Mr Rowland provided a signed declaration of honour on 16 March 2018 stating as follows:

(1) He had not been involved in any way in a plan allegedly prepared by a staff member presenting a scheme to harm the economic interests of Qatar.

(2) He had not ordered or initiated or approved in any way the drafting of the plan.

(3) He had not learned about the drafting of the plan before publication of the Intercept article on 9 November 2017.

119. Mr Rowland's declaration of honour was subject to express qualifications describing the circumstances in which he stood down as CEO of the London branch in May 2017. He stated that the Intercept Article misrepresented the role played by the Bank and that after the meeting with Mubadala he asked a junior member of staff to do some research on hedging strategies, without giving any detailed or specific instructions but stating that he should not invest too much time or effort on the task. He had no time to follow up on the presentation because Mr Selwyn's departure came at a most inopportune time leaving Mr Rowland to deal with several important and urgent projects and he did not deem it to be particularly important. The junior staff member submitted the presentation to him by email but he did not review it because more pressing matters demanded his attention.

120. Mr Weller provided the Bank with a narrative of events on 29 March 2018 as part of his disciplinary process. The Bank dismissed Mr Weller on 10 April 2018, concluding that his conduct in relation to the SFNH Document amounted to serious neglect or gross dereliction of duties and brought the Bank into serious disrepute.

121. Various individuals were interviewed in connection with Project Gulf, including Mr Rowland, Mr Bolelyy, Mr Weller, Mr Unwin and Mr Henry. The Bank's investigation provided its factual findings in relation to the questions asked by the CSSF with the supporting evidence exhibited to the Project Gulf report dated 7 June 2018. The report also found that Mr Rowland and Mr Bolelyy had both deleted substantial volumes of data from their mobile phones in October and November 2017. There are issues as to what material was deleted and as to the circumstances in which it was deleted.

The FCA investigation

122. The Authority commenced an investigation in early 2018. In April and May 2018 it interviewed Mr Rowland, Mr Bolelyy, Mr Weller, Mr Unwin, Mr Keraitis and Mr Selwyn. Second interviews with Mr Bolelyy and Mr Rowland were conducted in September and October 2019 respectively.

123. Warning Notices were issued to the Bank, Mr Rowland, Mr Bolelyy and Mr Weller on 14 October 2021. Each of those parties made written and oral representations to the Authority's RDC. Decision Notices were issued on 17 January 2023 setting out the Authority's reasons for its decisions to impose the penalties and make the prohibition orders described above.

124. Mr David Rowland was provided with a copy of each of the Decision Notices as a third party pursuant to section 393(4) Financial Services and Markets Act 2000 ("FSMA"). He has referred all the Decision Notices to the Tribunal including that of Mr Weller pursuant to section 393(9).

(2) OUTLINE OF THE ISSUES RAISED BY THE REFERENCES

125. In this section we set out at a high level the Authority's case against the Applicants. We explore in more detail in subsequent sections the factual and legal issues which arise in relation to each Applicant.

(i) The Bank

126. The FCA Handbook sets out provisions made by the Authority pursuant to its powers under FSMA. It includes the Principles for Business which set out the fundamental obligations of all firms. The Authority's case is that the Bank has breached Principle 1 which relates to integrity and provides:

> A firm must conduct its business with integrity.

127. PRIN 3.2.1A provides that the Principles apply with respect to the carrying on of certain activities, including:

> (1) regulated activities,
>
> (2) …
>
> (3) ancillary activities in relation to designated investment business…

128. The FCA has imposed a penalty of £10m on the Bank pursuant to section 206 FSMA. The Authority's case is that during the relevant period the Bank acted without integrity. For this purpose the relevant period is 12 September 2017 to 13 November 2017.

129. The Bank's case on the allegation that it breached Principle 1 may be summarised as follows:

> (1) It denies that the conduct of any of the individuals involved in the Disputed Document formed part of the Bank's "business" for the purposes of Principle 1.
>
> (2) It denies that the conduct of any of those individuals is attributable to the Bank for the purposes of Principle 1.
>
> (3) It denies that the conduct in question amounted to the carrying on of regulated activities or ancillary activities in relation to designated investment business within PRIN 3.2.1A.
>
> (4) It denies that the Bank can be held responsible for what the Authority alleges was a cover up by Mr Rowland and Mr Bolelyy.
>
> (5) It contends that the penalty is disproportionate.

130. The Bank has accepted that even if the Disputed Document was not Bank business for which it can be held responsible, its internal systems and controls were insufficient to prevent Bank employees from carrying out activity unrelated to Bank business. These system and control failures created inappropriate risk for the conduct of the Bank's regulated business.

131. Principles 2 and 3 of the Principles for Business provide as follows:

> 2. A firm must conduct its business with due skill, care and diligence.
>
> 3. A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

132. The Bank admits failures as follows:

(1) enabling an environment which permitted other business interests, independent of the interests of the Bank and unrelated to Bank business, to be pursued from the UK Branch;

(2) the unchallenged use by Bank employees of its premises and IT systems to facilitate the pursuit of non-Bank business; and

(3) the presence of non-Bank personnel engaged on non-Bank projects within an open plan office environment at the UK Branch.

(ii) Mr Rowland

133. The Authority makes rules governing the conduct of certain persons working within authorised firms. Section 64A FSMA provides as follows:

> **64A Rules of conduct**
>
> (1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons —
>
> (a) persons in relation to whom either regulator has given its approval under section 59;
>
> (b) persons who are employees of authorised persons.
>
> (c) persons who are directors of authorised persons.

134. The Code of Conduct Sourcebook provisions of the FCA Handbook issued pursuant to section 64A include Individual Conduct Rules at COCON 2.1. COCON 1.1.2 provides that COCON applies to various persons including an "SMF manager", that is a person who is approved to perform certain designated senior management functions in relation to the carrying on by the firm of regulated activities. COCON 2.1.1 sets out Rule 1 which simply provides:

> You must act with integrity.

135. COCON 1.1.6 provides as follows:

> For a person (P) who is an approved person, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by the firm (Firm A) on whose application approval was given to P.

136. The FCA Handbook sets out a "Fit and Proper Test" for approved persons which must be satisfied if an individual is to be approved as an SMF manager. It is also relevant in assessing the continuing fitness of a person approved to perform an SMF. The Authority will have regard to a number of factors which include honesty, integrity and competence.

137. The Authority's case against Mr Rowland is based on a breach of Individual Conduct Rule 1. It alleges that Mr Rowland acted without integrity in the relevant period of 12 September 2017 to 13 November 2017. The Authority has imposed a penalty on Mr Rowland of £352,000 pursuant to sections 66 and 66A FSMA which provide as follows:

> **66 Disciplinary powers**
>
> (1) A regulator may take action against a person under this section (whether or not it has given its approval in relation to the person) if —
>
> (a) it appears to the regulator that he is guilty of misconduct; and
>
> (b) the regulator is satisfied that it is appropriate in all the circumstances to take action against him.

(1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator —

(a) see section 66A, in the case of action by the FCA, …

66A Misconduct: action by the FCA

(1) For the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that —

(a) the person has at any time failed to comply with rules made by the FCA under section 64A, and

(b) at that time the person was —

(i) an approved person,

(ii) an employee of an authorised person, or

(iii) a director of an authorised person

(3) Condition B is that —

(a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and

(b) at that time the person was —

(i) an approved person in relation to the authorised person, ...

(ii) an employee of the authorised person, or

(iii) a director of the authorised person.

138. The Authority also decided to prohibit Mr Rowland from performing any function in relation to any regulated activities pursuant to Section 56 of FSMA. Section 56 provides that the Authority may make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

139. Mr Rowland's case on the allegation that he breached Rule 1 may be summarised as follows:

(1) His conduct did not involve any lack of integrity.

(2) His conduct was not related to the carrying on of activities by the Bank.

140. Further, Mr Rowland contends that his conduct does not support the Authority's conclusion that he is not a fit and proper person to perform functions in relation to regulated activities carried on by an authorised person. Mr Rowland also challenges the penalty as being disproportionate.

(iii) Mr Bolelyy

141. COCON 1.1.2 provides that the Individual Conduct Rules also apply to any employee of an SMCR firm subject to certain exceptions. The term SMCR firm is defined elsewhere but it covers firms in the banking sector. It is common ground that the Bank is an SMCR firm. COCON does not apply to an employee "who only performs functions falling within the scope of the following roles". There is then a list of roles such as receptionists, switchboard operators, post room staff and, most relevant for present purposes, "personal assistant or secretary".

142. It is common ground that excepted employees have roles with functions which would be fundamentally the same in a non-financial services firm. This was how the test was described in the consultation when the Individual Conduct Rules were introduced and all parties accept that this is the test. The exception for a personal assistant therefore applies to employees who carry out essentially administrative work.

143. Mr Bolelyy was not an approved person within COCON 1.1.6. However, the Authority says that he did fall within COCON 1.1.7 which provides as follows:

> For a person (P) subject to COCON who is not an approved person, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by P's employer (Firm A).

144. Mr Bolelyy's case on the allegation that he breached Rule 1 may be summarised as follows:

(1) He was Mr Rowland's personal assistant and therefore COCON did not apply to him. In the alternative,

(2) His conduct did not involve any lack of integrity.

(3) His conduct was not related to the carrying on of activities by the Bank.

145. Mr Bolelyy contends that even if he did breach Rule 1, it is not appropriate in all the circumstances for the Authority to take disciplinary action against him, or to make a prohibition order against him. He also challenges the penalty as being disproportionate.

146. There are further aspects to Mr Bolelyy's case which relate to his state of mind in relation to the conduct alleged against him. In particular, he says that he did not know his conduct was improper nor did he turn a blind eye to the obvious or act recklessly or otherwise display the lack of a moral compass. In this regard, Mr Bolelyy relies on a diagnosis of autism which he has recently received from Professor Sir Simon Baron-Cohen. The Authority does not accept that Mr Bolelyy is properly to be diagnosed as having autism and have relied on their own expert report from Dr Nicholas Taylor. There is an issue therefore as to the question of whether Mr Bolelyy has autism and also the impact his autism or his traits of autism should have on our view of his conduct and his evidence, with or without a diagnosis of autism.

(iv) Mr David Rowland

147. Mr David Rowland contends that the Authority has drawn erroneous and objectionable conclusions in relation to him in the Decision Notices. In particular, he contends that the Decision Notices:

(1) Wrongly infer that at material times "*in practice, David Rowland has a level of influence and management within [the Bank]*".

(2) Wrongly state a view that by the time Mr Rowland forwarded the Disputed Document to him on 18 September 2017, he "*already had some awareness of what the [Disputed Document] was about*".

(3) Wrongly infer that, by mid-October 2017, *"David Rowland is likely to have been aware that the [Disputed Document] had been provided to [Mubadala]"*.

(4) More generally, wrongly proceed on the basis that the Disputed Document was both created and disseminated in order to promote the interests of the "*Rowland Family"*.

148. Mr David Rowland seeks relief by way of confirmation from the Tribunal in this decision that these inferences, views and conclusions about him were wrongly reached by the Authority.

149. At this stage we should say that the Authority refers to "Rowland Family interests" as part of its allegations against the Applicants. In particular, it is said that the Disputed Document was produced in order to further the interests of the Bank or Rowland Family interests including the Bank. The term "Rowland Family interests" has not been defined but it is common ground that Mr David Rowland has various business interests outside the Bank including AGTB which was a joint venture between Mr David Rowland and Mubadala. We have no evidence as to the extent of those interests or how they are held. However, as the Bank noted on its website: "the Bank is an integral part of the Family's interests on both a professional and personal level".

(3) OUR APPROACH TO THE EVIDENCE

150. The burden of proof in these references rests firmly on the Authority. It is for the Authority to prove its case and to establish the facts on which it relies by reference to the balance of probabilities. There are a large number of factual issues arising out of the evidence before us and those factual issues concern matters going back some 8 years. In considering the evidence in relation to those issues, we have formed views as to the credibility of the witnesses and the reliability of their evidence. In forming our views we have placed particular reliance on contemporary documentary evidence and the oral evidence of the independent witnesses, in particular Mr Hiltunen and Mr Unwin against whom no allegations have ever been made.

151. We recognise that the reliability of oral evidence may be subject to faulty encoding of memories, conscious and sub-conscious bias and other subjective factors. Such factors can also affect what appears in contemporaneous documents. Memory can honestly change over time as a result of various external influences and a witness might be honestly and sub-consciously reconstructing events rather than recalling events. We have taken into account the dangers of hindsight and of attributing greater significance to the use of specific words and phrases than might have been intended at the time. We have had regard to what may be described as inherent probabilities in considering the conduct of witnesses and explanations as to their understanding of events. Particular care is required in a case such as this where witnesses are being asked to recall undocumented meetings and conversations some 8 years ago. Further, the strength or vividness of a memory is not necessarily a good indicator of its reliability.

152. We have regard to the observations of Leggatt J (as he then was) in *Gestmin SPGS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 at [15] - [22] about the fallibility of memory. In particular the weight that should be placed on the documentary evidence. Leggatt J said as follows at [21] and [22]:

> 21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.
>
> 22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because

a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

153. In relation to evidence as to what was said in interviews with the Authority, we take into account the pressures that interviewees are likely to experience and that honest answers may not be as accurate or as full as they might have been.

154. There are submissions that the Authority has in some respects failed to put its case to witnesses. Any failure by a party to put its case to a witness must be met with a fair response from the Tribunal. The significance of a failure to put a matter to a witness who might reasonably be expected to have relevant evidence to give on that matter will depend on the circumstances (see *TUI UK Ltd v Griffiths* [2023] UKSC 48 at [69]).

155. We take into account that an assessment of the credibility of oral evidence is not simply a matter of deciding whether a witness is honest or dishonest in the evidence they have given. It also requires an assessment of whether an honestly held recollection might be erroneous, either because the witness' memory inaccurately recorded the relevant event at the time or because their memory has changed over time as a result of other influences. In a case such as this, it is rare that the evidence of a witness will be wholly reliable or indeed wholly unreliable.

156. We have listened carefully to what the witnesses have said and have considered that evidence in the context of all the other evidence adduced. We have also had regard to the overall plausibility of the evidence and the witnesses' accounts of events.

157. The following is a summary of our assessment of the witnesses. All the witnesses, save for Mr David Rowland, gave oral evidence. We also consider the position in relation to what were described as "missing witnesses".

(i) Mr Rowland

158. We acknowledge and have taken into account in our assessment of Mr Rowland's evidence the fact that he suffers from dyslexia which might affect how he communicates with others, both orally and in writing. Dyslexia might also give rise to difficulties of memory recall. Mr Rowland gave his evidence carefully and clearly, ensuring that he understood the questions he was being asked and the context of documents that were being put to him. We also take into account that during the relevant period he was in the throes of a divorce and custody battle in the High Court which may have affected his ability to deal with business matters and his recollection of matters.

159. Mr Rowland was a most unsatisfactory witness. In the light of all the evidence we have concluded that on certain significant matters his evidence was not true. In many respects his evidence was simply not credible. The following examples from our findings later in this decision illustrate the unsatisfactory nature of Mr Rowland's evidence:

(1) He sought to understate his role in the UK Branch after he had relinquished the title of CEO.

(2) He has given contradictory accounts as to the nature of Mr Al Mubarak's request at the August Meeting and his reaction to that request.

(3) He has made contradictory statements as to whether his instructions to Mr Bolelyy identified that it was a non-Bank project.

(4) He has sought to understate his involvement in the First September Meeting and his evidence as to the circumstances in which that meeting was arranged is inconsistent with other reliable evidence.

(5) His evidence that he did not read the Disputed Document until 9 November 2017 when the Intercept Article was published is wholly implausible.

(6) He sought to understate the significance of the Disputed Document even after he had read it when discussing the Intercept Article with Mr Lang.

(7) We accept Mr Unwin's evidence that Mr Rowland encouraged him to cover up Mr Rowland's involvement in the Disputed Document and to blame everything on Mr Bolelyy.

(8) We have found that Mr Rowland and Mr Bolelyy agreed a strategy to explain his instructions as being for a non-Bank hedging strategy which was never reviewed by Mr Rowland and for which Mr Bolelyy would take the blame.

160. Whilst we do not discount all Mr Rowland's evidence, we treat it with considerable caution.

(ii) Mr Bolelyy

161. Any assessment of Mr Bolelyy's evidence must take into account the diagnosis of autism made by Professor Baron-Cohen. Mr Bolelyy had a consultation with Professor Baron-Cohen on 24 July 2025 at the suggestion of his counsel. In short, Professor Baron-Cohen concluded as follows by way of opinion:

(1) Mr Bolelyy is definitely autistic. He demonstrates clear characteristics in two key areas, namely social difficulties and tunnel vision, leading to difficulties seeing the big picture.

(2) He was unaware of the risks of helping to make the [Disputed Document], because his autism made him more trusting of the senior colleagues who asked him to work on it.

(3) The Tribunal should make reasonable adjustments [including] giving him breaks during questioning, using unambiguous language, and offering him an intermediary who is trained in understanding autism.

162. All the suggested adjustments were implemented. An intermediary assisted Mr Bolelyy in giving his oral evidence. The Authority went to great lengths to avoid using ambiguous language, including providing copies of questions in advance to the intermediary for her comments. It is fair to say that it was only necessary for the intermediary to intervene on one occasion during Mr Bolelyy's cross-examination which lasted some 1½ days.

163. Professor Baron-Cohen amended his conclusion at (2) above during the course of his evidence. He accepted that he could not say whether Mr Bolelyy was aware of the risks of helping to make the Disputed Document because he had not heard all the evidence. The most he could say was that Mr Bolelyy's autism might make it more likely that he was unaware of the risks.

164. The Authority instructed its own expert to give evidence following a consultation with Mr Bolelyy. Dr Nicholas Taylor concluded that Mr Bolelyy does not meet the criteria for a diagnosis of autism, because his symptoms are not sufficiently severe.

165. Professor Baron-Cohen has wide experience of autism, especially in high-functioning autistic people in the workplace. Dr Taylor is a consultant forensic psychiatrist who also has considerable experience of treating people with autism, often exhibiting more serious mental health issues. Whilst Professor Baron-Cohen's experience is more directly relevant to Mr Bolelyy's circumstances, we are satisfied that both witnesses are experts in the field of autism and able to express an opinion on whether Mr Bolelyy suffers from autism and if so how his

autism might have affected his conduct in relation to the Disputed Document. Having heard all the evidence and taking into account the expert evidence we consider we are in a good position to form a view as to Mr Bolelyy's understanding of and culpability for the Disputed Document.

166. It is notable that Professor Baron-Cohen accepted during his evidence that a diagnosis of autism, certainly in relation to some of the factors on which a diagnosis of autism might be based, is a matter of professional judgment. He did not suggest that Dr Taylor's conclusion was outside the bounds of reasonable professional judgment. For example, at one stage of his evidence he stated in relation to one aspect of his diagnosis: "it is a judgment call, and we differ on it".

167. The Authority invited us to prefer Dr Taylor's evidence to that of Professor Baron-Cohen. In particular, it submitted that Dr Taylor readily made concessions. For example, he used the term "mild autism" in his evidence but he accepted that professionals are now discouraged from using that term. We accept that both experts were trying to assist the Tribunal and readily made concessions where appropriate.

168. We do not accept the Authority's submission that we should prefer Dr Taylor's evidence because Professor Baron-Cohen is a "seasoned expert", overwhelmingly instructed by the defence in criminal cases and, it is said, rarely does not diagnose autism. In our view, it was inappropriate to make those submissions. Nor do we accept a submission that Professor Baron-Cohen has limited clinical experience.

169. The Authority also pointed to the fact that Professor Baron-Cohen's report did not contain his detailed reasons for reaching a diagnosis of autism and omitted any reference to Mr Bolelyy's medical history. It was said that Professor Baron-Cohen has previously been criticised by the Court of Appeal for similar omissions in *R v Grant-Murray* [2017] EWCA Crim 1228. It is the case that Professor Baron-Cohen's report contained no reference to the diagnostic criteria known as DSM – 5, which we consider below, and omitted any reference to Mr Bolelyy's medical history. However, there is no doubt that Professor Baron-Cohen did apply DSM – 5. Neither expert had access to Mr Bolelyy's medical history but both were able to express their opinions on whether he suffered from autism. Similarly, neither expert had access to contemporary evidence in relation to Mr Bolelyy's childhood, such as school reports. We do not consider that these omissions affect the reliability of Professor Baron-Cohen's evidence.

170. It is also the case that Professor Baron-Cohen relied on Mr Bolelyy's account as to the circumstances in which the Disputed Document came to be produced as justifying a diagnosis of autism. Professor Baron-Cohen did accept in evidence that this reliance was somewhat circular, and assumed various facts which are disputed between the parties. Indeed, it is only having considered and heard all the evidence in this case that we are in a good position to form a view as to Mr Bolelyy's understanding of and culpability for the Disputed Document. In many respects we do not accept Mr Bolelyy's account as to the circumstances in which the Disputed Document was produced.

171. In relation to Dr Taylor's evidence it was submitted by Mr Bolelyy that he did not ask Mr Bolelyy to complete the Autism Spectrum Quotient, also known as "the AQ Test". This is a screening questionnaire designed to measure the number of autism traits an individual has through self-assessment. It was designed by Professor Baron-Cohen and his colleagues in 2001. He used it as part of his consultation to provide information for his assessment. Dr Taylor did not use the AQ test but we do not consider that is a justified criticism of his approach. He obtained the evidence he considered necessary in interview. Professor Baron-Cohen did not criticise Dr Taylor's approach in this regard. We do not know the extent to which questions in the AQ test were effectively covered by Dr Taylor in his consultation with Mr Bolelyy.

172. Mr Bolelyy criticised Dr Taylor's interpretation of a 2005 study which evaluated the potential to use the AQ Test as a screening questionnaire. The results of that study indicated that it had good screening properties above a certain threshold result. Professor Baron-Cohen had used this study to help make his diagnosis. We were not satisfied on the evidence before us that Dr Taylor had incorrectly interpreted the study.

173. The diagnostic criteria for autism are contained in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), published by the American Psychiatric Association. The relevant criteria for present purposes are A, B, C and D, all of which need to be met for a diagnosis of autism:

(1) Criterion A is "persistent deficits in social communication and social interaction across multiple contexts";

(2) Criterion B is "restrictive, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following, currently or by history". Various characteristics are then identified including "Insistence on sameness, inflexible adherence to routines, or ritualized patterns"; "Highly restricted, fixated interests that are abnormal in intensity or focus"; and "Hyper or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment";

(3) Criterion C is "Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life)";

(4) Criterion D is "Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning".

174. Three threshold levels of "support" are identified in relation to Criteria A and B respectively. These levels do not indicate the level of severity of the autism as such but are an indication of the appropriate level of support. However any diagnosis of autism does imply that a level of support is required. Level 1 requires support, Level 2 requires substantial support and Level 3 requires very substantial support. A requirement for Level 1 support does not indicate that the autism is "mild" or limited in scope or impact.

175. Level 1 of Criterion A states that "Without supports in place, deficits in social communication causes noticeable impairments. Difficulty initiating social interactions, and clear examples of atypical or unsuccessful response to social overtures of others". The experts disagreed as to how well Mr Bolelyy described managing social situations.

176. It was in relation to Level 1 of Criterion A that Professor Baron-Cohen described the difference between himself and Dr Taylor as a "judgment call". The point was not put in relation to any of the other criteria but from the expert evidence as a whole we are satisfied that a diagnosis in the case of Mr Bolelyy is a matter of judgment where different experts can reasonably reach different, legitimate opinions.

177. Level 1 of Criterion B states "Inflexibility of behaviour causes significant interference with functioning in one or more contexts". In relation to Criterion B, both experts agreed that Mr Bolelyy demonstrates "restricted, repetitive patterns of behaviour, interests or activities". These included an interest in financial charts, philosophy and arithmetical patterns in music.

178. Professor Baron-Cohen considered that Mr Bolelyy met the diagnostic criteria for autism at Level 1 by reference to Criteria A and B. He confirmed in cross-examination that Criterion D is "an overarching separate criterion once you have got over the A and B hurdle".

179. Dr Taylor did not consider that Mr Bolelyy showed the "persistent deficits in social communication and social interaction across multiple contexts" required by Criterion A but

agreed that Mr Bolelyy demonstrated some of the characteristics which form part of Criterion B.

180. In relation to Criterion C, both experts agree that Mr Bolelyy had some early difficulties at school on his own account which is likely to fulfil criterion C, although more evidence would have been helpful.

181. Criterion D was described in the Expert's Joint Statement as the area of greatest disagreement. Professor Baron-Cohen highlighted that "symptoms … may not become fully manifest until social demands exceed limited capacities or may be masked by learned strategies in later life". In his view, many autistic people function well for long periods of their lives. For example when their parents are managing their life for them in childhood and adolescence, and the symptoms only emerge when they move to independence. Also, when at school or college and the educational curriculum is highly structured and well specified, the symptoms may only emerge when they are expected to make important decisions, or when they find themselves outside of their "comfort zone". He considered that Mr Bolelyy is typical of autistic people in this regard, many of whom only seek a diagnosis at the point of a crisis such as losing a job, losing a significant relationship, getting into trouble at work, or being arrested. That is possibly the situation here with Mr Bolelyy's involvement in the investigations following publication of the Disputed Document.

182. Dr Taylor's opinion was that there is no evidence of clinically significant impairment, now or in the past. He noted that Mr Bolelyy has said that Professor Baron-Cohen's diagnosis of autism has "zero effect" on his daily life and "doesn't affect [his] life in any way." Mr Bolelyy also said to the Intermediary that "[the diagnosis] has zero effect on my daily life from my perspective." Professor Baron-Cohen considered Mr Bolelyy's autism has impacted his career progression, lack of friendships, and most relevant, risky decision-making in his job.

183. Both experts agreed that Mr Bolelyy knows and understands the difference between truth and falsehood. They also agreed that Mr Bolelyy was capable of understanding whether the SFNH Document and the Disputed Document were improper. He is an intelligent person who can develop a good theoretical understanding of a wide range of concepts.

184. Professor Baron-Cohen took the view that Mr Bolelyy was probably capable of understanding the impropriety if prompted, but that he may not have understood this at the time, and may not have realised the risks associated with the SFNH Document and the Disputed Document because he may have been unusually trusting of Mr Weller as his mentor. He saw this as an example of how an autistic person might make poor social decisions. Professor Baron-Cohen was concerned that although Mr Bolelyy may have no difficulty understanding the theory about, for example, market manipulation, he may not have translated or generalised this to his situation at the time. Difficulties in applying theory to actual situations is a common feature in autistic people. If Mr Bolelyy was reassured that there was precedent for the strategy in the Disputed Document by reference to the strategy of George Soros (as to which, see our findings below) then Mr Bolelyy may have trusted others and taken this as an assurance that there was nothing improper in what he was doing.

185. Professor Baron-Cohen's view was that Mr Bolelyy did not understand the cartoon in the SFNH Document and the humour associated with it. This could be a reflection of difficulties in communication, including understanding non-literal communication. These are features of autism.

186. Both experts found Mr Bolelyy to be open in the consultations. He was cooperative, giving a lengthy and detailed account and answering all questions asked. They agreed that Mr Bolelyy may have made false admissions in order to "cover up" the actions of his seniors. Professor Baron-Cohen took the view that Mr Bolelyy may have done so without realising the

associated risks and that his autism may have led him to believe he should protect his seniors to avoid them getting into trouble. This would be another example of poor social decision-making.

187. Professor Baron-Cohen's opinion was that Mr Bolelyy's autism meant that he would be prone to being overwhelmed by the stress of difficult situations, such as the questioning he has been subjected to in relation to the Disputed Document.

188. There is some evidence in relation to how Mr Bolelyy dealt with events following publication of the Disputed Document which supports Professor Baron-Cohen's conclusion. For example, in his exchange of messages with Mr Weller on 9 November 2017 he appears to be more concerned with misspellings and does not appear to recognise Mr Weller's crude joke. Nor is he critical of Mr Weller, save possibly in his reference: "Thanks to you, mate".

189. Professor Baron-Cohen's evidence was that autism would make it more difficult for Mr Bolelyy to imagine what others were thinking or planning and more difficult to question their motives or to know if they were joking or being serious. He might also find it difficult to imagine how the Disputed Document would look to others. It might make him more trusting of Mr Weller and make his approach to work more obsessional and subject to tunnel vision, making it harder to see the wider context of projects he was working on. It might make him more prone to take what he was being told literally, for example that the strategy was similar to that of George Soros even if, unlike George Soros, profit was not a motivating factor.

190. In our view, these are all factors to take into account in assessing Mr Bolelyy's evidence, whether or not he is correctly diagnosed as having autism. A diagnosis of autism might make it more likely that Mr Bolelyy was unaware of the risks, but whether he was aware of the risks is a question we must answer on the evidence as a whole. We must also take into account for example, Mr Bolelyy's academic background, his qualifications and the fact that he worked with Mr Rowland for a year prior to the relevant period. Mr Rowland described him as a diligent employee and we are satisfied that he would not have set the task for Mr Bolelyy if he did not think he was capable of carrying it out.

191. Overall, taking into account all the evidence including the medical evidence and the evidence we have heard and seen from Mr Bolelyy, we consider that it is likely that he does suffer from autism. However, for reasons set out below we do not consider that a diagnosis of autism explains or excuses the unsatisfactory nature of Mr Bolelyy's evidence.

192. The following examples from our findings later in this decision illustrate the unsatisfactory nature of Mr Bolelyy's evidence:

> (1) In interviews with the Authority, Mr Bolelyy described his role as including economic analysis and understanding investment opportunities. In his evidence to us he sought to characterise his role as purely that of an administrative assistant.
>
> (2) We do not accept Mr Bolelyy's evidence as to the nature of his instructions from Mr Rowland or that he was told that it was a non-Bank task.
>
> (3) It is not credible that Mr Bolelyy did not understand, at least by the time that v12 was produced on 18 September 2017, that the SFNH Document and the Disputed Document described a strategy involving improper market manipulation.
>
> (4) He claimed that he did not know that Mr Rowland intended to distribute the Disputed Document to Mubadala but we have found that he must have known that Mr Rowland intended the Disputed Document to form the basis of a discussion with Mubadala.

(5) We have found that Mr Bolelyy was persuaded by Mr Rowland to adopt a false narrative that Mr Rowland had asked him to provide a simple hedging document, that it was not a Bank project and that Mr Rowland had not reviewed the Disputed Document.

(6) Mr Bolelyy accepted that he lied about the circumstances in which he prepared the Disputed Document in his statement to the bank dated 15 November 2017, in his declaration of honour and in his two interviews with the Authority.

193. We take into account that Mr Bolelyy was taking the blame for others, in particular Mr Weller and in our view Mr Rowland. We have concluded that in significant respects Mr Bolelyy's evidence was not true. In many respects his evidence was simply not credible. Whilst we do not discount all Mr Bolelyy's evidence, we treat it with considerable caution.

194. It was said on behalf of Mr Bolelyy that he was professionally and personally immature in the period 2017 to 2019. We do not accept that was the case or that it offers any explanation or excuse for Mr Bolelyy's conduct, whether admitted by Mr Bolelyy or the conduct which we have found in this decision. His involvement in the Disputed Document and the way in which he dealt with the investigations following publication of the Disputed Document amounts to a sustained course of conduct over a significant period of time. It was not an ill-judged reaction to a pressurised situation or a momentary lapse.

(iii) Mr Weller

195. Mr Weller's evidence was not entirely satisfactory. We consider that following publication of the Disputed Document in the Intercept Article, Mr Weller sought to downplay the extent of his involvement in the Disputed Document. Having done so, he continued that approach in his evidence before us. We draw that conclusion from his evidence as a whole, including the way in which he gave his evidence:

(1) At certain times in his evidence he refused to accept what appeared to us to be clear. For example, that he used humour and light-hearted analogies in the articles that he wrote for Compass.

(2) In some respects his evidence was not credible. For example, that he recalled knowing that Mr Bolelyy was working on the Disputed Document because he looked over his shoulder one day and noticed a typographical error.

(3) We do not accept Mr Weller's evidence that in the email dated 13 September 2017 at 13.02, Mr Bolelyy was asking for a note of what had been discussed at the First September Meeting and that the SFNH Document was his note. The meeting only lasted some 15 minutes. The SFNH Document must have included additional ideas which were developed by Mr Weller. It was not simply a note of what had been discussed.

(4) He was reluctant to identify who was the source of the unlawful aspects of the strategy described in the SFNH Document.

(5) He was not open and frank during the Bank's internal investigation. In a telephone call with Mr Hiltunen in January 2018, after he had been suspended, he stated that he had been trying to protect the Bank and said that a comprehensive explanation could be awkward. He accepted in his evidence that he was at this stage wanting to see if a settlement could be explored rather than being sacked and going to an employment tribunal. He was trying to protect his own position and in some respects he was playing a tactical game.

(6) His evidence was that he was given no guidance in relation to the CSSF Declaration of Honour. But Mr Hiltunen told him on 18 December 2017 that the expectation was that he should provide an explanation. Rather than give an explanation, he threatened that if he was required to tell things then it would be embarrassing for the Bank.

196. Mr Rowland submitted that Mr Weller's evidence was tainted by his strong animosity to Mr Rowland which led him to sling as much mud as possible. We are not satisfied that is the case, but we are satisfied that Mr Weller's evidence was tainted by his desire to distance himself from involvement in the Disputed Document.

197. We do not discount Mr Weller's evidence as a whole but we do treat it with considerable caution.

(iv) Mr Unwin

198. Mr Unwin is an independent witness with no axe to grind as regards any of the parties or indeed as regards Mr Weller. He has no reason to support the case of any party or witness, although he may have a vested interest in distancing himself from discussions at the First September Meeting. We are satisfied that he was an honest witness doing his best to assist the Tribunal. He gave his evidence in a straightforward manner and he readily answered questions. That is not to say that we accept all his evidence at face value. It is subject to the vagaries of memory and the passage of time in the ways we have described above.

199. To some extent Mr Unwin's memory of events was not reliable, and we address aspects where this is the case when we come to consider his evidence. However, we do not accept Mr Rowland's submission that Mr Unwin's memory was generally poor and not well encoded.

200. Mr Unwin acknowledged that it is hard to work out what is memory, what is logical deduction and what is something discovered after the event. For example, he attended Mr Weller's disciplinary hearing at the Bank on 23 March 2018 as his non-legal support and would have heard Mr Weller's account in detail. Having said that, he had already attended his Project Gulf interview by this time. We take into account the possibility that Mr Unwin's memory involves elements of reconstruction and has been influenced sub-consciously. It does not follow from Mr Unwin's insight that his evidence on matters where he claims to have a good memory is reliable.

201. We take into account the factors referred to below in relation to Mr Unwin's account of the First September Meeting. Those factors include Mr Unwin's recognition in his interview with the Authority in 2018 that his memory was "terrible" in relation to certain aspects of the meeting and his evidence that he "zoned out" during this meeting. We still regard Mr Unwin as a broadly reliable witness, albeit we approach his evidence with some caution.

(v) Mr Hiltunen

202. Mr Hiltunen had no involvement in or knowledge of the Disputed Document prior to its publication. He gave evidence about the Bank's governance and its systems and controls, the roles of individuals within the Bank and his understanding of the Bank's relationship to AGTB and Falcon Bank. Mr Hiltunen also gave a commentary on the circumstances in which the Disputed Document was produced which to a large extent was based on his analysis of the documents rather than any first-hand knowledge of events in connection with the Disputed Document. Whilst there was some helpful material in this commentary, it was mostly a matter of submission and opinion, inviting an inference that the Disputed Document did not amount to Bank business. The same point can be made in relation to parts of Mr Hiltunen's cross-examination where he was effectively being asked for opinion evidence.

203. We make no criticism of Mr Hiltunen in this regard. We are satisfied that he was an honest and straightforward witness who gave his evidence is a measured manner. However,

save where he gave first hand evidence of facts and matters within his own knowledge we have given little weight to his evidence.

(vi) Mr Walls

204. Mr Simon Walls is employed by the Authority as its Director of the Wholesale Markets Department within the Supervision Division. He has held that role since 2022. Prior to that he was the Authority's Head of Wholesale Markets for six years and held a variety of roles supervising sectors of the market. He gave evidence about the Authority's statutory objectives, and the risks posed by market abuse. He has had no involvement in the Authority's investigation of the alleged misconduct in these references or in the references themselves. As such his evidence was of minimal relevance.

205. Mr Walls acknowledged in cross-examination, unsurprisingly, that the Authority's investigations of misconduct should be thorough and should look for and consider evidence that might change its view of the conduct under investigation.

206. There is no doubt that Mr Walls gave honest evidence and was seeking to assist the Tribunal in its task.

(vii) Mr David Rowland

207. Mr David Rowland served a witness statement dated 27 February 2024. We were told that he was not available to give evidence on medical grounds. The evidence in support of those medical grounds initially comprised a letter from a consultant who had a consultation with Mr David Rowland on 26 August 2025. The consultant gave very little detail about Mr David Rowland's health issues but stated that he had advised him that it would be best for him not to attend the hearing.

208. It had been hoped to obtain more detailed evidence from the consultant following a further appointment. We gave time following the end of the hearing for an appointment to take place. Unfortunately, for reasons beyond anyone's control it was not possible for the appointment to take place. In the absence of any more detailed evidence from the consultant, Mr David Rowland relied on a letter from his general practitioner dated 9 October 2025. The letter gave very brief details of his past medical history and recent concerns and expressed an opinion that it would have been "harmful" for Mr David Rowland to attend the Tribunal.

209. We note in this context that Mr David Rowland willingly appeared before the Authority's RDC and clearly wanted to have his say in relation to the Decision Notices.

210. There is no need for us to reveal sensitive personal information in this decision. We simply say on the basis of the evidence adduced we cannot be satisfied that there was a good medical reason why Mr David Rowland could not have given evidence to the Tribunal, with appropriate reasonable adjustments.

211. The Authority does not invite us to draw any adverse inference from the fact that Mr David Rowland has not attended the Tribunal. Nor does it seek to exclude Mr David Rowland's witness statement from the evidence before us. It does however submit that we should place little if any weight on the statement.

212. We do not consider that we should simply place little or no weight on Mr David Rowland's evidence as a whole. We have considered his evidence on different aspects of the references and give it the weight we consider appropriate, taking into account the other evidence available to us. However, where his evidence is relevant to an issue, it does not command the same weight as it would if Mr David Rowland had been tendered for cross-examination and tested on his evidence. In estimating the weight to be given to Mr David Rowland's evidence on any particular issue we have had regard to the factors set out in section

4 Civil Evidence Act 1995. We have also had regard to the documentary evidence, the extent to which Mr David Rowland's evidence is corroborated by other reliable evidence and inherent probabilities.

(viii) So-called "missing" witnesses

213. In *FCA v Seiler* [2024] EWCA Civ 852, the Court of Appeal was concerned with an appeal against a costs decision that the Authority pay a proportion of the costs of two applicants who had made references to the Upper Tribunal. In particular, the reasonableness of the Authority's conduct in failing to call material witnesses. The Authority had submitted that it was entirely a matter for the Authority which witnesses it should call. The Court of Appeal was not persuaded by that submission. Fraser LJ considered that proceedings before the Upper Tribunal in financial services cases were not precisely the same as "ordinary civil litigation". He stated at [51]:

> In my judgment, the Authority is engaged in a common enterprise with the Upper Tribunal in ensuring that the objects of the legislation are achieved and that public confidence is maintained in the integrity of financial markets, with those who are not fit and proper persons prohibited from engaging in regulated activity.

214. The Court of Appeal held, by a 2-1 majority, that the Upper Tribunal had been entitled to criticise the Authority's failure to call material witnesses and to treat that conduct as unreasonable in the context of its costs jurisdiction.

215. In the present references, Mr Rowland submits that the Authority has failed to put before the Tribunal the evidence it needs to determine the issues raised by the references or even to interview certain potential witnesses. That criticism is made in relation to three principal issues:

(1) The circumstances in which the Disputed Document was produced. In particular, the evidence of Mr Henry in that regard.

(2) Mr Rowland's role in the UK Branch during the relevant period and after he had stepped down as CEO. In particular, the evidence of Mr Selwyn and Mr Keraitis.

(3) Dissemination of the Disputed Document. In particular, the evidence of Mr Al Mubarak and Mr Hurn.

216. Mr Henry was at meetings to discuss Mr Bolelyy's task, was a party to emails about it and contributed to the Disputed Document by drafting the FIFA slide. However, the Authority has not called or even interviewed Mr Henry. He was interviewed as part of Project Gulf and the notes of that interview were in evidence. He is recorded as saying in that interview that he never participated in any meeting about the Disputed Document, never saw the Disputed Document and never heard about the Disputed Document before the Intercept Article. He says that he was asked by Mr Bolelyy to type up some handwritten notes but did not know who had produced the notes or what presentation they were for.

217. In October 2018 the Authority emailed Mr Henry at a Liwathon email address asking to speak with him about events at the Bank in 2017. A chasing email was sent in November 2018 but it does not appear that any other efforts were made to obtain evidence from Mr Henry.

218. The Authority relied on what Mr Keraitis and Mr Selwyn had said in their interviews with the Authority. Mr Rowland submits that we should place very little weight on their answers in the absence of any explanation as to why the Authority did not call them as witnesses. The Authority seeks to rely on their evidence as to Mr Rowland retaining his SMF 21 approval after he had stepped down as CEO of the London branch. The Authority also seeks to rely on Mr Selwyn's evidence as to whether Mr Rowland effectively remained in charge of

the UK Branch after stepping down as CEO, and when Mr Selwyn first informed Mr Rowland that he was resigning as CEO of the UK Branch.

219. The Authority could easily have called Mr Selwyn. We understand that he currently works in financial services for the same firm as Mr Unwin.

220. Whilst it is clear from *Seiler* that the Authority ought to call material witnesses, it would also have been open to any other party to call these witnesses. Quite how much Mr Henry would have assisted is open to doubt given what he is recorded as saying in his Project Gulf interview. Namely, that he had never heard about the Disputed Document before the Intercept Article and had never discussed it. We take into account the absence of these witnesses when we come to make findings of fact in relation to these issues.

221. As to dissemination of the Disputed Document, it is said that the Authority has failed to clearly plead its case on dissemination or to identify who at Mubadala is said to have received a copy of the Disputed Document. Mr Rowland has therefore been prejudiced in identifying potential witnesses. It now appears that Mr Al Mubarak and Mr Hurn might have been relevant witnesses. In the circumstances it is said that the Authority cannot properly invite the Tribunal to make findings that expressly or implicitly criticise Mr Al Mubarak or Mr Hurn.

222. The Authority invited us in opening to find that Mr Rowland "most likely" discussed the Disputed Document with Mr Al Mubarak in Abu Dhabi and "possibly" gave a copy to Mr Hurn. Mr Rowland submitted that we should not make such a finding because it would follow that neither individual was concerned about unlawful conduct being presented to them, and that they forwarded a copy of the Disputed Document to the UAE Ambassador to the United States.

223. The Ambassador has confirmed in correspondence that he did not receive the Disputed Document and did not communicate with any representative of the Bank concerning the Disputed Document or its content. He also explained separately to Mr David Rowland and Mr Rowland that he knew nothing about the Disputed Document. In our view, there is no basis for us to go behind this evidence.

224. In the event, it is not necessary for us to address these criticisms. For the reasons which follow, we have not been satisfied on the evidence that the Disputed Document was communicated to anyone at Mubadala.

(4) THE FACTUAL ISSUES

225. There are a considerable number of factual issues on these references. We shall consider the issues discretely, but in reaching our conclusions on each issue we have considered the evidence as a whole. We determine all factual issues by reference to the balance of probabilities.

4.1 Mr Rowland's role at the Bank

226. Mr Rowland was at all material times until his resignation in December 2017 a Board director and a member of ExCo. He was CEO of the UK Branch from 2014 until sometime in April 2017 when he relinquished that title in order to focus on the AGTB project. Mr Selwyn took over the title of CEO but his salary was not increased to reflect any new responsibilities. Mr Rowland was re-appointed CEO of the UK Branch on 26 September 2017, shortly after the resignation of Mr Selwyn.

227. As CEO of the UK Branch, Mr Rowland was approved by the Authority to hold a senior management function. He held SMF 21 approval which is the EEA Branch Senior Manager Function applicable to individuals with substantial responsibility for one or more significant business units within the UK branch of an EEA firm. He held that approval throughout 2017, including the period after he had relinquished his title as CEO.

228. Mr Rowland contended that despite the terms of his employment contract he had no direct role in introducing new relationships to the Bank although it did happen from time to time. We are satisfied that this was part of Mr Rowland's role although not necessarily a major part of his role. Mr Rowland said in evidence that he was not permitted to identify and source new clients or market the Bank's services because he did not hold the necessary qualifications. We are not satisfied that there was any reason as a matter of law why Mr Rowland could not carry out these activities on behalf of the Bank as his employer. In any event, even if Mr Rowland believed at the time that such restrictions existed, he accepted that he could identify prospective new clients and introduce them to an appropriate relationship manager. Also, that he could "talk up" the Bank's services as long as he was not giving investment advice.

229. Mr Rowland's evidence was that when he stepped down as UK Branch CEO in April 2017 his executive responsibilities ceased. He continued to work on AGTB and other projects but none of them were related to the Bank. He accepted that he remained a Board director and "retained a general interest in the operation of the Branch and held some authority within it".

230. Mr Rowland continued to be paid pursuant to his employment contract with the Bank as a full-time employee and as CEO of the UK Branch. There was no variation to that contract and Mr Rowland continued to work physically from the London Office. He remained able to instruct other Bank employees to carry out tasks, both in relation to Bank business and non-Bank business. He retained Mr Bolelyy as his personal assistant. Mr Bolelyy was himself a full-time Bank employee based in the London Office.

231. Mr Keraitis, when interviewed by the Authority, stated that whilst Mr Rowland stepped down as CEO to focus on another project, which we infer was a reference to AGTB, he still wanted to be involved in the management and key decisions affecting the UK Branch. That is why he maintained the SMF 21 function. We do not accept Mr Rowland's evidence that his retention of the SMF 21 function was effectively a filing error. Mr Hiltunen supported Mr Rowland's evidence in this regard, but he did not have first-hand knowledge of the position.

232. Mr Selwyn in his interview with the Authority described Mr Rowland as still being in charge of the UK Branch after stepping down as CEO. It is notable that when Mr Selwyn resigned from the Bank, his letter of resignation dated 15 September 2017 was addressed to Mr Rowland at the UK Branch.

233. We acknowledge that Mr Keraitis and Mr Selwyn were not called to give evidence but their interview transcripts are in evidence and we give them some weight, taking into account that they could not be cross-examined.

234. Mr Weller was dismissed by letter signed by Mr Peter Rose, who was a non-executive director of the Bank handling the disciplinary process. Mr Rose acknowledged in that letter that at the time the Disputed Document was produced Mr Rowland "was in a position of influence".

235. Overall, we are satisfied that Mr Rowland retained executive responsibility in the UK Branch throughout 2017. We consider that Mr Rowland sought to understate his role in the UK Branch in the period after he had relinquished the title of CEO.

4.2 Mr Weller's role at the Bank

236. Mr Weller's role at the Bank was not the subject of significant dispute and we have described his role above. The evidence confirms that he held an SMF 21 senior management function at the UK Branch. Mr Hiltunen, Mr Rose and Mr Rowland all described Mr Weller at various times in evidence or in documents as a senior employee and we consider that is an accurate description.

237. Mr Hiltunen did suggest in his evidence that Mr Weller was more of a "middle manager". That might be right in terms of corporate governance in the context of the Bank as a whole, but we are satisfied that in the UK Branch Mr Weller held a senior position. In his role as Head of Asset Management in the UK Branch he was responsible for managing portfolios of assets with a value of $250m. He was also the de facto chair of the Bank's investment committee. He led a small team comprising Mr Unwin as his deputy and a junior administrator in what was a small branch office of the Bank.

238. Mr Weller himself also sought to downplay his role and responsibilities. He said that he never had any executive or management responsibilities and he also sought to describe himself as a "middle manager of sorts". More reliable is Mr Weller's declaration for the purposes of his approval as an SMF 21 dated 5 February 2016. He confirmed in this document his responsibilities as Head of Asset Management as follows:

> In charge of the Asset management department in the Branch. Supervises asset managers and assistants in the branch.

4.3 Mr Bolelyy's role at the Bank

239. Mr Bolelyy was born in August 1986 and was aged 31 at the time of the events relevant to these references. He was born in Russia but completed his school education in the UK. He graduated from University College London with a 2.1 degree in economics after which he completed a Master's degree in economics at Warwick University. In 2010 he worked as an analyst at a boutique corporate finance firm. In 2011 and 2012, he worked as an analyst at a financial services company. Between 2013 and 2015 he worked as an analyst at a telecoms company. He then worked at an investment management firm where he monitored the performance of various funds.

240. Mr Bolelyy had applied for a job at the Bank as a junior private banker in 2013. The interview panel included Mr Weller. He was not offered the job but Mr Weller kept in touch with him. Indeed, Mr Weller would send draft copies of his quarterly newsletter to Mr Bolelyy for him to proof-read.

241. Mr Bolelyy began studying for the Chartered Financial Analyst qualification in April 2014. He paid the course fees himself and studied in his own time. He passed the three levels of examinations in 2014, 2015 and 2016, becoming a member of the CFA Institute on 2 June 2017.

242. Mr Weller became aware in 2016 that Mr Rowland was seeking to appoint a new personal assistant with Russian language skills. He encouraged Mr Bolelyy to apply and Mr Bolelyy got the job. Mr Bolelyy's employment contract stated that his job title was "senior investment analyst". He reported directly to Mr Rowland as CEO of the UK Branch. His role was expressed to cover "technical and investment analysis as well as managing due diligence process of standalone investment projects". The contract provided that additional duties may be required and it is not disputed that Mr Bolelyy was Mr Rowland's personal assistant. He continued in that role after Mr Rowland relinquished the title of UK Branch CEO.

243. It is part of Mr Bolelyy's case that he was simply a personal assistant concerned with administrative matters and therefore the Individual Conduct Rules in the Code of Conduct did not apply to his conduct.

244. There was evidence as to Mr Bolelyy's work on the AGTB project which Mr Bolelyy says illustrates the true nature of his role. We accept that in this regard Mr Bolelyy's work consisted largely of preparing slide decks. Indeed the Disputed Document started out using what was described as an AGTB template. We are satisfied that Mr Bolelyy had no role in making presentations to third parties. In relation to AGTB, his main role was to incorporate the

comments of others into draft presentations and to submit drafts for further review. His views on content were not sought and he simply carried out what he was instructed to do.

245. Mr Bolelyy frequently travelled abroad on business with Mr Rowland. They would usually stay at different hotels. That was the case on the Abu Dhabi trip in September 2017. When he attended meetings with Mr Rowland, Mr Bolelyy's role was to take notes. His interactions in connection with external meetings would be with similarly junior people. These findings are corroborated to some extent by Mr Unwin's evidence that during the First September Meeting, Mr Bolelyy did not speak.

246. Mr Daniel Gould was CEO of the Bank's Moscow Office and was assisting Mr Rowland with the AGTB project. In addition to his responsibilities in the Bank, it was intended that he would be part of the senior management team of AGTB. Mr Hiltunen says and we accept that the Board and ExCo were unaware of the extent of Mr Gould's involvement in the AGTB project.

247. Mr Gould asked Mr Bolelyy to write the "marketing page" for an AGTB update slide. Mr Bolelyy's evidence was that it was very unlikely that he wrote that page and his primary work was formatting the slides. He said that it is likely that the material was derived from a Deloitte Report prepared for AGTB. We are satisfied that Mr Bolelyy was indeed asked to write the marketing page. We do not know whether in doing so he derived material from a Deloitte Report. However, he was not simply instructed to transpose material into the slides. He was entrusted with the task of producing his own work for incorporation into the presentation.

248. Various witnesses described Mr Bolelyy's role. Mr David Rowland described him in his witness statement in proceedings brought by the State of Qatar against the Bank as "a junior Bank employee who also used to run errands for my son, Edmund". Mr Weller described him as a "bag carrier" for Mr Rowland. Mr Rowland in his interview with the Authority described him as "the guy who ran around and did odds and ends in the office". Mr Hiltunen said that his understanding was that Mr Bolelyy was recruited by the Bank to assist Mr Rowland with administrative-type tasks.

249. We consider that whilst there might be an element of truth in all these descriptions, they do not cover the full extent of Mr Bolelyy's role and responsibilities or his capabilities. We are satisfied from Mr Bolelyy's own evidence that he was ambitious and keen to impress Mr Rowland with his efforts. He had opportunities to do so in relation to AGTB and in relation to the Disputed Document.

250. We are also satisfied that Mr Bolelyy's job title and description in his employment contract did not accurately convey the true nature of his duties on a day-to-day basis. His role was not in reality that of a senior investment analyst at the Bank. However, if his role was intended to be limited to that of a personal administrative assistant there was no reason that should not have been the description in his contract. Mr Bolelyy described himself as follows in his email signature:

Vladimir Bolelyy CFA

Senior Investment Analyst

251. Some of Mr Bolelyy's work was not unique to the financial services sector. In a different environment his role might have included the same type of administrative tasks and presentational work on different subjects. He booked rooms and restaurants, arranged meetings, took meeting notes, printed documents, liaised with other personal assistants,

assisted with drafting presentations, prepared emails to give effect to Mr Rowland's instructions, filed and sorted documents on behalf of Mr Rowland, liaised with other departments in the Bank on behalf of Mr Rowland in connection with recruitment, proof-read documents and undertook online research for Mr Rowland, including Russian language content, which he summarised for Mr Rowland. These are all tasks which might be required in a non-financial services firm.

252. Mr Unwin's evidence is likely to be closer to the truth. Whilst he had no dealings with Mr Bolelyy other than chatting at the water cooler, he understood that Mr Bolelyy was a "sort of assistant" to Mr Rowland. He was a "sort of personal analyst" or "investment assistant" to Mr Rowland and Mr Rowland's projects. Those descriptions, together with Mr Bolelyy's work on AGTB and the Disputed Document went beyond what a personal assistant in another sector might be required to do. He was also a qualified CFA and included that title on his email signature.

253. In his interviews with the Authority, Mr Bolelyy described his role as including "economic analysis-type of scenarios" and "trying to understand investment opportunities in general".

254. We are satisfied that Mr Bolelyy was a dedicated and hard-working employee trying to demonstrate that he was capable of more than the administrative side of his role. That is entirely natural given his aspirations. We are satisfied from his academic background and his determination to obtain the CFA qualification that he was capable of being more than a personal assistant. He was capable of researching matters and producing the finished product. That was the case in relation to the Disputed Document. Whilst he required significant input from others, the Disputed Document was in large part the result of Mr Bolelyy's research including his discussions with Mr Weller. He described in evidence how he researched the task including internet searches and press articles. In that regard we are satisfied that Mr Bolelyy's CFA qualification would have assisted him in the task. If he did not understand the concepts involved, such as CDS, then he would have been in a good position to research those concepts and incorporate his understanding into the Disputed Document. Indeed, for reasons set out below in relation to drafting the Disputed Document, we are satisfied that in producing the Disputed Document Mr Bolelyy was making strenuous efforts to understand the strategy and did not incorporate elements into the Disputed Document unless he understood them.

255. We are satisfied that Mr Rowland entrusted the task to Mr Bolelyy because he considered Mr Bolelyy was capable of fulfilling the task and in the knowledge that it would require Mr Bolelyy to conduct his own original research and to liaise with Mr Weller and others in the London office.

256. Overall, we are satisfied on the evidence that Mr Bolelyy's role included carrying out research and analysis as instructed by Mr Rowland. It went beyond the administrative tasks associated with the role of personal assistant. Mr Bolelyy's role might not have included as much research and analysis as he would have liked, but it was part of his role.

257. Mr Bolelyy says that he was never certified under the Senior Managers and Certification Regime. It is said that if the Bank considered him more than Mr Rowland's personal assistant, then it would have been obliged to certify him. We are not satisfied that is the case. The Certification Regime is set out in the FCA's Handbook at SYSC 5. It requires certification for employees performing an "FCA-specified significant harm function". The definition of such a function at SYSC 5.2.30 includes for example employees with client-dealing functions. It would not necessarily include an individual such as Mr Bolelyy carrying out investment research or economic analysis for Mr Rowland. The position may be different if Mr Bolelyy

had a client-facing function which included advising on investments or arranging deals in investments, but there is no suggestion that is the case.

4.4 Mr David Rowland's role at the Bank

258. Mr David Rowland was the Honorary President of the Bank. The ultimate beneficial owner of the Bank was a family trust of which Mr David Rowland was the protector. As such, Mr David Rowland was registered with the CSSF as the ultimate controller. We are satisfied that he had no management responsibilities in that capacity, but we accept Mr Hiltunen's evidence that having Mr David Rowland "behind the Bank" had a marketing effect. That is supported by the descriptions of the Bank and its ethos on the Bank's website.

259. The Authority says that Mr David Rowland had influence in relation to the Bank's affairs. In that regard the Authority relies on a number of matters.

260. The fact that Mr David Rowland had a Bank email address which forwarded messages to his personal account does not in our view suggest that Mr David Rowland had influence over the Bank's affairs. He was the Honorary President so it was not unusual that he should have an email address. We accept Mr David Rowland's evidence that he had an email address because he received many requests for charitable donations and that he did not use this email address to send emails.

261. Mr Hiltunen accepted in evidence that Mr David Rowland could control the appointment of directors of the Bank. It does not follow from the fact that a shareholder, or in this case the protector of a trust which controls the shares, has voting control in relation to the appointment of directors, that the shareholder has influence over the Bank's affairs. He had influence over the appointment of directors but we are not satisfied on the evidence before us that he used that influence in relation to the Bank's affairs.

262. We are also not satisfied that Mr David Rowland involved himself in the management of the Bank by talking to and influencing family members who were directors. He undoubtedly has a strong personality but there is no real evidence that he influenced the Bank's affairs in this way.

263. The Authority points to Mr David Rowland's telephone call with Mr Rowland on 19 October 2017. Mr David Rowland suggested that Mr Bolelyy should be taken off the Bank's payroll and moved to Liwathon. Mr Rowland agreed with this suggestion. This conversation followed a discussion about hacking where there was a suggestion from Mr David Rowland that Mr Bolelyy should be given a Liwathon email address. We do not consider that suggesting Mr Rowland's junior assistant should be moved from the Bank to employment with another Rowland family business really amounts to having influence in relation to the Bank's affairs.

264. Mr Weller's evidence was that in his view Mr David Rowland made the "big decisions". There is no evidence to support that suggestion, nor is it clear what foundation Mr Weller had for making the suggestion.

265. There is evidence before us that Mr David Rowland is a very successful businessman who has strong views and expresses them in a forthright manner. It is tempting to think that he would therefore have influence in relation to the management of the Bank's affairs. However, looking at the evidence available to us, we are not satisfied that is the case. In any event, this issue is only relevant to Mr David Rowland's third party references and no allegations of wrongdoing are made against Mr David Rowland.

4.5 AGTB

266. AGTB was a joint enterprise to create a new trade bank in the UAE. There is an issue as to the intended relationship between the Bank and this joint enterprise and whether the Bank

stood to benefit in any way from AGTB. The Authority says that the interests of the Bank and the Rowland Family were closely aligned in relation to AGTB.

267. The Bank's case is that the AGTB project was wholly unrelated to the Bank's business. Hence, the August Meeting and the trip to Abu Dhabi which were in part at least to discuss AGTB were also wholly unrelated to the Bank's business.

268. Mr Rowland sent an email to Mubadala on 13 February 2017 effectively pitching AGTB which they had recently discussed. Mr Rowland sent that email from his Bank email account. He stated that AGTB would draw on the resources of the Rowland Family who were owners of the Bank, described as a EUR10 billion banking group. It was said that use had been made of "the in-depth information and experience used in the establishment of [the Bank] on pricing, costing (people) and regulatory structures. (correspondent accounts)." The point of contact was identified as Mr Bolelyy who was copied in at his Bank email address. A link to the Bank's website was provided.

269. The Authority contends that the Bank benefitted from being held out in the pitch as an established and experienced banking group. The Authority also says that the Bank stood to benefit by being used as a correspondent bank for AGTB. Correspondent banks essentially provide international services for domestic banks without the need for the domestic bank to open an overseas branch. Mr Hiltunen's evidence was that the Bank could not act as a correspondent bank for AGTB because it relied on its own correspondent network.

270. It is not clear whether AGTB had come into existence as a legal entity by September 2017, although a company called AGTB Holding Limited had been incorporated. There is no evidence that the Bank was intended to be party to the joint venture. Whilst the evidence is not clear, it seems likely that the joint venture was between Mr David Rowland and Mubadala.

271. On 19 September 2017, Allen and Overy emailed Mr Rowland in connection with AGTB and Mr Rowland's forthcoming trip to Abu Dhabi. The email identified topics which might be covered at a meeting with the Abu Dhabi regulator, including risks associated with "parallel banking" in light of the common ultimate beneficial ownership of AGTB and the Bank. The email stated in this context:

> **Strictly "Arm's Length" Relationships**. The terms and conduct of any relationship which may arise between AGTB and Banque Havilland, including by way of example correspondent banking or nostro/vostro account relationships, will be on a strictly arm's length basis. This means that fee arrangements and commercial terms will be consistent with whatever is "market" for any products or services received by AGTB from the Banque Havilland group, or vice versa.

272. The email returned to parallel banking in relation to operational matters and stated:

> Parallel banking – practically, how will the arms' length relationship with Banque Havilland SA (BH) be maintained and enforced? I understand that AGTB will seek to be operationally independent, but please confirm the extent of any support services that BH will provide, even in the early stages of AGTB's existence. Do you propose to put in place a service level agreement with BH to define its relationship with AGTB, and the roles of relevant members of AGTB's board and senior management? With regard to BH, you kindly confirmed yesterday that its home state regulator, the CSSF, is aware of the AGTB proposal; as mentioned in the meeting, the FRSA may contact the CSSF to discuss the proposal and BH's role …

273. We also note in the hearing bundle a letter from Mr David Rowland to the CSSF dated 20 September 2017 in which he stated:

> … the activities of the two institutions are entirely and fundamentally different such that there will be no operational or commercial relationships…

274. We cannot see that this letter was referenced in the evidence or in the submissions of any party. It would no doubt have been the subject of questions to Mr David Rowland if he had given oral evidence.

275. Mr Keraitis, the UK Branch compliance officer in his interview with the Authority stated his belief that no-one knew whether the Bank would be involved with AGTB, for example as a subsidiary of the Bank. However, he does not set out in any detail the source of that belief and his answers in relation to this matter were vague.

276. We place little weight on the letter from Mr David Rowland or on Mr Keraitis' statement in this connection because neither have been subject to cross-examination.

277. Overall, we are satisfied that in September 2017 there was a prospect, recognised in the emails referred to above, that the Bank might provide services to AGTB. It may be that Mr Rowland had not discussed that prospect with Mr Hiltunen, but it remained a prospect nonetheless. The relationship between the Bank and the AGTB project was not clearly defined at this stage. It remained unclear on what basis Mr Rowland and Mr Bolelyy were working on the AGTB project. They were both employed full time by the Bank. Whilst there is no evidence of any payment or any agreement in respect of payment for their services, we are satisfied that there was a prospect of the Bank benefitting from a relationship with AGTB in respect of potential future services, including in the UAE.

4.6 Falcon Bank

278. Falcon Bank was a Swiss private bank owned by Mubadala. The significance of Falcon Bank was not apparent from the Authority's pleaded case and it only appeared to take on significance during the course of the hearing. The Authority asserts that Mr Rowland was negotiating on behalf of the Bank to purchase Falcon Bank from Mubadala until at least 24 September 2017. It says that those negotiations show that Mr Rowland continued to be involved in the activities of the UK Branch after he had stepped down as CEO and counter Mr Hiltunen's evidence that the continued approval of Mr Rowland as an SMF 21 in the period from May to September 2017 was an error. In particular the Authority sought to establish that Mr Hiltunen was unaware that Mr Rowland was working on the acquisition in that period and to counter the Bank's contention that the Abu Dhabi trip did not involve any Bank business.

279. The Authority also seeks to counter Mr Hiltunen's evidence that the Disputed Document would have no value to the Bank because the Bank could not provide banking services in the UAE and it had no ongoing business relationship with Mubadala.

280. Mr Hiltunen's evidence was that any possibility of acquiring Falcon Bank had been abandoned by the end of July 2017 due to restrictions placed on the Bank by the CSSF. He said that the Bank had given undertakings to the CSSF not to make any further acquisitions and the Bank's directors including Mr Rowland would have been aware of those undertakings. Further, he was not aware of any subsequent discussions to acquire Falcon Bank.

281. We were not provided with a copy of the undertakings but we accept Mr Hiltunen's evidence that undertakings were given to the CSSF that the Bank would not acquire any further businesses whilst the undertakings remained in place. We do not know why the undertakings were in place or how long they were expected to last. We also accept his evidence that he understood the possibility of the Bank acquiring Falcon Bank had been abandoned earlier in 2017. However, we are satisfied that Mr Rowland at least understood that the Bank stood to benefit from an acquisition of Falcon Bank even if it was not the acquiring party.

282. Mr Rowland exchanged WhatsApp messages with Mr Weller on 15 and 16 September 2017 following the announcement of Mr Selwyn's resignation. Mr Rowland stated that he would need to rely on Mr Weller a lot over the next few weeks "while we bring people in. And

with falcon etc". Mr Weller stated that "Unwin would be up for the challenge too". Mr Rowland replied the following day: "Yes – Falcon [memorandum of understanding] is rung signed Thursday in Abu Dhabi so then we can get you and unwin … looking at the UK bizz".

283. On 18 September 2017, Mr Rowland emailed Mr Hurn of Mubadala to say that he would be seeing Mr Al Mubarak that weekend to finalise AGTB and Falcon Bank with Mr David Rowland. Mr Hurn replied that in relation to Falcon Bank, Mubadala were awaiting the Letter of Intent from Mr Willems based on a draft that had been shared the previous week.

284. During the course of the Abu Dhabi trip, Mr Rowland messaged Mr Weller on 24 September 2017 saying that the Falcon memorandum of understanding had been signed. Mr Weller responded to say "Good news and well done. Will be good to get things rocking".

285. If Falcon Bank was not connected to the Bank's business or the Bank did not stand to benefit from an acquisition of Falcon Bank we cannot see that Mr Rowland would be keeping Mr Weller apprised of the situation. Nor that he would lead Mr Weller to believe that he would have some work to do once it had been acquired. There was no suggestion that Mr Weller ever worked for any entity other than the Bank. Mr Weller's evidence, which we accept, is that the acquisition of Falcon Bank, whether that was by the Bank or through some other vehicle, would increase the assets under his management on behalf of the Bank and give rise to a requirement for additional staff.

286. We do not accept Mr Rowland's evidence that the acquisition of Falcon Bank was nothing to do with the Bank and that it was intended as an acquisition by AGTB of the Falcon Bank shell. We are satisfied that in Mr Rowland's mind an acquisition of Falcon Bank by whatever means would benefit the Bank. Consistent with this finding is Mr Willem's presence on the Abu Dhabi trip. He was CEO of Havilland Group SA. Mr Rowland's evidence was that Mr Willems was assisting with the IT functionality of AGTB. We cannot accept that evidence at face value. Also consistent with our finding is that Mr Rowland had in mind another possible acquisition to enlarge the Bank's asset management business. When he exchanged WhatsApp messages with Mr Weller on 15 September 2017, Mr Weller expressed his surprise at Mr Selwyn's departure and then said:

> Nevermind.
>
> So:
>
> Buy WH Ireland
>
> … Let me and Johnny rationalize the business for you.
>
> And Boom!

287. The evidence before us was that WH Ireland was a small asset management company. Mr Weller's evidence was that the Bank was seeking to acquire WH Ireland in September 2017. There is very little supporting evidence for this beyond what was contained in the WhatsApp messages. However, it is clearly something that had been discussed by Mr Rowland and Mr Weller.

4.7 The August Meeting

288. Mr Rowland and Mr David Rowland attended the August Meeting on 30 August 2017. The meeting was arranged by Mr Tricks at short notice because Mr Al Mubarak was scheduled to be in London. Mr David Rowland arranged to fly to London to attend the meeting.

289. Mr Rowland's evidence as to what occurred at this meeting has been contradictory. The entry for 30 August 2017 on Mr Rowland's timeline prepared on 13 November 2017 stated

that Mr Al Mubarak asked Mr Rowland if as a favour one of his people could do a "Macro hedging few pages on how they can protect the value of investment current held in there regulated banks in the UAE and [Kingdom of Saudi Arabia]". He records that a few banks and consulting companies had also been asked to produce something.

290. Mr Rowland prepared a handwritten narrative of events on 25 November 2017. There was a typed version of this prepared the previous day and we are satisfied that it was a carefully considered document. Mr Rowland states that the August Meeting was in relation to AGTB and the potential timelines involved. At the end of the meeting the Mubadala executives discussed the situation with Qatar and their fears that the stand-off would be significantly extended. They were particularly concerned about bank exposure in the interbank market to Qatar and the local banking sector. The executive briefly discussed carving out this exposure and potentially putting on some sort of hedge. The numbers involved were so substantial and because the Bank had little expertise it was dismissed out of hand. He later discussed the conversation with Mr Bolelyy who was interested in looking at it as an intellectual exercise.

291. In his witness statement, Mr Rowland stated that as the meeting was coming to an end, Mr David Rowland went to the bathroom. In the 10 minutes he was away, Mr Al Mubarak mentioned the holdings of UAE banks in Qatari bonds and that the banks were considering ways to hedge and ring fence the risks associated with those holdings. He asked if Mr Rowland could put together a few pages of ideas to hedge and manage the exposure. There was no discussion of the blockade, although everyone was aware of it.

292. In his oral evidence, Mr Rowland initially confirmed that there had been no discussion of the situation in Qatar. He later said that there had been a passing reference. At one stage in his oral evidence, Mr Rowland denied that Mr Al Mubarak had asked about carving out the exposure of Emirati banks and potentially putting on some sort of hedge. He maintained that Mr Al Mubarak had said he was concerned about holdings they had and things they could do to protect their investments.

293. These inconsistencies in Mr Rowland's evidence and the unsatisfactory nature of his evidence generally mean that we cannot rely on his account of what was said at the August Meeting. What we can accept is Mr Rowland's submission that there was nothing inappropriate, unlawful or surprising about Mr Al Mubarak's request. The Authority does not challenge that submission.

294. Mr David Rowland's evidence as to the August Meeting was that it had been arranged for certain political discussions to take place. Mr Rowland attended because of the possibility that AGTB might be raised. The meeting lasted about 20 minutes and AGTB was briefly discussed. At the end of the meeting he went to the cloakroom leaving Mr Rowland talking to Mr Al Mubarak. When he returned, Mr Al Mubarak had departed and Mr Rowland briefly mentioned something about "hedging their exposure".

295. We have no reason to doubt that Mr David Rowland has a genuine recollection that Mr Rowland mentioned something about "hedging their exposure". That is potentially relevant to a key issue in the references but we note that the Authority has not had an opportunity to cross-examine Mr David Rowland on that part of his witness statement. Given the vague terms of Mr David Rowland's evidence in this regard, which is understandable given the passage of time, we do not consider that it is reliable evidence as to the content of Mr Rowland's discussion with Mr Al Mubarak.

296. There was certainly some request from Mr Al Mubarak at the August Meeting and we are satisfied that at some stage Mr Rowland requested Mr Bolelyy to prepare a document which would be used to answer that request. Mr Rowland's case is that it was a straightforward request about hedging the exposure of UAE banks.

297. We consider that the best evidence of the request is Mr Bolelyy's contemporaneous Email to Self dated 12 September 2017. For reasons which follow we have found that this document is Mr Bolelyy's note of the task he was instructed to carry out by Mr Rowland.

298. We accept the Authority's submission and their pleaded case that Mr Al Mubarak asked for consideration to be given to ways in which pressure might be placed on the Qatari Riyal and/or the Qatari economy whilst protecting the value of Qatari investments held by UAE banks. That is consistent with the whole purpose of the blockade which was to put pressure on the Qatari economy and we are satisfied that there was discussion about the blockade of Qatar. Such a request might also involve consideration of hedging, to offset the inevitable risk of falls in the value of Qatari assets.

299. We consider it unlikely that Mr Al Mubarak merely asked for ideas about hedging to protect against the risk of losses on Qatari assets held by UAE banks. It is highly unlikely such a straightforward request would result in the Disputed Document. More likely is that the request was for ways in which pressure might be placed on the Qatari Riyal and/or the Qatari economy whilst protecting the value of Qatari investments held by UAE banks. It is that request which opened the door to the proposal of an unlawful strategy, first put forward either by Mr Rowland or by Mr Weller.

300. Mr Rowland submitted that a consequence of entering into very large hedging positions would be that it could place "pressure" on the Qatari Riyal and the Qatari economy more generally. In our view, however, such pressure was the aim of Mr Al Mubarak's legitimate request and not simply the likely consequence of a hedging strategy.

301. We do not accept Mr Rowland's submission that there was no reason for Mr Rowland to require Mr Bolelyy to produce something different to what had been requested by Mr Al Mubarak. The same can be said of Mr Weller and we shall come on to that issue in due course. Mr Rowland also submitted that this request would be a much more difficult task and beyond Mr Bolelyy's capabilities. We are not satisfied that is the case, and in any event Mr Rowland was well aware that Mr Bolelyy was enlisting help from at least Mr Weller and Mr Henry.

302. Mr Rowland submitted that we cannot find that Mr Al Mubarak requested consideration to be given to ways in which pressure might be placed on the Qatari Riyal and/or the Qatari economy whilst protecting the value of Qatari investments held by UAE banks. That is because the Authority did not put their primary case as to the nature of the request to Mr Rowland in cross-examination. The highest case put was that Mr Al Mubarak raised all the points in Mr Bolelyy's Email to Self. We are satisfied that it was sufficient for the Authority to put their case as to the nature of the request by reference to what was contained in Mr Bolelyy's Email to Self.

303. In any event, we agree with the Authority's submission that a finding as to the precise terms of the request is not necessary. The Authority accepts that in principle there are lawful and unlawful means of effecting Mr Al Mubarak's request. The conduct complained of in these references is not what was requested by Mr Al Mubarak, but the way in which Mr Rowland actioned that request and the instructions he gave in relation to creating, communicating and/or disseminating the Disputed Document.

304. We do not need to consider the Authority's alternative case that if Mr Al Mubarak merely asked for "hedging concept ideas", Mr Rowland took it upon himself to instead prepare ideas on how to put pressure on the Qatar Riyal/US dollar currency peg whilst protecting the value of investments held by UAE banks.

Mr Rowland's instructions to Mr Bolelyy

305. There is a significant issue of fact as to the circumstances in which Mr Rowland instructed Mr Bolelyy to carry out the task arising from Mr Al Mubarak's request.

306. The evidence of Mr Rowland and Mr Bolelyy is broadly that Mr Rowland instructed Mr Bolelyy in the same terms as the request from Mr Al Mubarak. Namely, to put together a few pages of ideas on how UAE banks holding Qatari bonds might hedge and ring-fence the risk associated with those holdings. Mr Rowland wanted a document for his trip to Abu Dhabi on 21 September 2017 and both say that Mr Rowland stated this was "not a bank-related matter". Mr Rowland says that he did not subsequently discuss or review Mr Bolelyy's work on the task.

307. Mr Bolelyy says that his instructions were brief and that he did not subsequently discuss his work with Mr Rowland. However, he did not fully understand the task and sought help from Mr Weller. Having discussed the task with Mr Weller, Mr Bolelyy says that he made a record of their discussion in his Email to Self.

308. Mr Rowland's evidence as to the circumstances in which he says he instructed Mr Bolelyy have changed considerably over time. In his 25 November 2017 handwritten statement Mr Rowland said that he had dismissed Mr Al Mubarak's request out of hand because the Bank had little expertise in the area. He mentioned the conversation to Mr Bolelyy. Mr Bolelyy was interested in taking it on as an intellectual exercise. However, neither Mr Rowland nor Mr Bolelyy put forward that description of events in their witness statements or their oral evidence.

309. In his second interview with the Authority on 24 October 2019, Mr Rowland was clear that he did not say anything about whether or not it was a Bank project. Mr Rowland was asked whether he gave Mr Bolelyy the task as a Bank employee, or Rowland family or AGTB project. He responded:

> There was no detail as to what, what it was, it was just "can you prepare that?" There was no it's a Banque Havilland project. It wasn't a Banque Havilland project, but there was no also saying its this project. There was nothing, it was a generic macro piece.

310. In cross-examination Mr Rowland stated that "with the benefit of time and everything" he now very clearly recalls telling Mr Bolelyy that it was a non-Bank project. We do not accept that Mr Rowland has any such recollection. Further, there is no evidence that there was any clear demarcation in the UK Branch in 2017 between Bank business and non-Bank business. The conclusion we have reached is that Mr Rowland is now seeking to embellish his evidence in order to assist his case that the Disputed Document did not relate to the activities of the Bank and the Bank's case that the Disputed Document was not Bank business.

311. Mr Bolelyy's evidence was also that he was told this was not Bank business. In the light of the evidence as a whole including evidence as to the alleged cover-up we are not satisfied that was the case.

312. Mr Bolelyy said that once he had been set the task by Mr Rowland he initially discussed it with Mr Weller on 12 September 2017 and it was following that discussion that he produced his Email to Self. The following day at 09.44 he sent his "special sit" email to Mr Weller and Mr Henry and thereafter he sat down with Mr Weller, Mr Henry and Mr Unwin to further discuss the task. That was sometime before the email he sent at 13.02. He has no independent recollection of Mr Unwin being at that meeting. Mr Weller then assisted him with the task throughout the period to 18 September 2017.

313. Mr Weller disputes that he discussed the task with Mr Bolelyy. He says that his first knowledge of the task came from a group meeting called by Mr Rowland without notice on or about 12 September 2017. The meeting was attended by Mr Rowland, Mr Bolelyy, Mr Weller,

Mr Unwin and Mr Henry. It was at this meeting that Mr Rowland outlined the nature of the task he had set for Mr Bolelyy. There is support for Mr Weller's account of this meeting in the evidence of Mr Unwin.

314. Evidence as to the initial instructions by Mr Rowland and what allegedly happened at a meeting on or about 12 September 2017 is interconnected but for the sake of clarity we shall describe the evidence under separate headings. In this section we shall deal with Mr Rowland's initial instructions to Mr Bolelyy. We deal with the September meeting or meetings in due course. In doing so, however, we have considered the evidence as a whole in making our findings as to the most likely sequence of events. We have taken into account that there may have been passing conversations between individuals which were not documented or recalled by the individuals. It is unrealistic, 8 years on, to expect anyone to clearly identify a detailed and accurate sequence of events. We have made our findings on the basis of what we consider to be the most likely sequence of events. In any event, given our findings on other issues it does not seem to us that much turns on the precise chronology. What is more important is what people knew and said and broadly at what stage. Even if Mr Bolelyy is right about the chronology, we are satisfied that Mr Rowland attended the First September Meeting and was aware at that stage of the matters being discussed in connection with the task he had set.

315. The Authority's pleaded case at [71] of its statement of case is as follows:

> 71. … Mr Rowland tasked Mr Bolelyy with preparing a written presentation as to how "currency peg pressure" might be put on Qatar and the Qatari Riyal's peg to the US Dollar, whilst protecting investments held by UAE banks (i.e. [the Disputed Document]).

316. We are satisfied that this was the initial task set for Mr Bolelyy by Mr Rowland and that Mr Bolelyy immediately made a note of Mr Rowland's instructions in his Email to Self. That is consistent with Mr Rowland's evidence that he mentioned the task to Mr Bolelyy on or about 11 September 2017. In other words, at a meeting between the two of them rather than a group meeting. That meeting was prompted by Mr Rowland's forthcoming trip to Abu Dhabi which was scheduled for later in the month. He intended to meet with Mr Al Mubarak during that trip.

317. We note Mr Rowland's attempt to distance himself from the task in his narrative dated 25 November 2017 where he stated that he had dismissed the task out of hand and it was only when he mentioned it to Mr Bolelyy, presumably in passing, that Mr Bolelyy wanted to take on the task as an intellectual challenge. In oral evidence Mr Rowland did not seek to rely on that account and Mr Bolelyy's evidence was that these were not the circumstances in which he took on the task.

318. It is said that the language in the Email to Self is more consistent with Mr Weller's exchanges with his friend in commodities and with Harley Rowland on 31 August 2017. Those exchanges included a reference to sanctions not working because different countries were still doing co-loads and the Email to Self refers to "sanctions don't work unless everyone is doing them". There is nothing surprising about such a statement or indeed that Mr Rowland might use those words in giving instructions to Mr Bolelyy. We are satisfied that any similarity to Mr Weller's email exchange is a matter of coincidence and that Mr Bolelyy in his Email to Self was quoting Mr Rowland.

319. Mr Weller had also told Harley Rowland that "CDS is perhaps going to be your way ahead" when asked how to profit from political tensions around Qatar. That might be consistent with Mr Bolelyy's reference to cash to pay for insurance but again there would be nothing surprising in Mr Rowland himself referring to CDS when giving instructions to Mr Bolelyy.

320. It seems to us that other aspects of the Email to Self tend to suggest that it was a note of Mr Rowland's instructions. The reference to "bond exposure" is a reference to the assets which

needed protection. That is more likely to have come from Mr Rowland who had been told that the UAE banks had exposure to Qatari assets. It is part and parcel of the task being set rather than the first description of a strategy to answer the task by Mr Weller. It is true that Mr Weller had been considering on 31 August 2017 how to get "exposure" if there was a downturn in the Qatari economy. However, that was about exposure as a means to profit rather than exposure to the risk of losses which is what the Email to Self is referring to. We do not read anything into the fact that when Mr Weller subsequently came to write his SFNH Document, the first step referred to was a large bond issue.

321. The reference to "avoid jargon" in the Email to Self is more likely to have come from someone who knew the intended audience and was giving instructions. That is a more likely explanation than Mr Bolelyy struggling to follow Mr Weller's thoughts and therefore making a note to himself that he should avoid jargon. It is also consistent with Mr Rowland intending to make a presentation to Mubadala which is why Mr Bolelyy produced a PowerPoint presentation rather than just a few pages of notes.

322. Mr Bolelyy says that the Times article circulated by Mr Weller on 13 September 2017 discusses the use of a PR firm by Qatar. He submitted that Mr Weller was seeking to cement "what matters is the Western view" in the Email to Self and subsequently "firing up the PR machine" in the SFNH Document. We consider that reads too much into the words in the Email to Self.

323. At this stage, there is nothing inherently inappropriate or unlawful about what was being discussed by Mr Rowland and Mr Bolelyy and recorded in the Email to Self. We are satisfied that it is only after Mr Bolelyy had been given his instructions that for some reason the task mutated into an unlawful strategy. It seems likely to us that this mutation occurred at some stage between the Email to Self and the First September Meeting, probably at that meeting.

324. Mr Rowland says that the mutation occurred without his knowledge after the First September Meeting and that it was Mr Weller who caused the mutation. That is because:

(1) Mr Weller's SFNH Document is the first document that records an unlawful strategy.

(2) It is implausible that everyone including Mr Unwin attended the First September Meeting and sat around whilst an unlawful strategy was being discussed.

(3) It is consistent with Mr Weller's character traits of eccentricity and misplaced enthusiasm.

325. We reject Mr Rowland's evidence to this effect. It is true that Mr Weller's SFNH Document is the first documentary evidence recording an unlawful strategy. However, we are satisfied for reasons given in the next section that the unlawful strategy was discussed at the First September Meeting.

326. We agree with Mr Bolelyy that the references to currency peg pressure, foreign reserves and currency peg break may be construed as drawing upon the strategy adopted by George Soros to make huge profits for his fund on "Black Wednesday" in 1992. At that time Sterling was part of the European Exchange Rate Mechanism ("the ERM"). Mr Soros created currency peg pressure by shorting the pound, resulting in the UK using its foreign reserves to maintain the exchange rate. Speculators including Mr Soros' fund bought larger positions against the pound until eventually the currency peg broke, the UK withdrew from the ERM and Mr Soros through his fund is reputed to have made profits of £1bn.

327. Mr Bolelyy says that Mr Weller brought up the example of George Soros in their initial discussion. We think that is unlikely because if he had done so then Mr Bolelyy would have

likely made a note of it in his Email to Self as a focal point for his research. His evidence was that he did not understand what Mr Weller was talking about and he had not previously heard of George Soros.

328. We also consider it unlikely that Mr Bolelyy would not have made a note of the actual task set by Mr Rowland but made a note of his discussion with Mr Weller about the task he had been set. Particularly if, as Mr Bolelyy said, he did not understand Mr Rowland's instructions.

329. Mr Bolelyy's evidence was that following his Email to Self, he sought clarification from Mr Weller in his "special sit" email timed at 09.44am on 13 September 2017 and that this email resulted in the First September Meeting.

330. It is true that the special sit email provided no clue as to what the special situation was, yet Mr Weller knew what it related to because within minutes he sent the Times article "Qatar seek Jewish help in Saudi row". This was also the first time Mr Weller had ever sent Mr Henry an email about Qatar. It is not clear to us how Mr Henry would have known what the special situation was or why he was sent a copy of the Times article. It may be that there had already been some passing discussions about the task prior to the First September Meeting or that the email was sent after the First September Meeting.

331. It is also fair to point out that Mr Weller changed his account as to the date of the First September Meeting when he was told about the Email to Self. He originally thought that the First September Meeting was on 13 September 2017 but having seen the Email to Self he stated that the First September Meeting may have been on 12 September 2017.

332. If there was some discussion between Mr Bolelyy and Mr Weller prior to the First September Meeting, that would be consistent with Mr Rowland introducing the task at that meeting but with most of the discussion which followed involving Mr Weller and Mr Henry. It would also be consistent with Mr Weller already having some idea as to the task that had been set and effectively leading the discussion.

333. Overall, we are satisfied that Mr Rowland's instructions to Mr Bolelyy were to prepare a presentation, avoiding jargon, as to how currency peg pressure might be put on the Qatari Riyal whilst protecting the value of Qatari bonds held by UAE banks. At this stage it was a perfectly legitimate instruction which mirrored the request from Mr Al Mubarak.

4.9 The September meetings

334. Given our findings as to the credibility of the evidence of Mr Rowland and Mr Bolelyy, and our reservations about the evidence of Mr Weller, the best starting point in considering the meeting or meetings which took place to discuss Mr Rowland's instructions to Mr Bolelyy is the documentary evidence and the evidence of Mr Unwin. None of the parties suggested that Mr Unwin had any incentive to give false evidence or indeed to embellish his evidence in any way. His evidence is subject to the vagaries of memory and we are conscious that it is being given some 8 years after the relevant events. However Mr Unwin did provide more contemporaneous accounts of his knowledge of the Disputed Document in his Project Gulf interview on 7 February 2018 and in his interview with the Authority on 29 May 2018.

335. We are satisfied from Mr Unwin's evidence that in September 2017 he was sitting at his desk in the London office when he was called into a meeting with Mr Rowland, Mr Weller, Mr Bolelyy and Mr Henry. He had no idea beforehand what the meeting was about. This is consistent with his account in interview with the Authority and with Mr Weller's evidence, although we accept that Mr Weller may have had a prior discussion with Mr Bolelyy about the task he had been set.

336. Mr Unwin's evidence is that Mr Rowland asked for ideas as to how one might go about undermining the currency of a particular country. He does not now recall that a particular country was mentioned although in his Project Gulf interview on 7 February 2018 he recalled that the country being referred to was Qatar. We consider that interview is likely to be Mr Unwin's most reliable account being some 5 months after the meeting. He thought Mr Rowland's request was flippant. He was not really interested in the conversation that followed and he did not contribute to it. He does recall that the conversation included references to manipulating bond prices. Having refreshed his memory from his Project Gulf interview he also says that there was mention of "attacking the bonds" and "bending the curve" although he cannot recall who said what. He had no recollection of Mr Rowland himself contributing any ideas. Mr Unwin recalls that on leaving the meeting he told his assistant that it had been a waste of time.

337. It is true that when asked in interview by the Authority in 2018 about Qatar being identified at the First September Meeting he stated, "sorry my memory's terrible, I can't remember". In the same interview, he said that the SFNH Document was a much more fleshed-out idea of the general gist of the first meeting. The whole tone of the meeting was "jokey" and he did not pay much attention to it which he said is probably why his memory was so poor.

338. Mr Rowland says that Mr Unwin's repeated suggestion that Mr Rowland instigated the First September Meeting is not credible. It would make no sense for Mr Rowland to instigate the meeting without mentioning Qatar or contributing to the discussion which was Mr Unwin's evidence. We do not accept that submission. More likely is that Mr Rowland instigated the meeting and that Mr Unwin was correct in his Project Gulf interview that the discussion did concern Qatar. It would make more sense for Mr Rowland to instigate the meeting, describe the task and then let Mr Weller and Mr Henry make the running.

339. Mr Unwin did not report this discussion to compliance or anyone else at the Bank. If there was a discussion involving "old school account painting", "crossing amongst yourselves" and "bending the curve" then Mr Rowland says that Mr Unwin would have recognised that as market abuse and would have reported it. The fact he did not report the discussion suggests that it did not take place or if it did it was in a jokey way which did not involve Mr Rowland setting a task. We do not accept that submission. Simply because these concepts were being discussed does not mean that Mr Unwin would have realised that a serious strategy was being formulated which involved applying those concepts. In his own words he had "zoned out" and viewed the meeting as a waste of his time. In our view that is the likely explanation as to why Mr Unwin did not recognise that Mr Rowland was seriously intending to come up with a wholly improper strategy.

340. We are satisfied that it was at the First September Meeting that Mr Al Mubarak's request mutated into an unlawful strategy involving market manipulation. We cannot say who at the meeting first came up with the idea of a strategy involving market manipulation. It is likely that it was either Mr Rowland or Mr Weller. If it was Mr Weller, we are satisfied that Mr Rowland was content for Mr Bolelyy to carry out the task on the basis that it involved a strategy of market manipulation.

341. Mr Rowland questions why he would countenance an improper strategy of market manipulation? The same might be said of Mr Weller. The answer in Mr Rowland's case is straightforward albeit unattractive. In his mind it would further the interests of the Bank and the Rowland Family in the Middle East.

342. It is suggested that a number of factors gave Mr Weller a motive to devise the unlawful strategy either prior to Mr Bolelyy's Email to Self or at the First September Meeting.

343. According to Jonathan Unwin, Mr Weller's nose had been put out of joint by the appointment of Mr Stefano Torti in Luxembourg who had taken over Mr Weller's responsibility for advisory work. Mr Unwin's evidence was that the advisory work had appealed to Mr Weller because he had a creative, entrepreneurial approach and liked a challenge. He therefore became under-stimulated in his work. We accept Mr Unwin's evidence in this regard.

344. We also accept Mr Unwin's evidence that Mr Weller was eager to be "close to power". That was why he encouraged Mr Unwin to attend a second meeting. We do not accept Mr Weller's evidence that he was not interested in impressing the Rowland Family and preferred to keep them at arm's length. It is inconsistent with Mr Unwin's evidence and also with the tone of his WhatsApp messages with Mr Rowland.

345. Mr Unwin and Mr Bolelyy both described Mr Weller as "an information sharing type person". We accept that evidence. He clearly took great pride and enjoyment in producing the Compass newsletter.

346. All of these factors provide a reason for Mr Weller to be interested and probably enthused at the prospect of contributing to the task. However, they do not in our judgment provide likely reasons for him to mutate the task into a strategy of market manipulation. Overall, we are satisfied that it was Mr Rowland who first suggested a strategy involving market manipulation. The mutation occurred when Mr Rowland first set the task for Mr Bolelyy or at the First September Meeting.

347. In our view, it is highly unlikely that Mr Bolelyy would misunderstand instructions to prepare a research note on macro-economic hedging and produce a strategy to use market manipulation to undermine the Qatari Riyal. It is also unlikely that Mr Weller would encourage Mr Bolelyy to produce an unlawful strategy knowing that it was being prepared for Mr Rowland who had simply asked for a few ideas on how to hedge against the risk of falls in values of Qatari assets.

348. Mr Rowland has attempted to distance himself from the discussions at the First September Meeting. He has claimed that the only meeting he recalls was a meeting to discuss Mr Selwyn's resignation. He has gone on to claim that he did not review any drafts of the Disputed Document, or indeed the final version of the Disputed Document until after the Intercept Article was published. In fact, we are satisfied that the Disputed Document was what he had asked for at the First September Meeting. Even if Mr Weller first came up with the idea of market manipulation at or before the First September Meeting, Mr Rowland either expressly or implicitly approved of it through his presence at the First September Meeting.

349. We are satisfied that the specific purpose of the First September Meeting was to discuss the task which Mr Rowland had set for Mr Bolelyy. We do not accept Mr Rowland's evidence that this may have been a meeting to discuss the resignation of Mr Selwyn and discussion of the task was simply an end piece to that meeting in which he was not involved. Mr Rowland's evidence to this effect is contradicted by Mr Unwin's evidence, which we prefer. It is also inconsistent with what Mr Selwyn told the Authority in interview. Namely, that he phoned Mr Rowland on Friday 15 September 2017 to say that he was resigning. The WhatsApp messages between Mr Weller and Mr Rowland on 15 September 2017 show that Mr Weller did not learn of Mr Selwyn's resignation until 15 September 2017.

350. Mr Weller has a more detailed recollection of what was discussed at the First September Meeting. In particular he recalls discussion of the following points:

(1) Mr Rowland explaining the background to the situation involving Qatar and other Gulf States, including that those states held $23 billion of Qatari assets and were unconcerned about losses to those assets.

(2) The Rowland Family could hold these assets in a separate vehicle and possibly charge a small fee.

(3) Mr Rowland asked how pressure could be put on the Qatari Riyal and referenced the historical precedent of George Soros putting pressure on the pound in the 1990s.

(4) He says that he considered the idea was far-fetched and ridiculous.

351. This is consistent with the account Mr Weller has given previously in his Project Gulf interview and in his narrative of events for the disciplinary process. However, we do consider that we must approach Mr Weller's evidence with some caution. On that basis we cannot say whether it was suggested that the Rowland Family might charge a small fee for holding the assets in a separate vehicle or that the Gulf States were unconcerned about losses to $23 billion of assets. We do not accept that Mr Weller considered the idea to be far-fetched and ridiculous. He went on to treat the task seriously and provided significant input to Mr Bolelyy. Otherwise, we accept that Mr Rowland described the situation in Qatar and was asking for ideas on how pressure could be put on the Qatari Riyal.

352. Mr Unwin says that Mr Weller and Mr Henry referenced George Soros in discussions at the First September Meeting and that Mr Weller did most of the talking. It seems more likely to us and we find that it was Mr Weller who referenced George Soros at this meeting. We do not accept his evidence that he did not know about George Soros' strategy at the time of the meeting and had to go away and research it. That is not credible given his nature and experience and that he was working in the City in 1992.

353. Mr Weller also says that Mr Bolelyy played an active part in the discussions. We consider that is unlikely and we prefer Mr Unwin's evidence that Mr Bolelyy said nothing. We are satisfied from Mr Unwin's evidence that once Mr Rowland had set out the scenario, it was Mr Weller who did most of the talking. Mr Bolelyy had little if any input but was making notes. Mr Unwin's evidence was that Mr Weller seemed to consider this was a good thing for Mr Unwin to be involved in. We accept that is the case.

354. Mr Weller said that he did not have much interest in geopolitics or financial markets except where relevant to his work. We prefer Mr Unwin's evidence that Mr Weller was very enthusiastic about geopolitics and financial markets.

355. These aspects of Mr Weller's evidence illustrate him seeking to minimise the extent of his involvement and overstate the involvement of others.

356. Mr Weller's evidence was that Mr Rowland did not himself raise the use of CDS at the First September Meeting. Mr Rowland simply set out the background and the discussion then kept flowing. That is consistent with Mr Unwin's account of Mr Weller's involvement in the discussion.

357. We are satisfied that improper aspects of the strategy contained in the Disputed Document first arose at this meeting. We have found that there was discussion at this meeting of manipulating bond prices and "bending the curve", which must be a reference to the yield curve for Qatari bonds. Hence, from this early stage the foundation for improper market manipulation was laid. It had been part of the strategy from at least the First September Meeting.

358. Mr Unwin described the meeting as "not a serious meeting" but that general ideas were being exchanged and that it was "a sort of theoretical exercise". That is consistent with the fact

he did not report any concerns following the meeting. Mr Weller's evidence was that everyone at the meeting could see "that it was pretty ridiculous". In this regard we consider that Mr Weller is seeking to justify his involvement in devising an improper strategy. It is clear from subsequent emails and the process of drafting the Disputed Document that Mr Weller and Mr Bolelyy were treating the matter seriously. What was produced took time and effort and was at least on its face a serious document. Further, we are satisfied that it contained the type of strategy that Mr Rowland was expecting to receive. Whether that strategy could have been implemented in practice is a separate question.

359. Mr Bolelyy emailed Mr Weller, Mr Henry and Mr Unwin with a copy to Mr Rowland on 13 September 2017 at 13.02. The email was headed "Special Sit" and invited high level ideas and suggesting that they reconvene on 14 September 2017. The reference to reconvening suggests and we find that the First September Meeting took place sometime before this email.

360. Mr Bolelyy says that he understood very little of the discussions at the First September Meeting and in this email he was asking for those with ideas to provide them in writing so that he could take care of the presentation. We accept that at this stage Mr Bolelyy may have been struggling to understand the concepts being discussed, although we are satisfied that with further thought and research he was well capable of understanding the concepts. He applied himself to understanding the concepts when producing further drafts of the Disputed Document.

361. Mr Weller provided his response to Mr Bolelyy's email in the SFNH document. His evidence was that this was principally a note of what had been discussed at the First September Meeting. We discuss the SFNH Document below, but at this stage we can say that we are not satisfied that it was intended as a note of what had been discussed at the First September Meeting. It included some ideas that had been discussed but we are satisfied that it also included Mr Weller's further thoughts about the strategy. Nor do we accept Mr Rowland's evidence that it was a proposal that had not been discussed at the meeting.

362. Mr Unwin's evidence is that there was a second meeting shortly after the first. They gathered around his desk and asked if he was coming but he declined. At the time of his interview with the Authority he recalled that the same individuals were present apart from himself. In oral evidence to us he could not recall if Mr Rowland was present. Mr Weller does not recall a second meeting and there is no documentary evidence to suggest that there was a second meeting involving Mr Rowland.

363. Mr Rowland says that evidence in relation to a second meeting is particularly opaque. Mr Unwin is the only witness who recalls it yet cannot recall whether Mr Rowland was there. By 14 September 2017 Mr Bolelyy was asking Mr Rowland in an email to "sit down and nail down the basic skeleton" indicating that Mr Rowland had not yet done so.

364. We consider it likely that there was a second meeting following Mr Bolelyy's email at 13.02 on 13 September 2017. We cannot be satisfied that Mr Rowland attended. We are satisfied that Mr Unwin did not attend. It may well have been a very informal meeting between Mr Bolelyy, Mr Weller and Mr Henry. In any event, in light of the subsequent drafting process and given the small size and open-plan layout of the office, it is likely that there would have been further ad hoc discussions involving Mr Bolelyy, Mr Weller and Mr Henry.

4.10 Drafting the Disputed Document and Mr Bolelyy's understanding of the strategy

365. Mr Bolelyy produced all versions of the Disputed Document. The extent of his understanding of the contents of those versions and of his reliance on Mr Weller is in issue. Mr Bolelyy's case is essentially that he had a limited understanding of the strategy described in the various versions of the Disputed Document. He considered that the strategy was intended

to sanction Qatar for its wrongdoing and amounted to nothing more than a hedging strategy. His lack of understanding is evidenced by the use of placeholders in the form "[XXXX]" included in various versions of the Disputed Documents. He trusted Mr Weller and that Mr Weller's contributions to the Disputed Document were describing a lawful strategy, akin to the strategy employed by George Soros.

366. Immediately upon sending his Email to Self, at 09:47 on 12 September 2017, Mr Bolelyy created v1, copying and pasting the contents of the Email to Self into an existing AGTB Powerpoint presentation which he used as a template. The title slide was "Qatar Special Opportunity Fund". It is likely that he produced v1 shortly after receiving instructions from Mr Rowland. Version 1 was created in a folder on the Bank's systems which was accessible only to Mr Bolelyy and could not be detected by the Bank's internal controls. All subsequent versions of the Disputed Document were stored in the same folder.

367. Version 2 was created at 10.45. The title slide was changed to "Emerging Markets Opportunity Fund". A Mission Statement slide was added referring to "sanctions do not work unless adhered to by all parties" and "what matters is western perception". There was a blank slide for "Proposed Structure".

368. Mr Bolelyy says that v2 illustrates that his focus was on sanctions against Qatar and wrongdoing by Qatar which was perceived to be sponsoring terrorism. His evidence was that in later versions of the Disputed Document he was also focussing on that aim of the strategy and did not appreciate the unlawful aspects which were introduced into later versions of the Disputed Document. For reasons which follow we do not accept that evidence.

369. Version 3 was created at 11.10 with the title changed to "Distressed Countries Fund". The Mission Statement slide was updated as follows:

(1) "Sanctions do not work unless adhered to by all parties" and "what matters is western perception" remained unchanged.

(2) The reference to "Currency peg pressure is effective when thought by everyone" in the Email to Self was paraphrased to "Currency peg pressure is only effective when pressure is exercised by all parties".

(3) The references to "Currency peg" and "foreign reserves" in the Email to Self became "Maintaining the peg requires extensive use of central bank foreign exchange reserves".

(4) There was also a reference to "Existing G$15bn [sic] of Qatari bonds represent close to 50% of all central bank reserves available". It is likely that this figure for Qatari bonds related to holdings by UAE banks and had been provided by Mr Rowland, although the figure is not referred to in the Email to Self. It is likely that Mr Rowland would have been given the figure by Mr Al Mubarak.

370. The Proposed Structure slide now had some narrative:

(1) The reference to "Segregated vehicle" in the Email to Self became "In-situ transfer of aggregate bond holdings is arranged into a segregated vehicle – ownership and pari passu redemption rights".

(2) The reference to "Cash to pay for insurance" in the Email to Self became "{XXX} serve as an effective hedge / insurance on the bonds whose value would inevitably decline".

371. The reference to the value of bonds inevitably declining suggests that the strategy itself would inevitably cause the value of Qatari bonds to decline. Hedging was not the aim of the strategy but was intended to offset losses caused by the strategy.

372. Mr Bolelyy submits that at this stage he clearly did not properly understand CDS. Hence he used "{XXX}" as a placeholder. He rejects the Authority's submission that {XXX} simply indicates that he had not yet identified the type of hedging instrument or CDS. He says that if the type of CDS was still to be worked out then he would have included "[CDS]" which is what he did later in v5.

373. At this stage, we cannot read anything into Mr Bolelyy's use of {XXX}. It may be that Mr Bolelyy did not understand that CDS would be used, or it is possible that he did not at this stage have an understanding of how CDS worked.

374. At noon on 12 September 2017 Mr Bolelyy saved a Financial Times article titled "Qatari riyal under new pressure despite credit rating reprieve". He said that he had found this article as part of his research after speaking with Mr Weller. We think it more likely that this was the product of research following his instructions from Mr Rowland.

375. By 14.57, Mr Bolelyy had turned his attention to documents relevant to the AGTB project.

376. Mr Bolelyy created v4 at 16.39 on 13 September 2017. This was after the First September Meeting. The proposed structure included a diagrammatical representation of the segregated vehicle being set up but no other changes of significance.

377. Version 5 was produced prior to the SFNH Document at 06.42 on 14 September 2017. The Proposed Structure slide was expanded and identified the hedging instruments as "[Long credit default swaps (CDS)] for liquid maturities up to 5 years or less" and "[Long credit forwards] for longer-dated maturities …". A new fourth bullet point was included as follows:

> Sourcing for protection amongst various counterparties will quickly lead to market rumours and speculation thus providing critical mass:
>
> - The selling pressure creates upward pressure on the Qatari Riyal-US dollar peg and forces Qatar National Bank to defend it by decreasing available foreign reserves
> - [xxx] will act as critical mass for market participants to start aborting the currency.

378. Mr Bolelyy says that the text does little more than unpack the currency peg pressure and foreign reserves in the Email to Self and does not introduce anything new. That was because Mr Bolelyy could not take it any further until he received the SFNH Document.

379. It appears to us that the references to "critical mass" were to the acquisition of CDS having the effect of causing a sharp fall in the value of the Qatari Riyal. That was the purpose of the strategy.

380. It may be that at the beginning of this process Mr Bolelyy had little understanding of CDS and how they worked as a hedging tool. We are satisfied that by v5 he understood how CDS worked because he included the term in that version. He accepts that he did come to understand that CDS are a hedging tool. In exchange for payment of a premium they provide insurance, described as a hedge, against a decline in the value of a debt. He would also have understood that significant purchases of CDS would cause a fall in the value of the Qatari Riyal.

381. Mr Bolelyy then worked on AGTB matters until at 12.48 he sent v5 to Mr Rowland describing it as a "work in progress based on fragments of information exchanged so far". Mr Bolelyy says that this illustrates the limit of his understanding and capabilities.

382. Mr Rowland submitted that whilst v5 referred to "currency peg pressure" and a "range of hedging instruments" being employed, it did not involve any unlawful conduct. However, in our view the fourth bullet point does show that an aim of the strategy at this stage was to generate a market reaction, albeit a natural market reaction. It was not simply a hedging strategy. Further, setting out to generate market rumours and speculation with a view to influencing the market could amount to market manipulation.

383. Mr Bolelyy created v6 at 15.11 on 14 September 2017. The Disputed Document was unchanged since v5 except that it contained a new slide with the title "Notes" which read as follows:

> The spat will damage GCC [Gulf Cooperation Council] growth initiative to boost pan-regional trade
>
> May carry substantial currency fluctuation of the ally countries
>
> Risk of hidden assets which can be used as defence
>
> Currency shorts carry…

384. Mr Bolelyy says that the Notes were a reflection of conversations between Mr Bolelyy and Mr Weller. It seems likely that this is the case.

385. Mr Weller emailed his SFNH Document to Mr Bolelyy at 16.43 on 14 September 2017. At 16.48 Mr Henry emailed the FIFA Slide to Mr Bolelyy.

386. In his witness statement Mr Weller stated that he "suspect[ed] that some of the ideas discussed in the meeting were reproduced in [his SFNH document]". In cross-examination his position firmed and he suggested that his SFNH document was a write-up of the First September Meeting. His evidence was also that it was clearly not a serious document, as evidenced by the name of the document and the cartoon at the end.

387. We do not accept that evidence. Mr Weller's evidence was that the First September Meeting lasted 15 – 20 minutes. Mr Unwin said that it lasted no longer than 10 minutes. We do not accept that what is contained in the SFNH document could have been discussed in such a short meeting. We are satisfied that some aspects of the SFNH document were discussed at the meeting, including some of the unlawful aspects, but that the document contained Mr Weller's further thoughts on the exercise.

388. The name of the SFNH document and the cartoon at the end do not reflect any lack of seriousness on the part of the participants in the First September Meeting, including Mr Weller. They simply reflect Mr Weller's presentational style. He enjoyed using humour, word play and light-hearted analogies in his professional work. There are examples of this in his Compass newsletters.

389. Mr Weller was aware that Mr Bolelyy was using his SFNH Document in preparing the Disputed Document. His evidence was that he looked over Mr Bolelyy's shoulder on one occasion and pointed out a typo. He said that he "saw enough of what [Mr Bolelyy] was working on to recognise that it related to the SFNH Document in some way". We do not accept that was the extent of his involvement in the Disputed Document after sending the SFNH Document. Having produced such a detailed document it is more likely that he would have continued to discuss the strategy and the Disputed Document with Mr Bolelyy. We accept Mr Bolelyy's evidence in that regard.

390. Mr Bolelyy created v7 at 16.48 on 14 September 2017. This was the first version created by Mr Bolelyy after receiving the SFNH Document. He began to incorporate material from the SFNH Document and the FIFA Slide. The FIFA slide was added with some minor amendments. An additional Proposed Structure slide was incorporated which had references to

purchasing Qatar paper to "control the yield curve" and "give the ability to lower prices further":

- Issue a large bond by Saudi Arabia and use proceeds to…
- Meanwhile, purchase medium-term Qatar paper in the background in order to control the yield curve
    - This would give the ability to lower prices further
- Short Riyal
- Buy CDS

391. Mr Bolelyy says that v7 is very important and illustrates the best that he could do with the SFNH Document given his limited grasp of the strategy. He did not know what Mr Weller meant when he used the term "old school account painting" or "crossing transactions". There was no reason for him to understand the unlawfulness of the proposed structure. The whole document did not make any sense to him but he trusted Mr Weller.

392. We do not accept that evidence. We are satisfied from what Mr Bolelyy included within v7 that he understood at this stage that the strategy involved market manipulation to put pressure on the Qatari Riyal. He was well able to understand the basic strategy and its unlawful nature. The strategy involved controlling the yield curve and causing the price of Qatari bonds to fall. We are satisfied that Mr Bolelyy would have understood these aspects of the strategy and that they involved unlawful market manipulation.

393. Mr Bolelyy created v8 at 09.05 on 15 September 2017. Version 8 is the first version to include a similar level of detail as v12. It introduced in considerable detail the three stages of the proposed structure, namely: Stage 1 – Establish Execution Strategy; Stage 2 – Gear up; and Stage 3 – PR Machine & Position Increase. There is reference to establishing a "crossing transaction arrangement whereby another party, acting in concert (and forming a substantial part of existing "market"), sells the same bond holdings back to the original seller (thereby creating additional downward pressure)". The proposed structure includes: "Increase long CDS positions slowly with large banks, just enough to move the price sufficiently to make it newsworthy".

394. Mr Bolelyy says that Mr Weller sat with him during the morning to help transpose the SFNH Document into v8. That may well be the case, given that v8 was never printed off. We are satisfied that Mr Weller continued to discuss the Disputed Document with Mr Bolelyy and that he was assisting Mr Bolelyy to produce v8. That is entirely consistent with their relationship and the working arrangements in the office. When Mr Weller said that he only knew Mr Bolelyy was working on the Disputed Document from a brief look over Mr Bolelyy's shoulder he was seeking to mislead us as to the extent of his involvement in the Disputed Document.

395. Mr Bolelyy created v9 at 12.01 on 15 September 2017. It was similar to v8 with most of the extraneous slides removed.

396. Mr Bolelyy created v10 at 13.23 on 15 September 2017 and printed it off at 13.39. It was the first version of the Disputed Document ever to be printed. We accept Mr Bolelyy's evidence that this assisted his discussions with Mr Weller about the Disputed Document.

397. Mr Bolelyy created v11 at 15.35 on 15 September 2017. The Mission Statement now had the phrase "Control the Yield Curve, Decide the Future" and there were some additions to Stage 1.

398. Mr Bolelyy created v12, the final version, at 09.31 on 18 September 2017. A Segregated Vehicle slide which had previously been removed was restored as an appendix with the title "Collateral Structure". This described the segregated vehicle as a "Protected Cell Company" and included additional narrative.

399. Shortly before that, Mr Weller sent an email at 08.58 on 18 September 2017 to Mr Rowland, Mr Bolelyy and Mr Henry. It included an article from Bloomberg about Qatar buying 24 Typhoon Jets to "beef up" its UK defence partnership and referring to the blockade. Mr Rowland replied, "I think they call that, hedging all bets". We do not accept Mr Bolelyy's case that this served to add to his flawed perception that 'hedging' was the theme of the Disputed Document.

400. We are satisfied that by the time Mr Bolelyy had incorporated elements of the SFNH Document into the Disputed Document he fully understood the unlawful elements of the strategy. He only incorporated matters into the various versions of the Disputed Document when he understood them.

401. Mr Bolelyy says that from his limited understanding of the SFNH Document, the end point of the Strategy was to "clear out the AED specs for profit". It is not clear to us from the SFNH Document how there could be a profit. In any event, it does not appear that the strategy described in the Disputed Document could ever make a profit or was intended to make a profit.

402. We consider that Mr Bolelyy's WhatsApp messages with Mr Weller following publication of the Intercept Article indicate that Mr Weller was responsible for much of the content of the Disputed Document. They serve to confirm that Mr Bolelyy was placing reliance on Mr Weller. For example, his response: "Thanks to you, mate". Mr Weller did not contradict this assertion and was apparently not concerned that what had started out as his SFNH Document had found its way into the public domain.

403. Those messages might also suggest that Mr Bolelyy was not aware that the Disputed Document was improper when he talks of Al Jazeera having "faked and inflated this stuff". However, if Mr Bolelyy had no understanding of any impropriety in the Disputed Document, we consider that he would have expressed his shock and possibly anger to Mr Weller. He did not do so.

4.11 Communication/dissemination of the Disputed Document

404. The Disputed Document was sent by Mr Rowland to his father and Mr Tricks on 18 September 2017 by separate emails marked "Private and Confidential". There is an issue as to whether it was communicated more widely, in particular to an individual or individuals at Mubadala.

405. The significance of dissemination is as follows:

(1) If the Disputed Document was disseminated then it follows that Mr Rowland must have been aware of its contents. He would not have authorised dissemination unless he was happy with its contents.

(2) The alleged conduct may be more serious if the Disputed Document was communicated outside the Bank or the Rowland Family.

(3) It is relevant to the question of whether the Disputed Document was produced as part of a regulated activity of advising on investments or ancillary activities.

406. It is also necessary for us to consider whether it was intended that the Disputed Document would be communicated to persons outside the Bank, even if it was not so communicated. In that regard there is a suggestion that the Disputed Document was not a serious document or that it was so ridiculous that it was never intended to be communicated to anyone. We can deal

with that suggestion quite briefly. We have already found that Mr Weller was not treating the task as a joke. We are satisfied that everyone involved in producing the Disputed Document was treating the task seriously. Mr Rowland gave instructions to Mr Bolelyy and Mr Bolelyy spent a considerable amount of time liaising with others including Mr Weller in drafting the Disputed Document. Mr Rowland was provided with copies of the Disputed Document. There is no suggestion in any of the exchanges between the individuals involved that this was anything other than a serious task.

407. Mr Rowland's case is that there is no basis to allege dissemination. The Disputed Document was not disseminated widely on any view. Forwarding it to Mr Tricks and Mr David Rowland does not amount to dissemination. In so far as the Authority relies on the Disputed Document being communicated outside the Bank or the Rowland family then its statement of case fails to allege to whom it was allegedly communicated.

408. The Authority asserts that it is likely that Mr Rowland had discussed the Disputed Document with Mr Tricks and Mr David Rowland prior to sending the Disputed Document to them on 18 September 2017. It relies on the fact that the accompanying emails were blank other than being marked private and confidential. We are not satisfied on the evidence before us that there was any discussion about the Disputed Document between Mr Rowland and Mr Tricks or Mr David Rowland prior to 12 October 2018.

409. Mr Rowland stated in his handwritten statement to the Bank dated 25 November 2017 that Mr Tricks had asked him for a copy of the Disputed Document. In oral evidence, Mr Rowland suggested that what Mr Tricks would have asked for was "anything relevant in the UAE". We are not satisfied on the evidence that Mr Tricks was specifically aware of the existence of the Disputed Document or its contents prior to the email sending it to him. In any event, little turns on whether Mr Tricks was aware that a document existed and had specifically asked for a copy. We reach the same conclusion in relation to Mr David Rowland.

410. Mr Rowland and his father discussed the Indian Article on the day it was published on 12 October 2017. When his father asked how "that thing in the Indian paper" got there Mr Rowland said, "probably a leak from their office I would imagine".

411. For the reasons given below we are satisfied that Mr Rowland knew about the contents of the Disputed Document at this stage. The reference to "their office" is to Mubadala. That is evidence that might suggest a copy of the Disputed Document had been given to someone at Mubadala, or at least that Mr Rowland understood that a copy had been provided. It is also consistent with Mr Rowland forming the view that internal discussions at Mubadala to which he was not a party had been leaked.

412. If the Disputed Document was given to Mubadala, then the obvious time for that to happen would be prior to or during the Abu Dhabi trip. There is forensic evidence before us and it is not disputed that the version of the Disputed Document which was eventually made public in the Intercept Article was the electronic version v12 which Mr Bolelyy had sent to Mr Rowland on 18 September 2017 and which Mr Rowland had forwarded to his father and Mr Tricks.

413. Mr Rowland emailed Matthew Hurn of Mubadala on 18 September 2017 to say that he would be seeing Mr Al Mubarak that weekend in Abu Dhabi "to finalise AGTB and Falcon Private Bank" with his father. The itinerary shows the meeting was scheduled for Sunday at 3pm, but a subsequent email indicates that the itinerary had changed to incorporate a meeting with the Crown Prince between noon and 4pm on that day. It was also said that other meetings had been moved around. There is also evidence which we accept that Mr Al Mubarak, who was the chairman of Manchester City Football Club, was in Manchester on the Saturday to

watch a Premier League game with a 3pm kick off. However that is not inconsistent with a meeting on the Sunday in Abu Dhabi or indeed on the Monday.

414. In his Project Gulf interview, Mr Rowland stated that there was no particular plan to meet Mr Al Mubarak on their trip to Abu Dhabi but that they did so. That is not correct. It is clear that a meeting was scheduled and Mr Rowland's evidence is now that the meeting did not take place.

415. There is also evidence that a version of the Disputed Document was provided to Mr Hurn of Mubadala. Mr Bolelyy in his statement to the Bank dated 15 November 2017 said that to the best of his recollection he provided "one single copy" to Matthew Hurn. That would suggest a hard paper copy. Mr Bolelyy had hard copies of the Disputed Document with him when he went to Abu Dhabi so that if he had met Mr Hurn on the visit he could have given him a hard copy. However, that would not have been the specific document reproduced in the Intercept Article. There is no evidence of Mr Bolelyy sending Mr Hurn an electronic version of the Disputed Document.

416. Mr Rowland in his draft narrative provided by email dated 13 November 2017 also records Mr Bolelyy telling him that he provided a copy of the Disputed Document to Matthew Hurn. In his handwritten statement to the Bank dated 25 November 2017, Mr Rowland also states that he was made aware that Mr Bolelyy "may have given it to a junior employee at Mubadala" which must be intended as a reference to Mr Hurn.

417. Strangely, there was no evidence before us as to what happened with the Disputed Document after the Abu Dhabi trip and prior to the Indian Article and Mr Grim's enquiries on 12 October 2017. We cannot see that this was addressed in the evidence of any witness, either in chief or in cross-examination.

418. In cross-examination of Mr Bolelyy it was put that he shared an electronic version of the Disputed Document with someone at Mubadala. The Authority relied on the fact that Mr Bolelyy had sent a copy of v12 to his personal Gmail account on the evening of 18 September 2017. In our view there is nothing suspicious in Mr Bolelyy doing so. He explained that he forwarded the Disputed Document so that he would have access to it if he was offline from the Bank's systems. Mr Bolelyy also told the Authority's RDC that he had previously sent documents to his Gmail account in May in relation to AGTB, so this was not unconventional.

419. There is no evidence before us as to Mr Bolelyy's use of his Gmail account and it would be speculative of us to find that he used that account to communicate an electronic copy of the Disputed Document via that account. Equally, we do not know how the Intercept came to have a copy of v12 of the Disputed Document. Mr David Rowland suggests that his phone and/or email account had been hacked by Qatari agents. It would be equally speculative of us to make such a finding. Looking at the evidence as a whole, we cannot say how the Intercept came to have an electronic copy of the Disputed Document.

420. Mr Rowland and Mr Bolelyy both contend that Mr Hurn was not in fact in Abu Dhabi at the time of their trip but was either in or en route to Brazil. In support of that fact we were referred to an email dated 19 September 2017 in which Simon Clark, who was working on the AGTB project, told Mr Hurn: "We're over next week and hoped we would be able to meet up with you and your team to run through our revised financial forecasts". Mr Hurn responds to say, "I will be in Rio next week at our Brazilian office though keen to work collectively on the financial outputs…".

421. There are subsequent emails arranging Mr Clark's meeting with Mr Hurn following the Abu Dhabi trip but there is no suggestion that he had been in Abu Dhabi to meet anyone during Mr Rowland's trip to Abu Dhabi.

422. The evidence that any version of the Disputed Document was shared with anyone at Mubadala is unclear. Based on the evidence before us we are not satisfied that the Disputed Document was shared with or disseminated to anyone at Mubadala as alleged by the Authority. For reasons which appear in the next section we are satisfied that Mr Rowland had intended to share the Disputed Document with Mubadala.

423. In any event, we consider that it would be procedurally unfair for us to make a finding that the Disputed Document was communicated to anyone at Mubadala. The Authority did not plead in their statement of case the identity of the Mubadala representative said to have been provided with a copy of the Disputed Document. In the Annex to the Warning Notices the Authority explicitly accepted that Mr Hurn was not provided with a hard copy of the Disputed Document. In the Decision Notices the Authority stated that it considered it likely that Mr Bolelyy provided a copy to a representative of Mubadala but not to Mr Hurn. The allegation that it was Mr Hurn who received the Disputed Document only re-surfaced in the Authority's skeleton argument.

424. We are satisfied that it would be prejudicial to the Applicants to permit the Authority to rely on an allegation that the Disputed Document was given to Mr Hurn or Mr Al Mubarak. Since receiving the Authority's skeleton argument, Mr Rowland's advisers have been trying to obtain evidence as to the whereabouts of Mr Hurn and Mr Al Mubarak at the time of the Abu Dhabi trip. They were able to find evidence that Mr Al Mubarak was in Manchester on Saturday 23 September 2017. There is also a suggestion that photographic evidence was at one stage available to show that Mr Hurn was in Brazil. Further, the Authority did not seek to interview or obtain evidence from Mr Al Mubarak or Mr Hurn. If the Applicants had known how the Authority intended to put its case on dissemination then further relevant evidence may have been available to them.

4.12 Purpose of the Disputed Document

425. The Authority says that the Disputed Document was a means of marketing the Bank. Not in the sense of a conventional marketing campaign but in the sense of portraying the Bank to Mubadala as an institution that the UAE and businesses in the UAE could trust. Signalling that it would go to significant lengths, including countenancing improper market manipulation, to advance the interests of the UAE and its allies. It is said that Mr Rowland would not have tasked Mr Bolelyy with producing the Disputed Document without any expectation of future commercial benefit.

426. Mr Rowland submits that the Disputed Document described a wholly impracticable strategy and the Authority does not suggest otherwise. That is confirmed by the Intercept Article which described the strategy as "far fetched" and put together by "someone with little or no experience trading in credit and currency markets". It is also consistent with Mr Weller's description of the strategy as "a bit of a joke". It is said that the idea Mr Rowland would use it as a marketing tool is "nonsensical".

427. We are satisfied that Mr Rowland considered that there would be a future commercial benefit. That benefit would accrue for both the Bank and other Rowland Family interests in the Middle East such as AGTB. We are satisfied that Mr Rowland viewed the interests of the Bank and the Rowland Family as indistinguishable. The description of the Bank on its website highlights that fact along with the position of Mr David Rowland as the Bank's Honorary President. This is in the context of the Bank intending to develop its activities in the UAE, reflected by the appointment of Mr Tricks as a consultant to the Bank for that purpose. He was to provide specific assistance in terms of "strategic marketing" and "local networking". Mr Rowland forwarded the Disputed Document to Mr Tricks at the same time as to his father.

428. It is notable that in a telephone conversation between Mr Rowland and his father on 12 October 2017, Mr Rowland suggested to his father that they could use the publicity "as a badge of honour when we go and see them next time". On 19 October 2017 Mr Rowland agreed with his father that "we can capitalise on this", namely on being publicly associated with the interests of the UAE.

429. It is said that the strategy in the Disputed Document was wholly unworkable and given its reliance on improper market manipulation it was in reality an "anti-marketing" document. In our view that misses the point. The fact that Mr Rowland might have made an error of judgment in assessing the credibility of the strategy does not detract from his purpose of impressing Mubadala in the lengths he would go to in support of their aim of putting pressure on the Qatari economy. That is no reflection on Mubadala. There is no suggestion that Mubadala either encouraged or countenanced the strategy set out in the Disputed Document.

430. Mr Bolelyy had been tasked by Mr Rowland to produce the Disputed Document on the basis set out above. In doing so, and with encouragement from Mr Rowland, he engaged the assistance of Mr Weller and Mr Henry. It is clear that Mr Rowland regarded this as a serious task which was being undertaken for commercial benefit. The fact it did not expressly identify the Bank is of little significance. It did not identify any party as making the presentation. It was Mr Rowland who was intending to present the strategy and he was a director of the Bank.

431. Mr Bolelyy says that as of 18 September 2017 he did not know whether Mr Rowland intended to distribute the document to Mubadala. That is why he asked in his email what materials "if any" Mr Rowland wanted printed for the trip to Abu Dhabi. He attaches particular importance to those words and says that they are consistent with his understanding that the Disputed Document was for consideration by Mr Rowland and the Rowland Family. We do not accept that evidence. We are satisfied that Mr Bolelyy did know that the Disputed Document was intended to form the basis of a presentation to Mubadala, although we accept he may have understood that it was to be discussed with members of the Rowland Family beforehand. That is why Mr Bolelyy believed that he might have provided a copy of the Disputed Document to Mr Hurn.

4.13 Publication of the Disputed Document

432. It is not in dispute that the document published by the Intercept was v12 of the Disputed Document. Mr Grim's enquiries began on the same day that the Indian Article was published. It is also likely and we find that the Indian Article was based on the same document.

433. The Intercept Article itself states that the Disputed Document was found in the email inbox of the UAE Ambassador to the United States. We do not consider that to be reliable evidence. The evidence of Mr Rowland and Mr David Rowland is that they met the Ambassador at the Abu Dhabi Grand Prix a year or two later and he confirmed to them that he never received the Disputed Document. There is also an undated letter from the Ambassador's legal counsel, likely to be some time in 2021, stating that the Ambassador did not receive the Disputed Document.

434. Mr David Rowland in his evidence sets out his belief that his phone was hacked by the State of Qatar and that Qatar had an interest in damaging those perceived to be associated with the UAE, such as himself. Mr David Rowland was also critical that the Authority did not make any attempt to investigate how the Disputed Document came to be leaked.

435. We cannot say on the evidence before us how the Disputed Document came to be in the hands of the Business Standard or the Intercept.

4.14 Mr Rowland's knowledge of the contents of the Disputed Document

436. Mr Rowland's evidence was that he had no knowledge as to the contents of the Disputed Document prior to publication of the Intercept Article on 9 November 2017. The reasons he gave for not reading any version of the Disputed Document were that he did not consider the task to be important or interesting. That was why he did not comment on any of the drafts. In contrast, in relation to AGTB he commented on draft documents in minute detail. Indeed, Mr Weller accepted that Mr Rowland wanted any documents intended for distribution or marketing to be as perfect and professional as possible.

437. Mr Rowland also said that he was very busy with other things, including the resignation of Mr Selwyn and his divorce and custody proceedings. He believed it was a straightforward and uncontroversial hedging document and intended to read it at some stage prior to the scheduled meeting with Mr Al Mubarak in Abu Dhabi. In the event, the meeting did not take place.

438. Mr Rowland said that he sent the Disputed Document to his father and Mr Tricks, unread, in order to ensure that they were kept in the loop. He did not want his father to be taken by surprise if Mr Al Mubarak's request was discussed at their meeting in Abu Dhabi.

439. Mr Rowland also said that if he had known about the contents and been aware that there was substance in the Indian Article and Mr Grim's enquiries, he would have had a very different discussion with his father in his telephone calls on 12 October 2017 and subsequently. He would have raised and debated the content with his father in those calls including the PR implications. He would not have misrepresented to his father what was in the Disputed Document. In fact, he says that he made a lazy assumption as to what the Disputed Document contained and that journalists were seeking to exaggerate, distort and sensationalise a story. This is consistent with Mr Rowland's deep distrust of journalists having grown up with press intrusion. He did not read the Indian Article for the same reasons, where tweets in connection with that article wrongly referred to his father as being an ex-MP. When he was approached by Mr Grim, he was not concerned about an illegal and manipulative trading strategy being traced back to the Rowland Family. That was because he had not read the Disputed Document. He was principally concerned that he or his father had been the subject of a hack.

440. It is clear to us that Mr Rowland's evidence as to when he first became aware of the contents of the Disputed Document is untrue.

441. Mr Rowland wanted the Disputed Document in advance of his trip to Abu Dhabi. In all the circumstances, we regard it as inherently unlikely that Mr Rowland would not have reviewed the Disputed Document prior to that trip, and prior to sending copies of it to Mr Tricks and his father.

442. Mr Bolelyy sent v5 of the Disputed Document to Mr Rowland on 14 September 2017 with an invitation "for all of us to sit down and nail down the basic skeleton". Mr Bolelyy was clearly not under the impression that Mr Rowland was not interested in the Disputed Document, or that he was too busy to consider it.

443. Mr Bolelyy provided Mr Rowland with a hard copy of the final version of the Disputed Document for his review on 18 September 2017. Mr Rowland says that it was left on his desk by Mr Bolelyy. That is not consistent with Mr Rowland being uninterested or too busy to consider it. It is unlikely that he did not read or review the hard copy and would have left it to be disposed of in line with the Bank's clear desk policy, which was his evidence.

444. Mr Rowland asked Mr Bolelyy to print two copies of the "Qatar presentation" for the trip to Abu Dhabi. He evidently knew that the Disputed Document was in the form of a presentation rather than a research note. When asked what documents he wanted printed off, he was

immediately able to identify the "Qatar report". We are satisfied that he knew it was in a form ready to send to Mr Tricks and his father and to bring with him because he had looked at it.

445. Mr Rowland immediately forwarded the electronic version to his father and Mr Tricks without comment save for the email heading "Private and Confidential". We do not accept his explanation that he did this because he was concerned that his father might reprimand him if he failed to follow up on the request by Mubadala. It is likely that he could forward it so quickly because he was aware of its contents, having been provided with a hard copy earlier that day. It is unlikely he would send his father and Mr Tricks a document which had been prepared by Mr Bolelyy and which he had not reviewed.

446. This was a document which even on Mr Rowland's case had been produced for the purposes of Mubadala and he was about to embark on a trip to Abu Dhabi to meet with representatives of Mubadala, including Mr Al Mubarak. Indeed, later that day he specifically requested and was sent an electronic version of the Disputed Document. The emails of 18 September 2017 show that the Disputed Document was at the forefront of his mind.

447. A link to the Indian Article published on 12 October 2017 was sent to Mr Rowland by Mr Weller on 12 October 2017. Mr Rowland replied minutes later saying, "made me laugh". Later that day Mr Weller sent another email to Mr Rowland saying "Trending on Qatari Twitter as I type" with a screen shot of a tweet. Mr Rowland's evidence was that he did not recall reading the Indian Article. Mr Rowland had clearly read the Indian Article in order to reply in the way he did to Mr Weller. He must have realised or at least suspected that the Disputed Document was possibly the source of the Indian Article and if he was unaware of its contents by then he would certainly have read the Disputed Document at that stage to check what it contained.

448. When Mr Rowland spoke to his father later that day they first discussed an unrelated topic concerning finance leases. Mr David Rowland then raised the subject of the Indian Article, asking Mr Rowland how he thought it got there. Mr Rowland said that the source of the Indian Article was "probably a leak from their office". By this we are satisfied that he meant a leak of the contents of the Disputed Document given his understanding that a copy had been provided to Mr Hurn. He recorded that understanding in his handwritten statement dated 25 November 2017. It was not simply a leak of Mr Al Mubarak's request during their conversation at the August Meeting because the strategy outlined in the Indian Article went further than the request. To know this, he would have to be aware of the contents of the Disputed Document.

449. Mr Rowland's evidence was that he linked the Intercept enquiries of Mr Grim to the Disputed Document. He was clearly right to make that link. Indeed, when Mr Grim subsequently emailed on 18 October 2017 he identified Mr Bolelyy as having been involved in producing the Disputed Document. It is unlikely in the extreme that Mr Rowland would have given instructions to Mr Kozlov as to how to deal with enquiries from the Intercept without having read the Disputed Document. Further, he must have known that the Disputed Document referred to CDS because he referenced them in his proposed response to Mr Grim.

450. Mr Rowland's subsequent conversations with his father on 13, 18 and 19 October 2017 clearly indicate that Mr Rowland had read the Disputed Document. He says: "… if you look at the two things they've got, there's nothing wrong with the two things …"; "the attachments, that's all they have"; and "… if you look at the presentation that's all it says". These were references to the Disputed Document and a document in connection with AGTB. Mr Rowland would not invite his father to look at the Disputed Document or make observations as to whether there was anything wrong with it without having first read it himself.

451. Mr Grim emailed Mr Kozolov on 18 October 2017 with a detailed list of questions about the strategy in the Disputed Document. These were forwarded to Mr Rowland in email chains by Harley Rowland and Margaret Morrow (twice) that night.

452. In the call with his father on 19 October 2017, Mr Rowland refers to a hedging strategy to protect a $15bn investment and says: "if you look at the presentation that's all it says". The Authority says that Mr Rowland must have got this figure from v5 of the Disputed Document which was sent to him on 14 September 2017. We do not accept that is the case. It could have come from Mr Al Mubarak at the August Meeting. In isolation, Mr Rowland's reference to a hedging strategy tends to suggest that Mr Rowland believed that the Disputed Document simply referred to a hedging strategy. Mr Rowland says that if he had known about the content of the Disputed Document he would have clearly identified its illegal and abusive aspects and the concerning PR implications for the Rowland Family and the Bank. He would not have told his father that there was nothing wrong with the Disputed Document. However, we consider that Mr Rowland was at this stage desperately trying to convince himself and his father that there was nothing improper about the Disputed Document in much the same way as he later sought to downplay the implications of the Intercept Article in his discussion with Mr Lang.

453. Mr Rowland's own evidence was that when Mr Bolelyy resigned on 9 November 2017 he was told that Mr Weller had given Mr Bolelyy the information contained in the document. However, at no stage thereafter did Mr Rowland take Mr Weller to task as to his involvement. Indeed, on the same day but after Mr Bolelyy's resignation Mr Weller emailed Mr Rowland following a request by Al Jazeera for information. Mr Rowland's response was just "ignore". Also, on 14 November 2017 Mr Rowland messaged Mr Weller to suggest "relax beers" and "All is good by the way. Sorted. So relax". We are satisfied that is because he had been aware of the content of the Disputed Document during the course of its drafting and that Mr Weller had contributed to the content.

454. We are satisfied that Mr Rowland has sought to mislead us in his evidence that he was not aware of the contents of the Disputed Document until after the Intercept Article was published. He did this because he realised, from a very early stage, that if he was aware of the contents prior to publication he should have stopped work on the document and reported it internally.

455. Mr Rowland's evidence was that he had many other things going on at the time, including his divorce and custody proceedings. As a result, he did not read the Disputed Document but just assumed that it contained the hedging strategy he says he had asked Mr Bolelyy to research. He also said that he did not read Mr Grim's questions in the emails sent to him on 18 October 2017 because he had many things going on and this was not a priority. We are not satisfied that pressure on Mr Rowland from other matters would explain his claimed failure to look at the Disputed Document at any time between 14 September 2017 and 9 November 2017. The same applies to his asserted failure to consider Mr Grim's detailed questions. It is not credible that following the Indian Article and Mr Grim's enquiries he would make a "lazy assumption" about the contents of the Disputed Document without looking at it.

456. In the light of all the evidence we are satisfied that Mr Rowland was aware of the content of the Disputed Document because he had read drafts of the Disputed Document well before the Intercept Article was published. He was also aware of its likely content from the discussions which took place at the First September Meeting.

Events following publication

457. The Authority contends that following publication of the Intercept Article Mr Rowland embarked on a cover-up. In particular, he agreed with Mr Bolelyy that they would falsely portray the Disputed Document as having nothing to do with the Bank. They also agreed to

conceal Mr Rowland's involvement in giving instructions for the Disputed Document and would say that Mr Rowland had simply tasked Mr Bolelyy with providing some notes on a macro-economic hedging strategy and that Mr Bolelyy had no outside help.

458. In our view there is clear and compelling evidence of such a cover-up which we deal with in our chronological consideration of events following publication.

459. The context for this cover-up goes back to 13 October 2017. On that date Mr Rowland sought to convince his father that there was nothing wrong with the Disputed Document and gave instructions to Mr Kozlov to try and distance the Bank from the Disputed Document. On 18 October 2017 he again sought to convince his father that the Intercept did not have a story.

460. On 19 October 2017, Mr Rowland first set out his false narrative in a call to his father. He suggested that the Disputed Document was "the product of a simple request for hedging strategies" and that "the Bank was not involved in anything". We emphasise that there was no reason why Mr David Rowland should have known that this was a false narrative because he had not read the Disputed Document.

461. Mr Rowland persuaded Mr Bolelyy to adopt that false narrative. Mr Bolelyy resigned on 9 November 2017 and thereafter took sole responsibility for producing the Disputed Document. Mr Bolelyy lied to the Bank, the CSSF and the Authority about the involvement of Mr Weller and Mr Henry. To his credit, Mr Bolelyy admitted doing so in his oral evidence to us. We are also satisfied for reasons which follow that he lied more generally about the involvement of Mr Rowland and about the circumstances in which the Disputed Document came into existence. The existence of a cover-up is also indicated in Mr Rowland's response to Mr Lang in their telephone call on 9 November 2017. Mr Lang said that he wanted Mr Bolelyy out. Mr Rowland said "we've already dealt with that". The implication was that Mr Rowland had some involvement in Mr Bolelyy's departure rather than Mr Bolelyy having voluntarily resigned. We are satisfied that in Mr Rowland's mind, dealing with Mr Bolelyy meant persuading him to adopt a false narrative.

462. It was said on Mr Bolelyy's behalf that we should not see these lies as being inconsistent with integrity. They were said to show a degree of selflessness and courage in taking upon himself the consequences of someone else's conduct. We should recognise that Mr Bolelyy was professionally and personally immature in the period 2017 to 2019 which led to his attempted cover-up. We do not accept those submissions.

463. On 15 November 2017, the Bank informed Mr Bolelyy that it was carrying out a full investigation in relation to the Disputed Document and he was asked to provide clear and exhaustive answers to six specific questions. Mr Bolelyy answered those questions as described above. His answers were untruthful:

(1) When asked whether anyone else in the Bank was involved or informed or instructions given to him he stated that no-one at the Bank had assisted in preparing the Disputed Document. In fact, he had he been assisted by Mr Weller and Mr Henry. Further, his response that Mr Rowland had asked him "to do a short non-bank macro hedging note on UAE exposures to Qatar" was also untrue. In describing his instructions in that way he was seeking to distance Mr Rowland and the Bank from the Disputed Document.

(2) He stated that no other related documents existed when he was aware that the SFNH document existed. Initially in oral evidence Mr Bolelyy suggested that he must have misread the question but then accepted that when he answered the question he did not want to reveal Mr Weller's involvement.

464. Mr Bolelyy's Statement of Honour for the CSSF dated 1 March 2018 also contained untruths:

(1) He stated that the document was solely designed for internal purposes and never intended to be shared externally. In oral evidence he contended that as far as he was aware the end audience was "the Rowland family". However, he was aware that Mr Rowland was intending to share the document with Mubadala. That was why he required it for the Abu Dhabi trip and why he mistakenly thought that he had provided a copy to Mr Hurn. He was also aware that the Disputed Document was being produced following a request from Mubadala.

(2) He described the Disputed Document as a "research note" rather than a presentation in order to wrongly imply that it was solely for internal purposes.

(3) He stated that he had not shared or discussed the Disputed Document with any third party, knowing that he had shared it with Mr Rowland and discussed it with Mr Rowland, Mr Weller and Mr Henry.

(4) He stated that Mr Rowland showed no interest in reviewing or commenting on the Disputed Document. That was not the case. We are satisfied that Mr Bolelyy was well aware at this time that Mr Rowland was intending to review it. We do not accept his evidence that he had forgotten he had provided copies for Mr Rowland to review.

(5) He stated that it appeared to him that due to staff changes at the Bank, Mr Rowland's mind was pre-occupied with other, more pertinent matters. Again, we do not accept that evidence. He was deliberately seeking to distance Mr Rowland from the Disputed Document.

(6) He stated that the intent of the "research note" was purely speculative and never intended to hurt the economic interests of Qatar. We are satisfied that Mr Bolelyy knew full well that the strategy in the Disputed Document was intended to hurt the economic interests of Qatar.

465. The matters covered by the Statement of Honour were in Mr Bolelyy's direct knowledge and had occurred in the recent past. We are satisfied that Mr Bolelyy was misguidedly, but deliberately, seeking to mislead the CSSF. He did so in order to protect Mr Rowland, the Bank and his colleagues.

466. Mr Weller's evidence was that Mr Rowland told him that Mr Bolelyy had been offered a job for life. We make no finding as to whether an offer was made in those terms but we are satisfied that Mr Bolelyy had been persuaded to distance Mr Rowland from the Disputed Document. It is likely that Mr Bolelyy was offered a job in Liwathon, but in the event he decided to pursue legal studies.

467. Mr Bolelyy also lied in his two interviews with the Authority. He accepted in cross-examination that he lied to the Authority when he said in both interviews that he was the primary source of the content in the FIFA slide. We are satisfied that he did so at least partly to prevent Mr Henry from being dragged into the proceedings. He had decided to take full responsibility for the Disputed Document. We are also satisfied that he lied about the instructions he received from Mr Rowland and about Mr Rowland's involvement with the Disputed Document.

468. During the course of his oral evidence Mr Bolelyy seemed to back track from his admission about the FIFA slide, suggesting that it was only later that he realised Mr Henry had prepared the FIFA slide. The position was clarified in re-examination where Mr Bolelyy again clearly acknowledged that he had lied about Mr Henry's involvement in the FIFA slide.

469. The Authority allege that both Mr Rowland and Mr Bolelyy deleted data from their mobile phones in order to frustrate any investigation into circumstances surrounding the Disputed Document. In making that allegation the Authority relies on investigations carried out by PwC as part of Project Gulf.

470. Mr Rowland and Mr Bolelyy gave up their mobile phones to PwC on 1 December 2017 and 20 November 2017 respectively. PwC were able to analyse the dates of events which had been created or deleted from the phones. An event for these purposes is some sort of action performed on a specific application that is recorded by the device. It includes amongst other things calendar entries, calls, web search history and forms of messages.

471. Mr Rowland's phone showed that a large number of events dated in November 2017 were deleted prior to the phone being delivered up. Some 13,300 events from November were deleted. The previous highest month in 2017 for deleted events was April 2017 for which some 1,900 events had been deleted. 48% of the November events which were deleted were web history and web searches.

472. There is no evidence from PwC to explain their findings, or any explanation as to what events might be generated automatically by an electronic device or deleted automatically. PwC do not explain how events came to be deleted on Mr Bolelyy's iPhone after it was surrendered to the Bank. It is also fair to say that the deletion of events relating to November 2017 does not suggest that Mr Rowland was trying to cover his tracks in August and September 2017.

473. Mr Rowland says that he was not instructed by the Bank not to delete items from his phone. We have seen evidence that other individuals were told not to delete items, including Mr Bolelyy. However, there is no evidence that Mr Rowland was given such an instruction.

474. Mr Rowland's evidence was that he deleted nothing relevant to the investigation. What he deleted was items relating to his divorce, the custody battle for his son and personal photos. He also said that he did not delete any WhatsApp conversations from his phone. This is consistent with the Project Gulf Report which found that Mr Rowland had not deleted the App from his phone but some conversations could not be found, possibly because another device had been used.

475. PwC did manage to recover one item that was deleted by Mr Rowland. It was a note made by Mr Rowland on his phone which refers in abbreviated language to various aspects of the production of the Disputed Document including:

> Reframe the agenda … Macro note hedging No named security No reply back Hubris, embellished Work was not reviewed Took responsibility resigned with immediate effect No trades have ever been done, attempted to be done … can trade instruments we do not know what they our, in an entity that does not exist, with assets we Do not they have, by entities we do not know … No meetings, discussion, face to face or electronic has ever occurred on the matter, and it was never mentioned again We where never to be involved as bank, company or individuals in any way M is a large swf had just committed 75 million to new bank short macro hedging note.

476. This was an undated note which clearly related to the Disputed Document and set out in shorthand what was or became Mr Rowland's case in relation to the Disputed Document. Mr Rowland's evidence was that he prepared it as a speaking note for an ExCo meeting and it was his practice to delete such speaking notes after he had made a presentation.

477. We cannot take Mr Rowland's evidence on the issue of deleted data at face value. However, the Authority has adduced no first hand evidence as to what was deleted from his mobile phone and it has not called anyone from PwC to explain their findings.

478. Mr Bolelyy's phone showed that a large number of events dated in October 2017 were deleted prior to his phone being delivered up. Some 1,480 events from October and 353 events

from November were deleted. The previous highest month in 2017 for deleted events was February for which some 95 events had been deleted. The only events on the phone not deleted were phone logs, wireless locations, SMS and MMS messages from a service provider and some calendar events.

479. The Project Gulf Report found that Mr Bolelyy used WhatsApp until 15 November 2017 but that the App was then deleted from his phone.

480. Mr Bolelyy's evidence as to why so many October and November events were deleted was that he had deleted personal data including music from his phone. His phone was not "wiped" as alleged by the Authority. Some 26% of the phone's content remained. It may be that when he logged out of his WhatsApp and email apps that the messages were deleted.

481. It was also put to Mr Bolelyy that he had refused to provide the Project Gulf investigation with a Bitlocker recovery key to enable access to his laptop. However, there is no evidence that he was asked for this.

482. We take into account that both Mr Rowland and Mr Bolelyy appear to have deleted an unusually large number of events from the relevant period. Whilst it might be possible to infer that this was done deliberately, the evidence does not satisfy us on the balance of probabilities that they deliberately destroyed relevant evidence.

483. There are a number of other matters relevant to the alleged cover-up. The documentary statements provided by Mr Rowland and Mr Bolelyy are at least suggestive of a co-ordinated response.

484. Following the Intercept Article, Mr Rowland and Mr Bolelyy gave accounts which described the instructions given by Mr Rowland to Mr Bolelyy as being for a "macro-hedging note" in strikingly similar terms. Mr Rowland described it in his timeline dated 13 November 2017 as a "non-bank presentation, on macro hedging". In his statement to the Bank dated 15 November 2017, Mr Bolelyy described it as a "non-bank macro hedging note". In his email to the Board dated 15 November 2017, Mr Rowland quoted Mr Bolelyy at his resignation meeting as describing it as a "macro note on hedging". We have already found that this was not the request made by Mr Al Mubarak or the instructions given by Mr Rowland to Mr Bolelyy.

485. Mr Rowland and Mr Bolelyy both stated that no-one assisted in producing the Disputed Documents. In the case of Mr Rowland, his 13 November 2017 timeline of events stated that Mr Bolelyy produced the Disputed Document by himself and he talked to no other parties. They both knew this to be untrue.

486. Mr Rowland maintained in his statement of honour that he had not reviewed the Disputed Document because more pressing matters demanded his attention. Mr Bolelyy stated in his statement of honour that Mr Rowland showed no interest in reviewing the Disputed Document and that it appeared Mr Rowland's mind was preoccupied with other more pertinent matters.

487. Mr Rowland stated in his handwritten statement dated 25 November 2017 that he had been made aware that Mr Bolelyy may have given it to a junior employee at Mubadala. Mr Bolelyy said in his statement to the Bank dated 15 November 2017 that to the best of his knowledge he provided a copy to Mr Hurn, a mid-level executive at Mubadala. Mr Rowland did not suggest in his statement that this would have been without his authority.

488. We also take into account Mr Unwin's evidence, which we accept, as to a conversation he had with Mr Rowland in the weeks following the Intercept Article. He went out for a coffee with Mr Rowland and as he got back to his desk Mr Rowland said words to the effect that if anyone should ask Mr Unwin, he should say it was all Mr Bolelyy's idea. Mr Unwin did not respond but just sat down. In his interview with the Authority, Mr Unwin's account of this

conversation was that Mr Rowland said that if there is an internal investigation he should say it was all Mr Bolelyy's idea.

489. Mr Rowland denies that this conversation took place and submits that Mr Unwin's evidence is unreliable. He points to the fact that in his interview Mr Unwin had said that this likely happened after Mr Weller had been suspended, which was on 18 December 2017. The Bank's investigation was already underway by then, having commenced on 13 November 2017. It is also the case that Mr Unwin did not mention this alleged conversation in his Project Gulf interview on 7 February 2018. Mr Rowland also says that there could not have been a plan for Mr Bolelyy to take the blame at that stage because Mr Weller had already been suspended.

490. Mr Unwin's evidence was that he could not recall when exactly he learned that there would be an investigation. He said that whilst he might forget the dates, times and chronology of events, he was sure the conversation took place. We agree that a conversation such as that is memorable and we are satisfied that Mr Unwin's evidence as to the gist of the conversation is reliable, if not the chronology. We are satisfied that Mr Rowland did encourage Mr Unwin to say that it was all Mr Bolelyy's idea.

491. There is also evidence from Mr Weller that at a meeting with Mr Rowland at the Guinea Pub on 23 November 2017 he was told that if he was asked anything he should say that Mr Bolelyy had asked him to look into hedging strategies for the Qatari Riyal and make clear that Mr Rowland had nothing to do with it. It is said that Mr Rowland also told him that Mr Bolelyy had been given a "job for life" for accepting responsibility for the Disputed Document. The meeting had been arranged by Aurelian Rowland, another son of Mr David Rowland who worked in the UK Branch as a private banker.

492. Mr Rowland denies that this meeting took place or that he said these things to Mr Weller.

493. Given our caution about the evidence of Mr Weller and Mr Rowland we have not given any weight to Mr Weller's evidence as to this meeting.

494. It is common ground that there was a meeting between Mr Rowland and Mr Weller at the Guinea pub on 18 December 2017. Mr Weller had not previously told anyone about the SFNH Document. Mr Weller says that he suggested the Rowland Family might set up an asset management business and Mr Rowland asked him about his salary. Mr Weller told him that he was on £200,000 pa. Mr Rowland says that this would have been an odd conversation when Mr Weller knew that he had created the SFNH Document, he had just been suspended by the Bank and he knew of the illegality in the Disputed Document. Mr Rowland recalls that Mr Weller threatened to "blame anyone he could" for the Disputed Document unless he was paid £200,000. For Mr Weller to be asking for a reward would not make sense unless he was blackmailing Mr Rowland. Mr Rowland points to the fact that it was immediately after this meeting that Mr Weller carried out his threat and spoke with Mr Hiltunen, telling him about a meeting on 23 November 2017, and that Mr Rowland asked him to lie about responsibility for the Disputed Document.

495. Essentially, this is Mr Rowland's word against Mr Weller. We have come to the unfortunate conclusion that it is not beyond Mr Rowland to have made up that account. Nor is it beyond Mr Weller to have sought to "leverage" his position in that way. It is Mr Rowland who makes the assertion against Mr Weller. However, based on the evidence as a whole we cannot be satisfied that Mr Weller did seek to blackmail Mr Rowland.

496. Mr Bolelyy's evidence was that in giving untrue answers to questions from the Bank and the CSSF and in interview with the Authority he wanted to protect other people, to put the whole episode behind him and to get on with his life. That is because he had a young family

and was under a lot of pressure. On 15 November 2017, he had also received the offer of a place on the Graduate Diploma in Law course at the University of Law to begin in January 2018. He was very stressed in his interviews with the Authority and did not consider that he had done anything improper. As a very junior person in a vulnerable position he did not want to get anyone else into trouble.

497. To a large extent we accept what Mr Bolelyy says about his motivation for lying, in particular his wish to protect others and the pressure he was under as a junior employee. However, we are satisfied that Mr Bolelyy did realise that what he had been involved in was improper and he knew so at the time. He took a conscious decision to put forward Mr Rowland's false narrative and knew that was wrong. We are satisfied that he was acting in concert with Mr Rowland to cover up Mr Rowland's involvement with the Disputed Document.

498. Based on the evidence as a whole, we are satisfied that on 9 November 2017 Mr Rowland agreed with Mr Bolelyy that their position would be that Mr Rowland had asked Mr Bolelyy for a macro-economic hedging document, Mr Rowland had not reviewed it, it was nothing to do with the Bank and that no other bank employees had been involved. They both knew that this was a false narrative. At the same time Mr Bolelyy was offered a job in Liwathon, but in the event he decided to pursue his legal studies.

5.1 THE CASE AGAINST THE BANK

499. The issues raised in the Bank's reference are summarised above. We consider those issues under the following headings:

(1) Did the Disputed Document form part of the Bank's "business" for the purposes of Principle 1?

(2) Is the conduct of Mr Rowland and/or Mr Weller attributable to the Bank for the purposes of Principle 1?

(3) Did that conduct amount to the carrying on of regulated activities or ancillary activities in relation to designated investment business within PRIN 3.2.1A?

(4) Has the Authority established that the Bank failed to conduct its business with integrity?

(5) What penalty is appropriate?

500. If the Bank succeeds in its case on issues (1) to (4) above, it still acknowledges that it should face a penalty for admitted breaches of Principles 2 or 3. In that case it contends that public censure pursuant to section 205 FSMA may be sufficient. Alternatively, based on the Authority's policy in relation to penalties the Bank contends that a penalty of £241,087 would be appropriate.

501. If the Authority succeeds on its case on issues (1) to (4) above, the Bank contends that a penalty of £574,018 would be appropriate.

Bank Business

502. There are issues between the Bank and the Authority as to the test to be applied in determining whether an activity or conduct is the Bank's business, and whether applying that test the activities and conduct of Mr Rowland and/or Mr Weller amount to bank business. The Bank submits that this is all essentially a matter of fact. The Authority submits that it is necessary to identify what as a matter of law amounts to a firm's business for the purposes of Principle 1 and then to apply that test to the facts.

The legal test

503. It is common ground that we must interpret Principle 1 in the light of its purpose. Principle 1 is a fundamental obligation on firms under the regulatory system. Its purpose is to protect and enhance the integrity of the UK financial system.

504. The Authority's case as to what amounts to a firm's business for the purposes of Principle 1 is that it includes two elements:

(1) Any conduct of the firm's employees acting in the course of their employment, and

(2) Any acts carried out on behalf of the firm by individuals with actual or ostensible authority to act on its behalf.

505. The Authority accepts that this is limited for present purposes by the requirement in PRIN 3.2.1A that Principle 1 only applies with respect to the carrying on of regulated activities or ancillary activities in relation to designated investment business.

506. The Authority also submits that whether or not conduct falls within elements (1) or (2) above, it is still necessary to stand back and consider whether, taking into account the statutory objective, the conduct should nevertheless be characterised as part of the firm's business.

507. The Bank's case is that what amounts to a firm's business is essentially a question of fact. The Bank invited us to have regard to the test which is applied to establish criminal liability of a company. This requires consideration of whether the actions of an officer of the company were "within the scope of their office".

508. The Authority submits that this approach to a firm's business is subjective and highly uncertain and would impair the efficacy of Principle 1. The Authority's case is that element (1) is to be informed and guided by the common law on vicarious liability of employers in tort. Element (2) is informed and guided by the common law of agency. There should be a structured approach. First, consider the functions and fields of activity in which the employee is actually engaged. Second, ask whether the conduct is sufficiently connected to those authorised activities or whether the employee is acting solely in their own interests or, in the time-honoured phrase, "on a frolic of their own".

509. One of the leading cases on the vicarious liability of an employer is *BXB v Trustees of the Barry Congregation of Jehovah's Witnesses* [2023] UKSC 15. The Supreme Court stated at [58(iii)] that an employer would be vicariously liable where:

> … the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment

510. It may be helpful in this regard to ask in broad terms what "functions" or "field of activities" the employee has been authorised to carry out by the employer. Consideration should then be given to whether there is a sufficient connection between the position in which he was employed and his wrongful conduct. In *Mohamud v Wm Morrison Supermarkets Plc* [2016] UKSC 11 the Court stated at [44] and [45]:

> 44. In the simplest terms, the court has to consider two matters. The first question is what functions or "field of activities" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly; see in particular the passage in Diplock LJ's judgment in *Ilkiw v Samuels* [1963] 1 WLR 991, 1004 included in the citation from *Rose v Plenty* at para 38 above, and cited also in *Lister* by Lord Steyn at para 20, Lord Clyde at para 42, Lord Hobhouse at para 58 and Lord Millett at para 77.

> 45. Secondly, the court must decide whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice which goes back to Holt. To try to measure the closeness of connection, as it were, on a scale of 1 to 10, would be a forlorn exercise and, what is more, it would miss the point. The cases in which the necessary connection has been found for Holt's principle to be applied are cases in which the employee used or misused the position entrusted to him in a way which injured the third party. *Lloyd v Grace, Smith & Co*, *Peterson* and *Lister* were all cases in which the employee misused his position in a way which injured the claimant, and that is the reason why it was just that the employer who selected him and put him in that position should be held responsible. By contrast, in *Warren v Henlys Ltd* any misbehaviour by the petrol pump attendant, qua petrol pump attendant, was past history by the time that he assaulted the claimant. The claimant had in the meantime left the scene, and the context in which the assault occurred was that he had returned with the police officer to pursue a complaint against the attendant.

511. Lord Dyson noted at [50] and [54] that the test is inevitably imprecise given the infinite range of circumstances where the issue of vicarious liability arises. However, at [53] he described the attraction of the close connection test. It is "firmly rooted in justice" and asks whether the employee's tort is so closely connected with their employment so as to make it just to hold the employer liable.

512. In our view this supports the Authority's approach in the present context. We consider that the approach to vicarious liability in tort is a helpful approach in determining whether an activity forms part of a firm's business. We should first ask what was the nature of the employee's role and then ask whether there was sufficient connection between that role and their wrongful conduct to make it right for the firm to be held accountable. In doing so, it is important to stand back and ask whether the objective of Principle 1 requires the activity to be characterised as part of the firm's business.

513. Dishonest conduct may fall within the course of employment where an employee does an act of a type for which he is employed but does so dishonestly. In *Dubai Aluminium Co Ltd v Salaam* [2002] UKHL 48, the question was whether a firm of solicitors was liable for a partner's dishonest assistance in a fraud. Lord Nicholls stated at [30]:

> 30. … Take a case where an employee does an act of a type for which he is employed but, perhaps through a misplaced excess of zeal, he does so dishonestly. He seeks to promote his employer's interests, in the sphere in which he is employed, but using dishonest means. Not surprisingly, the courts have held that in such a case the employer may be liable to the injured third party just as much as in a case where the employee acted negligently. Whether done negligently or dishonestly the wrongful act comprised a wrongful and unauthorised mode of doing an act authorised by the employer …

514. Conduct falling on the other side of the line would typically be a case where the employee is engaged solely in pursuing their own interests. Lord Nicholls addresses this at [32]:

> 32. The limits of this broad principle should be noted. A distinction is to be drawn between cases such as Hamlyn v John Houston & Co [1903] 1 KB 81, where the employee was engaged, however misguidedly, in furthering his employer's business, and cases where the employee is engaged solely in pursuing his own interests: on a "frolic of his own", in the language of the time-honoured catch phrase …

515. If there are mixed motives then that may be sufficient for liability depending on the facts. In *Vertical Leisure Ltd v Poleplus Ltd* [2015] EWHC 841, HHJ Hacon sitting as a High Court Judge stated at [47]:

> 47. The question of which party's interests were being furthered cannot be a binary test – in some cases there may have been a mixed advancement of interests. It seems to me to be consistent with the passage from Kooragang referred to by Lord Nicholls that where, objectively assessed, the

> employee primarily intended to further the interests of the employer, this is sufficient to fix an employer with vicarious liability. (It may be enough if furthering the interests of the employer formed just some significant part of the employee's intention.) I put it that way because I do not understand the ruling of the House of Lords in Dubai Aluminium to require the court to investigate the actual effect of the employee's acts and to assess which party benefitted from them irrespective of intention.

516. The policy rationale for the imposition of vicarious liability for the actions of employees was described in *BXB* at [47]. It is not deterrence but what is known as "enterprise risk". Namely, that an enterprise which takes the benefit of activities carried on by a person integrated into its organisation should also bear the cost of harm wrongfully caused by that person in the course of those activities. In summarising the modern law, the Court stated at [58](iv):

> (iv) … the tests invoke legal principles that in the vast majority of cases can be applied without considering the underlying policy justification for vicarious liability. The tests are a product of the policy behind vicarious liability and in applying the tests there is no need to turn back continually to examine the underlying policy. This is not to deny that in difficult cases, and in line with what Lord Reed said in *Cox,* having applied the tests to reach a provisional outcome on vicarious liability, it can be a useful final check on the justice of the outcome to stand back and consider whether that outcome is consistent with the underlying policy. What precisely the underlying policy is has been hotly debated over many years … [the core idea] appears to be that the employer or quasi-employer, who is taking the benefit of the activities carried on by a person integrated into its organisation, should bear the cost (or, one might say, should bear the risk) of the wrong committed by that person in the course of those activities.

517. In the present context there is certainly a deterrence aspect to Principle 1 which in our view strengthens the argument that vicarious liability in tort is at least a helpful guide in identifying the business of a firm and the extent to which a firm should be accountable in regulatory terms for the actions of its employees. We agree with the Authority that it would be inimical to the proper functioning of relevant markets and the integrity of the UK financial system for firms to take the benefit of their employees' conduct in the course of their employment but escape the regulatory consequences of that conduct. The statutory objectives also support an approach which recognises that where an employee has mixed motives, seeking to further their own interests as well as the interests of their employer, then the firm should be accountable if the intention is to further the firm's interests in some significant way. That is particularly the case where the personal interests and the firm's interests are closely intertwined.

518. It is not clear to us from submissions how the Bank's test, by reference to whether the actions of an officer of the company are within the scope of their office, would differ in practical terms from the test by reference to vicarious liability. In any event, we consider that the test for vicarious liability provides the most helpful guidance as to what amounts to a firm's business. The test for criminal liability does not in our view offer a helpful analogy to the present regulatory context.

519. For these reasons, we consider that the test for vicarious liability in tort provides a useful guide in identifying a firm's business for the purposes of Principle 1. We also agree with the Authority that in an appropriate case, regard might also be had to principles of agency. If an individual is acting within the scope of their actual or ostensible authority then that would indicate that they are carrying out the firm's business. The scope of what amounts to actual authority and ostensible authority was described by Lord Denning MR in *Hely-Hutchinson Brayhead Ltd* [1968] 1 QB 549 at 583A at p583:

> … actual authority may be express or implied. It is *express* when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is *implied* when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.
>
> Ostensible or apparent authority is the authority of an agent as it *appears* to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority.

520. In most cases involving an employee it will be appropriate to consider whether they were acting in the course of their employment in identifying a firm's business. In the case of others, it will be appropriate to consider the scope of their actual or ostensible authority. In the case of directors, it may be appropriate to consider both concepts.

Application of the test

521. We must therefore consider whether Mr Rowland and Mr Weller were acting in the course of their employment in connection with the Disputed Document. In the case of Mr Rowland it is also necessary to consider whether he was acting within the scope of his actual or ostensible authority as a director of the Bank. We are not concerned with the conduct of Mr Bolelyy at this stage because the Authority does not seek to attribute his conduct to the Bank for the purposes of the Bank's alleged breach of Principle 1.

522. The Bank submits that this was not the Bank's business, but the business of an entity other than the Bank. It also submits that this was not in fact business at all. In this context, we can usefully ask in what capacity were Mr Rowland and Mr Weller acting? Was this a Bank task or a Rowland Family task? On whose behalf were they acting? Were they acting on a frolic of their own?

523. We agree with the Bank's submission that what matters is the nature and quality of the actions and the capacity in which those actions were done. In our view these are all useful questions in considering whether Mr Rowland and Mr Weller were acting in the course of their employment. We are satisfied that Mr Rowland was acting to a significant extent as a director and employee of the Bank. Mr Weller was acting exclusively as an employee of the Bank. We have reached a conclusion that this was both a Bank task and a Rowland Family task. Mr Rowland was acting on behalf of the Bank and on behalf of the general interests of the Rowland Family, including the AGTB project. Mr Weller was acting on behalf of the Bank. The intention of Mr Rowland was to benefit the commercial interests of the Bank and the Rowland Family generally. They were not acting on a frolic of their own.

524. We acknowledge that the Disputed Document did not pass through the Bank's approval procedures. In particular there was no analysis by the Bank's centralised Risk and Compliance functions and no approval as a new product by the Board, although it is not clear to us on the evidence how these procedures might have been expected to operate in relation to a document such as the Disputed Document. The Disputed Document had no Bank branding and was created using a AGTB template. It was also stored in a folder on the Bank's systems which was accessible only to Mr Bolelyy and could not be detected by the Bank's internal controls.

525. Mr Rowland was a director of the Bank, a member of ExCo and employed at the Bank's UK Branch. He had no other employment. In the period when he was not the CEO he continued to draw his salary and was involved in the potential acquisition of Falcon Bank, whether by the Bank or for the benefit of the Bank. We have found that Mr Rowland retained executive responsibilities in the UK Branch throughout 2017. The best evidence as to the scope of his employment duties are those set out in his employment contract.

526. We do not consider that Mr Rowland and Mr Weller were acting in breach of their employment contracts. If the strategy outlined in the Disputed Document had been a lawful strategy then presenting such a strategy to Mubadala for the benefit of the Bank would have been fairly and squarely within the terms of their contracts and within the Bank's business.

527. We have also found that Mr Rowland's purpose in putting forward the strategy in the Disputed Document was to benefit the Bank and the Rowland Family's interests in the UAE and the Middle East generally. It could provide commercial benefit for the Bank either in terms of its relationship with AGTB or in relation to its plans to expand its interests in the Middle East. Mr Tricks had been appointed to provide assistance in expanding the undertaking of the Bank in the UAE and broader Middle East with specific assistance in terms of strategic marketing and local networking. We consider that those commercial interests, namely the interests of the Bank and for example the Rowland Family interests in AGTB, were intertwined and Mr Rowland viewed them as indistinguishable. That is why Mr Rowland sent the Disputed Document to Mr Tricks and his father on 18 September 2017. Mr Tricks was the Bank's marketing agent. It was not suggested that anyone else was paying Mr Tricks to look at the document. Mr David Rowland was the Bank's Honorary President and ultimate controller but we acknowledge that Mr Rowland probably sent him a copy of the Disputed Document because it could be relevant to the Rowland Family's other interests.

528. It is notable that the Bank and Mr Rowland have not identified any other specific entity which would have benefitted commercially from the work done on the Disputed Document. In part that reflects the fact that the commercial benefits were in a sense nebulous. The intended commercial benefit Mr Rowland was pursuing was to cement the relationship between Rowland Family interests including the Bank and Mubadala. The Bank was in the business of providing financial advice and only the Bank had the necessary regulatory permissions to do so. That suggests that Mr Rowland and Mr Weller were acting in the course of their employment as Bank employees. Indeed, it is not suggested that Mr Weller might have been acting in any other capacity.

529. Mr Rowland's instructions to Mr Bolelyy were given following Mr Al Mubarak's request for advice. Mr Bolelyy was employed and paid only by the Bank. Preparing such a document fell within the scope of his duties as described in his contract of employment. He worked on the Disputed Document from the Bank's offices and using the Bank's IT equipment in the Bank's time. Mr Bolelyy saved the document in a folder on the Bank's systems, albeit a folder which was accessible only to himself. Mr Rowland's instructions in relation to the Disputed Document were consistent with his role as a director of the Bank and CEO of the UK Branch.

530. We have found that Mr Weller contributed significantly to the Disputed Document. He was employed and paid only by the Bank. He worked on the Disputed Document from the Bank's offices, using the Bank's IT equipment and in the Bank's time. His contribution to the Disputed Document was consistent with his role as Head of Asset Management in the UK Branch.

531. In our view Mr Rowland, Mr Weller and indeed Mr Bolelyy were acting in the course of their employment. Giving or contributing to financial advice in these circumstances fell within the roles and responsibilities as set out in their contracts of employment. Mr Weller and Mr

Bolelyy were doing what their employer, through Mr Rowland, had asked them to do. The fact that they incorporated an unlawful strategy as a response to a lawful request for advice does not in our view take their conduct outside the scope of their employment.

532. The Bank's interests and activities were closely intertwined with those of the Rowland Family. The Bank's website described the Bank as "an integral part of the Family's interests" and as a vehicle to share the Family's business network. An example of this can be found in the confidentiality clauses incorporated into the employment contracts. Indeed, it is because the Bank's interests and the interests of the Rowland Family were so closely intertwined that there is any question as to whether the activities of Mr Rowland and Mr Weller were part of the Bank's business.

533. It is true that Mr Rowland and on his behalf Mr Bolelyy occasionally undertook non-Bank tasks on Bank premises using Bank facilities. Mr Weller in his evidence described this as a "Rowland project rather than a Bank project". In his words it was a "fantasy idea on the part of Mr Rowland (as distinct from the Bank)". He "did not think it was related to Banque Havilland … I thought it was more of a side project". This may well have been Mr Weller's understanding of the task, but he had no direct knowledge of the circumstances in which the request for advice was made by Mr Al Mubarak or of how Mr Rowland intended to use the Disputed Document. He also said that he did not consider it was a document that was "going outside to anywhere". We do not accept that evidence. He was aware that Mr Rowland was talking about Qatar's neighbours wanting to put pressure on the Qatari Riyal. He was aware that the Rowland Family had interests in the Middle East, including the potential acquisition of Falcon Bank. On his evidence, he thought that Qatar's neighbours were not concerned about losses to their $23bn Qatari assets. This was clearly a strategy that would have to go outside the Bank if it was implemented and was for the benefit of third parties. We have already found that it was treated as a serious task by all concerned.

534. Mr Unwin confirmed the account he gave in his Project Gulf interview that "it was not a [Bank] project, it was a family operation and therefore I did not participate in it". His oral evidence was that he didn't think it was necessarily on behalf of the Bank and he described it as a "side project" of Mr Rowland. Again, this might have been Mr Unwin's perception but he was not aware of the circumstances.

535. Mr Hiltunen also expressed a view in his evidence that this was not Bank business. Similarly, Mr Selwyn stated in his interview with the Authority that "this has got nothing to do with the Bank. The Bank employees were not involved in producing something like this, as far as I'm aware". He also said it was not in a Bank format and had not been through the Bank's formal processes before anything gets sent out. Mr Keraitis said in his Authority interview that it was not "a Bank matter" and does not look anything like a Bank document.

536. We take this evidence into account, but we give it little weight. None of these witnesses or interviewees were aware of the full context in which the Disputed Document was prepared. Nor were they applying an appropriate legal test as to whether the task was Bank business.

537. The CSSF was in a similar position. It concluded that the Disputed Document was not Bank business and challenged the Authority's view that it was Bank business in correspondence in 2022, prior to the Warning Notices being issued. However, it had not had the benefit of hearing and seeing all the evidence that is before us.

538. Mr Rowland was clear that he could differentiate between Bank and non-Bank business and that both AGTB and his instructions to Mr Bolelyy for the Disputed Document were expressed to be unrelated to the Bank's business. We do not accept that is the case, and in any event for reasons previously set out we treat his evidence on this with considerable caution. We accept that the purpose of setting up the August Meeting did not include Bank business but

it was in relation to Rowland Family interests, of which the Bank formed a part, that matters concerning the Bank or where the Bank might assist could arise. Indeed, it was thought that AGTB might arise as a topic which was why Mr Rowland attended. We have made findings above in relation to potential commercial connections between AGTB and the Bank.

539. The position was the same in relation to the Abu Dhabi trip. Mr Rowland clearly anticipated that the Disputed Document might be discussed and the acquisition of Falcon Bank was expected to be discussed.

540. We also note Mr Rowland's evidence as to Mr Al Mubarak's request at the August Meeting to the following effect:

> Trading in Qatari bonds and securities was not an activity the Bank was involved in or able to do and I said this to Mr Al-Mubarak. However, I also told Mr Al-Mubarak that I would be happy to look into the matter.

541. We are satisfied that Mr Rowland saw the Bank as a potential source of advice in response to Mr Al Mubarak's request, but on his case he ruled it out because the Bank did not trade in Qatari bonds and securities. However, there was never any suggestion in the request or indeed in the Disputed Document that the strategy would involve the Bank trading in Qatari bonds or securities. Mr Rowland was asked to come up with a strategy, and he did come up with a strategy in the Disputed Document.

542. The August Meeting was not limited to the matters Mr David Rowland wished to discuss with Mr Al Mubarak and AGTB. An email from Mr Rowland to Mr Gould dated 27 August 2017 stated that the meeting would finalise all AGTB issues and that "they have another potential opportunity they want me to look at also".

543. In our view an agency analysis would give the same result. It was plainly within Mr Rowland's actual or ostensible authority as a director of the Bank to send the Disputed Document to Mr Tricks and Mr David Rowland and to make a presentation to Mubadala. Even if Mr Hiltunen is right that there was some restriction on Mr Rowland's actual authority to communicate advice, it would be within his ostensible authority.

544. We find that Mr Rowland and Mr Weller were acting in the course of their employments in connection with the Disputed Document. There was a sufficient connection between the roles of Mr Rowland and Mr Weller and their involvement in the production of the Disputed Document for the Bank to be accountable for their conduct.

545. We must still stand back and consider whether the objective of Principle 1 requires the activity of Mr Rowland and Mr Weller to be characterised as part of the firm's business. In all the circumstances we are satisfied that it is consistent with the purpose of Principle 1 for their activity to be characterised as Bank business. In our view, the objective of ensuring the proper functioning of relevant markets and the integrity of the UK financial system does require the Bank to be accountable in a regulatory context for the conduct of Mr Rowland and Mr Weller.

Attribution

546. Having found that the work of Mr Rowland and Mr Weller on the Disputed Document was Bank business, an issue arises as to whether their actions, knowledge and state of mind can be attributed to the Bank for the purposes of Principle 1. The Bank submits that the Authority must establish for the purposes of Principle 1 that the conduct said to lack integrity was that of a person who was the "directing mind" of the firm. It is said that the Authority has not recognised the requirement for attribution and has elided the separate questions of Bank business and attribution.

547. The Authority's case is that if production of the Disputed Document was Bank business, there is no further requirement that the conduct of the individuals responsible must be attributable to the Bank. It questions the need for such a requirement and says that if an individual acts without integrity in the course of their employment by a firm, there is no reason the firm should not be accountable for that conduct.

548. Somewhat surprisingly, there is no authority as to whether there is a separate requirement, for the purposes of regulatory enforcement proceedings based on a breach of Principle 1, that the conduct be attributable to the firm. That may be because the Authority is right, and at least in most cases where a senior individual acts in the course of their employment their conduct will be attributable to the firm.

549. In *Arch Financial Products LLP v FCA* [2015] UKUT 0013 (TCC), it appears to have been common ground that the seniority of the individuals involved was relevant to the firm's alleged breach of Principle 1 such that their conduct could be attributed to the firm. However, there was no analysis of attribution.

550. In regulatory proceedings against *Julius Baer International*, the same arguments as to attribution were put to the Authority's RDC. The RDC rejected the arguments now relied on by the Bank, but it did so in favour of a special rule of attribution based on the degree of seniority and autonomy of the individuals involved. We consider special rules of attribution below. The firm did not refer the Decision Notice to the Tribunal so there was no authoritative determination of the issue.

551. Before addressing the issue of whether there is a requirement for attribution, and if so what the test entails, it is helpful to set out the test which the Bank advocates. It says that the applicable test is that outlined by the House of Lords in *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153. That case involved an alleged infringement of the Trade Descriptions Act 1968. Tesco's defence was that the offence was due to the act or default of another person, namely its store manager. The House of Lords quashed the company's conviction because the manager could not be identified with the company for those purposes.

552. The House of Lords decision in *Tesco* still provides the relevant test for attributing criminal culpability to a company. The individuals whose conduct is to be attributed must be the "directing mind and will" of the company before their conduct will be attributed. They must have "full discretion to act independently of instructions" from the board of directors in carrying out the relevant actions.

553. In *Bilta (UK) Ltd (in liquidation) v Nazir (No 2)* [2015] UKSC 23, there was a civil claim by a company's liquidators against its former directors. The liquidators claimed that the directors had conspired to defraud the company by trading in carbon credits so as to leave the company unable to meet its VAT liabilities on those trades. The directors were said to be "knowingly parties" to carrying on the company's business with intent to defraud creditors so as to be liable to contribute to the company's assets on the winding up.

554. Lord Mance summarised the context to the issue as follows:

> 40. As Lord Hoffmann pointed out in *Meridian Global* at pp 506-507, the courts' task in all such situations is to identify the appropriate rules of attribution, using for example general rules like those governing estoppel and ostensible authority in contract and vicarious liability in tort. It is well-recognised that a company may as a result of such rules have imputed to it the conduct of an ordinary employee … But it is not always appropriate to apply general rules of agency to answer questions of attribution, and this is particularly true in a statutory context. Particular statutory provisions may indicate that a particular act or state of mind should only be attributed when undertaken or held by a company's "directing mind and will": see eg *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 and *Tesco Supermarkets Ltd v Nattrass* [1972]

AC 153, cited in *Meridian Global* at pp 507-509. In contrast in *Meridian Global* itself the company was for criminal purposes attributed with the conduct and knowledge of the senior portfolio manager who, without knowledge of the board or managing director, had entered into the relevant transaction of which the company had failed to give notice as required by the legislation.

41. As Lord Hoffmann made clear in *Meridian Global*, the key to any question of attribution is ultimately always to be found in considerations of context and purpose. The question is: whose act or knowledge or state of mind is *for the purpose* of the relevant rule to count as the act, knowledge or state of mind of the company? Lord Walker said recently in *Moulin Global*, para 41 that: "One of the fundamental points to be taken from *Meridian* is the importance of context in any problem of attribution". Even when no statute is involved, some courts have suggested that a distinction between the acts and state of mind of, on the one hand, a company's directing mind and will or "alter ego" and, on the other, an ordinary employee or agent may be relevant in the context of third party relationships. This is academically controversial: see Professor Peter Watts, *The company's alter ego – an impostor in private law* (2000) LQR 525; Campbell and Armour, *Demystifiying the civil liability of corporate agents* (2003) CLJ 290. Any such distinction cannot in any event override the need for attention to the context and purpose in and for which attribution is invoked or disclaimed.

555. In the same case, Lord Sumption stated at [67]:

67. The question what persons are to be so far identified with a company that their state of mind will be attributed to it does not admit of a single answer. The leading modern case is *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500. The primary rule of attribution is that a company must necessarily have attributed to it the state of mind of its directing organ under its constitution, ie the board of directors acting as such or for some purposes the general body of shareholders. Lord Hoffmann, delivering the advice of the Privy Council, observed that the primary rule of attribution together with the principles of agency and vicarious liability would ordinarily suffice to determine the company's rights and obligations. However, they would not suffice where the relevant rule of law required that some state of mind should be that of the company itself. He explained, at p 507:

> "This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person "himself" as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself."

The directing organ of the company may expressly or implicitly have delegated the entire conduct of its business to the relevant agent, who is actually although not constitutionally its "directing mind and will" for all purposes. This was the situation in the case where the expression "directing mind and will" was first coined, *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705. Such a person in practice stands in the same position as the board. The special insight of Lord Hoffmann, echoing the language of Lord Reid in *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153, 170, was to perceive that the attribution of the state of mind of an agent to a corporate principal may also be appropriate where the agent is the directing mind and will of the company for the purpose of performing the particular function in question, without necessarily being its directing mind and will for other purposes:

> "This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy." (p 507, and see pp 509-511)

556. Lord Sumption went on to say at [70]:

> 90. … Vicarious liability does not involve any attribution of wrongdoing to the principal. It is merely a rule of law under which a principal may be held strictly liable for the wrongdoing of someone else…

557. Most recently, Davis LJ sitting in the High Court considered the question of attribution in *Serious Fraud Office v Barclays Plc* [2018] EWHC 3055 (QB). The issue concerned the extent to which the allegedly criminal conduct of certain senior officers of the bank could be attributed to the bank in criminal proceedings against the bank. In other words, could the bank be criminally culpable for the actions of its officers?

558. At [67], Davis LJ identified that there had been criticism of the test in *Tesco* as involving too narrow an approach thus tending to render large companies with widely devolved management less exposed to criminal prosecution. The Judge noted however that *Tesco* provided certainty and continued:

> 67. … it is to be borne in mind that the policy considerations which have driven the doctrine of vicarious liability in the law of tort simply do not apply in the same way in criminal law. This is in part because tort is focused on issues of *liability* (and the redress, ordinarily financial, involved). But, as Lord Diplock points out, the focus of the criminal law is different. For, other than in strict liability cases, the focus is on *culpability*.

559. This distinction between attribution for the purposes of liability and attribution for the purposes of culpability was highlighted by the Bank in its submissions to us. The Bank contends that the test in *Tesco* applies to all cases involving culpability, both criminal and civil regulatory cases. Vicarious liability is limited to cases involving civil liability. However, in relation to that distinction, it is notable that in his analysis of the authorities, Davis LJ was careful to identify where principles were derived from civil cases. For example:

> 71. In my view, *El Ajou* provides only limited assistance to the SFO. First, it was a civil case. Second, it had its own particular facts …
>
> 78. I was also referred to the (civil) case of *Odyssey Re (London) Ltd.* v *OIC Run Off Ltd.* [2000] WL 19127 (13 March 2000). That was a remarkable case on its facts and litigation history.
>
> 80. In my view, however, that case [Odyssey] is of relatively limited assistance. It was a civil case and also did not involve any rule of substantive statutory law…
>
> 81. It at all events seems to me that it is plain that, whatever the more expansive approach to corporate attribution the civil courts may (possibly) be prepared to embark upon in a given case, such an approach has, in the aftermath of *Meridian*, been eschewed by the criminal courts.

560. The judgments in *Bilta* and *Barclays* both referred to the opinion of Lord Hoffmann in *Meridian Global Funds Management (Asia) Ltd. v Securities Commission* [1995] 2 AC 500. In that case two senior company employees unknown to the board undertook a covert share building programme in a target company. The individuals had wide authorised powers of investment which included the investments they made in the target company. However, they deliberately failed to comply with a statutory requirement to notify a regulatory body. Breach was liable to result in a fine. The company's defence was that it did not know of the acquisition and that the knowledge of its two employees should not be attributed to it for that purpose.

561. Lord Hoffmann stated at p 507 D-F:

> The company's primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication,

> excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person "himself," as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?
>
> One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or an unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy.

562. Lord Hoffmann went on to conclude that the knowledge of the employees was to be attributed to the company, otherwise the policy of the Act in that case would be defeated.

563. In *Barclays*, Davis LJ noted at [76]:

> 76. That decision, if adopted in the English courts (as it since has been), perhaps had the potential for leading to the prospect of a looser, or wider, approach for the purposes of attribution of liability to a company than provided in *Tesco* v *Nattrass*. But three points should be noted here:
>
> > (1) Lord Hoffmann at no stage purported to say – even if it were open to him to do so, which it was not – that *Tesco* v *Nattrass* was wrongly decided as a matter of English law. On the contrary, he applied its principles even if, to an extent, restating them.
> >
> > (2) It is also striking that Lord Hoffmann was careful to disclaim a proposition that his judgment would necessarily impact on the position relating to other cases such as, for example, corporate manslaughter.
> >
> > (3) The "special rule" of attribution comes into play when insistence or the primary rule would defeat the parliamentary intention.

564. Davis LJ also noted at [77] that subsequent cases in civil law have applied the approach of Lord Hoffmann and fashioned a special rule of attribution. At [86(1)] he approved the following proposition:

> (1) It is, depending on the circumstances, possible - both in a civil context and also in some criminal contexts, by reference to the wording and policy of the particular statute – for civil liability or criminal culpability to attach to a corporation even if it has not specifically authorised, and even may specifically have prohibited, the conduct in question …

565. Having set out passages from these authorities at length, we can deal with the Bank's submissions in favour of applying the test from *Tesco* which only attributes the conduct of an employee who is the directing mind and will of the firm. We do not accept those submissions.

In our view, applying the approach of Lord Hoffmann in *Meridian Global*, it would defeat the regulatory objective if such a test were to be applied to Principle 1.

566. We do not consider that in the context of Principle 1 it is necessary to look any further than whether the relevant conduct amounts to the firm's business. If it does relate to the firm's business then we see no reason why the firm should not be held culpable for that conduct. In our view the policy argument underpinning vicarious liability, namely enterprise risk, together with the policy imperative of deterrence strongly suggest that a firm should be culpable for conduct of which it takes the benefit. It is true that vicarious liability is a rule of liability and not attribution. However, it is the underlying test of whether the conduct is carried out in the course of the individual's employment or office which in our view should guide culpability. The obligation under Principle 1 is not merely to conduct with integrity that part of the firm's business of which the directing mind had knowledge. It is to conduct all the firm's business with integrity. The firm has control over its employees and there is no policy reason why it should not be accountable for the conduct of those employees acting in the course of their employment.

567. The Bank submits that if this is the test then a lack of integrity would routinely be imputed to firms in relation to the conduct of their employees and officers. That may be the case where employees are acting in the course of their employment, but in construing Principle 1, we do not consider that there is any policy reason why it should not be the case. Just as a company will be liable to a civil claim where its employees act in the course of their employment, so too will the company be open to regulatory enforcement action. In all cases it will still be necessary to stand back and consider whether it is consistent with the purpose of Principle 1 for the conduct to be treated as part of the firm's business.

568. In this case the Authority does not rely on the conduct of Mr Bolelyy for the purposes of the case against the Bank pursuant to Principle 1. We consider that it was right not to do so. Whilst he was acting in the course of his employment he was a very junior employee and standing back it would not be fair and just if the Bank were to be held culpable and to have acted without integrity in relation to his conduct. The position is very different in the case of Mr Rowland and Mr Weller who both held senior positions in the Bank and the UK Branch respectively and were approved by the Authority to hold senior management functions.

569. It is also relevant in this context that there is a further limitation on the liability of a firm in that the conduct must also fall within PRIN 3.2.1A, which we consider in the next section.

570. We have already found that Mr Rowland and Mr Weller were conducting Bank business in relation to the Disputed Document. We are satisfied that they were acting in the course of their employment by the Bank. Mr Rowland did not have the title of UK Branch CEO but he retained management responsibilities and resumed appointment as CEO on 26 September 2017, which is within the relevant period. The fact that Mr Weller may have been a "middle manager" is irrelevant. He did have management responsibilities, leading the asset management team in the UK Branch. In all the circumstances their conduct is to be attributed to the Bank.

571. Mr Hiltunen maintained that Mr Rowland did not have authority to communicate advice on behalf of the Bank in relation to specific investments. Mr Rowland himself said that he could not give investment advice because he did not hold the requisite licence. In 2017, certain advisers were required by the Authority to hold a "Statement of Professional Standing" issued by an accredited body. The question of whether the Disputed Document contained advice in relation to a particular investment or investments arises in the next section. For present purposes, as Davis LJ made clear in *Barclays* culpability can attach to a company if the conduct

is not specifically authorised, even where it has been specifically prohibited. We do not consider that these factors mean that Mr Rowland's conduct cannot be attributed to the Bank.

Regulated activity/Ancillary activity

572. PRIN 3.2.1A provides that the Principles for Business, including Principle 1, only apply to a firm with respect to the carrying on of regulated activities and ancillary activities in relation to designated investment business. The Bank's case is that the Disputed Document was not prepared or intended to be disseminated with respect to the carrying on of a regulated activity or an ancillary activity.

(i) Regulated activities

573. Section 22(1)(a) FSMA provides that an activity is a regulated activity for the purposes of the Act if it is "an activity of a specified kind" which is "carried on by way of business" and "relates to an investment of a specified kind":

> **22 Regulated activities**
>
> (1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and —
>
> (a) relates to an investment of a specified kind; or
>
> (b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.

574. The activity must be of a specified kind carried on by way of business and it must relate to an investment of a specified kind.

575. The "specified kind" of activities are set out in Part II of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001/544 ("the RAO"). Two activities are relevant for present purposes. Article 53 covers advising on investments and Article 25 covers arranging deals in investments:

> **53 Advising on investments**
>
> (1) Advising a person is a specified kind of activity if the advice is —
>
> (a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
>
> (b) advice on the merits of his doing any of the following (whether as principal or agent) —
>
> (i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or
>
> (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

> **25 Arranging deals in investments**
>
> (1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is —
>
> (a) a security,
>
> (b) a relevant investment, or
>
> (c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article, or
>
> (d) a structured deposit,
>
> is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b), (c) or (d) (whether as principal or agent) is also a specified kind of activity.

576. Article 26 provides an exclusion from Article 25(1) for arrangements which do not or would not bring about the transaction to which the arrangements relate:

26. There are excluded from articles 25(1), 25A(1), 25B(1), 25C(1) and 25E(1) arrangements which do not or would not bring about the transaction to which the arrangements relate.

577. In this case, we have found that the Bank's activities in relation to the Disputed Document were carried on by way of business.

578. The activity must relate to an investment of a specified kind. The specified kinds of investments for the purposes of section 22 FSMA are set out in Part III of the RAO. They include instruments creating or acknowledging indebtedness (Article 77), options (Article 83), futures (Article 84) and contracts for differences (Article 85). There is no issue that the investments being described in the Disputed Document fell within these categories.

Advising on investments

579. Advising on investments is a specified kind of activity where it is given to a person in his capacity as an investor or as an agent for an investor. It must also be advice on the merits of buying a particular investment.

580. The Bank did not raise any issue as to the capacity of Mubadala in relation to any advice in the Disputed Document. That is, whether Mubadala was a potential investor or agent for a potential investor. However, the point did arise in submissions made by Mr Rowland albeit in the context of a submission by the Authority that if he was not acting on behalf of the Bank then he may well have been acting in breach of the general prohibition in section 19 FSMA. It is convenient to address that submission here together with a number of other submissions made by Mr Rowland in the same context.

581. It is said that Mubadala was not acting in its capacity as a potential investor or as agent for a potential investor. Reliance was placed on the FCA Perimeter Guidance at PERG 5.8.6 which states that Article 53(1) does not apply where advice is given to persons who receive it as an adviser and who will use it only to inform advice given by him to others. Reliance is also placed on an observation of Professor Eva Lomnicka in the Encyclopedia of Financial Services Law at 3A-062 that advice to professional advisers is only covered if they act as agent for clients but not if they merely pass on the advice.

582. It is also said that the Disputed Document related to Qatari bonds held generally within the UAE banking sector. No specific banks were identified. Any advice was not being given to Mubadala as an investor or as agent for the banks.

583. The Authority pleaded that the Disputed Document was given to Mubadala which was a sovereign wealth fund owned by the government of Abu Dhabi. As such, it acted and invested on its own behalf and acted as agent for Abu Dhabi as an investor or potential investor through other UAE sovereign controlled entities. There is no dispute that Mubadala was a sovereign wealth fund acting as such but Mr Rowland denied that Mubadala received the Disputed Document.

584. We are not satisfied that the Disputed Document was given to Mubadala. In those circumstances, Article 53(1) is not engaged. It is only engaged where the advice is "given". In this case, no advice was given to Mubadala. Even if advice had been given to Mubadala, we are not satisfied on the evidence that it would have been acting in its capacity as a potential investor or as agent for the UAE banks or the UAE itself as potential investors.

585. For the sake of completeness, we do consider that the Disputed Document contained advice on the merits of buying or selling investments for the purposes of Article 53(b)(i).

586. The FCA's Perimeter Guidance distinguishes providing information for the purpose of enabling someone to decide upon a course of action, and advising someone as to what course of action they should take. It says that advice requires an element of opinion on the part of the adviser, including the pros and cons of buying, holding or selling an investment. In effect, it is a recommendation as to a particular course of action. This reflects observations in various authorities.

587. In *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474, Newey LJ stated at [75]:

> 75. It is plainly the case that the simple giving of information without any comment will not normally amount to "advice". On the other hand, I agree with Judge Havelock-Allan QC that the provision of information which "is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient" is capable of constituting "advice". I also agree with Henderson J that "any element of comparison or evaluation or persuasion is likely to cross the dividing line". I would add that "advice on the merits" need not include or be accompanied by information about the relevant transaction. A communication to the effect that the recipient ought, say, to buy a specific investment can amount to "advice on the merits" without elaboration on the features or advantages of the investment.

588. In an entirely different context in *South Australia Asset Management Corporation v York Montague Ltd* [1997] AC 191, Lord Hoffmann at 214e distinguished giving information for the purpose of enabling someone else to decide upon a course of action and advising someone as to what course of action they should take.

589. We agree with a submission on behalf of Mr Rowland that the giving of factual statements, prices, explanations or reports about investments will not necessarily entail the provision of advice on the merits. What is required is an opinion, recommendation or value judgment, whether express or implicit.

590. We do not accept the Bank's submission that the Disputed Document did not contain advice on the merits because it was simply exploring ideas and providing information without any recommendation with no opinion expressed or any recommendation as to a course of conduct. In our view, the Disputed Document was setting out a strategy to achieve an objective. There would clearly be other strategies which might be adopted to harm the Qatari economy but this was being put forward as a recommended strategy.

591. The Bank also relied on the evidence of Mr Rowland and Mr Hiltunen to the effect that Mr Rowland could not provide advice because he did not hold the necessary licences. We do not consider that this assists the Bank on this issue. The question of whether the Disputed Document amounts to advice on the merits is to be determined objectively by reference to the Disputed Document itself, albeit taking into account the context in which it was produced. Even if Mr Rowland believed that he could not provide advice to Mubadala, that is what he was intending to do.

592. Advice within Article 53(1) must also be on the merits of buying or selling "particular investments".

593. The Court of Appeal in *Adams* considered what amounts to a particular investment in this context:

> 76. Turning to when advice relates to a "particular investment" under article 53 of the RAO, generic advice is not covered. Thus, a recommendation to invest in European equities, say, would not fall within article 53. However, I do not think advice necessarily has to apply to just one

> product or asset for article 53 to be in point. For example, advice to buy shares in BP would be in respect of a "particular investment" (or, perhaps more accurately, a number of "particular investments") even though more than one class of BP shares was listed. Section 6 of the Interpretation Act 1978, of course, states that, unless the contrary appears, "words in the singular include the plural" in any statute.

594. This is consistent with observations in the Encyclopedia of Financial Services Law and with the FCA's Perimeter Guidance which gives examples of what it regards as "particular investments". This includes shares in a named company and contracts with essential terms specified. Advice in relation to classes of investments such as unit trusts, offshore funds and securities generally is not covered.

595. The Authority says that the advice did relate to buying or selling particular investments. It involved transferring existing holdings of Qatari bonds into a protected cell company; engaging in wash trading in existing and newly acquired medium and long term Qatari bonds; and acquiring related CDS.

596. It is relevant to note that the particular bonds were not specified. Hence, there is no reference to whether the bonds were government bonds or corporate bonds issued by Qatari banks or other businesses. There is no evidence that Mr Al Mubarak identified any particular financial instruments held by UAE banks. However, it is likely that Mubadala would have been aware of the details of the particular Qatari bonds held by UAE banks. It was the existence of those holdings which prompted it to seek advice from Mr Rowland. Having said that, the advice in the Disputed Document did not involve dealing in the existing holdings other than by way of providing collateral. It involved dealings in currency forwards, currency options and CDS generally.

597. In our view this was generic advice which had not yet reached the stage of advising on any dealings in particular investments. Hence, the execution strategy involved "identifying appropriate instruments". The advice in the Disputed Document did not therefore fall within Article 53(1)(i) and was not a regulated activity by virtue of Article 53.

Arranging deals in investments

598. If the Disputed Document did not amount to advising on particular investments pursuant to Article 53, the Authority says that it amounted to making arrangements for Mubadala to buy and sell particular investments within Article 25.

599. In *Personal Touch Financial Services Ltd v SimplySure Ltd* [2016] EWCA Civ 461 the Court of Appeal at [26] described the wording and scope of Article 25 as "deliberately wide". In *Re Inertia Partnership LLP* [2007] EWHC 502 (Ch), Jonathan Crow QC sitting as a High Court Judge described Article 25 in the following terms:

> 39. The critical words in article 25 are these: "making arrangements for another person … to buy, sell [or] subscribe for shares". The exception under article 26 applies to "arrangements which do not or would not bring about the transaction to which the arrangements relate". In my judgment, the correct analysis of these provisions is as follows:
>
> > 39.1. The word 'arrangements' is, depending on the context, capable of having an extremely wide meaning, embracing matters which do not give rise to legally enforceable rights.
> >
> > 39.2. In articles 25 and 26, the word 'arrangements' is used in contradistinction to the word 'transaction'.

> 39.3. In article 26, the word 'transaction' is plainly a reference to the purchase, sale etc of shares contemplated by article 25.
>
> 39.4. As such, a person may make 'arrangements' within article 25 even if his actions do not involve or facilitate the execution of each step necessary for entering into and completing the transaction (ie. the purchase, sale etc of the shares) …

600. We consider therefore that a person may make 'arrangements' within Article 25 even if their actions do not involve or facilitate the execution of each step necessary for entering into and completing the transaction. In *FCA v Avacade (in liquidation)* [2021] EWCA Civ 1206, Popplewell LJ stated at [47] and [48]:

> 47. There are three relevant differences between articles 25(1) and 25(2), each of which is concerned with "making arrangements" in relation to the buying and selling of securities (among other things). The first is that 25(1) applies to making arrangements "for" the buying and selling of securities, whereas 25(2) applies to making arrangements "with a view to" that activity. The second is that for article 25(1) the buying or selling may be conducted by anyone, whereas for article 25(2) it must involve a person who participates in the arrangements. I agree with the Trial Judge that both the language of the article ("a person") and the decision of this Court in *SimplySure* make clear that the relevant transactions contemplated need only involve one of the parties to the arrangements, not both. The third difference is that article 26 provides an exception to article 25(1) but not article 25(2).
>
> 48. Article 26 excludes from the operation of article 25(1) arrangements which do not or would not bring about the transactions to which the arrangements relate. The words "would not" make clear that even article 25(1) is not concerned only with arrangements which successfully result in a relevant transaction; a person may contravene article 25(1) by making arrangements "for" such a transaction which does not in fact take place. Nevertheless article 26 introduces an actual or notional test of causation ("bring about") in relation to arrangements for the purposes of article 25(1). In *Adams* the court held that the degree of causal potency required was that for arrangements to "bring about" a transaction they must play a role of significance but need not involve a direct connection (see [97]). Importantly, however, article 26 is expressly confined by its terms to article 25(1) and other articles; it does not apply to article 25(2), as this court confirmed in *SimplySure* at [26]. There is no need to introduce any test of causation into 25(2) by reference to the language of the inapplicable article 26 because by using the words "with a view to", article 25(2) makes clear that it is concerned with the purpose of the arrangements. An intended purpose, an end in view, must be that a relevant transaction take place, but the arrangements do not need to bring it about by way of an actual or notional test of causation. These are wide words which suggest that all that is necessary is that a relevant transaction is part of the purpose of making the arrangements. A person may have a relevant transaction as an end in view where the arrangements do no more than create or facilitate a situation which provides the opportunity for it to take place. That may be an intended result notwithstanding that the arranger is powerless to ensure that it takes place or even influence the decision which leads to it taking place. You cannot make the proverbial horse drink, but taking it to water involves making arrangements with a view to it drinking.

601. Given the wide scope of Article 25(2) described in the authorities we are satisfied that in producing the Disputed Document the Bank was making arrangements with a view to a person who participated in the arrangements, whether that was intended to be Mubadala or other entities, buying or selling investments. We must then consider whether those investments fell within Article 25(1)(a) to (d). The investments which fall within paragraphs 1(a) to (d) are particular investments which are, for present purposes, a relevant investment. There is no doubt that the intended investments would have been relevant investments. However, the arrangements did not involve buying or selling "particular investments" because the relevant investments had not yet been identified. The Disputed Document did not therefore amount to

arranging deals in investments for the purposes of Article 25 and therefore was not a regulated activity.

(ii) Ancillary activities in relation to designated investment business

602. The Authority contends that if producing the Disputed Document did not amount to the carrying on of a regulated activity for the purposes of PRIN 3.2.1A, then it was an ancillary activity in relation to designated investment business for the purposes of that provision.

603. "Ancillary activity" is defined in the FCA Handbook as an activity which is not a regulated activity but which is: (a) "carried on in connection with a regulated activity"; or (b) "held out as being for the purposes of a regulated activity".

604. The phrase "in connection with" is a broad one and should be given its natural and ordinary meaning. In *Campbell v Conoco (UK) Ltd* [2002] EWCA Civ 704 at [19], Rix LJ described those words as "widely regarded as being as wide a connecting link as one can commonly come across".

605. "Designated investment business" is defined in the FCA Handbook as follows:

> Any of the following activities, specified in Part II of the [RAO] (Specified Activities), which is carried on by way of business:
>
> …
>
> (c) arranging (bringing about) deals in investments (article 25(1)), but only in relation to designated investments …
>
> (d) making arrangements with a view to transactions in investments (article 25(2)), but only in relation to designated investments …

606. The term "designated investments" is defined in the FCA Handbook to include instruments creating or acknowledging indebtedness (RAO Article 77), options (RAO Article 83), futures (RAO Article 84) and contracts for differences (RAO Article 85).

607. The question which arises therefore is whether production of the Disputed Document was carried on in connection with a regulated activity and in relation to designated investment business.

608. The Authority's case is that the steps taken in relation to the preparation of the Disputed Document and its communication to Mr Tricks and Mr David Rowland were carried out "in connection with" the regulated activity of advising on investments under Article 53 RAO. That is the case irrespective of whether the Disputed Document was given to Mubadala.

609. It is not disputed that apart from the Disputed Document, the Bank carried on a regulated activity of advising on investments. We are satisfied that the Disputed Document can be viewed as being in connection with that activity even if the advice was not given to Mubadala. It was also in connection with that activity even though no particular investments had yet been identified. The activities were therefore ancillary activities.

610. It is clear that the transactions in government or corporate bonds, options and derivatives in the form of CDS being contemplated by the Disputed Document were designated investments falling under Articles 77, 83, 84 and 85 of the RAO.

611. In the circumstances, all of the steps taken in relation to the Disputed Document amounted to ancillary activities in relation to designated investment business falling within the scope of Principle 1. That is either because they were in relation to arranging deals in

designated investments or in relation to making arrangements with a view to transactions in designated investments.

The Bank's conduct

612. The Bank has admitted breaches of Principles 2 and 3 of the Principles for Business which require a firm to conduct its business with due skill, care and diligence and to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

613. The admitted breaches are as follows:

(1) Enabling an environment which permitted other business interests, independent of the interests of the Bank and unrelated to Bank business, to be pursued from the UK Branch;

(2) Enabling the unchallenged use by Bank employees of its premises and IT systems to facilitate the pursuit of non-Bank business; and

(3) Permitting the presence of non-Bank personnel engaged on non-Bank projects within an open plan office environment at the UK Branch.

614. We have come to the conclusion that the Bank's failures go considerably beyond what is admitted.

615. The meaning of integrity for the purposes of Principle 1 is well established. A person may demonstrate a lack of integrity where they act in a dishonest way. Even where a person has not been dishonest they may lack integrity if they lack an ethical compass, or where their ethical compass to a material extent points them in the wrong direction. Acting recklessly may also demonstrate a lack of integrity. A person acts recklessly with respect to a result if they are aware of a risk that it will occur and it is unreasonable to take that risk having regard to the circumstances as they know or believe them to be. Turning a blind eye to the obvious and failing to follow up obviously suspicious signs may show a lack of integrity.

616. There are both subjective and objective elements to the test of what constitutes a lack of integrity. The test is essentially objective but nevertheless regard is to be had to the state of mind and facts known to the person.

617. It is clear from our findings of fact that Mr Rowland and Mr Weller's conduct lacked integrity. They each participated in producing the Disputed Document. Mr Rowland gave instructions for the Disputed Document to be prepared. Mr Weller provided substantial assistance to Mr Bolelyy. Both were aware that the strategy being formulated was an improper strategy involving market manipulation to damage the economy of Qatar. For the reasons given above, that conduct is to be attributed to the Bank and it follows that the Bank's conduct lacked integrity in breach of Principle 1.

618. In reaching that conclusion we do not take into account Mr Rowland's attempts to cover up his own involvement and that of the Bank in the Disputed Document. It is not suggested that anyone at the Bank other than Mr Rowland and Mr Bolelyy tried to cover up the Bank's involvement. In our view it would not be fair and just to attribute Mr Rowland's attempts at cover-up to the Bank. We are satisfied that the Bank took robust steps to investigate the production and publication of the Disputed Document and satisfied its regulatory obligations in notifying the CSSF and the Authority as to the outcome of that investigation. Mr Weller has suggested that he was pressurised by the Bank to sign a false declaration of honour. We are not satisfied that is the case.

The Bank's penalty

619. The Authority's powers in relation to penalties derive from sections 66, 66A and 206 FSMA. The Authority's policy on penalties is contained in Chapter 6 Decision Procedure and Penalties manual ("DEPP"). We are not bound by the Authority's policy but should pay due regard to it in the interests of consistency (see *Arian v FCA* [2024] UKUT 352 (TCC) at [17] – [19]).

620. The principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches. The penalty regime is based on the following principles:

(1) Disgorgement - a firm or individual should not benefit from any breach;

(2) Discipline - a firm or individual should be penalised for wrongdoing; and

(3) Deterrence - any penalty imposed should deter the firm or individual who committed the breach, and others, from committing further or similar breaches.

621. The Authority applies a five-step framework to determine the appropriate level of financial penalty. We summarise the five steps in the following paragraphs as they apply to firms.

622. Step 1 relates to Disgorgement. The Authority will seek to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify the benefit. In the present case, no direct financial benefit to the Bank was identified so there were no profits to disgorge.

623. Step 2 relates to the seriousness of the breach. The Authority seeks to determine a figure that reflects the seriousness of the breach. In many cases, the amount of revenue generated by a firm from a particular product line or business area during the period of the breach ("the relevant revenue") is indicative of the harm or potential harm that a breach may cause. In such cases, the Authority determines a figure based on a percentage of the firm's revenue from the relevant products or business areas. Where revenue is an appropriate indicator of the harm or potential harm caused by a breach, a figure is determined based on a percentage of relevant revenue. The percentage is between 0% and 20% depending on the seriousness of the breach. There are five levels of seriousness between level 1 (0% of the relevant income) and level 5 (20% of relevant income).

624. In deciding which level is most appropriate, the Authority generally takes into account four broad factors: the impact of the breach; the nature of the breach; whether the breach was deliberate; whether the breach was reckless.

625. The Authority did not adopt a revenue-based approach in this case because it did not consider that it would be an appropriate indicator of harm. Instead, the Authority invited us to have regard to penalties imposed in other cases. We were referred to a penalty of £324m imposed on Deutsche Bank in 2015 for attempted LIBOR manipulation and a penalty of £3m on Bank of Beirut (UK) Limited for failing to be open and cooperative with the Authority where there was a potential for the bank to be exploited for financial crime. In neither case was a revenue-based approach adopted.

626. It does not seem to us that these cases, or any of the cases cited by the Bank, are really comparative to the present case. One might legitimately ask the question of why a penalty of £10m is appropriate in this case rather than a penalty of £20m or £5m. We were provided with no quantitative or qualitative answer to that question. We agree with the Bank's submission that a £10m penalty appears to be an arbitrary figure.

627. The Authority did submit that a revenue-based approach would also give a penalty of approximately £10m taking into account the revenue of the Bank as a whole in the relevant period. This is on the basis that Mr Rowland was seeking to benefit the Bank as a whole and not just the UK Branch. The Bank's revenues in 2017 were about EUR 54m and 20% at level 5 equates to £9.5m at current exchange rates.

628. We agree with the Authority that the revenue of the Bank is not a reliable proxy for the potential harm the breach may have caused. It is also relevant that the Disputed Document was not intended solely to benefit the Bank. It was also intended by Mr Rowland to benefit the Rowland Family interests generally.

629. The Bank's position was that in relation to its admitted breaches of Principles 2 and 3 public censure would be an appropriate sanction. If there was to be a financial penalty then it should be no more than £241,087. However, we have found that the Bank's breaches went well beyond the admitted breaches.

630. The Bank says that for breach of Principle 1, a relevant revenue-based approach should be taken by reference to the revenue of the UK Branch. The revenue in the year to 31 March 2018 was £3,826,789. At level 5 seriousness, a 20% penalty would be £765,358. However, the Bank says that it should not be level 5 seriousness given that the Disputed Document was not acted upon and no steps were taken to implement the strategy. It should be level 4 which would involve a 15% penalty at Step 2.

631. We are satisfied that this was a very serious breach. The breach was deliberate and encouraged the commission of financial crime and market misconduct. On the evidence before us we were not satisfied that the Disputed Document was communicated to Mubadala but Mubadala was certainly the intended recipient. There was no direct profit to the Bank, but the Disputed Document was intended to benefit the Bank for the reasons we have given. Further, it was intended to undermine the stability of the economy of a sovereign state risking significant harm to other market participants. We agree with the Authority that level 5 was the appropriate level of seriousness.

632. We also consider that the cost of the PwC investigation, some £2.5m, may be viewed as some indicator in financial terms as to the seriousness of the breach and the potential harm. On the facts of this case, in our view it sets a base line figure at Step 2.

633. Taking into account all these factors we consider that the Step 2 figure ought to be £5m which falls between the revenue-based approach using relevant income of the Bank as a whole and relevant income of the UK Branch. Mr Rowland was effectively the CEO of the UK Branch and whilst he was also a main board director that is where his principal responsibilities lay. However, we have found that the intangible benefit he was seeking was in part for the Bank as a whole.

634. Step 3 takes into account mitigating and aggravating factors. The figure identified at Step 2 may be increased or decreased to take such factors into account by way of a percentage adjustment.

635. The Authority considers that that there are no mitigating or aggravating factors. We disagree. It is a mitigating factor that the Disputed Document was not disseminated, although it is not clear why. Further, the strategy was never implemented and there was no actual market manipulation. A more significant mitigating factor is the Bank's conduct following the breach and in investigating the breach. It brought the breach to the attention of the CSSF and the Authority and fully cooperated in the regulatory investigations. Its lawyers and PwC were instructed to carry out a thorough investigation of the circumstances in which the Disputed

Document came to be prepared and it incurred costs of £2.5m in relation to that investigation. The employees involved in the breach had either resigned or their employment was terminated.

636. It is also relevant at this stage that there was no organisational or systemic lack of integrity at the level of the Bank as a whole. Whilst there were admitted breaches of Principles 2 and 3, for present purposes we are primarily concerned with the conduct of two individuals employed at the UK Branch of the Bank.

637. We consider that the Step 2 figure ought to be reduced to £4m to take into account these mitigating factors.

638. The Bank submitted that a £10m penalty ignored the need for the penalty to be commensurate with the Bank's resources. However, we were not directed to any evidence to support that submission, other than figures for relevant income of the Bank and the UK Branch. We do not consider that a £4m penalty is disproportionate to the seriousness of the breach or the relevant income of the Bank.

639. Step 4 takes into account deterrence. If the Authority considers that the figure arrived at following Step 3 is insufficient to deter the firm or others from committing further or similar breaches then the Authority may increase the penalty. On the evidence before us, we consider that the Step 3 figure acts as an appropriate deterrent. It would have been better if we had been taken by either party to material evidencing the resources of the Bank. In the absence of any submissions as to the resources of the Bank we must do the best we can with the evidence to which we have been referred.

640. Step 5 introduces the possibility of a discount. The amount of the financial penalty which might otherwise be payable may be reduced to reflect an agreement between the Authority and the firm as to the amount of the penalty. There is no question of a settlement discount in this case.

641. Taking into account all the circumstances and the parties' submissions, we consider that the Bank's penalty ought to be reduced to £4m.

5.2 THE CASE AGAINST MR ROWLAND

642. The Authority's case is that Mr Rowland breached Rule 1 of the Individual Conduct Rules in that he acted without integrity.

643. Rule 1 applies to the conduct of an approved person in relation to the performance by that person of functions relating to the carrying on of activities by the firm. It applies to any such activities, not just regulated activities.

644. For reasons given above, Mr Rowland's activities in connection with the Disputed Document were carried out in relation to his performance of functions relating to the carrying on of activities by the Bank. He was acting in the course of his employment and within the scope of his authority. He was engaged in Bank business. He instructed the Bank's employees to use Bank time and resources to prepare the Disputed Document. Even if it was an entirely non-Bank project, which we do not accept, he was using his position in the Bank to co-opt the Bank's employees and resources.

645. Mr Rowland acknowledged in his closing submissions that the question of whether he lacked integrity depends on precisely what facts are found. Our findings of fact as to Mr Rowland's conduct in the relevant period clearly demonstrate a lack of integrity on his part.

646. The Code of Conduct Rules are made by the Authority pursuant to section 64A FSMA which was introduced in 2013:

Rules of conduct

64A(1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons —

(a) persons in relation to whom either regulator has given its approval under section 59;

(b) persons who are employees of authorised persons;

(c) persons who are directors of authorised persons.

…

(4) Rules made under this section must relate to the conduct of persons in relation to the performance by them of qualifying functions.

(5) In subsection (4) "qualifying function", in relation to a person, means a function relating to the carrying on of activities (whether or not regulated activities) by —

(a) in the case of an approved person, the person on whose application approval was given,

(ab) in the case of a person who is a director of an authorised person but is not an approved person, that authorised person, and

(b) in any other case, the person's employer.

647. An Explanatory Note at the time section 64A was introduced states that the section makes clear that:

> … the rules can only relate to the conduct of individuals while working for the authorised person who applied for their approval to perform controlled functions, or, if the individual is not an approved person, his or her employer.

648. Mr Rowland described this as a jurisdictional limit. He did not accept the Authority's submission that it is relevant to consider whether the individual was acting "in the course of their employment" if the Authority thereby intended to introduce principles of vicarious liability. He submitted that vicarious liability addresses a different question, namely whether a person should have legal responsibility for the conduct of another. That question raises different policy issues to the question of whether an individual's conduct falls within the Authority's regulatory jurisdiction. He submitted that the test is straightforward and we should simply ask whether Mr Rowland's conduct occurred while he was working for the Bank.

649. We have set out above our reasons for finding that the Disputed Document was Bank business for the purposes of Principle 1. In our view the same analysis applies in the context of COCON 1.1.6. Mr Rowland's conduct was in relation to the performance by him of functions relating to the carrying on of activities by the firm. In short, he was working for the Bank.

650. The Authority also submitted that since the preparation of the Disputed Document amounted to a regulated activity, it is implausible that Mr Rowland was not acting on behalf of the Bank. Indeed, if Mr Rowland had been acting on his own behalf, or on behalf of any other business, then that may well have amounted to a breach of the general prohibition against carrying on regulated activity unless authorised or exempt pursuant to section 19 FSMA. It is not necessary for us to make any findings in relation to this submission and we have dealt with Mr Rowland's submissions on regulated activity in the context of the case against the Bank.

Mr Rowland's penalty

651. The five-step process described above is that which applies to firms. A similar process applies to individuals depending on whether it is a market abuse case. The Authority does not

consider the present case to be a market abuse case because there was no actual market manipulation. We consider that the five-step process should be applied in calculating Mr Rowland's penalty as follows.

652. At Step 1, it is common ground that there was no direct financial benefit to Mr Rowland so there are no profits to disgorge.

653. At Step 2, the relevant income is the gross amount of benefits received from the employment. Mr Rowland's relevant income from the Bank in the 12 months preceding the last day of the breach was £44,000. This did not reflect Mr Rowland's responsibilities. He also received gifts from his father, but there is no evidence as to the amount of those gifts. We are satisfied that the figure of £44,000 pa was artificially low, both generally given Mr Rowland's responsibilities and also compared to the earnings of Mr Weller and Mr Bolelyy. For the purposes of Step 2 however, we use Mr Rowland's actual income of £44,000 pa.

654. For reasons already given, we are satisfied that this was a very serious breach. There was no direct profit but the Disputed Document was intended to benefit the Bank. Further, it was intended to undermine the stability of the economy of a sovereign state. We agree with the Authority that level 5 was the appropriate level of seriousness. In the case of a level 5 breach for an individual, the Step 2 figure is 40% of the relevant income, which in this case is £17,600.

655. The issue between the Authority and Mr Rowland in relation to his penalty is the operation of Steps 3 and 4.

656. At Step 3, there are mitigating factors in that the Disputed Document was not in fact disseminated, the strategy was not implemented and there was no actual market manipulation.

657. Where a person clearly lies to the Authority that can be an aggravating factor (see *Micalizzi v FCA* [2014] UKUT 0335 (TCC) at [479]). We are satisfied that Mr Rowland clearly lied to the Authority. He did so in order to cover up his involvement in the Disputed Document and the involvement of the Bank. He persuaded Mr Bolelyy to provide a false account of how the Disputed Document was prepared which led Mr Bolelyy to lie to the Authority. Mr Rowland's lies to the Authority in its investigation and his attempted cover-up are in our view serious aggravating factors. It is also the case that Mr Rowland lied in his evidence to this Tribunal.

658. In setting the penalty, the Authority did not consider that there were any aggravating factors. In closing submissions, the Authority invited us to take into account these aggravating factors. Indeed, the Authority invited us for the first time in written closing submissions to increase the penalty. There is a line of authorities cautioning against increasing a penalty. It should only be done where the RDC has plainly misdirected itself and the penalty imposed falls substantially below a proper amount (see *Parker v FCA* 11 May 2006 unreported at [178]). It is wrong to punish an applicant for making a reference. The Tribunal's focus should be on penalising the conduct, not the applicant's approach to a reference.

659. We acknowledge that we should be slow to increase a penalty imposed by the Authority save in such cases. Overall, we do not intend to increase the penalty on Mr Rowland. Having said that, we do consider that the Step 3 figure should be increased by 25% to £22,000 to reflect the mitigating and aggravating factors just described.

660. We agree with the Authority that an adjustment for deterrence is required at Step 4. The Authority increased the penalty to £352,000 which involved a multiplier of 20 being applied to its Step 3 figure.

661. We are satisfied that our Step 3 figure of £22,000 would not act as any sort of credible deterrent to Mr Rowland or others. Quite the opposite. Such a small penalty would encourage

breaches. It does not take into account the artificial level of Mr Rowland's remuneration. We have had regard to a number of recent decisions drawn to our attention by Mr Rowland. We have concluded that the penalty of £352,000 set by the Authority is the minimum penalty required to provide a credible deterrent. That figure would imply an annual salary of £703,800 which does not seem unreasonable for an individual in the position of Mr Rowland.

662. Mr Rowland also submitted that it is disproportionate for him to be treated far more harshly than Mr Weller who was subject to a penalty of £54,000. We disagree. Mr Rowland was in a position of authority and gave instructions to Bank staff to produce the Disputed Document. He plainly bears significantly more responsibility than Mr Weller. There were also serious aggravating factors in the case of Mr Rowland.

5.3 THE CASE AGAINST MR BOLELYY

663. The Authority's case is that Mr Bolelyy breached Rule 1 of the Individual Conduct Rules in that he acted without integrity. Rule 1 applies to the conduct of Mr Bolelyy in relation to the performance by him of functions relating to the carrying on of activities (whether or not regulated activities) by the Bank.

664. For reasons given above, Mr Bolelyy's activities in connection with the Disputed Document were carried out in relation to his performance of functions relating to the carrying on of activities by the Bank. He was acting in the course of his employment and within the scope of his authority. He was following instructions from a director of the Bank. Even if it was an entirely non-Bank project, which we do not accept, he was using the Bank's time and resources which he only had access to as an employee.

665. Mr Bolelyy contends that his role was limited to that of a personal assistant. For the reasons given above we have rejected that argument.

666. Mr Bolelyy contends that he had no real understanding of the Disputed Document or its impropriety and he cannot be said to lack integrity for the purposes of section 66(1)(a) FSMA. He puts that case forward without reliance on his diagnosis of autism but contends that the diagnosis of autism strengthens his case in this regard.

667. We do not accept that submission. Mr Bolelyy was a high-functioning professional who had a Master's Degree in economics, experience of working in financial services and who had qualified as a Chartered Financial Adviser. He was well capable of understanding the Disputed Document and of recognising its improper nature. Indeed we have found that Mr Bolelyy only included matters in the Disputed Document when he understood them. In the light of all the evidence we find that Mr Bolelyy understood that the Disputed Document was setting out a strategy which was highly improper.

668. It is notable that Mr Rowland, who worked closely with Mr Bolelyy, described him as a smart young man, a competent individual with an interest in finance. He was said to have been a diligent and reliable employee whom Mr Rowland considered capable of carrying out the task which led to the Disputed Document. Mr Rowland thought that if Mr Bolelyy had not understood his instructions then he would have clarified those instructions with Mr Rowland. We are satisfied that is a fair description of Mr Bolelyy's capabilities, his approach to work generally and his approach to preparation of the Disputed Document.

669. Mr Bolelyy had obtained the CFA qualification. The syllabus for the examinations included ethics and standards of professional conduct, integrity of capital markets, guidance on market manipulation, hedging, derivatives including credit default swaps and yield curves. We cannot know to what extent Mr Bolelyy studied hedging, credit default swaps and yield curves in depth amongst all the other topics on the syllabus. However, we are satisfied from his academic and professional background that he would be well able to research any of these areas

and to understand them. We are also satisfied that he would have understood that market manipulation was improper. In short, there is nothing in the content of the Disputed Document which he would not have been able to understand and recognise as improper.

670. The question which arises is whether, at the time of preparing the Disputed Document, Mr Bolelyy understood the strategy which was described and the improper nature of that strategy. His case is that he did not understand the strategy and that he effectively relied on Mr Weller who came up with the strategy and Mr Weller clearly did understand it. He was comforted in this regard by his understanding, from Mr Weller, that the strategy was based on that of George Soros. Effectively he had tunnel vision and simply trusted that Mr Weller would not be advocating anything that was improper.

671. We are satisfied that Mr Bolelyy and Mr Weller had a close working relationship and that Mr Weller was akin to a mentor to Mr Bolelyy. However, we can see that Mr Bolelyy is a keen and ambitious individual. Even on his case, he was striving to understand the strategy in the various iterations of the Disputed Document. He relished the intellectual challenge. Indeed, it is notable that whilst Mr Rowland sought to falsely distance himself from the Disputed Document he chose to do so by indicating that Mr Bolelyy wanted to take it forward as "an intellectual exercise". We consider that says a lot about Mr Rowland's view of Mr Bolelyy's capabilities and Mr Rowland was in a good position to form a view. We do not consider that Mr Bolelyy took everything Mr Weller said on trust and assumed that because it came from Mr Weller it must be a proper strategy.

672. We are satisfied that by the time he produced v12 of the Disputed Document he understood the strategy. We find that he realised that it involved obvious aspects of market manipulation in the form of crossing transactions between connected parties and generating false market rumours to affect the price of Qatari bonds and the Qatari Riyal.

673. Mr Bolelyy sought to say that he viewed the exercise through the prism of George Soros and understood that the purpose of the strategy was to sanction alleged terrorist activity supported by Qatar. There is no mention of George Soros' trading strategy in any of the documentation but if Mr Bolelyy had understood that the Disputed Document was in some way replicating that strategy he would have researched it and realised that it went well beyond a strategy of shorting a currency.

674. Mr Bolelyy relied on various drafts of the Disputed Document which contained "[xxx]" indicating that there was something to be inserted which he did not understand or was not in a position to explain. One example of this was subsequently replaced in v5 by the term "credit default swap". We are satisfied that Mr Bolelyy did understand what a credit default swap was by the time v5 was produced on 14 September 2017.

675. We have not made any finding that Mr Bolelyy gave a copy of the Disputed Document to anyone at Mubadala. However, he was aware that the Disputed Document was intended to be discussed with Mubadala, although we accept he may have understood that it was to be discussed with members of the Rowland Family beforehand. At no point prior to his resignation on 9 November 2017 did Mr Bolelyy take any action in relation to the Disputed Document or raise any concerns about its content.

676. We appreciate that Mr Bolelyy was a junior employee. However, that does not justify his participation in developing a strategy which involved improper market manipulation to put pressure on the economy of a foreign state. His failure to take action itself demonstrates a lack of integrity.

677. Mr Bolelyy's participation in Mr Rowland's strategy to distance himself from the Disputed Document also demonstrates a lack of integrity. Again, we appreciate that Mr Bolelyy

was a junior employee but that is no justification for his lies during the course of the investigation by the Bank and by the Authority. Even if the incentive to keep others out of the firing line was a misplaced sense of loyalty to Mr Rowland and his other colleagues, it cannot justify his conduct in putting forward a false narrative.

678. Mr Bolelyy points to the WhatsApp messages exchanged with Mr Weller on 9 November 2017 as indicating that he did not realise that there was anything improper in the strategy. In particular his reference to Al Jazeera faking and inflating the story. In our view Mr Bolelyy may have been trying to convince himself that was the case but he did know that the Disputed Document described an improper strategy.

679. Mr Bolelyy also relies on the fact that Mr Unwin, who was more senior and experienced than Mr Bolelyy, did not recognise the impropriety. However, we have found that there were particular reasons that Mr Unwin did not recognise the impropriety. In any event, that was at a time prior to the strategy taking shape in the SFNH Document and the Disputed Document.

680. We acknowledge that autism may have made it more difficult for Mr Bolelyy to imagine what others were thinking or planning; more difficult to question people's motives; more difficult to know if his colleagues were joking or being serious; and more difficult to imagine how the presentation might look to third parties. He might also have been more trusting of Mr Weller. He may have approached his work with 'tunnel vision' making it harder to see the wider context. However, even taking this into account we are satisfied that Mr Bolelyy knew that the strategy set out in the Disputed Document involved improper market manipulation.

681. Even if we are wrong in that conclusion and Mr Bolelyy did not know that his conduct was improper, that was because he turned a blind eye to the obvious. In short we are in any event satisfied that in this aspect of his work he lacked an ethical compass or his ethical compass pointed him in the wrong direction.

682. In all the circumstances, we are satisfied that it is appropriate for the Authority to take enforcement action against Mr Bolelyy.

Mr Bolelyy's penalty

683. The Authority's policy in relation to Mr Bolelyy's penalty is the same as that described for Mr Rowland.

684. At Step 1, there was no direct financial benefit to Mr Bolelyy so there are no profits to disgorge.

685. We are satisfied that this was a serious breach for the purposes of Step 2. Taking into account Mr Bolelyy's role and status within the Bank we agree with the Authority that level 4 is the appropriate level of seriousness.

686. Mr Bolelyy's relevant income from the Bank in the 12 months preceding the last day of the breach was £47,452. The appropriate Step 2 figure is therefore 30% of £47,452 which is £14,235.

687. We are satisfied that Mr Bolelyy was persuaded by Mr Rowland to provide a false account of how the Disputed Document came to be created. That led him to give a false account to the Authority. In some respects, he has now admitted his deceit. In other respects, including the involvement of Mr Rowland, he has maintained his deceit. On balance, however we do not consider that we should increase the Step 2 figure for aggravating factors.

688. We agree with the Authority that there are no mitigating factors. Looking at the facts as a whole, we do not consider that Mr Bolelyy's diagnosis of autism is a mitigating factor. We have taken into account Mr Bolelyy's junior status in identifying the seriousness of the breach.

689. We agree with the Authority that in the case of Mr Bolelyy, no adjustment for deterrence is required at Step 4.

690. We are therefore satisfied that the penalty of £14,200 imposed by the Authority is appropriate.

5.4 PROHIBITION OF MR ROWLAND AND MR BOLELYY

691. In deciding whether to impose a prohibition order on Mr Rowland and Mr Bolelyy pursuant to section 56 FSMA, the Authority can take into account the conduct of Mr Rowland and Mr Bolelyy in the relevant period and their subsequent conduct, including their evidence to the Tribunal (see *FCA v Hobbs* [2013] EWCA Civ 918 at [38] and [39]).

692. Our jurisdiction is to consider whether the Authority's decision to impose a prohibition order falls within the range of reasonable decisions which the Authority could make in light of our findings of fact.

693. We have considered the position of Mr Rowland and Mr Bolelyy separately. We are satisfied on the facts we have found that the Authority was clearly entitled to impose prohibition orders on both Mr Rowland and Mr Bolelyy. It is not necessary for us to repeat our findings here.

694. Mr Bolelyy says that having regard to all the circumstances, it would not be reasonable and proportionate to impose a prohibition order on him. In particular, he relies on the fact he was a very junior person put in an unusual and inappropriate position by a person or persons much senior to himself whom he trusted and admired. He says that his CFA qualification was irrelevant to his role and he was not acting as a CFA. It is not appropriate to prohibit such a junior person. More so if his diagnosis of autism is taken into account.

695. We take these factors into account and his unprompted remark to the Tribunal at the end of his evidence when he stated:

> Back then, I did not see this as improper. I – it was a great misjudgement on my part. I learned a lesson really well now, and I have wised up, and there is absolutely not -- I never for a second think of engaging myself in something improper and would definitely now exercise prudent judgment.

696. It was also said that whilst it had been unacceptable for Mr Bolelyy to take the blame for others, his failures are attributable to immaturity rather than any lack of integrity. We do not accept that is the case. There may be scope for a Tribunal to take a "sympathetic" approach where an applicant is transparent about his failures and "lays his cards on the table" in his evidence before the Tribunal. To some extent that is what Mr Bolelyy has done.

697. We do consider that Mr Bolelyy has shown genuine remorse for his role in producing the Disputed Document. However, in our view the Authority was reasonably entitled to view his conduct as meriting a prohibition order. There are no grounds for us to interfere with that decision.

6 MR DAVID ROWLAND'S REFERENCE

698. Mr David Rowland seeks findings in this decision that the inferences and conclusions drawn by the Authority in its Decision Notices as to his influence in the Bank and knowledge of the contents of the Disputed Document are wrong. Further, the conclusion that the Disputed Document was created and disseminated to promote the interests of the Rowland family is wrong.

699. The Authority says that none of the points raised by Mr David Rowland have any bearing on the reasonableness of the Decision Notices so we should dismiss his third party references in any event.

700. Our jurisdiction in relation to Mr David Rowland's references is governed by section 133 FSMA. It is a non-disciplinary reference. We are entitled to make findings of fact pursuant to section 133(6A) and must then decide whether to dismiss the reference or remit the matter to the Authority pursuant to section 133(6) with a direction to reconsider and reach a decision in accordance with our findings. In this case however, Mr David Rowland does not seek a remittal for reconsideration. He will be satisfied by the findings in this decision. It was not suggested that we could not approach his references on that basis.

Level of influence and management

701. Mr David Rowland contends that the Authority was wrong to infer in the Decision Notices that he had a level of influence and management within the Bank. The inference is drawn in Annex B where the RDC gives responses to Mr David Rowland's representations.

702. In justifying the inference, the Authority relies on Mr David Rowland's position as Honorary President of the Bank and what was stated by Mr David Rowland to his son in their telephone conversation on 19 October 2017. Namely, not to put anything on the Bank's emails, to give Mr Bolelyy a job with Liwathon and to take him off the Bank's payroll. During the course of the hearing the Authority confirmed that it was inferring that Mr David Rowland had a level of general influence in the Bank and not specifically with regard to the Disputed Document. It is not alleged that he had any influence in relation to the Disputed Document or its dissemination.

703. In the light of all the evidence available to us, including Mr David Rowland's evidence, we are not satisfied that Mr David Rowland had a level of influence and management within the Bank. He was the protector of the trust and therefore treated as a controlling shareholder. However, there is no reliable evidence that he influenced the Bank's business. The telephone conversation can be construed as Mr David Rowland making suggestions to Mr Rowland in relation to the use of bank emails and dealing with Mr Bolelyy. It provides little support for the Authority's inference that Mr David Rowland had a general level of influence on the management of the Bank. The inference is, in any event, irrelevant to the issues before us where no allegations are made against Mr David Rowland. We agree with Mr David Rowland that a finding that he had a level of influence in the Bank is unjustified and brings with it the danger of innuendo. Namely, an underlying but unjustified suggestion that he was somehow responsible for the Disputed Document.

Awareness of the contents of the Disputed Document

704. Mr David Rowland contends that the Authority was wrong to infer in Annex B of the Decision Notices that by the time Mr Rowland forwarded the Disputed Document to him, he already had "some awareness" of what the Disputed Document was about.

705. In justifying that inference the Authority contends that Mr Rowland would not have emailed the Disputed Document to his father on 18 September 2017 without any comment in the body of the email unless he had already discussed the Disputed Document with his father.

706. Mr David Rowland submitted that it is not open to the Authority to seek such a finding because it was not put to Mr Rowland that he had discussed the Disputed Document with his father before sending the email. We do not accept that submission. We are satisfied that the point was raised sufficiently in cross-examination and effectively put to Mr Rowland. Mr Rowland's evidence was that it was not the case that he had discussed it previously, meaning that there was no need for him to write anything in the emails to Mr Tricks and his father. They could read the attachment themselves to see what it contained.

707. We do not accept on the evidence available to us that Mr David Rowland had any awareness of the contents of the Disputed Document prior to it being forwarded to him on 18 September 2017. There is no direct evidence to support such an inference. The fact that Mr Rowland sent the Disputed Document to his father is readily explicable on the basis that he intended to present it to Mubadala and did not want his father to be blind-sided. It sheds no light on whether there had been any prior discussion as to its contents or the request from Mr Al Mubarak.

708. The Authority also suggested that if Mr Rowland had not discussed the Disputed Document with his father then someone, possibly Mr Tricks, had done so. There is no evidence to that effect.

Awareness that the Disputed Document had been provided to Mubadala

709. Mr David Rowland contends that the Authority was wrong to infer in Annex B of the Decision Notices that by mid-October 2017 he was likely to have been aware that the Disputed Document had been provided to Mubadala.

710. In justifying that inference the Authority relies on the telephone conversation between Mr David Rowland and Mr Rowland on 12 October 2017 when discussing the source of the Indian Article. Mr Rowland stated that it was "probably a leak from their office" meaning the office of Mubadala and Mr David Rowland said, "we can capitalise on this".

711. We cannot infer from this or from the evidence generally that Mr David Rowland knew that what had been leaked was the Disputed Document.

712. Mr David Rowland's evidence was that the most likely explanation of how the Intercept obtained a copy of the Disputed Document was that his email account was hacked by agents of Qatar. We are not satisfied on the evidence that is the case, and we are not in a position to make any findings as to how the Intercept might have obtained a copy of the Disputed Document.

713. Mr David Rowland also submitted that it is not open to the Authority to seek a finding that he was aware that the Disputed Document had been provided to Mubadala because it was not put to Mr Rowland that he had at any time discussed doing so. It is true that this was not specifically put to Mr Rowland. However the point does not arise. For the reasons given above, we have made no finding that a copy of the Disputed Document was provided to Mubadala. In the circumstances, no inference can be drawn that Mr David Rowland was aware that it had been provided to Mubadala or might have been provided to Mubadala.

Promoting the interests of the Rowland Family

714. Mr David Rowland contends that the Authority was wrong to proceed on the basis that the Disputed Document was both created and disseminated in order to promote the interests of the Rowland Family.

715. The Authority seeks to justify proceeding on that basis in light of the close relationship between the Bank and the Rowland Family demonstrated by the Bank's website, Mr Weller's evidence that the Bank was in practice run by and for the benefit of the Rowland Family, and the fact that Mr David Rowland's children worked for the Bank in various senior roles.

716. We are not satisfied that Mr David Rowland was aware of the Disputed Document or its contents. We are however satisfied that when Mr Rowland gave instructions to Mr Bolelyy to prepare the Disputed Document, he was intending to promote the interests of the Bank and of the wider Rowland Family. We do not know the extent of those wider interests but we do know that they included interests in the Middle East, in particular AGTB.

717. We acknowledge that the Rowland Family is a collection of individuals. Alleging that the strategy was beneficial to the Rowland Family interests risks damaging the reputation of wholly innocent individuals. However, we record in this decision our finding that on the evidence we have seen no member of the Rowland Family other than Mr Rowland was involved in producing the Disputed Document or in covering up the circumstances in which it was produced. It remains the case however that Mr Rowland was seeking to benefit the commercial interests of the Bank and of the Rowland Family generally. He was certainly misguided in seeking to promote those interests through the Disputed Document, but that was his intention.

718. In the circumstances, we are satisfied that the Authority was entitled to proceed on the basis that Mr Rowland had given instructions for the Disputed Document and intended to disseminate it to promote the commercial interests of the Bank and the Rowland Family.

Generally

719. In making his third party references Mr David Rowland has criticised the Authority's investigation for following a pre-conceived case theory and failing to interview individuals who might support a different theory, including Mr David Rowland himself. It is said that the Authority has effectively been weaponised by the State of Qatar.

720. There can be criticism that a regulatory body failed to interview relevant individuals. In this case it is not clear to us why, for example, Mr David Rowland and representatives of Mubadala were not interviewed. Equally however, it was open to the Applicants to seek evidence from representatives of Mubadala and it was open to Mr David Rowland to give oral evidence. We must decide these references on the basis of the evidence before us and that is what we have done, taking into account that there are gaps in the evidence and recognising that the burden of proof lies on the Authority.

721. No party has invited us to draw adverse inferences from the absence of particular witnesses and we have not done so. Further, the evidence before us does not support any conclusion that the Authority had a pre-conceived case theory or that it had somehow been weaponised by the State of Qatar.

7 CONCLUSION AND DIRECTIONS

722. We can summarise our conclusions on these references and give appropriate directions pursuant to section 133 FSMA as follows:

723. In relation to the Bank's reference, we determine that the appropriate action for the Authority to take is to impose on the Bank a reduced financial penalty of £4m for failure to comply with Principle 1 of the Principles for Business. We remit the matter to the Authority with a direction to give effect to that determination.

724. In relation to Mr Rowland's reference, we determine that the appropriate action for the Authority to take is to confirm a financial penalty on Mr Rowland of £352,000 for failure to comply with Individual Conduct Rule 1. We remit the matter to the Authority with a direction to give effect to that determination. In relation to the prohibition order, we dismiss the reference.

725. In relation to Mr Bolelyy's reference, we determine that the appropriate action for the Authority to take is to confirm a financial penalty of £14,200 on Mr Bolelyy for failure to comply with Individual Conduct Rule 1. We remit the matter to the Authority with a direction to give effect to that determination. In relation to the prohibition order, we dismiss the reference.

726. In relation to Mr David Rowland's third party references, whilst we have accepted most aspects of Mr David Rowland's case he does not invite us to remit matters to the Authority for reconsideration. We must therefore dismiss the references.

JONATHAN CANNAN
UPPER TRIBUNAL JUDGE

Release date: 03 February 2026

APPENDIX 1

SFNH DOCUMENT

Setting Fire to the neighbours house Fund

Large Bond issue by Saudi to start the ball rolling.

Proceeds used to comfort Dubai as the AED might get smashed up later.

Try and mop up M.E. fixed interest demand knowing that appetite is about to get reduced for a while.

Use Qatar friendly banks for this (Barclays, Deutsche, Credit Suisse) to potentially affect loyalty and add confusion.

Make sure lines are in place everywhere to trade – different time zones and 2nd tier banks; need to work it like how a Central Bank would and be able to keep hitting trades from all angles and all geographies at all times.

Numerous lines will help to gauge the full extent of what trading in which products is available, where to do it, and in what size. Will help to establish a full execution strategy for zero costs.

Quietly pick up some Qatar paper; 2026s and 2030s; old school account painting and gets some ownership. Control the yield curve.

If the trade starts to work, it gives something to dump on the 'market' later to drive price further down.

To extent that it is possible, these are bought by a buyer acting in concert. f above can work, then they can be dumped again to drive price further down and picked back up the original seller. Crossing amongst yourselves

Done this way, then as far as the IBs are concerned, 1 side of the trade will always be looking smart at this point. (As things develop as below, then properly dump the lot. Loss offset with profits elsewhere.)

Establish positions in Forwards on Riyal, options where possible (and check gas market)

Start with the Qatar-friendly banks who may be an easy opener as they will be more likely to see it as a free money trade for them.

Imagine depth will be limited, though if done as a Put Spread on the Riyal then they might go a little further. Work on the basis that pricing may be pretty poor, especially on exit.

Depending on what lines are in place (everywhere) will determine where to start it, though **get long the CDS slowly with larger houses, just enough to move the price to make it news worthy**

Fire up the PR machine (Hill & Knowlton / Qorvis are already on the payroll - Saudi) to remind people there is problem with Qatar and reinforce the existing narrative, suggesting the state is feeling some pain from lack of engagement with neighbours. **Use their own narrative against them: Qatari's taking their own money out the country etc....**

Qatar will counter with their own PR but will exhaust the message quickly, especially as market prices will show their weakened position.

Hit up all the 2nd tier banks lines in one go at the same time with the CDS (who will probably be using the larger houses anyway) **and increase positions with the larger ones.**

Build a position that profits if the AED sells off too. (Dubai keep hold of the Saudi money raised at the start for comfort.)

PR wave two, with altered and additional narrative that "market appears to take the view that despite the massive SWF, pressure is building that could see Qatar having restricted access to Dollar (phoenix Trumps previous words) **and the 'once seen as stable' credit rating may be affected with the long term future of the country now in doubt." Qatar PR will have already been exhausted and prices will be reflecting the problem.** Peg won't break, though credit markets will be looking shambolic.

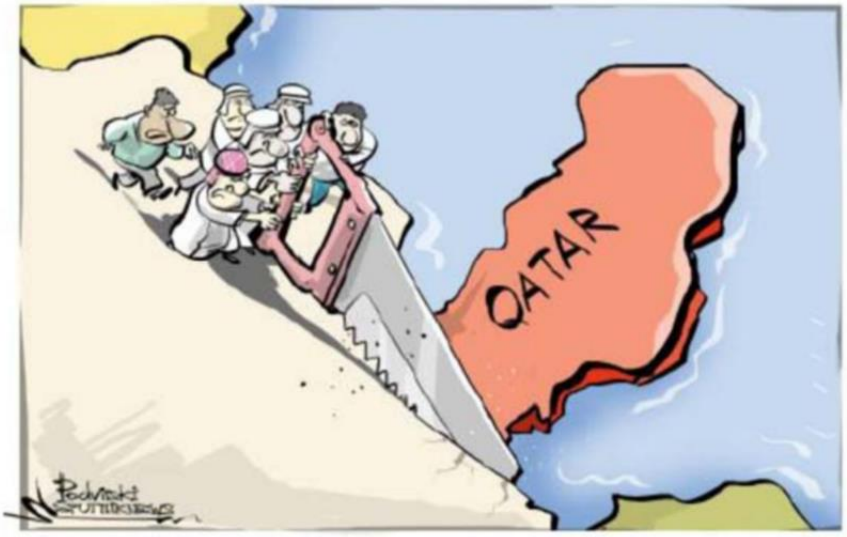
Some bold statements from neighbouring countries required here to add fuel to fire.

Increase positions. Dump the mid-term paper as set out above – or hold depending at this stage what control is required. Keep up the PR and try and draw some of the fire in to the AED if it isn't already smouldering with a "potentially could spill in to Dubai" type story. Neighbouring countries say nothing about the AED.

Once fire fully alight, clear out the AED specs for a profit.

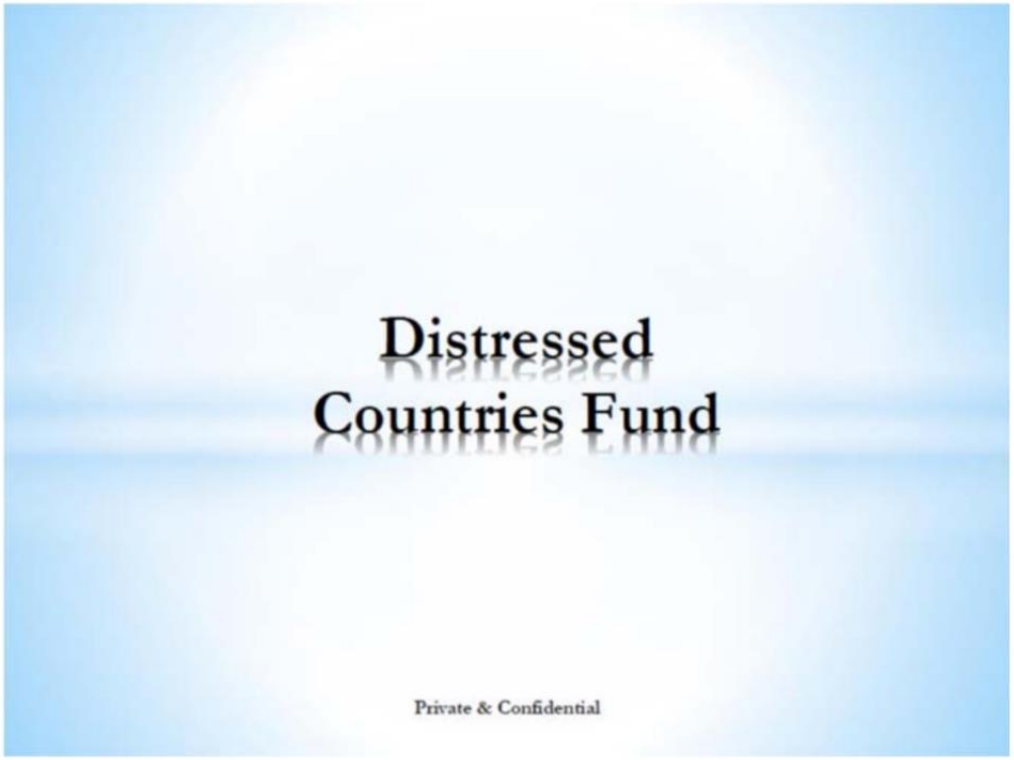
Close the positions with the Qatar friendly banks first; happy to take your call as you are saving them from a painful 'free money' trade. Other IBs second, and 2nd tier IBs last.

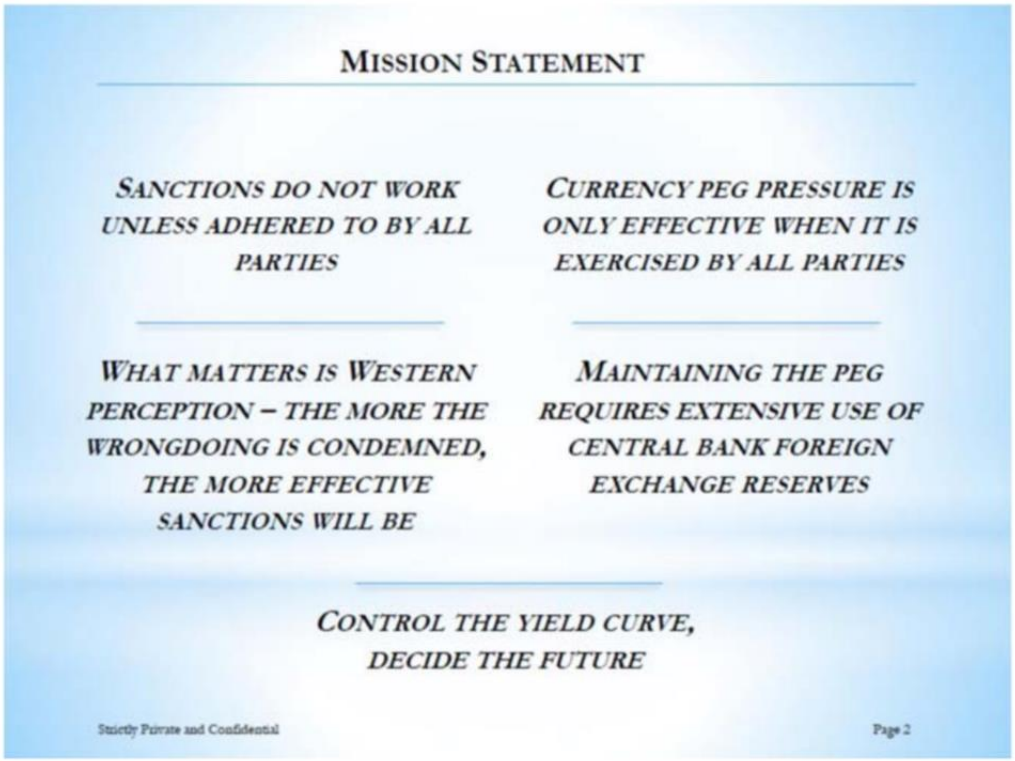
Repeat as desired.



APPENDIX 2

THE DISPUTED DOCUMENT





PROPOSED STRUCTURE

STAGE 1 – Establish Execution Strategy

- **TO PRESERVE INTEGRITY OF EXISTING QATARI BOND HOLDINGS, AN IN-SITU TRANSFER WILL BE ARRANGED INTO A PROTECTED CELL COMPANY:**
  - Create a sizeable, strong, and standalone entity which can be viewed as a smaller counterpart to central bank reserve holdings
  - Confidentiality is maintained
  - Separate ownership remains intact
  - Qatari bond holdings serve as collateral
  - Individual holdings can be instantly accessible
- **ASSESS GLOBAL MARKET CONDITIONS FOR THE QATARI RIYAL AND CDS TO ESTABLISH EXECUTION STRATEGY WHICH WOULD INCLUDE:**
  - Determining available liquidity, supply, and pricing
  - Identifying appropriate instruments such as currency forwards, currency options, and bond CDS
  - Ensuring trade lines are placed in different time zones and include second-tier banks to allow maximum flexibility
  - Make targeted use of investment banks' friendship with Qatar to affect loyalty and add confusion to the marketplace

PROPOSED STRUCTURE *(CONT'D)*

STAGE 2 – Gear Up to Control the Yield Curve

- **PURCHASE MEDIUM- AND LONG-TERM QATAR PAPER:**
  - This would allow to control the yield curve (and thus bond prices) and should favourably affect CDS pricing at a later stage
  - Establish a crossing transaction arrangement whereby another affiliated party sells the same bond holdings back to the original seller and thereby creates additional downward pressure
- **PURCHASE CDS ON QATAR:**
  - Start with Qatar-friendly banks who may prove more willing to enter into these trades
  - Increase long CDS positons slowly with large banks, just enough to move the price sufficiently to make it newsworthy
  - Market depth may be limited and poor pricing on exit expected

PROPOSED STRUCTURE *(CONT'D)*

STAGE 3 – PR Machine & Position Increase

- **FIRE UP THE PR MACHINE TO REMIND PEOPLE THERE IS A PROBLEM WITH QATAR:**
  - Reinforce the existing narrative, suggesting the state is feeling some pain from lack of engagement with neighbours and use their own narrative against them
  - Qatar will counter with their own PR but will exhaust the message quickly, especially as market prices will show their weakened position
- **INCREASE POSITIONS:**
  - Simultaneously hit all second-tier bank CDS lines and increase existing positions with larger banks
  - Buying additional CDS leads to falling bond prices, rising rates, and escalation in CDS premia
- **REFRESH THE PR MESSAGE TO ADD MORE FUEL TO THE FIRE:**
  - Focus on the prospect of restricted access to US Dollar and now-doubtful stability of the country
  - The currency peg will not break, although credit markets will not be looking healthy
  - Some bold statements from neighbouring countries may prove useful
  - And… continue to increase positions
- **CLOSE THE POSITIONS WITH THE QATAR FRIENDLY BANKS FIRST, FOLLOWED BY OTHER LARGER BANKS AND SECOND-TIERS**

FIFA OPTION

- **QATAR HAS COMMITTED TO $200BN OF SPENDING FOR ITS HOSTING OF 2022 WORLD CUP**
- **THE GCC CAN PETITION FIFA TO GRANT THE TOURNAMENT TO THE REGION AS A WHOLE**
  - Precedent in the form of Korea/Japan World Cup in 2002
  - European Championship in 2020 to be hosted across the continent in multiple countries
- **AN APPEAL TO FIFA WILL BE TO DISPLAY FOOTBALL AS A TOOL TO STABILISE THE REGION**
- **IF QATAR REJECTS THE PROPOSAL, THEY WILL BE SEEN UNWILLING TO WORK WITH THEIR GCC PARTNERS**
- **NEGATIVE PUBLICITY CAN RESURFACE AROUND THE ORIGINAL AWARD OF THE TOURNAMENT, BRIBERY ALLEGATIONS, CONDITIONS OF CONSTRUCTION PERSONNEL AND OTHER ISSUES**
- **THE MOVE DRAWS PUBLIC ATTENTION TO QATAR'S DUBIOUS ABILITY TO HOST THE WORLD CUP ON THEIR OWN**
  - Primary suppliers of materials were Saudi Arabia and the UAE – costs have already increased
  - Importing talent from abroad has become more difficult given the no-fly zones – ability of fans to travel to the region has already diminished
  - If Qatar now spends its reserves on protecting the currency and domestic credit markets, there is less dry powder to fund the infrastructure spending

APPENDIX: COLLATERAL STRUCTURE