UT Neutral citation number: **[2026] UKUT 00351 (TCC)**

UT (Tax & Chancery) Case Number: UT-2025-000021

Upper Tribunal
(Tax and Chancery Chamber)
Hearing venue: The Rolls Building, London

Heard on 10-13, 16-20, 24-26 March and 5 & 6 May 2026

Draft Circulated: 25 August 2026
Judgment date: 10 September 2026

FINANCIAL SERVICES – whether Applicant acted without integrity: in twice removing Executive Committees of the LLP he owned that were due to hear a disciplinary hearing into allegations he had breached a Final Written Warning imposed upon him for misconduct and inappropriate behaviour towards female employees; in substituting himself as the sole member of ExCo in breach of regulatory requirements requiring at least two managers; in making misleading statements to the members of the LLP, to investors and to the Financial Conduct Authority – whether the FCA was reasonably entitled to impose a prohibition order upon the Applicant pursuant to s.56 FSMA - financial penalty - s66 FSMA - whether jurisdiction to impose - whether financial penalty correctly calculated - reference dismissed

Before

MR JUSTICE THOMPSELL
JUDGE RUPERT JONES
MEMBER CATHERINE FARQUHARSON

Between

ROBIN CRISPIN ODEY

Applicant

-and-

THE FINANCIAL CONDUCT AUTHORITY

The Authority / Respondent

<u>Representation</u>:

For the Applicant: Alisdair Williamson KC and Jason Mansell, Counsel, instructed by Kingsley Napley LLP

For the Respondent: Clare Sibson KC, Simon Paul and Lara Hassell-Hart, Counsel, instructed by the Financial Conduct Authority

DECISION

OVERVIEW

1. On 3 March 2025 the Financial Conduct Authority ("**the Authority**"), through its Regulatory Decisions Committee, issued a decision notice (the "**Decision Notice**") to the Applicant ("**Mr Odey**"). The Decision Notice gave reasons for the Authority's conclusion that Mr Odey was in breach of a provision set out in the Code of Conduct part of its Handbook ("**COCON**"), namely Individual Conduct Rule 1 ("**ICR1**"), the requirement to act with integrity.

2. During the period 24 December 2021 to 17 November 2022 (the "**Relevant Period**"), Mr Odey was an employee of Odey Asset Management LLP ("**OAM**" or "**the firm**"), an investment management and advisory firm of which he was also founder and ultimate majority owner. As a fund manager he was an employee required to be certified annually as fit and proper ("**certification employee**") and subject to ICR1. The basis for the Authority's decision was that Mr Odey's conduct during the Relevant Period lacked integrity rendering him not fit and proper to undertake regulated activities.

3. The Authority decided to make an order prohibiting Mr Odey from performing any regulated activities ("**a prohibition order**") and to impose upon him a penalty of £1,835,200 ("**the financial penalty**") pursuant to sections 56 and 66 of the Financial Services and Markets Act 2000 ("**FSMA**").

4. The Authority primarily relied on the fact that, as controller and ultimate majority shareholder of OAM, in December 2021 and March 2022, Mr Odey twice removed two separately constituted Executive Committees ("**ExCo**s") of OAM. The ExCos were due to hear allegations that he had breached a final written warning ("**FWW**") imposed upon him in February 2021 following a first disciplinary hearing ("**1DH**") in January 2021. The FWW was imposed following the first ExCo finding Mr Odey had engaged in inappropriate behaviour and sexualised misconduct against female employees.

5. The Authority decided that Mr Odey's actions prevented either of the ExCos from holding the second disciplinary hearing ("**2DH**") into alleged breaches of the FWW, which hearing was delayed and postponed and at which Mr Odey was due to answer the allegations and, if necessary, face appropriate sanction. The Authority also relied on the fact that in twice removing the ExCos Mr Odey appointed himself as the sole member of ExCo in the interim periods, in breach of the Authority's rules which required a minimum of two approved senior managers. At the heart of its decision lies the Authority's central allegation that Mr Odey lacked integrity in removing the two ExCos out of self-interest to avoid being held to account.

6. On 5 March 2025 Mr Odey referred the Authority's decision to the Upper Tribunal ("**the Tribunal**"). In this reference he denies that he acted without integrity during the Relevant Period and contends that there were very good reasons that justified his removal of the ExCos.

7. We are very grateful to all counsel for the quality of their submissions and assistance in deciding this case: Mr Williamson KC and Mr Mansell for Mr Odey; and Ms Sibson KC, Mr Paul and Ms Hassell-Hart for the Authority.

8. Having had the opportunity to hear extensive evidence and submissions, we dismiss this reference, uphold the prohibition order and determine that the appropriate action for the Authority to take is to impose a financial penalty of £1,529,374 upon Mr Odey. For reasons

that we will give in more detail below, we are satisfied that Mr Odey lacked integrity in each of the ways that the Authority alleges.

9. In respect of the Authority's principal allegations, we are satisfied that Mr Odey's asserted beliefs or concerns were not the primary nor contemporaneous motives for his actions in removing the ExCos. Many of the beliefs he did not even hold at the time and those that he did were not reasonably held but reflected a warped set of values based on a strong sense of entitlement. Rather he was motivated by his own self-interest and self-preservation so as to avoid accountability: determination by the first or second ExCo at the 2DH as to whether he had breached the FWW and should be dismissed for gross misconduct. The far more significant source of pressure on both ExCos was from Mr Odey himself, who repeatedly threatened to close the firm if the two ExCos sought to dismiss him at the 2DH. He then removed the two ExCos and substituted himself when he feared they would not find in his favour as he wanted. In any event, Mr Odey's asserted beliefs, even if true and contemporaneously held, could not form a reasonable basis for his extraordinary actions which we are satisfied lacked integrity. Further, we are satisfied that Mr Odey acted with reckless disregard for OAM's governance and compliance with regulatory rules and obligations in removing both ExCos and lacked integrity in that way also.

10. None of the reasons that Mr Odey has advanced for his actions in removing the ExCos, such as any asserted concerns as to the fairness of the 2DH; or his assertions of undue pressure on the ExCos from the Authority or OAM's lawyers; or asserted concerns about the future of the firm and impact on staff and investors; or that when the 2DH was subsequently held by a third ExCo he was not dismissed; or his claim that the conditions imposed by the FWW were unduly restrictive and disproportionate, provide reasonable justification for his conduct. Further, we find that he did not hold or could not have held all of these beliefs at the relevant time.

11. The primary focus of this case is on Mr Odey's lack of integrity in corporate governance: in removing the ExCos due to hold him to account at the 2DH. Nonetheless, the case is set against the background of findings of his misconduct as set out in the FWW: inappropriate comments, non-consensual or unwelcome touching and harassment or bullying behaviour towards women, specifically the firm's female employees in subordinate positions to him. The first ExCo made five categories of adverse findings against Mr Odey in making the FWW, which he accepted at the time.

12. Whilst our decision is made against that background, it is important to remember that the truth of all the sexualised misconduct complaints considered at the 1DH is not required to be determined by the Tribunal in order to decide the reference. Nonetheless, contrary to Mr Odey's submissions, the misconduct allegations, that Mr Odey accepted or at least purported to accept at the 1DH and which resulted in the FWW, remain admissible background and relevant context when considering his motivation for the removal of both ExCos due to hear the breach allegations at the 2DH. They are also relevant to the Authority's allegation that Mr Odey's actions in removing the ExCos risked entrenching a culture at the firm where his inappropriate behaviour was tolerated or unchallenged and thus he lacked integrity. Some of the various allegations of inappropriate conduct by Mr Odey towards female members of staff are apparently conceded by him in these proceedings, as he had previously accepted them (or at least purported to accept them) in agreeing to the findings and the terms of the FWW, but some he appears to have resiled from which undermines his credibility.

13. This is not a case about whether sexualised misconduct in the workplace by Mr Odey, a form of non-financial misconduct ("**NFM**"), is, of itself, a matter falling within the jurisdiction of the Authority to regulate as a matter going to fitness, propriety or integrity. However, the fact

of misconduct and the sanction to be applied were definitely within ExCo's remit to adjudicate within OAM's terms of employment. In any event, we express our concern and extend our recognition to those women to whom Mr Odey accepts he did cause emotional or other forms of harm.

SUMMARY OF THE PARTIES' CASES

Outline of the Authority's case

14. A high-level overview of the Authority's case, consistent with its Decision Notice and Statement of Case ("**SoC**"), is as follows.

Removal of the first ExCo

15. On 24 December 2021, using his powers as ultimate majority shareholder, Mr Odey removed the then ExCo of OAM (the "**first ExCo**"), consisting of the CEO, Mr Tim Pearey ("**Mr Pearey**"), Head of Research, Lord Massey Roborough ("**Lord Roborough")** and James Hanbury ("**Mr Hanbury**"). He appointed himself in their place as sole member.

16. It is not disputed that Mr Odey's object was to prevent the first ExCo from proceeding to convene the 2DH to adjudicate his alleged misconduct within the firm, which was scheduled to take place on 6 January 2022. Neither is it disputed that, in doing so, Mr Odey placed OAM in breach of certain of its regulatory requirements, including the requirement that the firm be managed by at least two persons of good repute, and that there be a functional and hierarchical separation between risk management and fund management (which was not the case in circumstances where Mr Odey was both a fund manager and the sole member of the firm's governing body).

17. The Authority's case is that this was a serious step that had far-reaching implications for the governance of OAM. It resulted in the resignations of two of the three members of the removed first ExCo, Mr Pearey and Lord Roborough, as well as, in due course, OAM's Head of Compliance, Mr Jack Satt ("**Mr Satt**"). Each of those individuals were longstanding and experienced employees of OAM occupying important senior manager roles.

The background to the 2DH – alleged breach of the FWW – and its postponement

18. The context for Mr Odey's removal of the two ExCos was a disciplinary process that the first ExCo had initiated concerning alleged breaches by Mr Odey of the FWW to which he was subject. The FWW had been issued in February 2021, accepted and signed by Mr Odey, after the 1DH at which the first ExCo had found, without dispute by Mr Odey, that he had engaged numerous times in improper conduct or inappropriate behaviour towards female employees, during the period 2003 to 2020.

19. These findings were based on the first report ("**1S&S**") dated 19 January 2021 prepared by Simmons & Simmons ("**S&S**"), the firm's lawyers charged with carrying out the investigations. The FWW set out the terms on which Mr Odey could continue to be a member of OAM and included a condition that his interactions with female members of staff, whether temporary or permanent, would be professional and in accordance with the policies and procedures of OAM, supported by a list of non-exhaustive examples of behaviour that would not be considered professional or in accordance with OAM's policies.

20. In October 2021, OAM approached a recruitment agency, RMS, from which it had previously obtained temporary staff to provide reception cover. The agency told OAM that it was unwilling to supply further staff to OAM because of concerns arising in light of information supplied by a temporary member of staff who had worked at OAM in July and August of that year. The information suggested that Mr Odey's conduct towards the temporary receptionist in August 2021 may have amounted to breaches of the FWW. An investigation was commenced and the 2DH scheduled.

21. It is the Authority's case that during December 2021, in the run-up to the scheduled disciplinary hearing, Mr Odey sought to place pressure on and made threats to the first ExCo to discontinue the disciplinary process into alleged breaches of the FWW. The evidence of Mr Pearey, the then CEO, is that during those exchanges, Mr Odey "made his contempt for the whole process clear", considered it to be "nonsense", and threatened to "shut down the business" in the event of his dismissal; when Mr Pearey declined to stop the process, Mr Odey told him "you're fired, I don't want you doing this". Mr Odey does not dispute the account of that discussion as pleaded and maintained by the Authority, although he does seek to question Mr Pearey's motivations in raising these alleged breaches.

22. On 24 December 2021 Mr Odey subsequently took steps to remove the first ExCo and appoint himself in their place. The appointment of Mr Odey as sole member of ExCo placed OAM in breach of a number of regulatory requirements. On 6 January 2022, the previously scheduled day of the 2DH, he convened a meeting of ExCo (consisting only of himself) at which he decided that the disciplinary hearing would be "indefinitely postponed since he is unable to conduct it with impartiality".

Misrepresentations and lack of candour alleged

23. Thereafter the Authority alleges that on 24 December 2021 and 12 January 2022 Mr Odey was responsible for communications with OAM and its clients which presented an inaccurate and misleading impression about the circumstances of the changes to ExCo. Furthermore, in communications with an employee of the Authority, Mr Low, in February 2022 Mr Odey falsely contended that an agreement had been reached with another more senior member of the Authority, Ms Trost, regarding postponement of the disciplinary process. The Authority's case is that those communications included material misrepresentations and lacked candour.

Removal of the second ExCo

24. Mr Odey appointed a new ExCo on 12 January 2022 ("**the second ExCo**") consisting of two long-serving members of OAM, the COO, Mr Tom Richards ("**Mr Richards**") and a fund manager, Mr Oliver Kelton ("**Mr Kelton**"). The Authority's case is that Mr Odey also lacked integrity in removing the second ExCo only some 11 weeks later.

25. The second ExCo considered it their responsibility to bring themselves up to speed about the background to the FWW, to carry out the investigation into the new allegations, and to decide if and when it was appropriate to conduct the 2DH. In March 2022, however, further allegations emerged about Mr Odey's interactions with a new joiner to the firm the previous year, in March 2021. The second ExCo decided that these matters also needed to be investigated, and – with the input of legal advice – sought to introduce safeguarding[1] measures

[1] Safeguarding as understood by all parties in this context was understood to mean the protection of female employees from unwanted and inappropriate behaviour by Mr Odey. It is not meant in the statutory sense as

which Mr Odey was to abide by whilst the disciplinary process was pending. Mr Odey objected strongly to those measures - which included the suggestion that he take a sabbatical, work from home or work in the basement of the office until the disciplinary process was concluded.

26. The Authority's case is that this resulted in Mr Odey threatening Mr Richards and Mr Kelton that he would close down the business and/or remove their Directors & Officers ("**D&O**") insurance and sue them personally. The evidence of the two members of that ExCo, Mr Richards and Mr Kelton, is that Mr Odey was, at times in February and March 2022, aggressive. In one encounter, a meeting at Mr Odey's house on 12 February 2022, Mr Kelton felt physically threatened. Mr Odey made repeated threats, including to close OAM if ExCo made a finding against him, and/or proceeded to manage the disciplinary process otherwise than as he wished.

27. On 31 March 2022, against that background, Mr Odey again used his powers as ultimate majority shareholder to remove the second ExCo and once more appoint himself in their place as sole member. The Authority alleges that he did so to protect his own interests and to the obvious detriment of good governance at OAM. The Authority says that this plunged the firm deeper into a regulatory and governance crisis. Mr Odey's actions again precipitated the resignation of another longstanding and senior colleague, one of the two members of that ExCo, Mr Richards. Once again, the firm was placed in breach of its regulatory obligations.

<u>The pleaded Five Allegations of lack of integrity</u>

28. The Authority's case is that Mr Odey's conduct during this period lacked integrity, contrary to ICR1, and demonstrates that he is not fit and proper to perform regulated activities. In particular, the Authority alleges and pleaded in its SoC[2] that:

    i) Mr Odey's removal of both ExCos was deliberately intended to frustrate OAM's disciplinary process and limit his personal accountability; was motivated by Mr Odey's self-interest to avoid the risk of dismissal in respect of his own misconduct, and to avoid or minimise scrutiny of any further allegations of misconduct against him in future ("**the First Allegation**").

    ii) He demonstrated a reckless disregard for OAM's governance and compliance with regulatory rules and obligations. Mr Odey's acts caused OAM to breach certain regulatory obligations and risked OAM being unable to meet the Authority's Threshold Conditions ("**the Second Allegation**").

    In respect of the First and Second Allegations the Authority alleges that Mr Odey was motivated by and placed his own personal interests above a) the interests of OAM, b) the interests of OAM's clients, c) OAM's compliance with the regulatory obligations to which it was subject, and/or d) OAM's compliance with its own policies and procedures.

    iii) Mr Odey's conduct risked entrenching a culture at OAM which had normalised inappropriate behaviour by him towards female employees and had made employees reticent to raise concerns – there was a belief amongst some employees at least, that allegations of misconduct against him would not be properly scrutinised or challenged and/or that such behaviour would be tolerated ("**the Third Allegation**").

provided by the Safeguarding of Vulnerable Groups Act 2006 where it relates to 'vulnerable adults' and 'children' as defined therein nor as understood by the Care Act 2014.

[2] Summarised at paragraph 29 in the Authority's SoC and set out more fully in Section F, para 141 onwards.

iv) Mr Odey's dealings with OAM, its clients and investors and the Authority about these matters lacked candour, further demonstrating his lack of integrity ("**the Fourth Allegation**").

v) Mr Odey made a false assertion of fact to the Authority in an attempt to secure its endorsement of an indefinite deferral of the ongoing Second Disciplinary Hearing ("**the Fifth Allegation**").

29. In summary therefore, Mr Odey faces five allegations ("**the Five Allegations**"), each of which is said to evidence a lack of integrity. The First, Second and Third Allegations are the three principal allegations ("**the principal allegations**") and the two subsidiary allegations (the Fourth and Fifth Allegations) arise from the facts of the principal allegations.

30. As set out above, the Five Allegations only relate to actions taken by Mr Odey in the defined "Relevant Period", being 24 December 2021 to 17 November 2022.

Outline of Mr Odey's Case

31. The following is an overarching summary of Mr Odey's case and does not attempt to capture every point he relies upon. We outline and address his case in more detail later.

<u>The First and Second Allegations</u>

32. Mr Odey's starting point is that the facts that give rise to the First and Second Allegations flow from a second disciplinary investigation that OAM began in November 2021 and concluded in December 2022, the 2DH. The purpose of the 2DH was to determine whether Mr Odey had breached the terms of the FWW to which he was subject following the earlier disciplinary hearing, the 1DH, and, if so, whether the breach of that FWW should result in Mr Odey's dismissal from the firm for gross misconduct.

33. Mr Odey relies on a range of arguments as to why he did not lack integrity in removing the ExCos which broadly fall into four categories: unfairness; pressure; existential threat; and the final result of the 2DH not leading to his dismissal.

34. First, Mr Odey asserts that he removed both the First and Second ExCos as he believed that neither was able to conduct the disciplinary process fairly. As part of his argument about unfairness, he submits that the result of the 2DH, his dismissal, had been pre-determined by the two ExCos and that Mr Pearey was acting out of self-interest. Had he not taken these actions, he believed that the ExCos would have incorrectly and unjustly reached the conclusion that they had no option but to dismiss him, and that his dismissal would lead to the closure of the firm.

35. Second, Mr Odey asserts that OAM, in particular both ExCos, were subject to undue pressure from the Authority to dismiss him at the 2DH by virtue of its communications and opening an investigation into the firm's conduct of the 1DH and imposition of a FWW rather than dismissal. In addition, the Authority was seeking to target Mr Odey as part of their agenda in an uncertain area of law as to whether it held a jurisdiction to regulate NFM. As part of the pressure argument, he also suggests the ExCos were under undue pressure from their legal advisers to dismiss him at the 2DH.

36. Third, Mr Odey maintains that the actions which he took in his capacity as majority owner were ones that he was fully entitled to take. Further, in circumstances where the firm faced an

existential crisis, these were actions he reasonably considered to be in the best interests of the firm, its staff, and its clients. In this regard, his interests and theirs were wholly aligned. Further, it is argued that any risks and/or harms arising from the actions taken by Mr Odey were therefore outweighed by the detriment that would have been caused to OAM, its staff, and its clients had he been forced out of OAM as a result of a disciplinary process that had not been conducted fairly. Pursuing a course of conduct which Mr Odey reasonably believed would cause lesser harm than inaction does not and cannot demonstrate a lack of integrity.

37. Fourth, ultimately, OAM did investigate the alleged breach of the FWW and a third ExCo made findings following the 2DH in November 2022 that there had been two technical breaches by Mr Odey of the FWW for which further sanctions, not leading to Mr Odey's dismissal, were imposed. The decision reached by the third ExCo and issued in a letter on 13 December 2022 – that any breach of the FWW was technical and that it was not necessary to dismiss Mr Odey – was not one which either of the earlier two ExCos were in a position to reach. At its highest, therefore, the Authority's allegation amounts to Mr Odey having temporarily frustrated a disciplinary process that did ultimately reach a conclusion which is not criticised by the Authority.

38. Fifth, Mr Odey also maintains that the terms of the FWW were unduly restrictive and disproportionate to his conduct such that this further justified his concern about being dismissed at the 2DH for alleged breaches.

39. In the unprecedented circumstances in which Mr Odey found himself, he claims that his actions were reasonable. In this context, he relies on the fact that a number of the Authority's own witnesses agree that his actions were rational and/or not for the purpose of advancing his own interests.

40. In relation to the Second Allegation, Mr Odey relies on the fact that no harm was caused to the firm, investors or others by the temporary breach of the Authority's rules. He was only in place as the sole member of ExCo for very short periods during which there was a sophisticated governance structure in place at the firm and during which time he had acted quickly to restore multi-person ExCos – the second and third ExCos. His actions were justified by the extraordinary circumstances in which he found himself.

41. In brief, the Authority's case on recklessness in the Second Allegation is that Mr Odey understood the risks of breach of regulatory rules and threshold conditions caused by his removing the two ExCos but went ahead anyway out of his own self-interest. Mr Odey's case is that his conduct was reasonable in the light of his apprehensions that he could not get a fair trial and the pressures being placed on ExCos and for other good reasons, that the firm could not continue without him, and anyway he could not see any scope for consumer harm since the other organs of the firm were continuing to operate in a reasonable fashion. The competing evidence and arguments will be explored in more detail later in this judgment.

42. Mr Odey submits that the case against him is that he acted in bad faith, and in pursuance of his own interests over those of others, and for that reason lacks integrity. In circumstances where Mr Odey contends that the Tribunal can be satisfied that purpose was not deliberately to frustrate OAM's disciplinary process for his own ends and he did not act recklessly, the First and Second Allegations fail. The case against Mr Odey is not that he acted in good faith and simply failed to act with due skill and care and diligence in his choice of actions to achieve a legitimate objective; Mr Odey's response does not address this case as it is not the allegation that he has been required to meet.

<u>Third, Fourth and Fifth allegations</u>

43. In relation to the Third, Fourth and Fifth Allegations, Mr Odey asserts that for reasons set out later in this decision, these do not, either in themselves or collectively, evidence a breach of ICR1 or a lack of fitness and propriety on grounds of integrity. He denies entrenching any culture of normalisation or impunity at the firm in relation to his conduct or making any misleading communications to staff, investors or the Authority.

KEY ISSUES FOR DETERMINATION

44. The key questions for the Tribunal to determine in this reference are as follows.

45. As far as it relates to the Authority's decision to make a prohibition order against Mr Odey pursuant to s.56 of FSMA on the basis that he lacks the requisite integrity to be fit and proper, the Tribunal need only conclude whether the Authority's decision to prohibit him was one that was reasonably open to the Authority in the circumstances.

46. As far as it relates to the Authority's decision to impose a financial penalty on Mr Odey, the Tribunal must first conclude whether the Authority has jurisdiction to discipline Mr Odey pursuant to s.66/s.66A of FSMA in respect of the conduct relied upon, in view of the legal argument raised by Mr Odey that these sections apply only to acts that he performed in his capacity as a certification employee and not to acts he performed in his capacity as a controller of OAM.

47. Second, assuming the Authority does have jurisdiction, the Tribunal must decide whether Mr Odey's conduct lacked integrity.

48. Third, if so, the Tribunal must decide what the appropriate financial sanction is: what a fair and reasonable level of any fine imposed should be.

49. Mr Odey's integrity is thus common to both the decision to impose a prohibition order and financial penalty upon him. Other than the legal argument raised by Mr Odey on jurisdiction, which is relevant to penalty only, the core question for determination is thus whether Mr Odey lacked integrity in acting as he did. That will require consideration of the issues raised by the Five Allegations of absence of integrity pleaded by the Authority.

50. While there is a distinction between the Tribunal's effective supervisory jurisdiction over the prohibition order, and full merits jurisdiction over the financial penalty, the core question for determination is whether the Five Allegations during the Relevant Period are established, and if so, whether Mr Odey lacked integrity in breach of ICR1 of COCON in respect of them.

51. To determine this core question, it is necessary: a) to consider the nature of what is meant by "integrity" in this context; b) to make findings on the evidence as to the pleaded conduct of Mr Odey and his state of knowledge and motivations for taking these actions and evaluate whether the Authority has established a lack of integrity in relation to each of the Five Allegations.

52. This is not an appeal against the Authority's decision on both of the sanctions it applied but a reference. A reference requires a complete rehearing of the issues which gave rise to the decision. Section 133(4) FSMA, as explained below, provides that, on a reference, the Tribunal may consider any evidence relating to the subject matter of the reference whether or not it was available to the decision-maker at the material time.

THE LAW

Fit & Proper, Integrity, Regulatory Rules and Tribunal Jurisdiction

53. This reference concerns both a prohibition order under s.56 of FSMA (a non-disciplinary reference) and the imposition of a financial penalty under s.66 (a disciplinary reference), which we address in turn.

Imposing a Prohibition Order – s.56 FSMA and Fit & Proper

54. Section 56 of FSMA 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.

55. The "Enforcement" part of the Authority's Handbook contains further guidance as to how the Authority will exercise its powers under s.56. The guidance as to the exercise of its powers under s.56 FSMA was previously contained in EG 9 but is now found in ENFG 5. ENFG 5.2.1G provides that the Authority will consider all the relevant circumstances of the case in deciding whether to make a prohibition order. ENFG 5.3.2G states that the Authority will consider all the relevant circumstances of the case, and sets out a non-exhaustive list of factors it will consider in that regard, including:

> "(1) the matters set out in section 61(2) of the Act [which relates to applications for approval];
>
> (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
>
> (3) whether, and to what extent, the approved person has:
>
> (a) failed to comply with the Statements of Principle or COCON, as applicable, issued by the FCA with respect to the conduct of approved persons;
>
> […]
>
> (5) The relevance and materiality of any matters indicating unfitness;
>
> […]
>
> (8) the level of risk which the individual poses to consumers and to confidence in the UK financial system; […]"

56. The part of the Handbook entitled "The Fit and Proper Test for Employees and Senior Personnel" ("**FIT**") sets out the criteria by which firms should assess the fitness and propriety of certification employees. FIT is relevant in two ways: it sets out the factors relevant to both (i) the Authority's and Tribunals' assessment of whether Mr Odey is fit and proper in the context of deciding whether to impose a prohibition order under s.56 FSMA; and (ii) the considerations that were to be applied by OAM in assessing Mr Odey's fitness and propriety during the Relevant Period.

57. FIT 1.3.1BG provides that in the Authority's view, the most important criteria in assessing fitness and propriety are: "(1) honesty, integrity and reputation; (2) competence and capability; and (3) financial soundness." In determining a person's honesty and integrity, the Authority will have regard to all relevant matters, including those set out in FIT 2.1.3 (FIT 2.1.1G). Thus, one of the most important matters in assessing fitness and propriety to become a certification employee is the individual's integrity.

Integrity

58. Pursuant to s.64A of FSMA, the Authority may make rules governing the conduct of certain persons working in authorised firms, employees of authorised firms required to hold a valid certificate that they are fit and proper by virtue of s.63E(1) and s.63F(1) - "**certification employees**". Certification employees are not approved by the Authority. Instead, firms

need to check and certify that they are fit and proper to perform their role on appointment and at least once a year.

59. The rules for the purpose of s.64A FSMA are contained in the section of the Authority's Handbook called COCON, the Code of Conduct. COCON 2.1 contains certain "Individual Conduct Rules" ("**ICRs**"), including ICR1: "You must act with integrity."

60. Whether under FIT or ICR1, the meaning of integrity is the same. COCON 4.1.1G provides guidance on the application of ICR1, by listing non-exhaustive examples of conduct that would breach ICR1. The examples listed in COCON 4.1.1G include:

    a. Misleading (or attempting to mislead) by act or omission a client, the firm, the Authority or the PRA (COCON 4.1.1G(1)).

    b. Not paying due regard to the interests of a customer (COCON 4.1.1G(18)).

    c. Acts, omissions or business practices that could be reasonably expected to cause customer detriment (COCON 4.1.1G(19)).

61. We accept the Authority's submissions as to the meaning of integrity in the financial regulatory context, although there is no discernible difference between the parties as to the test to be applied.

62. The principles applicable to the assessment of integrity were summarised by the Upper Tribunal in *Thomas Seiler & Others v The Financial Conduct Authority* [2023] UKUT 133 (TCC) ("***Seiler***") at [42]:

> "(1) There is no strict definition of what constitutes acting with integrity. It is a fact specific exercise.
>
> (2) Even though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity.
>
> (3) Acting recklessly is another example of lack of integrity not involving dishonesty. A person acts recklessly with respect to a result if he is aware of a risk that it will occur and it is unreasonable to take that risk having regard to the circumstance as he knows or believes them to be.
>
> (4) To turn a blind eye to the obvious and to fail to follow up obviously suspicious signs is a lack of integrity. [(This includes turning a blind eye to a risk: see [48])]
>
> (5) There are both subjective and objective elements to the test of what constitutes a lack of integrity. The test is essentially objective but nevertheless involves having regard to the state of mind of the actor as well as the facts which the person concerned knew."

63. Reckless behaviour may give rise to a lack of integrity, see *Seiler* at [42(3)]. As Judge Herrington observed at [46], recklessness involves both a subjective and objective element, namely (i) the state of knowledge of the individual as to the risks concerned (subjective), and (ii) the question as to whether it was reasonable for the person to have ignored the risk (objective). However, in considering the subjective element, the Tribunal will have regard to the "inherent probabilities and, in particular, how a reasonable professional would respond in the relevant situation" and can draw inferences that the person was subjectively aware of the risk.

64. Where recklessness is the basis for a finding of absence of integrity in the financial services context, it is therefore necessary to determine the following matters, per *Seiler* at [50]: "(i)

what facts in relation to each of the matters on which the Authority relies was the Applicant aware of; (ii) whether in light of those facts the Applicant was aware…one or more of the Relevant Risks would occur; and (iii) whether it was unreasonable in light of the circumstances as the relevant Applicant knew or believed them to be to take the risk in question."

65. As the Tribunal stated in *Ford and Owen v FCA* [2018] UKUT 358 (TCC) ("**Ford and Owen**") at [18]-[19]:

> '18.It is not, however, necessary for a person to have been dishonest in order that a finding of lack of integrity can be made (see *Vukelic*, at [16]). As the Tribunal in *First Financial Advisers v Financial Services Authority* (FS/2010/0038), at [119], "[e]ven though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity."
>
> 19.Reckless behaviour may also be found to connote a lack of integrity (see *Roberts and Wilkins v Financial Conduct Authority* [2015] UKUT 0408 (TCC), at [47]). That Tribunal referred, at [48], to the observations of Lord Bingham in *R v G* [2004] 1 AC, at [41], where, in the context of the Criminal Damage Act 1971, he .. said: "A person acts recklessly within the meaning of section 1 of the Criminal Damage Act 1971 with respect to-(i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk."'

66. We accept the Authority's submission that the "essentially objective" test of integrity set out in *Seiler* at [42(5)] means that it is not a requirement for a person to lack integrity that the person was aware that the conduct they were committing lacked integrity. A broken or absent ethical compass may point a person in the wrong direction: a person may act without integrity even where they believe their actions to be justified (see [47(1)]):

> "A person who recognises a risk of morally objectionable action which is unreasonable to take and ignores it lacks integrity precisely because they consciously take a risk, which is in fact unreasonable, of unethical conduct occurring. It does not matter whether the person appreciates that the action is morally wrong: if they do not appreciate the moral character of the action, their ethical compass is defective."

67. We also accept the submission that a sense of entitlement repeatedly to act improperly, without objective justification, may be an indication that a person lacks the necessary conscience to distinguish wrong from right. In a footnote to the written closing submissions Mr Odey reserved his position on the question of whether, properly understood, the ICR concept of integrity means no more than the ability to appreciate the distinction between what is honest and dishonest by ordinary standards, especially insofar as the concept is applied when the person is not engaged in regulated professional activities.

68. As a result of the pleadings before the Tribunal, we have not been asked to make any findings on the evidence as to whether Mr Odey's actions were dishonest. The argument was not pursued orally or explicitly before the Tribunal and is contrary to the Upper Tribunal and Court of Appeal authorities on the meaning of integrity in the financial services context – in particular the authorities which bind the Tribunal. There is a clear distinction between honesty and integrity as explained in *Seiler* at [42(2)] and as is apparent from the distinction between the two in FIT 2.1. Indeed, the footnote reservation imports an element of subjectivity that is not even required by the objective test of dishonesty in *Ivey v Genting Casinos* [2017] UKSC 67. As Ms Sibson KC highlighted, it is not for Mr

Odey to reserve any argument that integrity means honesty in the hope of raising a new line of argument in an appellate court.

69. As the Tribunal stated in *Andrew Page & Ors v FCA* [2022] UKUT 124 (TCC) ("***Page***") at [41]:

> 'Mr Khan also drew our attention to the later Court of Appeal case of *Wingate v SRA* [2018] 1 WLR 3696. In that case Rupert Jackson LJ made the following observations at [95], [97], and [100] as to the standard of conduct expected of a professional person acting with integrity:
>
>> "95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty…
>>
>> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. …
>>
>> 100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."'

70. In *Jon Frensham v Financial Conduct Authority* [2021] UKUT 222 (TCC), the Upper Tribunal relied at [193]-[196] and [204]-[206] upon the Applicant disregarding bail conditions and failing to notify the Authority of relevant matters that he was obliged to report. Thus, we agree with the Authority that there may be a link between an authorised person acting in their own self-interest in disregard of legal or regulatory obligations, and an absence of integrity.

<u>Regulatory Rules</u>

The Threshold Conditions

71. Section 55B and Schedule 6 of FSMA require the Authority to satisfy itself that a firm authorised under Part 4A FSMA satisfies and will continue to satisfy the threshold conditions. The threshold conditions are set out in Schedule 6 to FSMA and include the following paragraphs thereof:

    a. That the firm must be capable of being effectively supervised by the Authority (paragraph 2C(1), including the matters set out in (a)-(f)).

    b. That the firm's resources are appropriate in relation to the regulated activities that it carries on or seeks to carry out (paragraph 2D(1) including the matters set out in 2D(2)).

    c. That the firm is a fit and proper person having regard to all the circumstances (paragraph 2E, including the matters set out in (a)-(g)).

PRIN and SYSC: SYSC 4.2.2R requires AIFMs to be managed by at least two persons

72. Part of the Handbook sets out the Principles ("**PRIN**"), which are a general statement of the "fundamental obligations of firms and the other persons to whom they apply under the regulatory system" (PRIN 1.1.2G).

73. The purpose of the "Senior Management Arrangements, Systems and Controls" part of the Handbook ("**SYSC**") is set out at SYSC 1.2.1G. Part of that purpose is to amplify Principle 3. Principle 3 ("Management and control") provides that a "firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems" (PRIN 2.1.1R).

74. OAM was at all times an Alternative Investment Fund Manager ("**AIFM**") – a legal or corporate entity that managed one or more Alternative Investment Funds ("**AIFs**"), which are investment vehicles outside the scope of traditional mutual funds, such as private equity, real estate, venture capital, infrastructure or hedge funds.

75. By virtue of SYSC 4.2.1R, senior personnel of a full scope UK AIFM must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management of the firm.

76. Most relevant to this case, by virtue of SYSC 4.2.2R, a full scope UK AIFM must ensure that its management is undertaken by at least two persons meeting the requirements of SYSC 4.2.1R.

77. The guidance to this rule at SYSC 4.2.4G states: "At least two independent minds should be applied to the formulation and implementation of the policies…of a full scope UK AIFM."

FUND 3.7.2R – functional and hierarchical separation of risk and portfolio management

78. Further rules applicable to a full scope UK AIFM are set out in the part of the Handbook entitled, "**FUND**".

79. By virtue of FUND 3.7.2R, it is a requirement for an AIFM to:

> "(1)…functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.
>
> (2) ….in any event, be able to demonstrate that:
>
> (a) specific safeguards against conflicts of interest allow for the independent performance of risk management activities; and
>
> (b) the risk management process satisfies the requirements of this section and is consistently effective."

80. FUND 3.7.3 UK provides further in relation to the requirement of functional and hierarchical separation of the risk management function, that:

> i. The requirement is only satisfied where three conditions are met, including that:
>
> "(a) persons engaged in the performance of the risk management function are not supervised by those responsible for the performance of the operating units, including the portfolio management function…

(b) persons engaged in the performance of the risk management function are not engaged in the performance of activities within the operating units, including the portfolio management function; […]”

ii. The functional and hierarchical separation “shall be ensured throughout the whole hierarchical structure of the AIFM, up to its governing body”. Further: “It shall be reviewed by the governing body and, where it exists, the supervisory function of the AIFM.”

Senior Management Functions and SMCR

80. The Authority’s Senior Management and Certification Regime (“**SMCR**”) provides a framework for the appointment, conduct and personal accountability for senior individuals in firms regulated by the Authority.

81. The SMCR applies to all regulated firms, with specific requirements varying by the firm's tier under the SMCR. Managers with Senior Management Functions (“**SMFs**”) approval are responsible for key decision-making areas and must be preapproved by the Authority before starting their roles.

82. Sections 63E and 63F of FSMA require individuals holding SMF27 approval to conduct annual assessments certifying the fitness and propriety of certification employees including fund managers.

The 12-week rule

83. The Authority’s rules and guidance for supervision are set out in the part of the Handbook titled “**SUP**” – the supervision manual. SUP includes rules relevant to the appointment by firms of individuals to perform senior management functions.

84. SUP 10C.3.13R permits cover to be provided for persons performing senior management functions on a temporary basis, for no longer than 12 weeks in a consecutive 12-month period (known as the “**12 Week Rule**”), including where the absence of the SMF, senior management function, manager is “reasonably unforeseen” (SUP 10C.3.13R(2)(b)).

85. The guidance at SUP 10C.3.14G states that the 12 Week Rule enables cover to be given for “(as an example) holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy”. However, “as soon as it becomes apparent that a person will be performing an FCA-designated senior management function for more than 12 weeks, the firm should apply for approval.”

<u>The Tribunal’s jurisdiction in determining a reference</u>

86. The present reference is both a non-disciplinary reference in respect of the prohibition order under s.56 of FSMA and a disciplinary reference within the meaning of s.133(7A) of FSMA in respect of the penalty imposed under s.66.

87. As indicated above, the hearing of the reference is not an appeal against the Authority’s decision but a complete rehearing of the issues which gave rise to the decision. The Tribunal’s role is to deal with the case afresh, conducting a rehearing of the allegations against the applicant and determining, on the basis of the facts and evidence before it, what the appropriate action is for the Authority to take: *Markou v Financial Conduct Authority*

[2024] EWCA Civ 1575 at [6] *per* Andrews LJ. Again, by virtue of s.133(4) of FSMA, the Tribunal may have regard to any evidence, whether or not it was available to the Authority at the time.

88. In these reference proceedings, the burden of proof lies with the Authority to establish its case; the standard of proof is the balance of probabilities (i.e. the ordinary civil standard): see, e.g., *Tariq Carrimjee v The Financial Conduct Authority* [2015] UKUT 79 (TCC) ("***Carrimjee No.1***") at [47].

Non-disciplinary reference: Prohibition Order

89. In the non-disciplinary part of the reference relating to the Prohibition Order, the Tribunal must determine the reference by either: "(a) dismissing it; or (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal" (s.133(6) of FSMA).

90. The Tribunal does not itself determine what is the appropriate action for the Authority to take (in contrast to s.133(5) in the case of disciplinary references). Other than in cases where it dismisses the reference, its powers are confined to giving directions to the Authority to remake its decision in light of the matters within the scope of s.133(6A) which the Tribunal considers appropriate: *Page* at [113].

91. As set out in *Carrimjee v The Financial Conduct Authority* [2016] UKUT 477 (TCC) at [39]-[40] and *Page* at [114]-[115], under s.133(6), the Tribunal has various options when dealing with a "non-disciplinary" reference such as a challenge to a prohibition order.

92. The question for the Tribunal is ultimately whether the decision to prohibit was one which *was reasonably open* to the Authority. It must dismiss the reference unless it makes findings of fact and law which indicate that the decisions made by the Authority to make prohibition orders were not ones reasonably open to the Authority: see *Hussein v The Financial Conduct Authority* [2018] UKUT 186 (TCC) ("***Hussein***") at [21].

93. If the Tribunal does find flaws in the Authority's decision-making (such as findings of fact at variance with the findings on which the Authority based its decision), it should not remit the reference if it is of the view that the Authority will nonetheless come to the same decision: see also *Charles Palmer v The Financial Conduct Authority* [2017] UKUT 313 (TCC) at [270].

94. The Tribunal may, accordingly, uphold the prohibition order on different grounds from the Authority if it is satisfied that its findings would justify the making of a prohibition order: see *Hussein*, where the substance of the Authority's case was rejected by the Tribunal, but the Tribunal nonetheless upheld the prohibition order on the basis that Mr Hussein had been untruthful in his evidence to the Authority and to the Tribunal.

95. The Court of Appeal in *Financial Conduct Authority v BlueCrest Capital Management* [2024] EWCA Civ 1125 ("***Bluecrest***") at [158] held that a reference to the Upper Tribunal is a continuation of the regulatory process and "integral part" of that process, ensuring independently that the objectives of the regulatory regime are upheld. The Court also addressed what is meant by the "subject matter" of a reference for the purposes of s.133 FSMA at [202]:

> "…The answer is to be found in the fact that the decision is a stage in the regulatory process, and the Tribunal reference a further stage in that process. The logical answer is therefore that something is sufficiently related to the decision which triggers the reference to amount to or be

included in "the matter" if it has a real and significant connection with the subject matter of the process, in the sense of its procedural or substantive content, which has culminated in the decision notice or supervisory notice. Such connection must be real and significant, not fanciful or tenuous. But if so, that is sufficient. It need not be something upon which the FCA has specifically relied during the process, provided that it has a real and significant connection with the subject matter of the process…" (emphasis added)

Disciplinary Reference – the Financial Penalty

96. In the disciplinary part of the reference relating to the financial penalty, the Tribunal must "determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter" and remit the matter with such directions as to give effect to that determination: s.133(5) of FSMA. As far as the penalty is concerned, as distinct from the prohibition order, the Tribunal has power to determine at its discretion whether a penalty should be imposed, and the level of penalty, and to direct the Authority to give effect to that determination.

THE EVIDENCE

97. Between 11 and 26 March 2026, the Tribunal heard oral evidence from eleven witnesses of fact, ten of whom were called by the Authority they being six former employees of OAM and four current or former employees of the Authority.

98. Each of the live witnesses provided one or two witness statements which stood as their evidence in chief and were cross-examined during the hearing. In addition, Ms Kumar provided a witness statement on behalf of the Authority which was read as agreed.

99. Our approach to the reliability of the evidence, both written and oral, of all witnesses is informed by the case law the Authority has directed us to. In carrying out our assessment, we have taken into account the extent to which witnesses' assertions are supported by other evidence, including contemporaneous documents; see the observations in *Page* at [126]-[130].

100. In *Gestmin SGPS S.A. v Credit Suisse (UK) Limited, Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm) at [19]-[20], Legatt J held that the process of civil litigation "subjects the memories of witnesses to powerful biases" and a witness's memory of events can be based easily on material they have seen subsequently "and later interpretations of it rather than on the original experience of events". In *Simetra Global Assets Ltd & Anor v Ikon Finance Ltd & Ors* [2019] EWCA Civ 1413 at [48], Males LJ emphasised the importance of contemporary documents "as a means of getting at the truth", including as to motivation and state of mind; and that where there was a conflict of evidence, "reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth".

Evidence on behalf of the Authority

101. A brief summary of the roles of the Authority's witnesses is set out below, in the order in which the witnesses were called.

102. The following witnesses were employees of OAM in the Relevant Period, albeit they are no longer so:

a. **Mr Pearey**: Mr Pearey worked at OAM between 2001 and the start of 2022. He became a partner in around October 2009 and a member of ExCo in around 2011. He became co-CEO in around September 2015. As set out above, he was a member of the first ExCo removed by Mr Odey on 24 December 2021. Mr Pearey was subsequently put on gardening leave on 7 January 2022. He provided two witness statements dated 31 October 2025 and 24 February 2026.

b. **Lord Roborough**: Lord Roborough worked at OAM between 2005 and January 2022. He became a partner in December 2010 and ran a hedge fund between 2010 and 2016, at which point he became the Head of Research. He became a member of ExCo in the late 2010s, and, as set out above, was another member of the first ExCo removed by Mr Odey in December 2021. He provided one witness statement dated 2 November 2025.

c. **Mr Hanbury**: Mr Hanbury worked at OAM between March 2009 and December 2023. He was a fund manager. He became a member of ExCo in 2012. He was the third member of the first ExCo removed by Mr Odey in December 2021. He provided one witness statement dated 30 October 2025.

d. **Mr Richards**: Mr Richards worked at OAM between June 2010 and March 2022. He was initially an accountant but took on more senior roles within the firm over time, becoming CFO and, in 2018, COO. As set out above, he was appointed to the second ExCo on 12 January 2022 and removed on 31 March 2022. He provided two witness statements dated 17 November 2025 and 23 February 2026.

e. **Mr Kelton**: Mr Kelton was a fund manager at OAM between 2015 and 2023. He was the other member of the second ExCo between 12 January 2022 and 31 March 2022. He provided two witness statements dated 3 November 2025 and 21 February 2026.

f. **Mr Satt**: Mr Satt worked in OAM's compliance team between August 2014 and June 2022. In 2018, he became Head of Compliance. Following the dismissal of the first ExCo on 24 December 2021 and the approval of the third ExCo later in the year, he was the only person at OAM holding a SMF (senior management function) approval. He resigned in March 2022 and left the firm in June 2022 after expiry of his notice period. He provided a witness statement dated 31 October 2025.

<u>Reliability and credibility of the OAM witnesses</u>

103. We found each of these six former OAM employees to be impressive and reliable witnesses. They were straightforward, truthful, and thoughtful. They all appeared to be mindful of their obligations under the regulatory regime and to ensure the best interests of the firm. They differed in their temperaments and in the nature of their roles within the firm. Mr Kelton was, understandably, a little less relaxed than the other five both in giving evidence and operating in the ExCo role. In any event they were all extremely experienced individuals and were professional and committed to their roles or responsibilities. Their oral evidence under cross-examination was largely internally consistent with their witness statements, the contemporary documentary evidence such as emails they had sent and with the answers given in their interviews to the Authority under compulsion in May to

September 2023. Their evidence was also consistent with that of the other witnesses and documentary evidence they did not author.

104. Finally, each of them made reasonable and courteous concessions when challenged on points that they accepted. We do not underestimate the strain they were placed under during the Relevant Period nor the stress associated with recalling events and giving evidence under oath about them.

105. The only one of these witnesses whose credibility was challenged was Mr Pearey. The only serious criticism made of the OAM witnesses by Mr Odey was the suggestion that Mr Pearey had sought to bring about Mr Odey's downfall for his personal advancement. Mr Odey sought to lay blame on Mr Pearey for the first ExCo pursuing the 2DH and seeking to dismiss him. He claimed in cross-examination that Mr Pearey's motivation "was the best thing that could happen to Odey [OAM] was if I [Mr Odey] was removed". He stated, "I don't think I quite understood how duplicitous to us Pearey was being".

106. Mr Odey impugned Mr Pearey as having ulterior motives to remove Mr Odey from OAM in order to advance the establishment of Brook Asset Management LLP ("**BAM**") for his own personal advantage – to become CEO of that firm. As we return to in more detail the accusation was baseless and not borne out by the contemporary evidence. There is no independent nor documentary evidence in support of Mr Odey's conjecture. The material considered at trial in fact revealed that at all times Mr Pearey was seeking to promote only the continued good of OAM and BAM, their members, staff, clients and investors. Mr Odey's claim was also contradicted both by the way in which Mr Pearey conducted himself at the time and in giving evidence. The caricature was the polar opposite of Mr Pearey's disposition. He was held in high regard by all of his former colleagues, including, at the relevant time, Mr Odey.

107. Further, at no time up to and including his interviews by the Authority in 2022 and 2023 did Mr Odey seek to denigrate Mr Pearey's motives. Mr Odey himself described Mr Pearey as having great integrity during his Enforcement interview with the Authority in September 2023 in the following terms: "he's got great integrity. He was a good manager. He chose good people. He was very easy to work with. I think everybody who did work with him liked him and respected him, including me."

108. Mr Odey implausibly suggested that his high regard for Mr Pearey's integrity that he had reported in his Enforcement interview had subsequently changed once he started reading through OAM's records as disclosed during these proceedings. We reject the suggestion that it was only when he received or had access to the firm's emails after September 2024 that Mr Odey became aware that Mr Pearey was acting for his own self-advancement. We are satisfied that Mr Odey did not believe this at that time nor in the Relevant Period and for good reason. It was neither true nor fair. It appears to have emerged in Mr Odey's mind as an expedient justification for challenging the fairness of the first ExCo conducting the 2DH long after the relevant events.

<u>Reliability and credibility of the Authority's employees as witnesses</u>

109. The following were employees of the Authority during the Relevant Period and gave oral evidence as witnesses:

a. Mr Howard Cornwell **("Mr Cornwell**"): Mr Cornwell is a Manager within the Authority's Supervision Division. During the Relevant Period, he was a Lead Associate in the Fund Supervision and Alternatives Asset Management Team. He previously worked for 25 years within the financial services industry, including within the asset management sector. Mr Cornwell took over OAM's supervision in July 2020 and was the firm's main contact throughout the Relevant Period. He provided one witness statement dated 31 October 2025.

b. Mr Warren Low **("Mr Low"):** Mr Low is now a director in the compliance consulting team at Kroll but worked in the Authority's Supervision Division between September 2019 and November 2022. During the Relevant Period he was manager of the Fund Supervision and Alternatives Asset Management Team. He provided one witness statement dated 3 November 2025.

c. Ms Nike Trost **("Ms Trost")**: Ms Trost is currently the Head of the Market Analysis and Policy Department of the Authority's Wholesale Buy-Side directorate. During the Relevant Period, Ms Trost was the Head of the Asset Management and Pensions Policy department and in addition was covering the role of Head of the Asset Management Supervision department on an interim basis. During January-March 2022, she had some involvement in Supervision's interactions with OAM and Mr Odey and was kept updated by Mr Cornwell and Mr Low as to developments at OAM. She provided one witness statement dated 3 November 2025.

d. Mr Howard Kippax **("Mr Kippax**"): Mr Kippax is a Technical Specialist within the Wholesale Authorisations Department at the Authority. He has over 20 years' industry experience in investment banking and investment management and joined the Authority in December 2017. He was the case officer allocated to assess BAM's application for authorisation in 2020-2021. He provided one witness statement dated 31 October 2025.

110. One of the Authority's witnesses did not give oral evidence but provided a witness statement, Ms Trish Kumar **("Ms Kumar")**. Ms Kumar was a Lead Associate within the Authorisations Division, Approved Persons and Mutuals Team at the Authority. During the Relevant Period, she held the position of Senior Associate in the Wholesale and Markets Team within Authorisations. She was involved in the assessment of OAM's SMF applications in 2022. She provided a witness statement dated 31 October 2025 and her evidence was accepted without cross-examination.

111. As for the Authority's witnesses, we find each of them to have given reliable evidence as to primary fact for the same reasons as the OAM witnesses. They were also generally straightforward and doing their best to assist the Tribunal.

112. Nonetheless, we express some reservations about the evidence of Mr Cornwell. While we accept that he was genuine in his wish to assist the Tribunal in giving evidence, he was at times unable or unwilling to give a direct or straightforward answer to questions, being particularly guarded and unwilling to volunteer any matters which he thought might damage the Authority's case. On many occasions, questions in cross-examination had to be repeated and yet he still failed to give a direct answer. We do not consider that he was being deliberately obstructive but that his unwillingness to make concessions that were reasonable was perhaps derived from not wanting to be seen to assist Mr Odey's case. A generous view is that he had received witness training, as had each of the Authority's witnesses, and took the view that he was only to answer questions in the most narrow of terms. As a result, we treat his evidence with some caution, particularly as to his stated interpretation of correspondence which took place some years ago or where his evidence was uncorroborated. We prefer to rely on the contemporaneous documents and

communications, internally within the Authority or in correspondence with OAM, in which he expressed less guarded views. Nonetheless, we do not doubt Mr Cornwell's credibility and little turns on the assessment of his answers under cross-examination for the reasons we return to below.

Evidence on behalf of Mr Odey

113. Mr Odey was the only witness called on his own behalf and no other witnesses provided statements as part of his case.

114. Mr Odey provided a primary witness statement of fact dated 3 November 2025. He also filed a witness statement addressing the late waiver of legal professional privilege on behalf of OAM in these proceedings, which was dated 5 February 2026. LPP was waived by him in his capacity as owner of OAM in respect of the advice it received in respect of the two disciplinary processes to which he was subject. He was cross examined and re-examined over a total period of three days.

Assessment of Mr Odey's reliability and credibility as a witness

115. We found that Mr Odey was generally open and unguarded in his oral evidence. We note that he is a man of good character – while we are not considering any criminal offence, we will take that into account when assessing his credibility and his propensity to act without integrity.

116. At [40] of the Court of Appeal's judgment in *Jafari-Fini v Skillglass Ltd & others* [2007] EWCA Civ 261 ("***Skillglass***"), the court held: *"*wherever the court is faced with a choice between two rival explanations of any particular incident, one innocent and the other not. Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct.*"* In *Re B (Children)* [2009] 1 AC 11 ("***Re B***"), at [64], Baroness Hale disapproved the "nostrum" that had developed that "the more serious the allegation the more cogent the evidence needed to prove it*"*. In *Birmingham City Council v Jones* [2024] AC 168, the Supreme Court expressly disapproved Richards LJ's dictum from *R (N)*, that was the source of the proposition in *Skillglass*. In *Lopez Gonzalez v FCA* [2025] UKUT 214 (TCC), the Upper Tribunal referred at [151] to [40] of *Skillglass*, but went on to qualify it by reference to *Re B* (see above), on the basis that "it has been repeatedly emphasised that there is no heightened standard of proof where serious allegations are made."

117. Mr Odey is also a man who has had a large measure of success in the field of financial services and established a thriving firm with, at one time, significant funds under management. We also note that he is a man that some OAM witnesses, such as Lord Roborough and Mr Hanbury, considered to possess an integrity in his working life and in their experience of working with him at OAM. Lord Roborough stated: "I have never known Crispin not to state the truth, or even hide the truth." He stated when interviewed by the Authority in 2023 and asked whether Mr Odey's conduct lacked integrity when removing the ExCo, "No I didn't think it. It wasn't a question I asked myself at the time, but I don't think it did." Lord Roborough knew Mr Odey well having sat next to him at work for many years. He went out of his way to be fair in his assessment.

118. Nonetheless, we add a note of caution to these assessments. These witnesses were not women or female employees, subordinate or otherwise. They were not witnesses either to incidents of inappropriate behaviour or misconduct nor were these individual witnesses

present when Mr Odey made all of the impugned statements to the Authority or each of the members of ExCos during the Relevant Period. They are not in a position to assess all the evidence he gave to the Tribunal when Mr Odey had a motive to misrepresent his position – for example to defend his position or protect his interests. We had a far greater range of material available to us to make our assessment than they did. Indeed, not all the OAM witnesses considered Mr Odey contemporaneously to be acting with integrity or to be making statements that were truthful. Over time, witnesses such as Mr Pearey or Mr Kelton went from a position of trusting what Mr Odey was saying about his actions towards women or about the governance of OAM to questioning this and considering his actions to be bullying, threatening or harmful.

119. Further, as a witness, Mr Odey appeared to continue to display no insight into the seriousness of the conduct that had led to the Authority's Five Allegations of lacking integrity or of his earlier actions which were the subject of the FWW. His evidence contained contradictions. For example, he claimed to be motivated by looking after the staff and clients of the firm but was ready to close down the firm if he was not allowed to continue as a fund manager within it. The Authority says that he had difficulties in seeing any difference between his own personal interests and the interests of the firm. We agree.

120. We address the reliability and credibility of Mr Odey's evidence in more detail below but at this stage we record that it contained inconsistencies with the contemporaneous documents such as emails and letters he authored, his interviews with the Authority and his witness statement. He also failed to address matters in written and oral evidence that he knew he would have difficulty explaining. We are wary of accepting his explanation of his motivations where this is or was not corroborated at the time. Likewise, where his evidence conflicts or is inconsistent with any of the OAM witnesses, we prefer their evidence for the reasons set out above.

121. For present purposes we give four examples of Mr Odey's evidence lacking credibility on relevant matters in issue.

122. First, we rely on the example above of him falsely questioning Mr Pearey's motives for attempting to hold and continue the second disciplinary process. This is for the reasons set out above. Mr Pearey was not driven by any self-interest or personal ambition to dismiss Mr Odey and set himself up as CEO of BAM. This was Mr Odey's late invented, and unwarranted, accusation. In fact, Mr Pearey was motivated by a genuine and independent desire to do the right thing in ensuring that the OAM business continued to have a future and that Mr Odey was held to account in a fair process at the 2DH.

123. Second, Mr Odey was responsible for approving false minutes of the ExCo meeting on 6 January 2022 at a time at which he was the sole member of ExCo having removed the first ExCo on 24 December 2021. Those minutes record Mr Satt, the compliance officer, not only being present but also involved in detailed discussions. They assert that Mr Satt said a number of highly relevant things to which we return later. Mr Odey approved those formal minutes of OAM as a true and accurate record of what took place. However, the documentary evidence made it clear that Mr Satt was not at that meeting and was never intended to be. Mr Odey knew of this at the time.

124. Mr Odey gave inherently unlikely oral evidence to the Tribunal about the meeting and the minutes. For example, he stated that the meeting took place with just him as a member of ExCo present together with his personal assistant ("**PA**") but that he narrated all the things recorded to have been said in the minutes. Mr Odey's position in his oral evidence

at times tried to evade the obvious: “Hey, look, I don’t remember whether Jack Satt was there or not…It makes absolutely no difference to these minutes whether Jack Satt was there or not.” That was implausible evidence, on any view. Instead, Mr Odey sought to blame the minutes on his PA, Ms Corke, despite accepting that she would have had no reason to falsify the minutes on her own initiative. He went on to deny knowing whether Mr Satt was present at the meeting when he signed the minutes. That was not credible. Mr Odey did not offer any credible explanation for how Mr Satt appeared in the minutes in the way he did, as attending and contributing to discussions of ExCo at the ‘meeting’. At one point he adopted a question by the chair that the minutes were intended to reflect other conversations he had had with Mr Satt but even this could not be the case when Mr Satt had never had conversations about some of the ‘discussions’ described in the minutes.

125. Mr Odey’s motive for overseeing the creation of deliberately inaccurate minutes is irrelevant. Nonetheless, it is likely that Mr Odey was seeking to present a veneer of compliance with regulatory standards, by asserting in formal minutes that the Head of Compliance was participating in an ExCo meeting. This was because the ExCo was not properly constituted at that time, not having at least two appropriate responsible or senior managers. The firm’s ExCo, its ultimate governance, consisted of Mr Odey acting alone. It is likely that he was aware of the risk that his actions and oversight would rightly be scrutinised by the Authority given that two enforcement investigations had been opened into both the firm and him by this time.

126. As we explain below, despite an objection raised in closing argument, we consider that the allegation regarding Mr Odey being responsible for the production of inaccurate minutes is relevant and admissible as going to his credibility.

127. Third, on 11 August 2021, Mr Odey exchanged personal telephone numbers with a temporary receptionist supplied to the firm by RMS temp agency. He then exchanged a series of personal messages with her. This was in breach of the terms of the FWW as is not disputed and which we go on to find below. Nonetheless, there is a dispute of fact as to what happened next, and specifically whether Mr Odey “self-reported” his breach to Mr Pearey, or whether Mr Pearey heard about the matter from Ms Versey, the Head of HR, and brought it up with Mr Odey at their meeting on 13 August 2021. Mr Pearey’s unchallenged evidence was that he had been told about the issue by Ms Versey on 12 August 2021. No other account was put to Mr Pearey by Mr Odey’s counsel in cross-examination. The only relevant aspect on which Mr Pearey was challenged is what Mr Odey had meant about the FWW not applying to temporary staff. Instead, it was put to Mr Pearey that he had received the news from Ms Versey, which Mr Pearey accepted. Mr Pearey’s account is supported by the second Simmons & Simmons Report (“**2S&S**”) dated 30 November 2021, the summary of evidence later produced by S&S.

128. Mr Odey himself did not give any evidence in his witness statement that he had self-reported this breach by telephoning Mr Pearey “on the Tuesday night” as he claimed in cross-examination. He relied on a ‘self-report’ to Mr Pearey in the 6 January 2022 minutes and before the third ExCo in November 2022. Yet, in his oral evidence he gave further details of how he claimed that self-report had happened. We are sorry to find that this evidence was invented by Mr Odey and not true. Again, while motivation is unimportant, the untruth was partly told to the third ExCo and to the Tribunal in an attempt to mitigate or minimise as trivial what was an indisputable breach. It was likely also done to suggest Mr Odey had insight into his behaviour, cooperated with OAM’s then governance and was

capable of accepting personal responsibility and was willing to be held to account. It was a material misrepresentation.

129. In fact, Mr Odey had at the relevant time, between August and November 2021, denied that his contact with the receptionist was a breach of the FWW in a not isolated instance of self-righteousness. In a letter later sent by his then lawyers, Wilmer Hale, dated 24 November 2021 it was maintained that there was no breach of the FWW. This is also inconsistent with any self-report of the breach. It contradicts Mr Odey's position that he realised immediately, on 11 August 2021, that he had breached the terms of the FWW. Instead, it is consistent with Mr Pearey's recollection that Mr Odey did not "self-report" the breach and was "surprised" to hear it was potentially a breach. It demonstrates not only Mr Odey's contemporaneous lack of insight but his willingness to provide after the event justification for his actions and tailor his evidence according to his will.

130. Fourth, Mr Odey gave written evidence at paragraph 18 of his witness statement to the effect that insofar as allegations in the 1S&S were true, those activities "were either entirely mutually consensual or, for my part, had been entirely innocent in nature." That gave a false impression. At the time of the FWW in February 2021, he had accepted the findings of the first ExCo at the 1DH, based on the 1S&S, which were that there was non-consensual touching.

131. One of these incidents concerned Mr Odey grabbing the breasts of a female employee in 2005. It was raised in the 1S&S and found established in the FWW which he accepted. In cross-examination Mr Odey accepted that the female individual whose breasts in 2005 he grabbed was "shocked. She didn't consent at the time".

132. Mr Odey is not on trial for any criminal or civil allegation of sexual assault. The Tribunal therefore does not make any finding as to whether the incident constituted a sexual assault for the purposes of the criminal or civil law on any standard of proof. Further Mr Odey does not accept the mens rea of any offence nor liability in tort - rather he suggested that he was acting under the influence of a general anaesthetic or sedative at the time following a visit to the dentist at which he underwent a procedure. Nonetheless, it is irrelevant for our purposes what his state of mind was in touching her breasts and Mr Odey gave no evidence as to whether he acted with any actual or reasonable belief that the complainant was consenting. Mr Odey admitted at the time and subsequently that this was an act of non-consensual touching of a female employee.

133. The point is instead that he engaged in non-consensual touching of this individual yet had sought to portray all his behaviour as consensual or innocent in his witness statement. This undermines his credibility. For instance, Mr Odey accepted in oral evidence he had been driven to apologise to the complainant, she was shocked at the time and he accepted he was embarrassed by his actions once they were highlighted. Mr Odey, in interview with the Authority in 2023, had suggested that he might have "misread" the individual in question. In his evidence before the Tribunal, he retracted this and admitted that there was "no good reason for what happened on that day". He ultimately accepted that his conduct towards her "wasn't entirely innocent in nature" but continued to say it was "understandable".

134. Mr Odey's description in his witness statement of "consensual" and/or "entirely innocent" conduct is also contradicted by his acceptance of unwanted shoulder massages of female staff and also contradicted by the admissions he made in cross-examination to bullying one of the two members of staff whose formal grievances against him formed part

of the first disciplinary proceedings. His oral evidence regarding his conduct towards various women is also at odds with the contrition he appeared or claimed to express at the time of the 1DH and accepting the FWW in relation to them. During his oral evidence he, in effect, sought to renege on his earlier partial admissions of misconduct in accepting the FWW.

135. Mr Odey also claimed in oral evidence to be unable to understand that there might be a power dynamic at play in his dealings with receptionists because of his status in the firm, describing himself as being "really an employee". However, when it came to the question of safeguarding, his position was "Hey, look – you can't treat me like this….it has got my name on the door…I put all the capital that's in this business. It's my retained profits…."

136. It is important to note that in making these findings regarding Mr Odey's credibility on the topic of non-consensual touching, we have not gone beyond the scope of considering Mr Odey's evidence which now conflicts with what was previously found to have occurred by the first ExCo in making the FWW and which findings he accepted at the time. As we explain below, despite an objection raised during trial and in closing argument, we consider that the Authority's deployment of the 1S&S in evidence and cross-examination on this allegation is relevant and admissible as going to his credibility regarding Mr Odey seeking to underplay the findings in the 1DH and FWW. The 1S&S and cross-examination thereupon were also relevant and admissible for other reasons we return to later in this decision.

137. There are numerous other examples where we find that Mr Odey's evidence lacked credibility as set out in our findings of fact below.

The relevance of Mr Odey's stated beliefs, even if genuinely and contemporaneously held, to the lack of integrity allegations

138. We should also note that Mr Odey's witness statement and oral evidence contained commentary and belief about what he currently purports to know, believe or think, including by reference to documents and conversations he was not party to at the time but has subsequently received disclosure of. It is important to consider whether his stated beliefs, even if genuinely and contemporaneously held, and we find many were not, are relevant to the lack of integrity allegations.

139. We also accept the Authority's submission that we should be cautious in distinguishing when the beliefs are said to be held – not to confuse (i) Mr Odey's state of mind at the time, with (ii) circumstances, interactions and documents of which Mr Odey was not aware contemporaneously during the relevant period. The latter material cannot have influenced his state of mind and cannot subsequently be relied upon as after the event justification for his behaviour.

140. As we have also already outlined, a person's subjective belief that they are entitled to act as they do, does not alone determine whether they lack integrity. A person's belief as to the facts of their circumstances at the time they acted is relevant to the assessment of his integrity. Nonetheless, as we set out above, the assessment on integrity is "essentially objective": *Seiler* at [42(5)]. If a person believes that they are entitled to act in ways that are objectively improper, that may lead to a finding that the person, as per *Seiler* at [42(2)] "either lack[s] an ethical compass, or their ethical compass to a material extent points them in the wrong direction".

141. Therefore, we accept the Authority's submission that Mr Odey could not properly rely on his subjective beliefs, even if genuinely held, in seeking to justify his behaviour as appropriate or not lacking integrity, (i) if those beliefs were objectively unreasonable or illogical, or otherwise lacked any foundation, or (ii) if they led him to behave in a way that is, objectively, improper.

142. As set out above, recklessness involves both subjective and objective elements. However, even the subjective limb requires a finding of fact for the Tribunal to make. In making findings about the first subjective element of the test, the Tribunal may have regard to inherent probabilities in deciding whether the purported beliefs were genuinely and subjectively held - see *Seiler* at [46]. As a result, in assessing Mr Odey's state of mind, as well as his integrity, we may have regard to what would have reasonably been appreciated or understood by a person in the same position as Mr Odey. It is always open and relevant for us to find that Mr Odey's assertions about his state of mind and/or motivations are either (a) not credible, or (b) not reasonable.

MR ODEY'S CASE - RESPONDING TO THE FIVE ALLEGATIONS

143. Mr Odey's case is set out in writing in four key documents: his Reply to the Authority's Statement of Case; his witness statement; the opening skeleton argument for trial and written closing submissions. It is supplemented by his oral evidence in cross-examination and re-examination and the oral submissions made by counsel on his behalf. Below, we expand upon the brief outline of Mr Odey's case set out above and summarise his evidence on each of the Authority's Five Allegations that he lacks integrity.

The First Allegation

Fairness

144. Mr Odey's case in relation to the First Allegation is that he took the actions he did, removing both ExCos, to try to achieve a fair hearing of the 2DH from a panel who would apply a fair process and not pre-judge the issues under consideration. Mr Odey's position is that he had no alternative but to act as he did. In both instances, he removed both the first and second ExCos to achieve due process. Had Mr Odey not acted, they would have embarked upon a process which he believed had a pre-determined outcome and which was (and which Mr Odey believed to be) unfair.

145. Mr Odey asserts that he recognised that neither ExCo was able to fairly consider the issues before it. Had he not taken the action he did, he believed that the ExCos would have incorrectly and unjustly concluded that they had no option but to dismiss him and that his dismissal would in turn lead to the closure of the Firm. Mr Odey was placed in this position because the Authority had a pre-determined view of his fitness and propriety. That in turn impacted upon both the advice OAM received and how the Authority interacted with OAM to achieve what it considered to be the right regulatory outcome.

146. Mr Odey also contends that the 2DH was structurally unfair. The first ExCo did not seem to appreciate the inherent unfairness in the process being adopted in relation to their investigation of the alleged breach of the FWW and the 2DH. In interview, Mr Pearey made it clear that he did not regard the fact that he was both investigator and adjudicator as presenting a fairness issue because Mr Odey "never raised that [issue]." Further, no consideration appears to have been given to the fact that the same panel would be sitting in judgement of the breach as who had sat at 1DH. Finally, unlike the third ExCo, who

eventually held a 2DH on 28 November 2022 and did not dismiss Mr Odey, Mr Pearey did not consider that the proportionality of the FWW in terms of its scope or the fact it was in perpetuity a relevant issue, making the point that Mr Odey had signed it without complaint. Had the FWW been issued in more proportionate terms there might not have been a need to convene a disciplinary hearing at all. There was no legal advice as to the structure and scope of the disciplinary process and its fairness.

147. Mr Odey argues that the ExCos had inappropriately pre-determined the issues in advance of 2DH. The evidence suggests that, once the advice from S&S had been received, the first ExCo had reached a clear view as to what the outcome of Mr Odey's disciplinary process should be. For example, the extent to which Mr Pearey had pre-determined the outcome of the disciplinary process is demonstrated during his interview with the Authority when he indicated that he had told Mr Cornwell of the Authority that "unless Crispin comes up with some new evidence, or otherwise, I cannot see us having any other option than to dismiss him." Both ExCos had pre-judged the outcome of Mr Odey's 2DH and would only dismiss him.

Undue Pressure on the ExCos

148. Mr Odey contends that both ExCos were under undue pressure from the Authority because the Authority appears to have had a settled view that throughout the Relevant Period Mr Odey was unfit to be a certified person. That assessment significantly impacted the way in which the Authority interacted with the firm and how the individuals at the firm perceived the regulatory expectations upon them personally. What is clear is that, through a coordinated strategy of covert and overt pressure being applied by the Supervision, Enforcement and Authorisation Divisions, the Authority sought to secure the outcome whereby the firm would eject Mr Odey. In addition, the Authority opened investigations into OAM itself in relation to its decision only to issue Mr Odey with a FWW in light of the 1S&S and into Mr Odey personally in relation to the allegations of NFM contained therein. He argues that the Authority placed the first ExCo under undue pressure to 'correct' what it perceived as too generous an outcome of the 1DH and dismiss Mr Odey at 2DH.

149. Mr Odey asserts that the first ExCo was also under pressure from its legal advisers. OAM has waived legal professional privilege in these proceedings. The first ExCo took advice from S&S as to the implications of Mr Odey's alleged breach of the FWW shortly after being made aware of it. The advice received was clear and robust: Mr Odey's career was over and the only choice for the firm was whether it wished to remove him at the 2DH in order to save itself. On 18 November 2021, S&S in a telephone call at 12:00 advised the First ExCo in the following terms:

> "[Mr Fletcher of OAM] - From what you say today it is clear he [i.e., Mr Odey] has breached the conditions of the letter which are grounds for considering removal.
>
> [Emma Sutcliffe from S&S] - FCA backdrop – being investigated for this issue – they will watch this and how you react will demonstrate systems and controls and independence. Need to consider as senior managers how you will handle it… an element of putting own reputation and livelihoods on the line for this. If you don't take steps now that are robust, it will be used by the FCA. It needs to be a firm decision, made by ExCo.
>
> [Darren Fox from S&S]– "CO is toast" and will be found by FCA to not be F&P [Fit and Proper] - final nail in coffin. Firm is different – "do you want to go down with him?" If he doesn't resign it is better you make decision on that as an F&P staff member. Shows backbone."

150. Mr Odey asserts that in such circumstances the only possible strategy the first ExCo could have followed was to dismiss Mr Odey at the 2DH in the hope of saving the firm and themselves from regulatory action, while all the time not giving the appearance of prejudging the issue.

151. He claims that the view of the second ExCo of the S&S advice was that, while it should be tested, including by the obtaining of a second opinion, it carried weight and should be followed unless there was a clear basis to depart from it.

152. Throughout the Relevant Period, Mr Odey asserts that he genuinely believed that the ExCos were under undue pressure from the Authority and/or the firm's advisers the effect of which was to substantially impact their ability to run a fair and independent disciplinary process.

Existential threat

153. Mr Odey believed that there was an existential threat to the life of the firm should he be dismissed unfairly and that there was real uncertainty in the state of the law as to whether the Authority had the jurisdiction to challenge his fitness and propriety based on allegations of NFM in respect of which it was pursuing its own agenda. He points out that despite opening an enforcement investigation into Mr Odey's alleged NFM, the Authority abandoned it and cannot reasonably rely on NFM allegations as going to his fitness and propriety. Mr Odey asserts that he reasonably believed that he was acting in the best interest of OAM, its clients and investors and employees in removing the two ExCos as otherwise the funds and firm would have been adversely affected or even closed down. He was not acting out of selfish or improper motives but was acting to prevent a greater harm.

The result of the 2DH

154. Mr Odey notes that when the 2DH was held in November 2022 the third ExCo found Mr Odey had only committed two minor and technical breaches in relation to contacting the temporary receptionist. The Authority had not taken any action against the third ExCo in respect of their findings and sanction which cannot therefore be properly criticised or impugned.

The terms of the FWW

155. Following the 2DH, the third ExCo, rather than dismissing him, relaxed the terms of the FWW in their decision of December 2022. They found the conditions imposed by the original FWW to be overly restrictive and disproportionate – the result he believed that the earlier ExCos should have arrived at if they acted fairly and without pressure. Mr Odey believed the conditions to be unreasonable and disproportionate and this was a further reason why he considered the breach allegations should not result in his dismissal.

<u>The Second Allegation</u>

156. In relation to the Second Allegation, Mr Odey maintains that, for the reasons set out above, he did not act unreasonably and therefore was not reckless. Any risks and/or harms presented by the actions taken by Mr Odey were outweighed by the detriment that would have been caused to OAM, its staff and its clients had he been forced out of OAM as a result of a disciplinary process which had not been conducted fairly.

157. Mr Odey argues that the fact that there were instances of temporary non-compliance by

OAM with certain regulatory standards as a result of his actions does not mean that these actions were necessarily reckless. In order to establish recklessness, the Authority cannot show on the balance of probabilities that "it is unreasonable to take that risk having regard to the circumstances as he knows or believes them to be." If Mr Odey's stated rationale for removing both ExCos– namely to prevent a greater harm – was sound and/or genuinely held, his subsequent actions cannot, on that test, be unreasonable or reckless.

158. He contends that whilst a breach of a regulatory rule is an adverse consequence of an action, and may in some cases risk harm, it is not a harm in and of itself. He argues that the key to the assessment of the reasonableness of his actions is whether he perceived there to be any risks and whether there was in fact any actual harm caused and that the evidence is that there was not. This, Mr Odey argues, is highly material to an assessment of whether his actions were reckless.

159. For the reasons set out above, Mr Odey contends that he was acting not out of self-interest to avoid accountability but in the interests of the continued existence of OAM as a firm, which he had established and of its members, investors, clients and employees. He did not place his personal interests above compliance with the relevant policies and obligations. Fitness and propriety do not require Mr Odey to submit to an unfair process, nor to keep open a firm from which he has been improperly ejected. His moral compass did not break or steer him astray. He acted to protect his own interests but also those of the firm, its clients, and its staff, which were all aligned. He acted not to subvert due process but to secure it.

The Third Allegation

160. Mr Odey denies the Authority's allegation that his actions in dismissing both ExCos temporarily delayed the disciplinary process in respect of the breach of the FWW, and, by extension, that risked entrenching a culture where inappropriate conduct towards female staff was normalised.

161. He asserts that there is no evidence that during the Relevant Period there was an on-going culture within OAM where inappropriate behaviour towards female employees had been normalised or was accepted. The firm had prior to the Relevant Period taken significant steps to address any issues of culture. In respect of the matters detailed in the 1S&S, Mr Odey was the subject of a proper disciplinary process, which concluded at 1DH in OAM making findings and imposing sanctions. The instruction of an independent law firm to conduct a detailed investigation is indicative of a firm committed to taking such allegations seriously. In this context, it is significant that no criticism is made by the Authority of OAM's decision to impose the FWW and the Authority has chosen not to pursue any allegations of NFM against Mr Odey.

162. Even if – which is denied – there were an entrenchment of such a culture, following the dismissal of the first and second ExCo Mr Odey did in fact go through a formal 2DH in November 2022 in relation to the alleged breach of the FWW before a third ExCo, as a result of which findings were made and sanctions imposed on him. Again, no complaint has been made by the Authority as to the adequacy of that disciplinary process, or of the sanctions that were ultimately imposed.

163. It is also not the case that Mr Odey sought to prevent the disciplinary meeting from ultimately taking place. On the contrary, all the evidence is clear that Mr Odey was only seeking to postpone it temporarily until an effective ExCo was in place who could run the process fairly. In his interview with the Authority, he confirmed that "I wasn't trying to

discontinue the disciplinary, I was just trying to postpone it to a point in time when we could - it could be, as it was, properly looked at, and properly resolved" and "while I was the only person in charge we couldn't have it".

Fourth Allegation

164. Mr Odey denies that his communications with OAM, clients and investors in December 2021 and January 2022 provided inaccurate, incomplete and misleading information as to the reasons for the changes in OAM or thereby lacked candour.

165. With regard to the communication to OAM members on 24 December 2021, the relevant passage is: "I believe that there exists a singular threat to the business and that is the overreaching action of the Financial Conduct Authority into matters which are unrelated to the financial conduct of the Partnership...I consider that the Executive Committee of OAM LLP has been subject to undue pressure from the FCA in their deliberations on a number of matters, unrelated to the financial conduct of the partnership, and in the absence of clear and reliable guidance from the FCA they will be compelled into certain actions which would likely precipitate the winding down of the business unless I take a number of important and necessary action [sic], which I am able to do in my capacity as the 74.9% majority owner of the Odey Group...In taking these actions I am then able to launch a judicial review against the FCA which I believe is in the best interests of the Odey Group and its wider stakeholders."

166. Mr Odey asserts this to be a genuine statement of his belief at the time.

167. With respect to the external communications of 12 January 2022, he denies that OAM's Statement entitled, "Evolution of Strategy and Management Team at Odey Asset Management" created the inaccurate (and incomplete) impression that the first ExCo had voluntarily stepped down as part of a wider and pre-existing commercial strategy. Significantly, these allegations formed no part of the Decision Notice and were only raised by the Authority for the first time in the Statement of Case. In terms of Mr Odey's personal culpability for this communication, it had in fact been through a detailed drafting process involving a number of senior stakeholders including Mr Pearey, Mr Richards, Mr Kelton and Mr Satt, in his capacity as Head of Compliance.

Fifth Allegation

168. Mr Odey denies making a false assertion of fact to the Authority either to Mr Low on 11 February 2022, or subsequently to the Authority on 13 April 2022, in an attempt to secure its endorsement of an indefinite deferral of the on-going 2DH. He genuinely believed that the Authority had agreed, as of 10 January 2022, to the alignment of the 2DH and its ongoing enforcement investigation into him regarding NFM.

FINDINGS OF FACT

169. As set out above, the burden of establishing facts, proving or evaluating that Mr Odey failed to act with integrity to the required standard rests with the Authority judged to the ordinary civil standard: see *Carrimjee No.1* at [47]. In *Ford and Owen* at [42], the Tribunal observed:

> "It is nonetheless the case that regard must be had to the quality of the evidence. As the Court said in In *re S-B*, if an event is inherently improbable, it may take better quality evidence to persuade a court or tribunal that it has happened than would be required if the event were

commonplace. There is, however, as Lord Hoffman in In *re B* had pointed out, at [15], no necessary connection between seriousness and inherent probability."

170. We are required to make findings of fact as to events which took place some years ago, some of which are undocumented. The contemporaneous documentary evidence that we have seen largely takes the form of email correspondence and minutes of meetings or telephone calls. We also have the benefit of what the OAM witnesses and Mr Odey said to the Authority in the transcripts of their interviews closer to the time in 2022 and 2023.

171. We cannot know what actually happened in relation to all the events concerned but where there is any dispute of fact, the Authority must satisfy us to the civil standard of proof as to what occurred - what was more likely than not to have happened on the basis of the evidence before us. All our findings are made on the basis of that burden and standard of proof.

172. The underlying facts as regards the actions that are principally alleged as demonstrating a lack of integrity - for example, Mr Odey's removal of both ExCos and substitution of himself as sole member at a time he was to face the 2DH - are generally not in dispute. What is in dispute is mainly the interpretation of the facts and Mr Odey's motivations, and whether, irrespective of his motivations, what he did demonstrates a lack of integrity.

173. Where there is a relevant dispute of fact, we give our reasons below for making our findings. However, much of the evidence is not in dispute as a matter of fact – rather there are competing interpretations or rationales placed on the events by the parties.

174. In our findings below, in our further findings when rejecting Mr Odey's case and in our later evaluation of those findings, we have rejected the evidence and submissions as to the facts relied on by Mr Odey.

175. Our findings and evaluation largely draw upon the evidence and submissions highlighted by the Authority in relation to the facts and their evaluation. This is for the reasons we give when accepting them.

OAM, Partnership Agreement and ExCo

176. During the Relevant Period, Mr Odey was the ultimate controlling party of OAM. He held a 74.19% shareholding in Odey Holdings Ltd ("**Odey Holdings**")[3], which in turn owned 100% of the shares in Odey Asset Management Group Ltd ("**OAMG**"). During the Relevant Period, OAMG held 97.6% of the ordinary members' capital of OAM.

177. OAM had been authorised in 2014 as a full scope AIFM, enabling it to undertake investment management for its AIFs. During the Relevant Period, OAM managed between 20-22 funds, with an average value of assets under management of approximately £2.925bn with a peak during the Relevant Period of £3.230bn. During the Relevant Period, Mr Odey was responsible for the management of 6-7 funds, with an average assets under management ("**AUM**") value of £862m, ranging from £565m to £1.351bn. The rest of the other funds were managed by Mr Hanbury, Mr Kelton, Peter Martin ("**Mr Martin**") and/or others.

[3] His family's total shareholding was 82.57%.

178. OAM was governed by an LLP agreement dated 20 April 2021 (the **"partnership agreement"**). There is no dispute about the terms and meaning of that agreement.

179. Under that agreement, OAM's partners delegated exclusive responsibility for the management and control of the business and affairs of the partnership to ExCo. Clause 8.1 provided that ExCo "shall have exclusive responsibility for the management and control of the Business and the affairs of the LLP and shall have full power and authority on behalf of the LLP to do all things it reasonably considers to be necessary on behalf of the LLP, or in the best interests of the LLP, to carry out the purposes of the LLP and the Business, and shall carry on and manage the same with the assistance from time to time of such Members and agents or employees of the LLP as it shall deem necessary."

180. Clause 8.2 gave ExCo full power to determine the regulation of its own proceedings as it saw fit. By virtue of clause 8.4, no member who was not a member of ExCo had the right or authority to act for OAM, save where and to the extent expressly permitted by the ExCo, or to take part in the management of OAM. By virtue of clause 8.5, only ExCo itself could make changes to its membership, subject to ratification by the members.

181. Further, pursuant to clause 21.1, any member could be removed from OAM by decision of the ExCo if the ExCo concluded it would be in the best interests of OAM to do so. Pursuant to clause 21.2, the ExCo could also remove members from OAM in various other circumstances, including where: "such Member is guilty of any Misconduct or neglect in the discharge of his duties which, if he were an employee of the LLP, would justify his summary dismissal or otherwise fails in any material respect to fulfil the role and carry out the duties expected of a Member as agreed from time to time between the Member and the Executive Committee or to comply with the directions and requirements of the Executive Committee to the extent which could reasonably be expected if the Member were engaged as a full time employee in the Business.[…] [or] such Member by his actions or omissions brings the name or reputation of the LLP into serious disrepute or seriously prejudices the interests of the Business."

182. 'Misconduct' is defined in clause 1, the Interpretation clause of the partnership agreement, as including where a Member "(d)... acts, or omits to act, either wilfully or recklessly" where such acts or omissions will "(i) expose the LLP, any other member of the Group, the Members or the Outgoing Members to an avoidable liability; (ii) amount to a breach of any regulatory or statutory obligation of the Member, the Outgoing Member, the LLP or any other member of the Group; (iii) amount to a breach of the Compliance Manual or any other rules and procedures of the LLP; or (iv) amount to a breach of any obligation or duty of the Member or Outgoing Member under this Agreement".

183. Therefore, OAM's partnership agreement, to which Mr Odey was a party, recognised ExCo's supremacy. This included its ability to issue directions and requirements and to remove a member in the circumstances set out in the partnership agreement if the member failed to comply with those directions and requirements.

184. In a regulatory document prepared by OAM for the Authority dated 1 October 2021 entitled "Apportionment of Responsibilities Odey Asset Management LLP", ExCo was described as having "full power and authority to bind [OAM] in relation to financial and business matters, compliance, risk control, human resources issues, and the promotion and development of the business". In relation to investment risk, OAM's appointment of responsibilities document dated October 2021 explained how ExCo's role included

exercising overall oversight and control regarding decisions and actions taken by individual fund managers, including Mr Odey. ExCo was the managing body of OAM.

185. Underneath ExCo there were various sub-committees, including: the remuneration committee (which reviewed remuneration policy); the prudential committee (which reported on external and internal regulatory issues affecting OAM, including overseeing the compliance monitoring programme); and the risk committee (which oversaw investment risk). None of the sub-committees had the power to bind OAM and they all ultimately reported to ExCo. Human Resources ("**HR**") matters were also reported to ExCo, although the CEO was typically responsible for these issues day-to-day according to Mr Pearey's statement.

Events prior to the Relevant Period – 2020 to December 2021

<u>Criminal investigation into Mr Odey and first internal OAM complaints</u>

186. Mr Odey was charged with a criminal offence in May 2020 - one indecent assault charge. The Authority had first been made aware by OAM of the criminal case against Mr Odey in late May / early June 2020 and the allegation became public shortly after. That allegation was not made by an employee or former employee of OAM and it formed no part of ExCo's later internal investigation. At a public hearing on 28 September 2020, the case was listed for summary trial before the Westminster Magistrates' Court in February 2021. Mr Odey pleaded not guilty and following a trial before a District Judge in March 2021 he was acquitted. As Mr Odey's legal team points out, the judge stated that he left the courtroom without a stain on his character.

187. At the time Mr Odey was charged and much of the time he was facing trial, up to November 2020, the ExCo of OAM consisted of five members: (i) Mr Odey; (ii) Mr Pearey, who was co-CEO; (iii) Lord Roborough, who was at that time Head of Research; (iv) Mr Hanbury, one of the fund managers; and (v) David Fletcher ("**Mr Fletcher**"), who had previously been CEO of the business, worked part-time, and acted as non-executive chair of ExCo.

188. During the period 9 December 2019 to 3 November 2020, Mr Odey held the SMF1 (CEO) and SMF27 (Partner) roles. Mr Odey stood down from ExCo in November 2020 to concentrate on defending himself from the criminal allegation and at the same time resigned as co-CEO. In addition, Mr Fletcher stepped down from ExCo in July 2021, although he continued to attend the meetings until he resigned from the business on 8 December 2021.

189. Therefore, by 24 December 2021, the first ExCo consisted of three individuals: Mr Pearey, Lord Roborough and Mr Hanbury. All three of Mr Pearey, Lord Roborough and Mr Hanbury held the SMF27 (Partner) role. Mr Pearey additionally held the SMF1 Chief Executive, CEO, role.

190. The first complaint which is relevant to this case was made on 27 August 2020, when a female OAM ex-employee raised a complaint through solicitors that Mr Odey had sexually harassed her at work. The ex-employee is referred to as "Individual B" throughout this decision as she was in OAM's later letter to the Authority dated 22 February 2021. OAM's General Counsel, Claire Holdsworth ("**Ms Holdsworth**") was originally appointed by ExCo to investigate the complaint.

191. On 17 September 2020, a further complaint was raised by a then current employee, who is referred to as "Individual A". She raised a formal grievance of her own having also been

interviewed by Ms Holdsworth regarding Individual B. This grievance appears at Appendix 2 of the 1S&S.

192. On 24 September 2020, Mr Cornwell, the Authority's lead Supervision contact for OAM, held a telephone call with Mr Pearey and Mr Satt. Amongst other matters such as the criminal allegation against Mr Odey and the creation of BAM, Mr Pearey told Mr Cornwell of both internal allegations and that Ms Holdsworth was looking to conclude the investigations in the coming weeks with Mr Odey to continue his role in the interim.

193. Mr Cornwell sent internal emails within the Authority on 24 and 25 September 2020 following the telephone call in which he reported to his then manager, Mr Faircliff, that he felt the failure to suspend Mr Odey was the wrong outcome. He stated that commercial factors might be overriding doing the right thing, that he had told the firm that it was carrying risk by continuing to consider Mr Odey "F&P" [fit and proper] and that he had queried whether the same action would have been taken if the allegations had been made against somebody other than Mr Odey.

194. Mr Cornwell was challenged in cross-examination on the views expressed and communicated in the telephone call with OAM and internal email within the Authority as being improper and symptomatic of a prejudicial mindset deciding Mr Odey was not fit and proper and seeking on behalf of the Authority to assert undue pressure on the ExCos of OAM to remove Mr Odey. We do not accept this as explained below.

195. In relation to the telephone call of 24 September 2020, both Mr Cornwell and Mr Satt in their oral evidence stated the discussion was a reminder of a senior manager's individual accountability. We consider such a reminder on behalf of the Authority's Supervision Division to be reasonable and appropriate to the role. Mr Odey, who was not party to the discussion, accepted that it was part of the Authority's role to hold senior managers to account and challenge them where necessary. The note for record also states that Mr Pearey stated that the firm would treat any member of the staff in the same way that they treated Mr Odey.

196. We reject the suggestion that this contact represents any undue pressure by the Authority on OAM, and in particular its ExCos. Undue pressure was not intended nor caused. One example of this being demonstrated objectively is that the firm did not suspend Mr Odey at any time before or during the Relevant Period, in 2020 or 2021 or 2022. Throughout this time the firm continued to regard Mr Odey as fit and proper.

197. In relation to the internal emails, Mr Cornwell was expressing a private view internally within the Authority on the failure to suspend Mr Odey on an interim basis which he did not communicate to OAM. The private emails do not contain a fixed view of the Authority that Mr Odey should be dismissed. Mr Cornwell did not express what the view was of the outcome of OAM internal investigation, nor could he nor did he express the corporate view of the Authority. Further, Mr Faircliff and Mr Cornwell discussed the matter further in emails with OAM and decided that it was just about in investors' best interests for Mr Odey not to be suspended.

198. In September and October 2020 there were further interactions between OAM and the Authority regarding OAM's internal investigation into Mr Odey's conduct. Mr Pearey sent an email to Mr Cornwell at the Authority on 30 September 2020 setting out the firm's response to various questions and reported that Ms Holdsworth would conduct an internal investigation and prepare a report and stated that the "Firm's Senior Managers have also

resolved to seek advice from the Firm's external legal advisers as to the appropriate course of action for the Firm to take in light of the information contained in the investigation reports…The external legal advisers will be given free rein to make any enquiries they think are relevant (including interviewing any relevant individuals)." Mr Pearey also provided a number of documents such as OAM staff policies.

199. Mr Cornwell reviewed the materials thereafter and discussed the matters with Lynda Vesco in the Authority's referral area, whose role was to consider whether the case of alleged misconduct should be referred to Enforcement for the opening of a formal investigation or whether some other option available to the Authority should be utilised. There is no direct evidence from these discussions that the Authority had formed a view as to Mr Odey's alleged misconduct.

200. Mr Cornwell reported to Mr Faircliff in an email dated 6 October 2020 that Ms Vesco was going "to keep tabs on" the firm with him, but that "a lot will be determined by the outcomes of the internal investigation and the criminal case". In emails dated 6 and 7 October 2020, Mr Faircliff and Mr Cornwell discussed 'pushing' OAM a little but Mr Cornwell's stated intention was "to ensure a rigorous approach to the investigation rather than a suspension of CO [Crispin Odey]".

201. On 15 October 2020 there was a call between Mr Cornwell and Mr Faircliff on behalf of Supervision and Mr Pearey and Mr Satt of OAM. There were four main areas of discussion. Mr Pearey reported that the decision not to suspend Mr Odey was based on a duty to the investors in Mr Odey's funds and they were not pre-judging the outcome of the case but considering contingency plans. Mr Pearey stated that the firm viewed Mr Odey's status as a senior manager and as a money manager as two separate considerations. He stated the OAM investigation into Mr Odey was conducted internally by Ms Holdworth but advised by S&S as external advisers on the process. He stated Ms Holdworth's role was to gather the facts rather than draw conclusions and make judgements. Mr Cornwell stated he would come back to the firm if they had any further queries.

202. In a follow up email from Lynda Vesco to Howard Cornwell at the Authority on 23 October 2020, she agreed that they would have to see the outcome of the investigation before any view was taken on potential Enforcement action.

<u>BAM</u>

203. On 3 November 2020 Mr Odey called a meeting of ExCo and announced he would step down from ExCo and as co-CEO with immediate effect. On the same date OAM made a public announcement in a press release as to the intended creation of Brook Asset Management LLP ("**BAM**"), a new entity within the group. The press release stated that initially it would rename a number of existing funds, and then (subject to the Authority's approval) create the new regulated entity called BAM. It also stated that OAM would be launching a new fund, managed by Mr Odey; and that Mr Odey would now focus entirely on managing his funds.

204. We find that there were various factors that drove the creation of BAM – most importantly, the performance of the funds under Mr Odey's management and the impact, reputationally and otherwise, of the news of the criminal allegation against him. We reject the suggestion made by Mr Odey that Mr Pearey led the creation of BAM out of personal ambition as a project for his own self advancement at the expense of Mr Odey. We accept Mr Pearey's evidence given in his witness statement and orally because it was objectively

supported by the evidence. We have already set out some of our reasoning when addressing Mr Odey's credibility above.

205. Further, there had been significant redemptions from the peak of Mr Odey's AUM. Mr Pearey stated that the volatility was "scaring off investors", with many institutional clients refusing to allocate to any fund managed under the Odey brand, and Mr Pearey felt that it might be heading towards the AUM which belonged just to Mr Odey and his family. As a result, in 2020, before the criminal case, discussions were already underway about how to "depersonalise" the firm away from Mr Odey; Mr Pearey stated that the publicity around the criminal case in September 2020 was "the tipping point that made us decide to accelerate these plans".

206. The attempt by Mr Odey to portray Mr Pearey as a man who would seek to advance himself at the expense of others was unconvincing - out of character with Mr Pearey's role in the firm and the manner of his giving evidence as we explained above. As he stated in his statement, Mr Pearey had joined OAM in 2001, initially recruited to assist the then co-CEO, Simon Batten, who had founded the business with Mr Odey in 1992. He became the Chief Financial Officer ("**CFO**") and then Chief Operational Officer ("**COO**"). He joined ExCo in around 2011 and in September 2015, he became co-CEO, together with Mr Orlando Montagu, and Mr Odey.

207. Mr Pearey stated in his statement and evidence that Mr Odey always appointed a Chief Executive, or someone besides him to manage the business, as his focus was "more on managing funds". When Mr Odey resigned as co-CEO in November 2020, that left Mr Pearey as the sole CEO. Mr Pearey rejected the suggestion that becoming sole CEO must have felt quite good. He was already co-CEO at this point; his role did not change much once he became sole CEO; and, as he pointed out, the circumstances of his sole appointment were "not happy circumstances".

208. Mr Pearey was not a fund manager. His job was on the operations side. He was responsible for the firm's performance of its obligations: under the senior managers' regime; under the certification regime; and for training and reporting on conduct rules. Mr Pearey explained in cross-examination that he was also responsible for the creation of a good compliance structure which Mr Satt operated well. It is also evident from the OAM witnesses that he was liked, highly competent and well-respected in the business. For example, Lord Roborough stated in his witness statement that he "strongly supported Tim Pearey to be the future CEO", as he was "extremely competent, good with people, approachable and numerate; he had the respect of everyone he was working with".

209. We have explained above that Mr Odey felt the same about Mr Pearey throughout this time and in the Relevant Period and even afterwards when interviewed by the Authority in 2022 and 2023. Mr Odey himself described Mr Pearey in interview with the Authority in September 2023: "he's got great integrity. He was a good manager. He chose good people. He was very easy to work with. I think everybody who did work with him liked him and respected him, including me." In fact, the attempt to portray Mr Pearey otherwise was first deployed in 2025 when Mr Odey was seeking to provide a number of avenues to shift or deflect responsibility for his own conduct when challenging the Authority's Decision Notice.

210. Mr Pearey's evidence regarding the reasons for the creation of BAM was supported by that of Mr Satt. He stated that the "Brook" range of funds had "already been used to house certain fund managers who wanted a separate identity and to operate distinctly", and was

"a way to manage the long-term success of the firm, including by assisting with staff retention" and BAM did become "part of the succession planning given the risk around Mr Odey being convicted in the criminal proceedings which were ongoing at that time". He accepted in cross-examination that the potential for bad publicity did, however, become "part of the rationale".

211. Mr Pearey specifically explained in his oral evidence that Mr Hanbury was the one "most concerned", including "about the impact of the perception in the market of the Odey brand on his fund raising ability". Mr Hanbury stated in his evidence that he "agreed a different profit & loss account in relation to my franchise, that is, the funds that I ran, and which were rebranded as Brook", and that he "became more responsible for the Brook team, and was paying their salaries out of my franchise".

212. There was no independent nor objective evidence for the case put to Mr Pearey on behalf of Mr Odey, that the idea "was to get rid of Mr Odey", and Mr Pearey rejected it in cross-examination. Nor was any coherent case put as to how Mr Pearey would himself benefit if Mr Odey was disadvantaged by the changes.

213. As Mr Pearey pointed out, Mr Odey was the only one who had the power to consent to changes in the ownership structure of the business. The application for BAM to be authorised was submitted to the Authority on 6 November 2020. Mr Kippax in Authorisations was allocated it on 14 December 2020 and he noted it suffered from missing documentation and information. In the period December 2020 to February 2022 the Authority's focus was on gathering information from BAM as the application was incomplete. In the event, as we return to below, the authorisation of BAM did not eventuate and the application was withdrawn after an adverse indication from the Authority. Nonetheless, there was a rebranding of certain funds and Mr Pearey was "satisfied that actually it had achieved the goals which we had set out to do which was to depersonalise the brand".

<u>Conclusion of first disciplinary investigation</u>

214. The disciplinary investigation into the two complaints from OAM employees, Individuals A and B, took place between September and December 2020. During that time Ms Holdworth conducted a number of interviews with Individual A and Individual B who had raised grievances. She also held interviews with Mr Odey in November 2020.

215. On 2 December 2020, Mr Pearey emailed Mr Cornwell indicating that S&S wished to make additional enquiries and carry out further interviews in the following weeks, but he "would hope to convene an ExCo towards the end of next week to consider their findings". Mr Cornwell expressed a view within the Authority that he considered the work S&S were doing to be "positive in terms of ensuring the firm reach the right outcome".

216. S&S then conducted follow-up interviews and opened further lines of enquiry beyond complaints from Individuals A and B relating to Mr Odey's alleged misconduct towards other female staff members. S&S interviewed Mr Odey in the first half of December 2020. On 14 December 2020, Mr Pearey reported to Mr Cornwell that S&S had completed their interviews, that there was an ExCo the next morning, and that he would inform Supervision of the outcome by close of business the following day.

217. On 15 December 2020, ExCo, the first ExCo plus David Fletcher, held a meeting which was also attended by Ms Holdsworth and Mr Satt. In addition, two lawyers from S&S were present and participated – Liz Wake ("**Ms Wake**"), from the employment team and Darren

Fox ("**Mr Fox**") from the compliance team. At the meeting, S&S provided legal advice to OAM regarding the investigation into Mr Odey, which included employment law advice and advice on regulatory compliance, such as the conduct rules and fitness and propriety ("**F&P**"). This was stated not to be "full and final advice", on the basis that there were still two interviews to conduct and one more line of enquiry to complete but a number of observations were made and concerns noted: "A number of allegations have been made against CO which are very concerning".

218. The ExCo minutes rebut any suggestion made on behalf of Mr Odey that the first disciplinary investigation was prejudged. The section of the minutes setting out "S&S advice" includes bullet points which noted "Once ready to make a decision, ExCo should decide whether or not Mr Odey should be removed as a member…", indicating that no decision as to the outcome had been taken prior to the meeting; and explained what considerations ExCo should take into account in reaching its decision – "In doing so, it would be advisable for the ExCo to consider what the decision might be in the case of similar evidence involving another partner or employee in the firm". The minutes also considered the position if Mr Odey remained in post which demonstrates that the alternative outcomes were considered in the advice.

219. Mr Pearey stated in evidence, and the ExCo minutes record, that there was further evidence still to be gathered at that point, and that Mr Odey had the opportunity to present further evidence. He stated that the ExCo considered it a "close run thing", and to his mind the final decision was "still in the balance". Mr Pearey's witness statement explains that a FWW or a dismissal were considered the two realistic sanctions, given the nature and breadth of the allegations. However, he rejected any suggestion the 1DH was pre-determined.

220. On 17 December 2020 Mr Pearey emailed Mr Cornwell to inform him that there would be a disciplinary hearing on 22 December 2020, but there were still some interviews to complete. Mr Cornwell's view – expressed internally within the Authority only - was that it was hard to see how the conduct rules had not been breached if there was to be a disciplinary hearing. Mr Faircliff replied that the Authority needed to "wait for the outcome of the hearing" and "understand how they [OAM] reached whatever conclusions they reach".

221. Additional follow up interviews were then conducted in December 2020 and January 2021 and the 1S&S was prepared, dated 19 January 2021. The Authority had been informed by Mr Pearey that the disciplinary hearing had been postponed and would likely take place in the new year.

222. On 19 January 2021 OAM sent Mr Odey a letter inviting him to a disciplinary hearing to be heard on 21 January 2021. The letter enclosed a copy of 1S&S and copies of the relevant policies and procedures of OAM.

223. The firm's Staff Handbook ("**Staff Handbook**") included Disciplinary Rules in Schedule 8.

224. Misconduct and examples thereof were set out at paragraph 3. These included minor breaches of the firm's policies including those contained in the handbook or any regulatory requirements that apply or obscene language or other offensive behaviour. Gross misconduct was set out at paragraph 4. It was defined, at paragraph 4.1, as including "misconduct which, in our opinion, is likely to prejudice our business or reputation or

irreparably damage the working relationship and trust between us", and would "normally lead to dismissal without notice or pay in lieu of notice (summary dismissal)". Paragraph 4.2 set out a non-exhaustive list of examples of gross misconduct. It included: physical violence or bullying (4.2.2); unlawful discrimination or harassment (4.2.7); bringing the organisation into serious disrepute (4.2.8); harassment of, or discrimination against, employees related to many attributes including gender or contrary to the Equal Opportunities Policy or Anti-harassment and Bullying Policy (4.2.19).

225. Schedule 4 of the Staff Handbook set out the firm's Anti-harassment and Bullying Policy.

226. Harassment was defined at paragraph 3.1 as: "any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment." At paragraph 3.2, this was to include also "treating someone less favourably because they have submitted or refused to submit to such behaviour in the past." Paragraph 3.3 stated that unlawful harassment may involve conduct of a sexual nature, sexual harassment. A non-exhaustive list of examples of behaviour amounting to harassment was set out at paragraph 3.4 and including at 3.4.1 "unwanted physical conduct or "horseplay", including touching, pinching, pushing and grabbing; and at 3.4.4 "unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless)".

227. Bullying was defined at paragraph 4.1 of Schedule 4 as: "offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation." Paragraph 4.2 states that "Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include by way of example: 4.2.1. physical or psychological threats…".

228. The Disciplinary Procedure was set out in Schedule 9 of the Staff Handbook.

229. The letter to Mr Odey dated 19 January 2021 explained the following among other matters. The purpose of the disciplinary hearing was to discuss with Mr Odey five allegations ("**the 5 allegations**") that:

1. "You have made inappropriate physical contact with female members of staff,
2. You have made inappropriate and/or unprofessional comments to female members of staff;
3. Your conduct has made members of staff feel uncomfortable;
4. Your conduct has resulted in inappropriate or unprofessional conduct towards female members of staff being normalised;
5. Given your role within the firm, and the apparent normalisation of the alleged inappropriate or unprofessional conduct by you towards female members of staff, staff are reluctant to raise their concerns, fearing either that no action would be taken or fearing retaliation. "

230. The letter stated that if proven, the allegations might constitute a breach of Mr Odey's obligations as a member of the partnership, his obligations under certain provisions of the OAM Staff Handbook including the Equal Opportunities Policy, the Anti-harassment and Bullying Policy and the Disciplinary Rules, and his obligations under the ICR, including ICR1, acting with integrity and ICR 2, acting with due skill, care and diligence. It might impact upon OAM's assessment of his fitness and propriety in accordance with FIT 1.3 of the FCA Handbook.

231. The letter stated if Mr Odey were found guilty of misconduct, he might be issued with a first or final written warning, or might be removed as a member of OAM pursuant to the 29 March 2011 version of the partnership agreement. It also informed Mr Odey that he would be given a full opportunity to state his case. It also stated he had a right to be accompanied by a fellow worker or appropriate trade union official who was willing to accompany him. The companion would be entitled to address the hearing and confer with him but not to answer questions on his behalf.

1S&S

232. The 1S&S was provided to Mr Odey on 19 January 2021 and was made available to the first ExCo for the 1DH. It was titled 'Summary of Evidence Relating the Alleged Conduct of Mr Crispin Odey'. The document was 68 pages long. It began by setting out in the Executive Summary, the investigation that had been undertaken. It included a list of steps that had been taken. It summarised the 5 allegations and the applicable policies and regulatory considerations. It documented that 23 people had been interviewed, by Ms Holdsworth, S&S, or both between September 2020 and January 2021 including numerous complainants and Mr Odey himself. It thereafter, from pages 7 to 27, included a tabulated summary of evidence relating to 46 allegations or alleged incidents and Mr Odey's responses in interview. There were a further 41 pages in 9 appendices including the interviews with Mr Odey conducted by Ms Holdsworth in September and November 2020 and S&S in December 2020.

233. As the Authority correctly observes, over half (around 33) of these incidents related to things Mr Odey was alleged to have said or done to one or other of the two original complainants, Individual A and Individual B, or complaints made by those two individuals about conduct towards other female employees.

234. Individual A's formal complaint dated 17 September 2020 was set out at Appendix 2 to the 1S&S. It included, amongst other things, a complaint of sexual harassment on her own behalf, and complaints of Mr Odey's behaviour towards other staff. In interviews Mr Odey denied these complaints or could not recall the incidents.

235. Individual B's formal complaint dated 27 August 2020 was set out at Appendix 1 to the 1S&S. It included various complaints of Mr Odey's conduct towards her, including shoulder massages, long hugs, expensive gifts, an unwanted kiss over lunch, and flirtatious text messages. She also complained that there was no mechanism by which she could formally report Mr Odey. In interviews he admitted some part of the complaints but suggested they were part of a consensually flirtatious relationship between them that did not go any further.

236. Other incidents involved other persons or were from other sources.

237. One allegation (numbered 3 in the table) involved a complaint from November 2005 against another female employee (referred to as "Individual C"). It was alleged that Mr

Odey massaged her shoulders and then groped both of her breasts. The individual recalled "screaming" and that "CO backed off, said sorry and left the room". Mr Odey, when interviewed by S&S in 2020, said he did not recall the incident and did not recall speaking to Mr Fletcher about it. He said he was made aware of the allegations very recently in the context of the investigation.

238. Another incident (numbered 44 in the table) involved a further female employee, whom Mr Odey had in February 2020 asked to try on a skirt he had bought for his daughter, and suggested that she try it on in one of the meeting rooms, which did not have a locking door. In interview with Ms Holdsworth he had said that she did try on the skirt but there was no mention of which room because one did not lock. He wanted to see whether it would fit his daughter - there was no connotation to the request.

239. The 1S&S, both in the schedule of incidents and notes of Mr Odey's interviews, did record that Mr Odey denied many of the allegations, including denying or mitigating many of the above incidents, when interviewed by Ms Holdsworth or S&S between September and December 2020. There were many other incidents which he stated that he could not recall when interviewed.

<u>1DH – 21 January 2021</u>

240. The 1DH was held on 21 January 2021 at 3.15pm. Mr Pearey, Lord Roborough, Mr Fletcher and Mr Hanbury, as the ExCo of the Odey Group, attended the meeting, virtually or in person, together with Mr Odey. Mr Fletcher was elected chairman for the meeting.

241. According to OAM's Disciplinary Procedure, and as explained in the letter dated 19 January 2021, Mr Odey was not entitled to have legal representation at the 1DH but only a companion such as colleague or trade union representative. Nonetheless, Mr Pearey stated that he mentioned to Mr Odey before the hearing that he could have legal representation. Mr Pearey's recollection was that Mr Odey responded, "let's just get on with this" and seemed keen not to delay the hearing.

242. The meeting only lasted approximately 15 minutes. Mr Pearey stated in oral evidence that: "…there was the opportunity for Mr Odey to present any further evidence, which he may have wished to have done. He did not. What he did express was embarrassment and contrition, which was positive. And so really we didn't determine it necessary to go through all of the documentation again. That had already been sent to him. He had no further comment to make on that documentation. So really, barring any additional evidence or any other comments from Mr Odey, it was in the end a quick process ultimately to make that final decision."

243. The minutes were two pages long. They record that Mr Odey confirmed he had received and reviewed all the material, which included the 1S&S and accepted its contents. When asked if there was anything he wished to add Mr Odey "stated that he was embarrassed by the allegations and admits there were certain things he did wrong. He acknowledged that aspects of his behaviour need[ed] to change".

244. Mr Pearey stated in his witness statement that Mr Odey was "very embarrassed and contrite" and "expressed a willingness to change"; "the allegations seemed to have given him a shock". Lord Roborough also stated that the minutes summed up Mr Odey's attitude at the meeting: he "accepted that his behaviour had been inappropriate, and he was embarrassed". Mr Odey accepts that this was his position at the meeting stating in his statement that the minutes were "generally a fair recollection of my position at this time. I

was embarrassed by the allegations…I had been given the opportunity to reflect on my behaviour and it was clear to me that I had got things wrong. It was not right that members of staff felt uncomfortable because of my behaviour."

245. ExCo gave its decision at the meeting as recorded at point 6 of the minutes. Mr Fletcher told Mr Odey that it had decided that he could remain in his current role as a member of the partnership, but only on the basis that Mr Odey complied with the conditions in a formal warning which would be sent to him.

246. In reaching this decision, not to dismiss him, Mr Odey's acceptance and attitude was an important factor for the first ExCo.

247. Mr Fletcher told Mr Cornwell of the Authority in a meeting held on 9 March 2021 that the 1DH was "straightforward" as Mr Odey "accepted facts", and the Executive Committee "determined that they would 'save Crispin if he would accept it' ie the conditions…as outlined in the disciplinary letter". Mr Fletcher stated that they believed that Mr Odey was worth saving, and that they would always look to save a star performer if they could, the ExCo had the power to dismiss Mr Odey but not the obligation. He continued, stating that Mr Odey's "contrition and acceptance were very important".

248. Mr Pearey described the decision taken at the 1DH in his statement as "not an easy" decision, and a "close run thing". For him, Mr Odey's contrition was an "important factor in this regard", and that Mr Odey said at one point "I need to change, the world has changed, I haven't, I have perhaps become too insular" which Mr Pearey took as recognition on his part that he was willing to change. Mr Hanbury also remembered the tone of the meeting and "being pleased that Mr Odey was accepting and humble, showed signs of contrition, and there was no push back from him". Lord Roborough stated in his oral evidence: "I think it was very important that this wasn't a mealy mouthed acceptance…that this was a genuine acceptance, and I believe our lawyers also had similar conversations and felt similarly convinced." A "grumpy acceptance would not have been enough".

249. Mr Odey himself stated in oral evidence that the 1DH was "truly well constructed, it was independent". He relied on the facts that: Lord Roborough had to take over from Mr Pearey in terms of leading the investigation; Mr Fletcher chaired the 1DH and they had S&S compiling the report and advising. There was no suggestion in Mr Odey's oral evidence regarding the 1DH that it was unfair or that the outcome of the hearing had been pre-determined. There was no independent or objective evidence to support any such assertion in any event.

250. We note at this point that Mr Odey sought to distinguish the 1DH from the 2DH, as originally arranged by the first ExCo. However, we are satisfied that there was no material difference: Mr Pearey's recusal from leading the investigation had nothing to do with Mr Odey, but was for the benefit of one of the complainants; the constitution of ExCo was identical in both cases, save for Mr Fletcher; and even in the 1DH, S&S did not give advice on the outcome which was ExCo's decision. S&S only gave advice on Mr Odey's fitness and propriety ("**F&P**").

251. Darren Fox ("**Mr Fox**") of S&S spoke to the Authority in a call the day after the 1DH, 22 January 2021. The purpose of the call was to relay to the Authority the outcome and Simmons & Simmons' advice. Mr Fox sent Mr Pearey a script of what he intended to say. Mr Cornwell made a note for record of the call and sent it to his superior Mr Faircliff.

252. Mr Fox stated that the 1DH had taken place with Mr Odey being given a formal written warning, effectively a final warning as his conduct had fallen below the expected standards. OAM had accepted the advice from S&S that there had not been a breach of conduct rules and that Mr Odey remained fit to undertake the client dealing function.

253. Mr Fox reported to Mr Cornwell that Mr Odey's attitude had weighed into ExCo's conclusion he was fit and proper to remain a member of the partnership: "In terms of F&P they have taken a backward looking approach to all allegations. From a forward looking perspective CO is very contrite and has stepped down as a senior manager…the test for F&P for a money manager is very different than that of a senior manager, and that while [Mr Odey] was close to the line, there were insufficient grounds to not be F&P."

254. At this stage, no one at the Authority had seen the 1S&S. Mr Fox's telephone call was the first time that Mr Cornwell or anyone else knew that the allegations went beyond two complaints made by one current employee and one ex-employee or that Mr Odey had admitted to any of the conduct.

255. Mr Fox's view given to the Authority was that there was not much guidance on how NFM mapped onto the Conduct Rules, the ICR, and FIT, and it was not "an easy call", but his view was that historic behaviour could not be relied upon without a more recent similar event. This meant that only behaviour after 2019 was taken into account. In Mr Fox's view, "the test for F&P for a money manager is very different than that of a senior manager", and "while CO was close to the line, there were insufficient grounds to not be F&P". It is important to note that Mr Fox stated that his view would have been that Mr Odey was not fit and proper to be a senior manager, if he had been asked to advise on this.

256. On 25 January 2021 Mr Cornwell sent an email to his colleague Marc Teasdale, copied to other colleagues in the Authority, to update them of his conversation with Mr Fox. He explained that Mr Fox had clarified that S&S were not making a determination as to whether Mr Odey should be dismissed but rather whether he had breached conduct rules and was fit and proper to undertake the client dealing function.

257. Mr Cornwell said that the outcome of 1DH "feels unsatisfactory. Mr Odey's behaviour has clearly been unacceptable over a long period and it is debateable whether the behaviour would have been tolerated had it been a different member of staff; it is also behaviour that is likely to have made colleagues uncomfortable and set the wrong culture". Mr Cornwell noted what Mr Fox had told him, namely that ExCo had been "unaware of Odey's behaviour and spoke of him being an unusual character." However, Mr Cornwell's initial thought as to next steps was that the Authority ought to be asking for a copy of 1S&S and asking the firm for its rationale behind the outcome to inform the Authority's next steps.

258. On 28 January 2021, Mr Pearey sent Mr Cornwell a copy of the 1DH letter dated 19 January 2021, the 1S&S, and ExCo minutes of 4 August 2020. On 29 January 2021, Mr Pearey sent Mr Cornwell the 15 December 2020 ExCo minutes.

259. Having received and reviewed all these materials Mr Cornwell sent an email to his colleague Mr Teasdale on 1 February 2021 and stated that Supervision's concern was that OAM had not followed the provisions of its own Staff Handbook – and in particular Supervision believed that there was evidence of gross misconduct that would normally lead to dismissal. Supervision considered that OAM had based its decision on S&S's 'fit and proper' assessment, rather than on the terms of its own Staff Handbook which they considered were more directly relevant. Mr Cornwell's note to his colleague also stated that Supervision continued to have concerns that Mr Odey was being treated differently from

other staff, and referred to cultural issues and failures within the firm that the issues raised by the investigation indicated. It stated Supervision was considering how best to challenge OAM on their conclusions.

The FWW and findings on which it was based – 4 February 2021

260. Mr Pearey wrote to Mr Odey on behalf of ExCo and OAM in a letter dated 4 February 2021. This was the FWW. Mr Pearey stated that the first draft of the FWW was produced by S&S. Mr Hanbury and Lord Roborough, while not involved in the drafting, were involved in discussions about and approved its terms.

261. The letter was titled 'Final Written Warning for misconduct'. The letter was marked 'legally privileged and confidential'. It set out the 5 allegations referred to at paragraph 229 above. It recorded findings that all 5 allegations were proved in the following terms:

> "Allegation 1: You have made inappropriate physical contact with female members of staff
>
> We found that you did have physical contact with colleagues including touching the shoulders of female members of staff on a number of occasions. Even though some of the interviewees were not offended by such contact, with one referencing it as "absent-minded affection", there were staff who found your conduct in this regard to be inappropriate and felt uncomfortable. Our view is that touching the shoulders of female members of staff is not appropriate conduct or behaviour and is not the example of behaviour we would expect you to set as a senior member of the LLP.
>
> We also note the admissions and comments you have made in relation to the nature of your relationship with Ms [] including your admission that you kissed her and entered into text message exchanges with her. Conflicting evidence and/or a lack of witnesses mean that we have been unable to reach a view in relation to all of the allegations concerning Ms []. However, notwithstanding your view (and that of others) that Ms actions towards you were flirtatious in nature and that the relationship was consensual, we find your admitted interactions with Ms [], including your physical contact with her, to have been inappropriate, not least when considering your position within the firm.
>
> For completeness, we also reference the historic incident dating from November 2005. Whilst you did not recall the incident when interviewed, the contemporaneous file note and interview evidence relating to the incident lead us to reach the view that you did make inappropriate physical contact with the member of staff in question.
>
> Allegation 2: You have made inappropriate and/or unprofessional comments to female members of staff
>
> Based upon your admissions in relation to Ms [] (in particular your comment to Ms Holdsworth that you recalled engaging in "silly banter" with Ms [] about the fictitious scenario where you could be lovers) and based upon our review of the text message exchanges between you and Ms [] we find that you did make inappropriate and unprofessional comments to her. In some cases, there is a lack of corroborating evidence in relation to other specific allegations of inappropriate comments by you to members of staff and we note your specific denials of a number of the alleged comments. Despite your lack of recollection in some cases, there is evidence to suggest that you have made inappropriate and/or unprofessional comments to members of staff and this behaviour is not acceptable.
>
> Allegation 3: Your conduct has made members of staff feel uncomfortable
>
> We note that, in addition to the allegations by Ms [] and Ms [], your conduct made them feel uncomfortable. Other former members of staff have also commented that your conduct has made them feel uncomfortable. We understand your perception as it relates to the consensual

nature of your relationship with Ms [] and your various denials as they relate to specific alleged conduct and comments.

Regardless of whether or not you intended to make members of staff feel uncomfortable, our review of the evidence leads us to the conclusion that certain aspects of your conduct (in particular touching the shoulders of female members of staff) did make members of staff feel uncomfortable. We also consider it likely that invitations issued to individual female members of staff for lunch and/or shopping trips could have resulted in staff feeling uncomfortable, especially bearing in mind your position within the firm.

We note that you are often described as being friendly and having a warm personality, but it is clear that to some employees your conduct is not well received and is considered inappropriate.

<u>Allegation 4: Your conduct has resulted in inappropriate or unprofessional conduct towards female members of staff being normalised</u>

There does not seem to be any suggestion by the complainants that your conduct has resulted in others behaving in a similar way. Rather, the allegation is that members of staff accepted your behaviour or conduct - for example your touching of their shoulders or invitations on shopping trips - because of it happening fairly consistently over a long period of time, as well as because of who you were. It came to be seen as "normal" behaviour by you which was tolerated and not challenged.

Given your senior role within the firm and your employment predating the rest of staff, we think that your conduct over a period of years has resulted in certain inappropriate conduct towards female members of staff becoming perceived as normal or acceptable by some staff members.

<u>Allegation 5: Given your role within the firm, and the apparent normalisation of the alleged inappropriate or unprofessional conduct by you towards female members of staff, staff are reluctant to raise their concerns, fearing either that no action would be taken or fearing retaliation</u>

We note the suggestion by some that concerns about your behaviour or conduct were not escalated because of a desire not to "ruffle feathers" or because of concerns that nothing would be done, and that employees would rather say nothing or even resign instead of lodging a complaint. We find this very concerning, but consider it likely to have been true for some employees - you are were at the top of the organisation and it would have been hard for individuals (in particular at more junior levels) to be confident to come forward with complaints.

This is [sic] may be illustrated by the fact that it seems not everyone has been comfortable to fully participate in this investigation which has limited the breadth of the evidence available to us in reaching a decision."

262. The first ExCo only made findings on the basis of the evidence before it, namely the 1S&S. As a matter of fairness, where there was no corroborative evidence of an allegation, including where Mr Odey could not recall the incident or denied it, that allegation was given less weight. The FWW noted, in relation to one of the allegations of inappropriate physical contact within allegation 1, "Conflicting evidence and/or lack of witnesses mean that we have been unable to reach a view in relation to all the allegations concerning…".

263. The findings came to a conclusion with the decision that the FWW should be issued. Regarding Mr Odey's conduct, the letter stated: "It is our view that the cumulative effect of the findings set out above demonstrate that your conduct fell short of the leadership standard of behaviour and adherence to the LLP's policies and values which could reasonably be expected of you given your role and seniority".

264. It stated that, in deciding to issue the FWW, ExCo had "taken into consideration your contrition together with your intention to make changes and your agreement to be subject to such measures as the LLP sees fit going forwards. These measures are set out below and must be complied with at all times."

265. The decision concluded "Whilst we have concluded that you should remain in your current role as a member of the LLP, for the avoidance of doubt, any further inappropriate behaviour…any failure to comply with the measures set out in this letter, or the discovery of any further relevant information (including without limitation an adverse outcome of the criminal trial) is likely to lead to your removal from the LLP."

266. The letter next set out the "Measures". These included general conditions as follows:

> "By counter-signing this letter, it is noted that, with immediate effect, you hereby agree that the conditions of your continued membership of the LLP are that:
>
> (A) your interactions (whether face to face or otherwise) with all staff (whether temporary or permanent, and whether provided via an agency or otherwise) (referred to as "member(s) of staff") are professional and are in accordance with the policies and procedures of the LLP, including without limitation the Equal Opportunities Policy, the Anti-Harassment and Bullying Policy and the Disciplinary Rules: and
>
> (B) you undertake a working with respect course of the firm's choosing, and repeat such training at intervals notified to you by the firm from time to time."

267. The letter then set out a non-exhaustive list of "examples of the behaviours and conduct which would not be considered by the LLP to be professional and/or in accordance with the policies and procedures of the LLP…without limitation".

268. The six stipulated examples of prohibited behaviours (the particularised terms or conditions of the FWW) that Mr Odey should not engage in were:

i. touching another member of staff (other than the shaking of hands in a professional context);

ii. inviting or accompanying any otherwise unaccompanied female member of staff to any event (whether formal or informal) whether inside or outside the office (including without limitation lunch events), unless approved by HR or the Chief Executive;

iii. taking any unaccompanied member of staff on a shopping trip, or offering to buy or buying any member of staff personal items or gifts;

iv. exchanging messages (over text, WhatsApp, email or any other platform) with female members of staff other than in the course of business using the firm's communication systems;

v. asking female members of staff for their personal contact details;

vi. talking about members of staff or others in a manner which is inappropriate.

269. The FWW also explained that, to preserve opportunities for female members of staff, ExCo was not imposing a "blanket ban" on Mr Odey having any one-on-one discussions or meetings with female members of staff in the office, but "any such discussions or meetings" were "to take place for business purposes only".

270. It also set out Mr Odey's right of appeal: "If you disagree with our decision, you can appeal against it by writing to the Executive Committee, setting out the grounds of your appeal in full, within seven working days of receiving this letter. Otherwise, please sign and return the copy of this letter to me as acknowledgement of receipt and as a record of your agreement to comply with the measures referenced above."

271. Mr Odey signed the FWW the following day, on 5 February 2021 to agree that "I, Crispin Odey, hereby confirm my understanding of and agreement to comply with the conditions set out in this letter".

272. Mr Odey did not appeal the FWW and at no time sought to challenge either the findings or sanction imposed either internally within OAM or externally by legal action. He accepted them.

273. The Staff Handbook stated that in appeals against disciplinary decisions the appeal hearing within OAM would be conducted by a more senior manager who has not been previously involved in the case "where possible". In his witness statement at paragraphs 21 and 22 Mr Odey reflected that he gave no thought to appealing the outcome at the time because of his criminal trial but he should have taken legal advice and sought either to appeal the FWW or enter into a dialogue about the necessity for the onerous measures. At the hearing of the reference, in oral evidence, Mr Odey changed track and doubted whether there could have been an effective right of appeal against ExCo's decision either at the 1DH or 2DH because it was the highest executive authority within OAM. He suggested there was uncertainty as to what a right of appeal could have involved.

274. Although academic, we find that there were effective appeal rights available. The first course of appeal would have been to ExCo as para 12.6 of Schedule 9 to the procedure stipulated that 'where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case', although the Staff Handbook's Disciplinary Rules made it clear that the procedure could be amended "as appropriate in any case", and, depending on the grounds of the appeal, it might even give rise to a new investigation. In any event and additionally, even as a partner of the firm, however, Mr Odey would have had recourse to bringing claims for legal redress challenging the FWW in the courts, or perhaps in the Employment Tribunal for certain purposes. We return to the routes of challenge available if there were concerns about the fairness or outcome of the firm's disciplinary proceedings against Mr Odey further below in the context of the 2DH.

275. We are satisfied that the terms and conditions of the FWW were clear and unambiguous to any reasonable reader as they were to Mr Odey. It was clear that the measures applied to Mr Odey's conduct in respect of all staff: the FWW specifically referred to "all staff (whether temporary or permanent, and whether provided via an agency or otherwise)". There was no ambiguity about this.

276. Second, the term and effect of the FWW were of indefinite duration. As we explain in more detail later, this was reasonable and justified in the context of the significant and wide-ranging allegations ExCo had been presented with and findings it made following the investigation.

277. Mr Pearey described the terms carrying on in perpetuity as "appropriate" in his oral evidence. In his witness statement he stated this was because of the findings ExCo had

made, and because the "change in Mr Odey's behaviour, which Mr Odey said on 21 January he realised must occur, had to be permanent"; it was "behaviour which should never occur again". Mr Pearey's oral evidence was also that the suggestion it be indefinite came from S&S.

278. It is worth noting in any event that each of Mr Odey's alleged breaches of the FWW came within seven months of its imposition in February 2021, and in the first case a mere month, of the FWW being imposed. It would therefore have been irrelevant had the warning been imposed for only 12 months rather than indefinitely.

279. Mr Odey made complaint at the 2DH held in November 2022, as supported by the third ExCo's view in December 2022, that the terms of the FWW were "too prescriptive" and unreasonably onerous. He relied on this before us. We reject this for reasons given in detail later in this decision. It was reasonable, in light of the 1S&S and findings made thereupon, for ExCo to consider there needed to be clear lines drawn about what was and was not acceptable.

280. Mr Odey's judgement over appropriate conduct at work had been found to be lacking by ExCo in various regards. The allegations contained in the 1S&S had come as a surprise to them as longstanding colleagues of Mr Odey. Mr Hanbury stated in his witness statement: "One of the worrying things for me as a member of ExCo was that I had never seen evidence of shoulder massages, or the other things that the process revealed, and which the disciplinary process suggested in some cases had become normalised. So if we as ExCo were not seeing it, we couldn't police it. There, therefore, needed to be some rules for Mr Odey so that he understood what was acceptable."

281. We are satisfied that Mr Odey had a clear understanding of the terms of the FWW at the time and made no complaint about them. Mr Pearey's evidence was that on or around 4 February 2021, he sat down with Mr Odey and went through the terms of the FWW. This was not challenged in cross-examination. We do not accept that Mr Odey was placed under any, let alone any undue, pressure, to agree to the FWW but did so willingly and gratefully on 5 February 2021, given that the other sanction available for his admitted or proved misconduct was dismissal.

282. In oral evidence and cross-examination of Mr Pearey, and in his own witness statement, Mr Odey attempted to place significant weight on the fact that the 1DH coincided with his poor fund performance and his criminal case. The criminal trial was listed to take place a few weeks later in March 2021. He suggested that his focus was elsewhere and he was not in a proper position to consider or dispute the terms or conditions of the FWW. It was suggested on Mr Odey's behalf that the timing of the 1DH was unfair on him and should have been delayed for his criminal trial to take place first, on the basis that it could have been prejudicial to Mr Odey's trial had he been sacked just before it; and because Mr Odey's focus was on his criminal proceedings at that time.

283. We do not accept that Mr Odey did not freely agree to the conditions imposed by the FWW without complaint or that the 1DH was in any way unfair on him in process or outcome. There is no proper basis for any such suggestion. Mr Odey was offered legal representation regarding the 1DH and made no complaint as to unfairness of the process or inability to focus on the proceedings or the terms of the FWW. In respect of the criminal trial, the outcome of the 1DH would not be relevant to or even admissible before a criminal court and Mr Odey was legally represented by a specialist team in the criminal proceedings which was more than competent to protect his interests. In any event, as Mr Pearey stated in his witness statement, it was Mr Odey who had wanted to get on with the disciplinary

proceedings at that point stating "let's just get on with this" and not wanting to delay them. Further, if there had been any real risk of unfairness to Mr Odey in the timing of the 1DH, he was able to raise that point but never did.

March 2021

284. As noted above, on 11 March 2021, Mr Odey was acquitted in his criminal case. He points out that the district judge stated that he left court without a stain on his character Subsequently, in March 2021, OAM issued a fit and proper certificate for Mr Odey. As we have explained in our discussion of the law, OAM was required to certify its certification employees as *"fit and proper"* every 12 months.

May 2021 – opening of the Authority's investigation into OAM and Mr Odey

285. The Authority's Enforcement Division opened an investigation into both OAM and Mr Odey in May 2021. The Authority's Investigation Decisions Committee ("**IDC**") had met on 13 May 2021. The Investigation Opening Document ("**IOD**") was 37 pages long.

286. The IOD recited the circumstances for opening the two investigations in the following terms:

> "This is a Non-Financial Misconduct (NFM) case.
>
> Mr Odey
>
> There are numerous allegations that Mr Odey has subjected employees to sexual harassment and other non-consensual misconduct. As the founder and owner of OAM, there are concerns that he has abused his position of power and engaged in a pattern of this misconduct over a number of decades. Mr Odey's misconduct appears to have gone unchallenged and, as the CEO setting the tone for the firm, his sexual harassment and inappropriate behaviour appears to have become an accepted part of the culture of the firm.
>
> OAM
>
> There are concerns that OAM failed to take the allegations sufficiently seriously and that OAM has failed to follow its own disciplinary process in its decision making about Mr Odey's sanction, putting the interests of the firm ahead of an appropriate outcome. The firm appear to have been made aware of numerous allegations of sexual harassment from staff over a long period of time, yet the firm appears to have taken no action to investigate Mr Odey until last year. The firm appears to have tolerated a culture of "fairly prolific" sexual harassment, leaving employees unnecessarily exposed to this misconduct and thereby put at risk for a significant period of time."

287. The proposed scope and relevant period were addressed in the following terms:

> "Mr Odey
>
> There are circumstances suggesting that Mr Odey lacks integrity and is not a fit and proper person. • APER 1 / ICR 1 (integrity) • APER 6 / IC 2 (due skill, care and diligence)1 • FIT 1.3 - honesty, integrity and reputation.
>
> OAM
>
> The investigation will consider whether, in its handling of the allegations around Mr Odey and the wider culture at the firm, OAM may have breached: • Principle 2 (due skill, care and diligence) • Principle 3 (reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems)

Relevant Period

There is evidence of sexual harassment complaints against Mr Odey from 2003 onwards. It is recognised that it is not proportionate to start the Relevant Period at this date…"

288. The IOD set out the discussion at the meeting from the IDC attendees and other individuals from various teams of the Authority including the Supervision, Authorisations and Enforcement Departments. There is nothing in the discussion recorded that substantiates Mr Odey's suggestion in his statement that he was to be the Authority's "poster boy" for their NFM "agenda". The discussion focused on the potential merits of the allegations. There was then a section of the IOD which is redacted and may have included legal advice to the Authority which is the subject of legal professional privilege.

BAM application March to June 2021

289. Between 31 March 2021 and 10 May 2021 there was further contact between Mr Pearey and Mr Satt for OAM/BAM and Mr Kippax for the Authority's Authorisations Division, regarding BAM. Subsequent to the Authority opening its Enforcement investigations into Mr Odey and OAM in May 2021, Authorisations informed Supervision that it had decided not to progress the approval of BAM's new firm authorisation application.

290. The Authorisations Division of the Authority sent a letter to BAM on 25 June 2021, following their meeting with Mr Pearey and Mr Satt for BAM. In the meeting Mr Kippax had advised them that the Authority did not consider that Mr Odey met the threshold for F&P as a controller of BAM; that there were concerns over the firm's culture and governance; and BAM did not appear ready and organised. The letter addressed the situation with OAM in terms of the Enforcement investigations being underway and that the Authority's team would be in touch in due course about the scope of the investigation. The Authority wanted to give OAM the heads up as the formal notices relating to the Investigations would not be issued for some time. These were only later issued and Mr Odey / OAM formally notified in October 2021.

291. Nonetheless, Mr Pearey was therefore aware as of 25 June 2021 that a referral to Enforcement was ongoing in respect of Mr Odey / OAM and that he would receive formal notification in due course.

292. On 28 June 2021, Mr Satt emailed Mr Kippax to inform him that BAM was withdrawing its application for authorisation so the application was never formally refused by the Authority.

August – September 2021 – the alleged breach of the FWW – RMS temporary receptionist allegation

293. As set out above, Mr Odey had agreed to the terms and conditions of the FWW on 5 February 2021. These included stipulated prohibitions that: ii) he was also not permitted to invite a female member of staff out to lunch unless approved by HR or the Chief Executive; and iv) he was not permitted to exchange messages with a female member of staff, other than in the course of business using the firm's own communication systems. This was to apply to all staff, whether temporary or permanent, and whether provided via an agency or otherwise. Part of the purpose was to prevent flirtatious behaviour which might lead to any reoccurrence of the sexualised or inappropriate conduct by Mr Odey towards female members of the staff that the first ExCo had found to have occurred in the FWW, much of which Mr Odey had accepted. Mr Odey stated that his take away from the

1DH was that it was "not appropriate that I should be trying to chat up, make the receptionist feel at home".

294. During July and August 2021, RMS agency provided to OAM a temporary receptionist ("**the temporary receptionist**") who worked at the firm including on 10-12 August 2021.

295. On 11 August 2021, whilst she was still working at OAM, Mr Odey exchanged personal telephone numbers with the temporary receptionist. In the afternoon of the same day, Mr Odey then exchanged text messages with her, which started with the following exchange:

> "Mr Odey: Such a treat meeting you. Cx
>
> [Temporary receptionist]: Likewise x
>
> Mr Odey: Maybe we can meet up! I would love to spend more time with you. Xx
>
> [Temporary receptionist]: Let's definitely stay in touch! I will let you know when I'm next in Mayfair, would be great to go for lunch or a coffee and catch up:)
>
> Mr Odey: Let's have lunch next week!"

296. This was an indisputable breach of the terms of the FWW as Mr Odey accepts.

297. It was not a technical breach as Mr Odey at times tried to characterise it. The temporary receptionist's description to Ms Versey on 12 August 2021 was that she had "good banter" with Mr Odey but her concern, was nevertheless, that Mr Odey might have got the "wrong impression". It is clear that Mr Odey's conduct towards her at the time she was OAM staff breached both the terms and the spirit of the FWW.

298. Mr Odey accepted in oral evidence that in his messages he was showing more than professional interest in this woman. He volunteered: "I took her out for lunch. We had – we had a very nice time." There were further messages after 12 August 2021, when the temporary receptionist left OAM. There was a message from Mr Odey on 20 August 2021, the first since the temp had left the office, which said: "Have missed you. Cx".

299. As set out above Mr Odey's messages in August 2021 went beyond assisting the temporary receptionist with her Reiki practice. Mr Odey was – on the days whilst the receptionist was still working at OAM – sending messages such as "I'm so happy too. I like you!". In contrast, the messages demonstrated that the temporary receptionist was trying to turn the conversation back to that practice and Mr Odey's assistance with contacts.

300. This is also clear from the subsequent conduct.

301. There was a series of text messages from Mr Odey on 26 August 2021, by which point Mr Odey had still not met the temporary receptionist for lunch, which subsequently took place on 3 September 2021. The messages must have been referring to an interaction that took place whilst she was at OAM, as Mr Odey accepted in cross-examination. They included a message from Mr Odey: "I remember how much fun we had. Doing nothing! But I also loved the look you gave me. What they call a 'technical'! Xx. But I may have been wrong." The response from the temporary receptionist was to clarify that the look had not been sexual: "Oh dear, not sure what look that was [emoticons] quizzical?" The relevant finding is that on 26 August 2021, after the temporary receptionist had stopped working at OAM, Mr Odey sent flirtatious text messages to her. It establishes that there was partly a sexual motive throughout - Mr Odey was seeking to make sexual the in-person contact

which had taken place between them earlier while she was working as a receptionist at OAM.

302. As we have already set out when making findings about his credibility, Mr Odey has suggested that he self-reported the breach of the FWW to Mr Pearey on 12 August 2021. We are satisfied that he did not for the reasons we set out above. We find that Mr Pearey heard about the breach from Ms Versey, the head of HR and Mr Pearey brought it up with Mr Odey. While the issue of self-report is not relevant to whether there was a breach of the FWW, it is relevant to Mr Odey's lack of credibility on important points and attempts to minimise his conduct. It is worth returning to the evidence that establishes our findings.

303. Mr Pearey's evidence in his statement was that he had been told about the issue by Ms Versey on 12 August 2021. He states that he was on leave at the time, but that he cut short his leave to go into the office so that he could discuss the matter in person with Mr Odey. His evidence was that he did not inform Mr Odey in advance that he intended to discuss the matter, but printed out a copy of the FWW and sat down with him.

304. Mr Pearey stated that he explained which aspects of the FWW had been potentially breached. He recalled that Mr Odey seemed "surprised" by Mr Pearey's reaction. Mr Pearey continued, "Mr Odey explained that he was just trying to help the receptionist, to put her in contact with someone to assist in growing her business. He then said that "none of this" – i.e. the Final Written Warning conditions – applied to temporary staff. I explained that it did. He seemed surprised by this, but once I showed him the Final Written Warning and explained that the conditions applied to temporary staff too, he said, 'Ok, fine, I'm sorry, got it.'"

305. Mr Pearey was not challenged in cross-examination on any of this evidence which we accept. To the contrary, it was put to Mr Pearey that he had received the news from Ms Versey, which he accepted. Mr Pearey's evidence was reliable in contrast to Mr Odey's. It is inherently contradictory and highly unlikely that Mr Odey would have self-reported a "technical breach" when he had also told both Mr Pearey and Lord Roborough that there was no breach and that the FWW did not apply to temporary members of staff. It is unlikely that Mr Pearey would have given evidence that he "did not inform Mr Odey in advance that he intended to discuss" the issue with him, if they had already had a discussion over the telephone about the matter.

306. Mr Pearey's account is supported by the summary of evidence later produced by S&S, the 2S&S. At Appendix 2 to 2S&S is Ms Versey's written note of what had been discussed on 12 August 2021 between her and another member of staff who had reported the issue, and then her and the temporary receptionist; and it records that Ms Versey "relayed all the above information to TP [Mr Pearey] a few moments later".

307. Appendix 3 to the 2S&S provides a note of Mr Pearey and Mr Odey's discussion on 13 August 2021 in which Mr Pearey records that he spoke to Mr Odey as Mr Pearey had heard Mr Odey had exchanged contact details with the temporary receptionist. The note records matters including the following. Mr Pearey outlined the term of the FWW. Mr Odey stated he was perplexed and said he only put her in contact with an individual who might help her with clients for her Reiki practice. Mr Odey was surprised that the FWW applied to temps which he did not appreciate. Mr Pearey felt the matter was therefore closed. Mr Pearey could not remember when the note was made, although he thought it was soon after the meeting. Even though it was not written on the same day it documented his recall of the discussion dating from a time closer than any other documented record of the discussion.

308. Around three months later, Mr Odey's then lawyers, Wilmer Hale, later sent a letter to Mr Pearey dated 24 November 2021. In this they also maintained that there was no breach of the FWW. The letter is inconsistent with Mr Odey's position that he realised immediately, on 11 August 2021, that he had breached the terms of the FWW. The letter is consistent with Mr Pearey's memory that Mr Odey did not self-report the breach and that he was surprised to hear it might be a breach.

309. Mr Odey himself did not give any written evidence in his witness statement that he had self-reported this breach by telephoning Mr Pearey "on the Tuesday night". At the 2DH on 28 November 2022 all he had said to the third ExCo (at para 5.3 of the file note) was that he "recalled a meeting he had with Tim Pearey (TP) in which CO told TP that he might be in breach [of the FWW] because he had got [the temporary receptionist's] number as he was trying to help her out, to which TP replied, 'watch out, you might be in breach'". However, Mr Odey purported to give details of how that self-report had happened in oral evidence.

310. Mr Odey's account is not credible.

311. It is agreed that Mr Pearey did not take further action at that time in August 2021 and considered "the matter closed". The reasons for that are set out Mr Pearey's witness statement that Mr Odey said that "none of this" i.e. the FWW conditions applied to temporary staff but Mr Pearey explained that it did and Mr Odey said "Ok, fine, I'm sorry, got it". Mr Pearey understood from Mr Odey's apology that "he had agreed that this was not acceptable, and I recall that we agreed that he would have no further contact with the receptionist".

312. The note of Mr Pearey's discussion with Mr Odey on 13 August 2021 states that Mr Pearey felt "the matter was therefore closed, as CO was now fully aware of the terms of the FWW, he was simply trying to help connect the temp to potential clients and there was no further contact."

313. Mr Pearey told us what he felt after their conversation: "I got the impression he understood the terms of the final written warning applied to temporary members of staff, and I also understood that he wasn't going to have any further contact with that individual. I felt he understood the risk he was running in doing so". Mr Pearey was challenged in oral evidence regarding his memory, and whether Mr Pearey had told Mr Odey to delete the receptionist's contact details and not to have contact with her again. Whether this in fact occurred or not, we are clear that Mr Pearey was under the impression that Mr Odey understood the seriousness of what Mr Pearey was telling him. Mr Odey was made aware of what was appropriate going forward.

314. There is an immaterial dispute between Mr Pearey and Mr Odey as to whether, at the meeting on 13 August 2021, Mr Odey said that he did not think that the FWW applied to temporary staff at all, as Mr Pearey recalled and put in the note, or whether Mr Odey said that it did not apply to "temps who had once worked at Odey but were no longer working there" as Mr Odey's counsel suggested Mr Odey had understood it. This is not a material dispute because the breaches upon which ExCo were asked to adjudicate in the 2DH were that Mr Odey had breached the FWW by obtaining the member of staff's personal contact details, messaging her privately about matters unrelated to business, and inviting her to lunch, while she was a temporary member of staff.

<u>October -November 2021 – the temporary receptionist complaint resurfaces and is investigated</u>

315. Mr Odey's conduct towards the temporary receptionist in August 2021 was the subject of a subsequent complaint on 11 October 2021 when RMS called Ms Versey in response to the firm's request for cover at reception on the following day. In a transcript of that call, an employee of RMS reported that Mr Odey had taken the temporary receptionist out for lunch and had tried to kiss her and had also messaged her in the past. The RMS employee told Ms Versey that Mr Odey had been engaged in some "pretty inappropriate behaviour" with one of their temporary staff and had been "quite forward in making advances, and making his intentions quite clear in terms of what he would like from her". RMS said that it did not feel it could work with OAM anymore as it would "not feel comfortable putting anyone in that kind of position".

316. The first ExCo, together with Mr Fletcher, met on 19 October 2021 and decided that the allegation required a "fact-finding / evidence-gathering exercise" and to determine if further action needed taking.

317. S&S were engaged to advise in relation to the investigation. On 19 October 2021, ExCo were given the text messages between Mr Odey and the temporary receptionist which included the messages from August 2021 which are referred to above.

318. Mr Odey once notified of the S&S investigation also sent an imessage to the temporary receptionist on 19 October 2021. "Have heard news that I tried to kiss you and am now in deep trouble. I find this strange when our lunch ended in the Catholic church listening to an organ recital. Beautiful but not kissing? Where has this come from? Cx". The temporary receptionist replied, "[…] I told her we went out lunch as friends, but that you'd tried to kiss me at the end so I thought it would be best if I don't come back to Odey[…] We had a lovely lunch and outing, but even you told me you wanted more than friendship and I had to do a bit of a duck at the end as I thought you were trying to kiss me, haha. I'm really annoyed with [RMS employee] that she made it sound so sinister", and ,"If I was any other woman I could have tried to make trouble for you so that's why I said you need to be more careful x".

319. Telephone calls were conducted in November 2021 by phone between Ms Versey and the temporary receptionist. Ms Versey also called RMS again that month.

320. On 12 November 2021, Mr Pearey then interviewed Mr Odey with Ms Versey present as a note-taker. In that interview, as recorded in Appendix 7 to the 2S&S, the messages between the temporary receptionist and Mr Odey were put to him. In relation to the message, "I also loved the look you gave me", Mr Odey told Mr Pearey that he had thought the temp seemed to be giving him "a bit of a come on".

321. Mr Odey commented at the end of that interview when asked if there was anything else he wished to add as background or context: "I think this process is very good and it is right to go through this." There was no complaint about the unfairness of the process at the time – indeed the opposite, Mr Odey complimented the process.

322. It was suggested in cross-examination of the members of the first ExCo that this process was "unfair" because Mr Pearey interviewed Mr Odey and he had been "a witness to a crucial interchange" between Mr Pearey and Mr Odey in August 2021. However, as explained, this was not a complaint made at the time. As we have found above, what was discussed between Mr Pearey and Mr Odey on 13 August 2021 only became a matter of dispute subsequently.

323. Mr Odey stated in cross-examination several times that what he felt was unfair was the "content" of the second disciplinary process, namely the fact the 2DH was being held at all to consider his conduct. When Mr Pearey's interview of him was put to Mr Odey in cross-examination, he stated twice, "It wasn't the process that was wrong". He said in cross-examination, "I could not understand why we were here because I couldn't see what having lunch with [the temporary receptionist] had to do with my breach of my final written warning. He agreed it was the substance of what he anticipated the decision-making would be but also, "When I look back at this…after the event…I think all of that [referring to Mr Pearey being in charge of adducing evidence and being the judge at the 2DH] feels very unjust, it's not due process." Mr Odey said "I have to fight over what was alleged that I had done…I can't understand quite why this is ending up as a disciplinary hearing". He said "the content was unfair", "I had a real argument with the content of this disciplinary hearing" and rejected the suggestion that this was a large change in his position.

324. We are satisfied that there was nothing about the investigation process, as recorded in the 2S&S, or in the holding of the 2DH itself, the content of the allegations and the potential outcomes if a breach of the FWW was proved, that was unfair or that Mr Odey thought was unfair at the time. His evidence is now based on looking back with hindsight and focussing on his current justifications. There was no conflict between Mr Pearey being interviewer of Mr Odey and a witness to a disputed piece of evidence. Mr Odey did not suggest to Mr Pearey during that process that he had been the one to self-report the potential breach as he now does. There was no issue during the investigation as to what was or was not said on 13 August 2021 between Mr Odey and Mr Pearey. Further, S&S's employment law team advised on the process and interview. They did not raise any perceived unfairness in Mr Pearey's conducting it. There is and was an immaterial dispute as to whether, after the receptionist had left OAM, Mr Odey attempted a kiss over lunch with her. However, Mr Pearey was not and could not be a witness to this. Indeed, there was no material factual dispute about Mr Odey having breached the FWW.

325. We address in greater detail later in this decision why we consider there was no unfairness in the first ExCo carrying out or determining the 2DH and why it was reasonable to proceed with the 2DH – there was a clear case to answer that he had breached the FWW. There was nothing unfair in Mr Odey being asked to answer the allegations of breach – the content or substance of the 2DH was not unfair.

<u>Notification of the Authority's investigation – October 2021</u>

326. In the meantime, the Authority had given formal notification of its investigations into OAM and Mr Odey in telephone calls with Mr Odey, Mr Pearey and Mr Satt on 4 October 2021. The notices of the Appointment of Investigators and Memorandums of the Appointment of Investigators ("**the Notice of Investigation**") reflect the IOD from May 2021 which is summarised above.

327. In relation to Mr Odey, the Authority's investigation concerned whether Mr Odey's conduct had fallen below the standards expected and whether he lacked fitness and propriety in the period 1 June 2003-31 January 2021, in particular due to his: (1) possible inappropriate behaviour towards members of OAM's staff; and (2) possible disregard for policies and controls in place around harassment and/or speaking up, or failure to ensure that OAM had in place adequate systems and controls to prevent a culture where sexual harassment was accepted, and where staff felt deterred from speaking up about it.

328. In relation to OAM, the Authority's investigation concerned whether the firm's handling of the allegations around Mr Odey and the wider culture of the firm fell below the standards expected, PRIN 2 and PRIN 3, in particular due to potentially (1) failing to take action until 2020 to investigate complaints made since 2003; (2) having an inadequate complaints procedures and tolerating a culture of sexual harassment; (3) not notifying the Authority about the sexual harassment allegations and its internal investigation until 24 September 2020; and (4) failing to take the allegations sufficiently seriously and failing to follow its own disciplinary process and remuneration policy in sanctioning Mr Odey and putting the interest of the firm ahead of an appropriate outcome.

329. We are satisfied from the evidence that no member of the first ExCo was particularly concerned about the investigation into the firm regarding the nature of the Authority's investigation (the fourth ground of which concerned the outcome of the 1DH and the issue of a FWW rather than dismissal). They were confident they could successfully defend the Authority's investigation into OAM. This evidence, which we accept, is relevant to rebut Mr Odey's case that the first ExCo felt under undue pressure arising from the Authority's investigation into the firm which would have impacted upon its ability to fairly determine the allegations that he breached the FWW which were to be considered in the 2DH. Put more simply, we are satisfied that the Authority's investigation into OAM did not place the members of the first ExCo under undue nor inappropriate pressure, to dismiss Mr Odey at the 2DH. It was not a matter that they considered relevant when they were seeking to proceed with the 2DH.

330. Mr Pearey stated in his statement that he was "confident in the investigation that ExCo had conducted into Mr Odey, and that the decision we had reached was consistent with the evidence and advice we had received". He "believed that the investigation into the firm was without merit and would just run its course". When asked in cross-examination whether he should have delayed the 2DH because of the Authority's investigation, he reiterated: "I felt the investigation into the firm was without merit…I thought that we had followed correctly all of the procedures and processes in the run-up to the first disciplinary hearing. We had been proactive in our communication [with] the Regulator. We had shared with them at every step of the way what we were doing and the decision ultimately was explained to them in detail…So I felt that was going to run its course."

331. Mr Hanbury stated in his statement that the Authority's decision to investigate the firm was not a huge surprise and that they were fully expecting it. He felt sanguine about it because "I thought we had followed the correct due process". Lord Roborough also stated it had been discussed at ExCo and that "we were comfortable that we had followed the correct process, and had taken appropriate legal advice".

November 2021: first ExCo's decision to hold the 2DH and S&S's advice

332. On 18 November 2021 there was a meeting attended by the three members of the first ExCo and David Fletcher, who was also a member of ExCo at this time, and Ms Versey head of HR at OAM. Also present were three lawyers from S&S by telephone, Ms Wake and Ms Sutcliffe giving advice on employment law and Mr Fox giving advice on regulatory law.

333. The note of the call ("Notes from Exec Co Call 18.11.21@12:00") is accepted to be reliable as to what occurred but we return to some challenges made in cross-examination below. This is what is recorded.

334. The purpose of the meeting was for the ExCo to consider whether the fact-finding investigation into the alleged breach of the FWW should be referred to a 2DH. As noted, after hearing a presentation of the facts investigated, Mr Fletcher stated it was "clear" Mr Odey "had breached the conditions of the letter which are grounds for considering removal". Ms Sutcliffe of S&S advised that it was ExCo's decision as to whether it got to a disciplinary hearing, and in particular whether the facts required that referral. In that context she noted the ExCo needed to consider mitigating factors such as Mr Odey's "lack of contrition and his lack of memory for more recent events". Ms Wake advised that the lunch itself did not breach the terms of the FWW, but the arrangement of it did.

335. Ms Sutcliffe noted there were two aspects to consider whether to refer to a disciplinary hearing, ensuring consistency between employees and the risk of this behaviour being repeated. Ms Sutcliffe also noted the backdrop of the Authority investigation: "they will watch this and how you react will demonstrate systems and controls and independence. In relevant period and reportable. No avoiding it, FCA will know." Mr Fletcher asked whether "our defence (FWW)" held. Ms Sutcliffe told him that it needed to be a "firm decision, made by Exec Co." but that they also did not know "if the FCA will be successful in claims against the firm".

336. Mr Fox then said and asked: ""CO is toast" and will be found by FCA to not be F&P – final nail in coffin. Firm is different – "do you want to go down with him?""

337. Mr Odey relies heavily upon these comments made by Ms Sutcliffe and Mr Fox when giving advice. Much was made of Mr Fox's statement and question as part of Mr Odey's case and we return to it below. In summary, we reject the suggestion that this legal advice placed the first ExCo under undue pressure in considering the 2DH and would have resulted in them only or unfairly dismissing Mr Odey, whether to protect their own position, to correct any impression of previously being unduly lenient at the 1DH or for any other reason.

338. Mr Fletcher then clarified with S&S their advice that they thought a disciplinary hearing was required. Mr Pearey queried whether Mr Odey should be suspended ahead of 2DH. Mr Fox said that "with the FCA watching it would be damage limitation".

339. Mr Pearey then asked Mr Fox about the "exam question", i.e. whether Mr Odey was still fit and proper. Mr Fox indicated that if the allegations were true, then "yes" i.e. his view on Mr Odey's fitness and propriety had changed.

340. Mr Pearey queried whether it would have made a difference if the terms of the FWW were less specific; S&S advised that it did not make a difference as it was "inappropriate conduct".

341. The meeting later discussed whether Mr Odey should be suspended ahead of a disciplinary hearing. S&S's advice was to the effect that optically it would be better if Mr Odey was suspended or consider asking him to work from home. Mr Fox recommended enforced working from home as the more robust they were it would be better for the firm.

342. As recorded, Mr Pearey, without prejudging the matter, asked Mr Fox for advice as to what would happen if ExCo did decide to remove Mr Odey from the partnership, and whether they would then have to make a judgement on whether Mr Odey was fit and proper, including as a controller. We note that Mr Pearey's caveat that he was not pre-judging the matter.

343. Mr Fox's advice was that nothing would force an F&P determination particularly if Mr Odey were to resign. However, if Mr Odey did not resign, then it would be better if the firm did choose to make an F&P assessment on Mr Odey "as an F&P staff member". This was because it "Shows backbone".

344. Mr Pearey later asked whether ExCo needed a second opinion as given the circumstances it could be worthwhile. There was concern it looked they were trying to get a different or better opinion.

345. There was also a discussion about options for Mr Odey to continue to receive revenue for the business even if he were not a "Controller" in the FSMA sense.

346. Lord Roborough then asked about "personal interactions with [Mr Odey] whilst this is ongoing – various social events". Ms Wake of S&S advised that it was fine, "as long as you're not giving a steer as to potential outcome – prejudged etc. Concerns around perception." We note Ms Wake's use of the words 'potential outcome' – thus indicating that the view of the advisor was that the outcome was not pre-determined.

347. Mr Pearey then asked whether, if Mr Odey resigned, the Authority's investigation would continue into the firm. Mr Fox thought that the investigation would continue into Mr Odey, but there was a chance the Authority would drop it for the firm, and more chance "if he goes forcibly".

348. As we address in more detail below, we consider that the first ExCo was not under undue pressure from its legal advisers. The first ExCo demonstrated themselves to act independently throughout, and while considering legal advice, not always automatically following it – for example they did not suspend Mr Odey pending the 2DH as advised. They also voluntarily decided to get a second opinion. They were seeking to operate independently to balance and protect the interest of the firm, its members, clients and Mr Odey within the scope of the law.

349. As we also address in more detail later, we also reject any suggestion that this meeting demonstrates any unfairness in the 2DH resulting from the first ExCo pre-determining the outcome. We accept the Authority's submission that when read fairly as a whole and in context the meeting did not prejudge the outcome of the 2DH. The purpose of the call was to decide whether there should be a 2DH and not what the outcome should be. The advice was that a disciplinary hearing was required. Mr Fox advised that Mr Odey would not be considered fit and proper but only "if what has been alleged is true". The conversation and advice also made clear that the assessment as to whether Mr Odey was Fit and Proper was distinct from what the right disciplinary or HR outcome was.

350. Mr Pearey made clear when he prefaced a question "without prejudging" that ExCo were discussing potential outcomes and what the next steps might be for various potential outcomes. ExCo was entitled to take advice on the potential outcomes and to be prepared. This indicates that the first ExCo had not made up its mind. Mr Hanbury stated in oral evidence that the Authority's focus on independence meant the first ExCo needed to "be taking the right decision regardless of the complicated circumstances there was". Mr Pearey stated in cross-examination that the general advice from S&S was that ExCo had to approach "this latest allegation seriously, we have to address it under the scrutiny of a regulator who has already expressed dissatisfaction with our first disciplinary hearing and…put us under investigation. As so they will be looking closely at what actions we take".

351. While there was acknowledgement and acceptance by the witnesses that the first ExCo was under pressure – particularly in the sense they were aware of the Authority's scrutiny and enforcement investigation throughout - we are satisfied that this was professional and appropriate pressure or scrutiny from the Authority which the ExCo took into account but was also able to reflect upon with the benefit of advice and make independent decisions without in any sense being directed beyond their own judgement. Again, we explain this in greater detail later.

352. Likewise, it is understandable that ExCo considered the nature and strength of the legal advice being given by their lawyers but this was not undue pressure, rather a relevant matter for them to take into account. We agree with Mr Pearey's evidence in cross-examination that ExCo were the senior managers, with responsibilities for the firm, members, staff and all employees. The advice received would have to have been taken into account in any decision-making context with serious implications. ExCo were told that, if established, the allegations were likely to lead to advice that Mr Odey was no longer fit and proper as a certification employee. None of this was inappropriate and none of it led the ExCo to approach the 2DH without a fair mind.

353. The contemporary emails members the first ExCo sent on 21-22 November 2021 also demonstrate their independence of mind or judgement.

354. Mr Fletcher wrote that Mr Pearey was, "100% right about the need to take legal advice on this – separate from S&S. It may well be that Darren Fox feels that he stuck his neck out too far last time in finding Crispin "had not crossed the line" and is nervous that he will be shown to have been wrong in that judgment." Mr Fletcher voiced private criticism of the Authority for effectively asking ExCo to abandon Mr Odey once accused of the criminal offence because, if ultimately convicted, the firm would be blamed. He pointed out that the most recent facts were not the most serious because no one was claiming harassment. However, he wrote: "S&S make a v strong case that Crispin being found the right side of the line depended in large part on Crispin's contrition + a change of behaviour which this contradicts. We remain very close to Crispin and these issues and therefore, as before, we must ultimately follow external legal advice. However, it is absolutely right that we check and challenge the advice." He demonstrated independence of thought.

355. Mr Pearey's oral evidence was that he felt that Mr Fox continued to be well-placed to advise the firm – he was "a very well regarded and respected lawyer in his field" – but he knew that Mr Fox had "found it a tricky decision" first time around, and therefore felt a second opinion was worthwhile. He did not feel that Mr Fox's advice lacked impartiality nor was coloured by a concern that he got it wrong and was overcompensating: "He was still well placed to advise us". Therefore, he did not entirely agree with Mr Fletcher's assessment, although he could understand Mr Fletcher's point because the language used by Mr Fox was at times emotional. Differing views on ExCo again demonstrates their independence of thought.

356. Lord Roborough wrote in one email to Mr Fletcher, copied to Mr Pearey and Mr Hanbury, dated 22 November 2021 that, having relied "heavily" on Mr Fox's advice earlier in the year, it would be "very hard to now go against his advice" as it "would look as though we are picking and choosing to get the answer we want". He therefore was of the view that if the second opinion contradicted Mr Fox's, the two would "need to be reconciled and [Mr Fox] to accept the wisdom of the second".

357. Mr Hanbury pointed out that ExCo laid down the conditions of the FWW letter, and that they were told that these were "unambiguously broken". He noted that, "Clearly Crispin needs to be given a chance to prove this was not the case". This was not a prejudgment in circumstances where there was significant evidence of a breach. Mr Pearey stated in a further email that Mr Odey needed to be given a chance to deny or refute the allegation or explain them. ExCo were waiting to hear Mr Odey's response to the alleged breach at the 2DH.

358. ExCo taking a second opinion by way of legal advice from Addleshaw Goddard also demonstrates its independence and lack of predetermination of the 2DH. Mr Pearey sought advice from them on 22 November 2021. This firm of solicitors noted the need for a 2DH, to understand if Mr Odey was deliberately breaching the FWW, therefore lacking integrity in breach of F&P, or acting incompetently, which would merely be a breach of the conduct rule (ICR2) to act without due skill, care and diligence. They also noted whether it would be in the best interests of OAM or clients to ask Mr Odey to work from home or not – so that Mr Pearey told ExCo that he would discuss with Mr Odey whether this was impractical.

359. On 23 and 29 November 2021 Mr Satt and Mr Pearey, by emails and a phone call, updated Mr Cornwell of the Authority informing him that the 2DH would take place. The note of the phone call includes that Mr Pearey stated ExCo were not prejudging the outcome and would go through their usual process.

360. We find that the first ExCo acted appropriately throughout. As the Authority submits and we find, it is understandable that members of ExCo should have felt they might be in a difficult situation. Mr Odey was not justified in taking it upon himself to relieve them of that situation nor to put the firm in breach of its regulatory obligations. We will address this separately when rejecting Mr Odey's reasons for removing the first ExCo but agree with the Authority that even if the 2DH had been pre-determined – it would not have given Mr Odey grounds for unilaterally removing the ExCo – there were other options available that were reasonable.

<u>24 November- 16 December 2021: First attempt to hold the 2DH and potential JR</u>

361. As indicated above, Mr Odey had employed his own firm of lawyers, Wilmer Hale, to act for him in reply to the alleged breach of the FWW. They sent a letter to Mr Pearey on 24 November 2021 explaining why Mr Odey's conduct did not amount to breach of the FWW and did not render him not F&P. The letter did not suggest Mr Odey had self-reported the breach or suggest that there was anything unfair about the process including the fact-finding investigation.

362. On 30 November 2021 OAM sent a letter, drafted by S&S and Addleshaw Goodard, telling Mr Odey of the 2DH with a provisional date listed for 14 December 2021. The letter enclosed the 2S&S which ran to 46 pages including 7 Appendices. Thus, Mr Odey did have all the evidence produced by S&S and would have known the evidence to be relied upon against him, contrary to his oral evidence that he did not know all the evidence.

363. Mr Fletcher resigned from OAM on 8 December 2021. On the same date Mr Cornwell emailed Mr Pearey and Mr Satt asking for various items and confirmation that 2DH was listed for 14 December 2021. Mr Pearey responded on various matters on 10 December 2021 including informing Mr Cornwell that Mr Odey had changed lawyers and this might introduce delay into the new year. On the same day Mr Odey's PA emailed Mr Pearey to say that he wished to move the 2DH in light of the new legal team.

364. Mr Pearey responded on 13 December 2021 scheduling the 2DH for 6 January 2022 and emailed Mr Cornwell notifying him of this.

365. On 14 December 2021, Cadwalader, Wickersham & Taft LLP, newly instructed solicitors on behalf of Mr Odey sent a letter before claim to the Authority threatening judicial review ("**JR**") and seeking to challenge the Authority's decision to open the investigation into Mr Odey. The letter required a response by 24 December 2021. The JR was never proceeded with.

366. Mr Pearey was worried about the publicity and reputational damage the JR would cause for the firm and its ability to attract clients as well as its lack of prospects. On 15 December 2021 he emailed Mr Cornwell to ask if there was a realistic prospect of BAM being authorised if Mr Odey was not a controller. Mr Pearey was challenged in cross-examination on the basis that he was trying to start BAM because of his alleged desires at that time to start this business at the expense of Mr Odey. However, Mr Satt's evidence in his statement rebutted this suggestion by stating that Mr Pearey was exploring a number of contingency options at this stage in order to help plan in case Mr Odey left the business or it was closed down. It was not simply the result of the 2DH which made this a reasonable approach by Mr Pearey - Mr Odey was also making threats to close down OAM by this time which we address below. Mr Cornwell responded on 16 December 2021 on behalf of the Authorisations Division of the Authority that it could engage with BAM on a pre-application basis.

<u>Threats made and pressure placed on first ExCo by Mr Odey to prevent a 2DH or his dismissal</u>

367. It is not in dispute that Mr Odey believed he would be dismissed at the 2DH. As we will come in due course when considering whether Mr Odey lacked integrity in removing the first ExCo, Mr Odey made repeated threats to close the business if he were dismissed. These threats against the body of the firm due to hold his behaviour to account were not appropriate. They were driven by Mr Odey's desire to avoid accountability and place his interests above that of the firm. The pressures placed upon the first ExCo by Mr Odey not to dismiss him were far greater than in the opposite direction — any pressure, perceived or real, from S&S or the Authority that Mr Odey should be dismissed if the allegations of breach of the FWW were proved as fact.

368. There is no real doubt that Mr Odey engaged in threats and heated language with the first ExCo to avoid what he anticipated to be his dismissal. Much of this evidence was uncontested and came from multiple sources including Mr Odey himself.

369. Lord Roborough stated in his witness statement that Mr Odey "was not happy with the decision to require a disciplinary hearing. He felt very strongly that this would lead to him being pushed out of the business and being ruled not fit and proper." He stated: "As I recall Mr Odey took issue with the disciplinary hearing on three grounds. Firstly, that the FWW did not apply to a temporary member of staff who had left the business. Secondly, that ExCo were not characterising his conduct correctly, as his position was that he was purely helping to find work, via introducing her to a contact who may be able to help her professionally. Thirdly, Crispin also considered it was not appropriate to link the employment matter with the question of whether he was fit and proper; his position was that the two should not be conflated…"

370. Mr Hanbury stated: "Mr Odey's reaction was far less accepting of the process this time than on the first occasion; it was quite different. He felt that he'd been tripped up or

ambushed by the terms of the Final Written Warning, that he had been trying to help someone, and that had come back to haunt him. I think he felt that the content of the allegations was not the type of thing that needed a disciplinary process."

371. Mr Pearey stated in his statement that Mr Odey's dissatisfaction was manifested as contempt in a series of discussions in December 2021.

> "122.Those discussions become more frequent, and increasingly heated. On a number of occasions, Mr Odey would come into my room, would sit down with me, and say, "Come on, what's going on, you've got to delay this [i.e. the disciplinary process]", or he said "You're not going to do the disciplinary hearing, you're just going to stop it. Now." I said to Mr Odey that we needed to consider the scenario of his dismissal, and what we might do in that situation. In response Mr Odey said, "Well, if you do that, I'll sue you for unfair dismissal", or "I'm just going to shut down the business."
>
> 123. This took place over a series of discussions that week. In those discussions, to my mind he made his contempt for the whole process clear. His position was that it was all nonsense, OAM/ExCo were being ill advised, and we should just stop the disciplinary process, and tell the Authority we were not going through with it."

372. That Mr Odey threatened repeatedly to shut down the firm was also confirmed by Lord Roborough in his statement: "In his discussions with me, he was crystal clear that if he got fired, he would shut the business down.…It was not a question of 'might'; he said 'I will shut the business down'". That the threats were sometimes made in earshot of other employees was not a matter of dispute. Mr Satt recalled hearing shouting in the meeting rooms as things were becoming strained between Mr Pearey and Mr Odey. Mr Odey explained in oral evidence that he disagreed with the content of the 2DH and it was unfair. He accepted Mr Hanbury's evidence – that his threats to close the business down were overheard and that it was likely many of the employees who heard him make these threats had mortgages or families to support.

373. The documentary evidence, in the form of imessages with Lord Roborough referred to above, also proves the type of threats made.

374. On 19 December 2021 Mr Odey wrote in a text to Lord Roborough: "Sorry to bother you but I do need to have a chat about what I might be doing with the business in January. It is quite drastic…I just think that Tim [Mr Pearey] is moving towards sacking me and I need therefore to think about the end game. I do propose to close OAM down." On 20 December 2021 he wrote, "Working for the lawyers. Loyalty will be duly rewarded. We might as well have the disciplinary hearing today. Then I can get on with closing down the firm". We do not accept Mr Odey's denial in cross-examination that he was suggesting he would reward Lord Roborough if the latter sided with him. The implication of the wording is plain even if the nature of the reward is not.

375. Mr Pearey stated in his statement: "Things came to a head on or around 21 December 2021. Again, Mr Odey asked me not to go through with the disciplinary process. I understood him not only to be suggesting that it be delayed, but that it be stopped entirely. I told Mr Odey I was not prepared to do that, and in response he said, "OK, you're fired, I don't want you doing this." Mr Odey was not simply seeking that he not be dismissed but that the 2DH not take place. In cross-examination Mr Odey accepted his mind was occupied by the likelihood of his dismissal: "all I was really thinking about was the decision, the disciplinary hearing and essentially what I could guess was going to happen, which was I was going to get dismissed". Lord Roborough, Mr Pearey and Mr Odey himself believed

the threats to close the business were meant seriously and such a sudden result would be disastrous for the firm, its staff and members.

376. Up to this point Mr Odey was acting in an unreasonable and inappropriate way so as to ensure that the holding of a 2DH and any determination of the alleged breach of the FWW be a highly charged and pressurised decision for ExCo to make.

The Relevant Period – beginning on 24 December 2021

Mr Odey's removal of the First ExCo

377. Matters came to a head in the days before Christmas in 2021. Mr Pearey and Lord Roborough were placed under extreme pressure by Mr Odey not to dismiss him. We consider that the Authority's characterisation of this as bullying is fair and accurate. However, the members of ExCo did not give in or accede to this pressure as they explained in their statements and, which evidence we accept. They stated they would carry on the process unless removed. Then Mr Odey decided to remove them.

378. Mr Pearey rung Mr Cornwell on 21 December 2021 to update him on Mr Odey's disciplinary process. He said he was exploring scenarios without prejudging the outcome and told him that Mr Odey had threatened to close or wind down the business and requested that the 2DH was delayed which Mr Pearey refused. Mr Pearey also told Mr Cornwell that Mr Odey had the power to dismiss or stand down ExCo.

379. Mr Pearey in his statement, then addressed Mr Odey's further actions on that day:

> "124. Things came to a head on or around 21 December 2021. Again, Mr Odey asked me not to go through with the disciplinary process. I understood him not only to be suggesting that it be delayed, but that it be stopped entirely. I told Mr Odey I was not prepared to do that, and in response he said, "OK, you're fired, I don't want you doing this."
>
> 125. I told Mr Odey that that would not change anything, because I would still have my 3 months' notice period, I would still be a regulated senior manager and thus I would have to go through with the process. I also said that even if I was not involved, the other members of ExCo – Lord Roborough and Mr Hanbury – would have to carry out the disciplinary hearing, so dismissing me would not solve anything. It was in that context that I said that in order to stop the process, he would have to dismiss the entire ExCo. Mr Odey seized on that, and said, "Brilliant, I'll do that, I'll get rid of ExCo".

380. Lord Roborough also stated that Mr Odey repeatedly threatened to shut down the business and prevent 2DH taking place that otherwise might dismiss him. Lord Roborough went on to state: "I remember one conversation Crispin and I had, I believe on 23 December 2021, where Crispin said, 'you know you've got to stop this process'. I said, 'the only way to stop this process, Crispin, is if you fire us' which was a possibility he had talked about before. I think he responded, 'maybe I'll do it', then the next day the paperwork concerning the dismissal of ExCo came through."

381. Mr Odey at times portrayed the decision to remove the first ExCo as coming at the suggestion of Mr Pearey and Lord Roborough. At times he also suggested that this would relieve them of the stress of the decision making. However, we are satisfied that Mr Pearey and Lord Roborough did not seriously suggest it being a good idea but only made the suggestion when standing up to Mr Odey's threats – explaining that they would not back

down and he would have to remove them in order to get his own way and stop the 2DH taking place.

382. On 22 December 2021 Mr Odey emailed Mr Richards to tell him that "we must do all the things required" for the mechanics of replacing the first ExCo.

383. On 23 December 2021 Mr Odey rang Mr Hanbury who was on holiday to explain the decision. Mr Hanbury stated "it was more of a courtesy call to explain a decision he had already reached. I think he was not in the mood to debate or hear another side of the argument at that point in time." Mr Hanbury did say that he thought Mr Odey's view was that ExCo was subject to "undue pressure" and needed an independent candidate to give him the fairest chance of being heard properly. However, Mr Hanbury stated in his statement that he did not agree with this reasoning. As Mr Hanbury explained in his statement, the first ExCo had not had an independent person the first time around and he was happy with the way that the process had been conducted. Mr Hanbury asked Mr Pearey if anything could be done about it but realised it was a fait accompli with the voting structure in place.

384. On 23 December 2021, Mr Odey initiated the process of removing the three members of the first ExCo and replacing them with himself. He appointed himself to the boards of OAM's holding companies, Odey Holdings and OAMG.

385. On 24 December 2021 Mr Richards, as instructed by Mr Odey, circulated the resolution, proposed at the instruction of OAMG, to remove ExCo and appoint Mr Odey as sole member of the ExCo of OAM. Mr Odey used his position as director of OAMG to cause it to vote in favour, by signing on behalf of OAMG, and the resolution was passed. He also signed to approve the written resolution in a personal capacity as a member of OAM. Mr Odey was the only member to vote. The partnership agreement required both signatures and we return to this when considering the argument as to penalty below.

386. We have set out above some of our findings as to Mr Odey's reasons for removing the first ExCo but we will expand on these below when explaining below why we find Mr Odey lacked integrity in removing the first ExCo.

387. On 24 December 2021 Mr Pearey immediately resigned from OAM but gave three months' notice. Mr Odey replied, "Accepted with great sadness / Happy Christmas / Let's hope that things work out. Warmest regards Crispin.".

388. We have already set out much of our reasoning as to why we rejected Mr Odey's case that Mr Pearey had been seeking to exploit the 2DH for his personal advantage. This email further demonstrates that Mr Odey did not think this at the time when he dismissed ExCo. Mr Odey explicitly accepted in oral evidence that he did not think, at the time, that Mr Pearey was promoting his own interests. It cannot have motivated any of Mr Odey's conduct at the time.

<u>Letter to members regarding the removal of first ExCo – 24 December 2021; Fourth Allegation</u>

389. The resolution removing the first ExCo and appointing Mr Odey as sole member of ExCo was circulated to OAM's members on 24 December 2021.

390. Mr Odey had earlier drafted a letter, sent by Mr Richards and also dated 24 December 2021, to OAM's members to account for his actions:

> "For a number of weeks I have been in discussions with the ExCo over the future direction of the Odey Group and its future viability as a business. I believe that there exists a singular threat to the business and that is the overreaching action of the Financial Conduct Authority into matters which are unrelated to the financial conduct of the Partnership. My discussions with ExCo have not yielded an agreed approach to this threat that I believe would be in the best interests of the wider stakeholders of the Odey Group, including investors, employees and shareholders.
>
> I consider that the Executive Committee of OAM LLP has been subject to undue pressure from the FCA in their deliberations on a number of matters, unrelated to the financial conduct of the partnership, and in the absence of clear and reliable guidance from the FCA they will be compelled into certain actions which would likely precipitate the winding down of the business unless I take a number of important and necessary action [sic], which I am able to do in my capacity as the 74.9% majority owner of the Odey Group.
>
> These actions are as follows:
>
> - To appoint myself to the ExCo in a sole capacity replacing Tim, James and Massey.
>
> - To appoint myself as the sole Director of Odey Holdings Ltd and Odey Asset Management Group Ltd replacing Tim and Tom.
>
> In taking these actions I am then able to launch a judicial review against the FCA which I believe is in the best interests of the Odey Group and its wider stakeholders. […]"

391. We are satisfied that this letter was materially misleading in a number of ways as the Authority submits.

392. The first paragraph of the letter made no mention of the 1S&S, the 1DH and FWW nor Mr Odey's 2DH, let alone that the latter was the primary reason for Mr Odey removing the first ExCo. It wrongly sought to suggest that Mr Odey had been "in discussions" with ExCo over the "future direction of the Odey Group and its future viability as a business".

393. The first paragraph of the letter states there was a singular threat to the business from the Authority's overreach and alludes to, but does not mention, the NFM allegations and the Authority's enforcement investigation. It gives no mention of Mr Odey himself being the greatest threat – given his threats to shut the business down. It suggests that it was the Authority's actions which would cause ExCo to wind down the firm.

394. The second paragraph of the letter states that the firm had been subject to undue pressure by the Authority. We have already rejected this for the reasons set out above and will give in more detail below. We find the Authority's actions did place some pressure on the first ExCo, but this was not undue nor improper; that the first ExCo had demonstrated it was capable of making independent decisions; and the greater pressure, which was undue, was coming from Mr Odey in the reverse direction. Further, Mr Odey accepted that until he started dealing with the Authority directly himself, in January 2022, he had no clue as to what the Authority had been saying to the first ExCo so had no reasonable basis on which

to say this. He only had his assertion that the first ExCo told him they were under pressure from their lawyers who were advising them in relation to the Authority. The members of OAM receiving the letter, like Mr Odey, would not have seen any objective or independent evidence as to how the Authority had interacted with the first ExCo in November and December 2021.

395. Finally, towards the end, the letter states that part of the reason to remove the ExCo was to enable Mr Odey to be able to launch a JR against the Authority. However, Mr Odey accepted in cross-examination that he did not remove ExCo in order to do so and he would not have needed to remove them to do so. He had abandoned the idea of the JR by Christmas morning, having received a response from the Authority on 24 December 2021 to his pre-action protocol letter. Paragraph 12 of the Authority's response dated 24 December 2021 to Mr Odey's letter before claim ("**LBC**") states:

> "You place great reliance on the judgment in *Frensham v Financial Conduct Authority* [2021] UKUT 222 (TCC). The LBC correctly identifies at paragraph 6.11 that "*Frensham* and the SRA cases it considered were concerned with conduct that took place at a remove from the work environment of those concerned", but then continues to argue that "the mere fact that non-financial misconduct is alleged to have taken place within a firm's premises is not enough to engage the FCA's regulatory remit". *Frensham* is not authority for a proposition that the FCA cannot investigate or act in respect of non-financial wrongdoing, even of the kind engaged in by Mr Frensham. In fact, *Frensham* did not engage with the issue of investigation of such wrongdoing at all. Instead, the focus of the Upper Tribunal (Tax and Chancery Chamber) ("Upper Tribunal") was on whether a prohibition order under section 56 of FSMA should be made. As explained in the following paragraphs, the Upper Tribunal did not decide that the FCA could not investigate, or take action in respect of non financial wrongdoing, but merely concluded that the specific factual circumstances that were present in Mr Frensham's case, meant that his criminal conviction alone was insufficient to justify a prohibition order in his case."

396. Mr Odey removed the first ExCo on the same day that he received the Authority's response to his proposed JR.

397. Further, he did not inform OAM's members of his abandonment of the JR. On 30 December 2021 his lawyers confirmed to the Authority that the JR claim would not proceed. Further by this time he had got control back over OAM, as he said in evidence and in interview with the Authority, the proposed JR would serve no purpose and had been robustly countered by the Authority.

398. We return to this letter below when evaluating the Fourth Allegation.

<u>24 December 2021 to 12 January 2022: the effect of Mr Odey as sole member of ExCo – lack of compliance with Authority's Rules</u>

399. The replacement of the first ExCo with Mr Odey as sole member from 24 December 2021 meant Mr Odey effectively took all financial and operational responsibility for the firm despite having left all the operations to other people for years. OAM was left in a position where Mr Odey was both a fund manager and as the sole member of ExCo ultimately responsible for assessing the risk of his own activities.

400. Mr Odey accepted in his Reply and in cross-examination that when he removed the first ExCo, he was aware he would put the firm's governance in breach of the Authority's rules and requirements.

401. Mr Odey left OAM with only one approved SMF, who was Mr Satt, the head of compliance. Mr Satt was now the only person holding all of the prescribed SMF responsibilities despite not being able to hold them as an SMF16/17 (person with senior manager responsibilities for compliance and money laundering reporting). As set out above, SYSC 4.2 requires a firm to have at least two persons meeting the requirements of SYSC 4.1.1.R. Mr Odey held no such approval. In addition he was not able to annually certify certification employees as F&P. Further, the firm was now also in breach of FUND 3.7.2R because there was no functional and hierarchical separation between the risk management and operating units, such as portfolio management, and no safeguards against conflicts of interest and/or no effective risk management process.

402. We do not accept that this was only a superficial breach or insignificant change in the organisation of the firm's governance for a number of reasons even if no actual harm eventuated. The risks were varied and serious. Everything from risk investment to HR was now to be decided by Mr Odey alone, as the sole member of ExCo.

403. Mr Satt, as head of compliance, stated there was "an inherent conflict with Mr Odey having appointed himself as the sole member of ExCo and there was a lot of concern about that".

404. One example was that the risk committee directly reported to ExCo which now consisted of Mr Odey alone. Ahead of the ExCo meeting on 6 January 2022, they reported that two of Mr Odey's funds, OEI and MAC, had been added to the Risk Log since the previous meeting; and that Mr Odey's SWAN fund had failed the test used by OAM to quantify potential loss of value of AUM. This was not a technical breach as Mr Odey suggested based on the autonomy and skill of the risk committee – because if matters had to go above the risk committee to be decided, Mr Odey would have been conflicted as the manager of the relevant portfolio. The fact that no harm was caused as the risk committee dealt with it, does not mean there was no risk of harm.

405. The whistleblowing hotline at OAM went to ExCo which now consisted of Mr Odey alone. It had been introduced by the first ExCo after the 1S&S, specifically in response to a concern about a culture in which people could not speak up. The fact that complaints would initially go to Ms Versey as Head of HR is irrelevant because a complaint against Mr Odey would have to be escalated to Mr Odey himself.

406. Further, Mr Odey's appointment as the sole member of ExCo left the firm at risk of not meeting the threshold conditions as we find below.

Events between 24 December 2021 and 5 January 2022

407. Mr Satt was not informed in advance or made aware of the possibility of Mr Odey dismissing the first ExCo. After it happened, he was told by Mr Pearey, in a call the same day, 24 December 2021, while on annual leave. Mr Satt described himself as "shocked", and that it was "a great concern and worry". Mr Pearey tried to reassure Mr Satt by describing the removal of the ExCo as the "least worst outcome" but we accept that this was as against the alternative: Mr Odey's threat to wind down the business which would have led to the departure of all employees and potential damage to the investors.

408. Mr Pearey wrote to Mr Cornwell on 24 December 2021 informing him that Mr Odey had removed ExCo and that he, Mr Pearey, had resigned. He told him that Mr Satt was aware of the situation and would follow up with the notification forms. Mr Cornwell informed the Authority's Chief Executive's office.

409. On 29 December 2021, there was call between Mr Satt and Mr Cornwell but Mr Satt was not able to give Mr Cornwell much detail. Mr Cornwell stated the Authority was concerned about the firm's failure to comply with SYSC 4.2 and concerned as to whether it was meeting threshold conditions.

410. On 30 December 2021 Mr Cornwell had a telephone call with Mr Pearey and discussed whether the 2DH was likely to go ahead but Mr Pearey did not know and did say it could only go ahead once the JR was complete.

411. On 30 December 2021 Mr Cornwell on behalf of the Authority sent an information request to Mr Satt as OAM's only remaining approved SMF. The information was required by 5 January 2022 under section 165 of FSMA. The letter asked for information about (i) reliance on the 12-week rule to justify Mr Odey's acting as a temporary SMF covering the SMF27 role; (ii) the reasons for the first ExCo's removal; (iii) how the firm was meeting SYSC 4.2, ensuring compliance with the threshold conditions, and mitigating any conflicts of interest; (iv) confirmation of the 2DH taking place on 6 January 2022 or if not, how it was proposed the 2DH would now be addressed; (v) why formal notification of ExCo's removal and the proposed plan for management of the firm moving forward had not yet been received. A response was requested by 5 January 2022.

412. On 5 January 2022 Mr Satt re-sent a response to Mr Cornwell's s.165 FSMA request answering the five points as best as he could. Mr Satt stated that Mr Pearey's roles and responsibilities in a Senior Management capacity now lay with Mr Odey. The prescribed responsibilities previously held by Mr Pearey would now lie with Mr Satt, as the only SMF. Mr Satt also wrote in relation to the disciplinary hearing that: "Mr Odey has confirmed to me today that, as sole member of the Executive Committee, he intends to hold an Executive Committee meeting tomorrow at which the Executive Committee will resolve to permanently discontinue the disciplinary process to which Mr Odey is currently subject. The rationale for this decision is set out in the letter to Partners included as a separate attachment."

413. Whether or not Mr Odey had said the 2DH would be permanently discontinued was disputed by Mr Odey. Mr Satt said in his statement that he had been told this by Mr Odey orally on 5 January 2022. We accept his evidence. Mr Satt was both a reliable witness and one who took his role seriously as a compliance officer. He was aware of his obligations toward the regulator and was careful to attempt to comply with relevant rules. He had worked in the firm's compliance department for many years.

414. Mr Odey said in oral evidence that he had no good reason to permanently discontinue the disciplinary hearing. We do not accept this. He had a good reason – which was to prevent his dismissal which he feared and he had objected to the content of the second disciplinary process: the allegations of breach of the FWW or that they should result in any serious sanction. He would only permit the 2DH to proceed if he knew he would not be dismissed.

415. The independent evidence does not support Mr Odey's account either. On 5 January 2022 the s.165 response recorded Mr Odey's intention to apply to perform the SMF1 and SMF27 roles permanently.

416. As we explain below, Mr Satt sent Ms Corke, Mr Odey's PA, an email on 6 January 2022 asking to be informed if Mr Odey had permanently discontinued the 2DH at the ExCo meeting that took place that day. This contemporaneous message accords with his understanding.

417. At the ExCo meeting on 6 January 2022, Mr Odey did not make clear that the 2DH was not going to be permanently discontinued. The alternative course he later opted for was an 'indefinite postponement' of the 2DH. However, this was only clarified later that afternoon after the meeting.

6 January 2022 – the meeting of ExCo with Mr Odey as sole member and minutes thereof

418. An ExCo meeting with Mr Odey as sole member took place at noon on 6 January 2022. Detailed reports and documents had been provided in the usual way prior to that meeting.

419. We have touched on the minutes of that meeting above rejecting not just the accuracy of the contents but finding that Mr Odey was responsible for deliberately falsely relaying what occurred. As we have set out, Mr Satt did not attend the meeting and there is no dispute about this. Only Ms Corke and Mr Odey himself can have attended the meeting.

420. The minutes falsely recorded that Mr Satt attended the meeting and that he said various things which he did not and could not have done. Ms Corke, who drafted the minutes, would have no reason to falsify the minutes but was acting on Mr Odey's instructions as to what to write. Mr Odey accepted this in evidence.

421. The minutes were drawn up on 6 January 2022 and signed by Mr Odey on 11 January 2022. Mr Odey's evidence in cross-examination was that he did not know when he signed the minutes that Mr Satt had not attended the meeting. We find this was untrue. He would have known only five days later who was there. He had reason to falsely suggest that Mr Satt had been present as explained when considering his motive above – giving a veneer of compliance for OAM by holding an ExCo with two senior employees, including a SMF approved manager, present.

422. On page 2 of the minutes, there is a particularly relevant false record of a discussion that did not occur: "CO [Mr Odey] stated his intention to let clients and market know by next Monday and asks JS [Mr Satt] to inform the FCA that that is his intention. JS to stress to the FCA the narrative that, following on from CO's court case, in which he was found completely innocent, there arose the initial correspondence with the FCA and their ensuing vendetta." Mr Odey had not had any contact with the Authority on behalf of OAM by this time. As Mr Odey accepted in cross-examination: "No. Well, they wouldn't have contact with me." Mr Odey had not attempted to speak to the Authority on behalf of OAM. There is no evidence that prior to this point in January 2022 Mr Odey had attempted to speak to the Authority at all. More importantly, he was falsely stating that Mr Satt had agreed to represent his narrative to the Authority.

423. On page 3 under AOB, Mr Odey included a "Statement from CO" – a monologue from Mr Odey justifying his acting in removing ExCo and preventing the 2DH occurring. The minute was misleading. It stated that Mr Odey immediately reported his breach of the FWW as 'inadvertent and unimportant'. We have found this "self-report" to be false. It suggested that there was an exchange of numbers with the temporary receptionist so Mr Odey could put in a good word for the receptionist with a CEO in respect of her job application. It made no mention of the invitation to lunch and flirtatious interest Mr Odey held in her as evidenced by the messages.

424. The minutes record Mr Odey misrepresenting the contents of the 1S&S which contained 46 incidents involving numerous complainants: "When it comes to the decision of the FCA it is important to understand that having trawled 30 years' worth of company files, there have been 2 other incidents, neither of which were sexual offences, neither of

which were financially settled, instead they were resolved at the time in a way in which the subjects continued to work for the company for a further 10 years on average. Other allegations which came about at the time of the court case have disappeared. No financial settlement of sexual offences was involved in any of these cases."

425. In cross-examination, Mr Odey said he did not think that this was a gross misrepresentation of the 1S&S. If that is Mr Odey's genuine belief, it shows an unreasonable failure to appreciate the amount or number of the complaints and complainants and the range of conduct outlined in the 1S&S and found by the 1DH as recorded in the FWW findings which we have summarised above. However, it is more likely that Mr Odey was deliberately misrepresenting the contents of the 1S&S and findings in the FWW because these demonstrate a far larger number than three incidents being complained of and Mr Odey accepting this when agreeing the FWW at the time.

426. Mr Odey's case is also that the contents of the minutes were not inaccurate because Mr Satt accepted in evidence he had held conversations with Mr Odey at earlier times, the contents of which were represented in the minutes. Further, it is argued that it was a rolling note rather than a formal meeting where Mr Odey sat down by himself to draft it. Additionally, it was submitted that his PA, Ms Corke, was not familiar with drafting minutes: she had said, "I've not drafted a minute for years", in an email to Mr Satt. Mr Odey denies he falsified OAM's 6 January 2022 minutes as alleged.

427. It is submitted on his behalf that the notion that Mr Odey would have had the foresight to deliberately falsify a minute to assist him in an investigation by the Authority that would not be commenced until February 2023 is not credible. Moreover, the fact is that the minutes broadly reflected the events that were occurring within the firm in a fast moving situation and were prepared by Mr Odey's assistant who lacked recent experience in taking minutes and whom Mr Satt accepted was: "a bit confused as to what a minute of a meeting should look like." Further Mr Satt did not want to "get into the realm of saying who did what and for whatever reasons." The presence of Mr Satt and the attribution to him of actions at the meeting was clearly an error but does not evidence the lack of candour on the part of Mr Odey the Authority seeks to contend.

428. We reject this account. We have given our reasons for this conclusion in the assessment of Mr Odey's credibility set out above which we do not repeat. In summary, Mr Satt did not attend the meeting and there is no real dispute about this. Mr Odey did not have during the meeting any, let alone all, of the conversations as recorded as taking place in the minutes as discussions. Mr Odey was responsible for approving the document.

429. The minutes were part of the formal record and minutes of the firm which they were obliged to make and retain. They were also to be relied upon by future ExCos such as the second ExCo – Mr Kelton was shocked, having read these minutes, to then read the 1S&S. Mr Odey had also told him there was only one incident and that he had done nothing wrong.

430. Mr Satt emailed Ms Corke after the meeting on 6 January 2022 to ask whether Mr Odey had resolved to permanently discontinue the disciplinary process. Mr Satt then emailed Mr Cornwell at 13.57 to tell him that: "As per my letter Mr Odey has replaced the Executive Committee and I believe, at today's Executive Committee meeting, has closed the matter and will not be looking to reschedule the disciplinary process. In accordance with COCON 2.2.4R (SC4) I would like to make you aware that I am now unable to drive through the decision making process via a disciplinary hearing that can lead to a F&P assessment and as a result am unable to comply with my obligations under Prescribed Responsibility b in this particular instance."

431. Ms Corke replied to Mr Satt's email that afternoon at 17.03 regarding the 2DH and what Mr Odey had resolved: "I asked him about this and he said it will be postponed indefinitely since he would be unable to be impartial in his own hearing."

432. Mr Satt responded five minutes later at 17.08 and said: "Thank you, from a record keeping perspective please ensure that this is reflected in the minutes (I'm sure you have already done so but just wanted to ensure)".

433. Mr Satt had also emailed Mr Cornwell at 17.07 to follow up on his earlier email: "Further to the below I can confirm that the disciplinary hearing has been postponed indefinitely since Mr Odey would be unable to be impartial in his own hearing".

434. The metadata for the ExCo minutes reveal that the document was edited at 17.13 on 6 January 2022, ten minutes after Ms Corke's email to Mr Satt stating the 2DH would be indefinitely postponed. While the metadata cannot show what edit was made, the ExCo minutes themselves state: "CO clarified following the meeting that this disciplinary will be indefinitely postponed since he is unable to conduct it with impartiality."

435. We find on balance that Mr Odey's position on the 2DH was in fact clarified on 6 January 2022 only after the meeting. It was likely to have been prompted by Mr Satt's question of Ms Corke and inserted after Mr Satt's request 5 minutes before an edit was made to the minutes. This supports our conclusion that Mr Odey's position on 5 January 2022 was that he intended to permanently discontinue the 2DH. That continued to be his position until later on 6 January 2022, after the ExCo meeting, when he changed his position to one of indefinite postponement.

436. In any event, Mr Odey sought to and had succeeded in deferring the 2DH indefinitely - without proposing any timescale or means by which it would be restored.

<u>The formation of the second ExCo: 5 –10 January 2022</u>

437. The second ExCo, formed of Mr Richards and Mr Kelton, was not appointed until 12 January 2022 so that Mr Odey was the sole member of ExCo from 24 December 2021 until that time, a period of some 18 days. As set out above, Mr Odey was not permitted to govern the firm alone, even on an interim basis under the 12-week rule, because of rule SYSC 4.2 which required two people to do so.

438. The formation of the second ExCo began when Mr Odey had approached Mr Richards on 5 January 2022 and Mr Kelton on 10 January 2022 to join ExCo.

439. Mr Richards was effectively Mr Pearey's deputy and sat next to him for 11 years. He had a wealth of experience and knowledge of the operations of the business and had become COO from 2018. He was a member of OAM's prudential committee and its risk committee and director of OAMG and Odey Holdings. He was not surprised to be approached by Mr Odey. As he explained in his statement, he initially declined the offer. He did not see how the conflict of having to address the status of a disciplinary hearing could be resolved. He thought that if ExCo tried to hold a disciplinary hearing, Mr Odey would simply repeat the actions he had just taken to remove the former members of ExCo. Mr Richards explained in evidence that he had also been advised that he may face personal regulatory repercussions in joining ExCo but those risks arose only if he was appointed to ExCo but it then did not proceed with the 2DH.

440. However, Mr Richards had then had a discussion with Mr Kelton and they discussed how the business could be run effectively. Part of his reason for wanting to join ExCo was that he felt someone needed to act. He believed the risk of him not acting and the firm remaining in breach of its threshold conditions could have a material detrimental effect on clients and the firm's employees.

441. Mr Kelton stated in his oral evidence, "The last thing in the world I really want to do, is to be a manager, let alone a chief executive, but I did this job, which I didn't get paid for, but I did it out of duty…". Mr Kelton continued that he "did it out of duty, fiduciary duty to my clients, I did it out of the duty to the employees of the firm and I also did it because I trusted Mr Odey." On 10 January 2022, he was approached by Lord Roborough and told that it was the last day that OAM could have Mr Odey as sole senior manager. He stated that Mr Odey was struggling to identify replacements, and that the firm needed two people, "otherwise there was going to be a major problem by the end of the day".

442. We find that despite their concerns, both Mr Richards and Mr Kelton agreed to join and become the second ExCo out of a sense of duty to the firm and its investors. At the time of joining they did not have any real knowledge about the circumstances in which the first ExCo had been removed prior to their appointments. Neither had had any involvement in the disciplinary process. The events of 24 December 2021 – the governance changes communicated to Mr Kelton, as to other members of the LLP, on 24 December 2021 – "came out of the blue" and the content of Mr Richards's emails on that date was a "complete shock to me".

443. Mr Kelton stated in his statement that in retrospect he did not think that Mr Odey gave him the full story of what had been going on with the disciplinary proceedings and presented a very simple story regarding what he was alleged to have done wrong. Mr Kelton stated in oral evidence that he thought the whole thing was a "storm in a teacup". However, this was based on what Mr Odey had told him about the disciplinary process. Mr Kelton stated in his statement that Mr Odey told him that the disciplinary process arose because Mr Odey had phoned a receptionist to organise a lunch with her; he did not mention that there had been prior incidents, although Mr Kelton was aware that there had been a FWW because Mr Odey suggested the proceedings were about whether his actions had been a technical or actual breach of it.

444. When Mr Kelton subsequently saw the 1S&S, he was shocked, and felt that the position was "very far removed" from that which Mr Odey had told him when they spoke on 10 January 2022. Mr Odey "had described only one incident and had assured me that he had done nothing wrong". After reading the report he "therefore considered that the situation was materially different to that which Mr Odey had originally presented to me".

445. We have found that Mr Odey misrepresented the underlying misconduct which had led to the FWW, and all the circumstances of the breach within the 6 January ExCo minutes. Likewise, Mr Odey deliberately sought to underplay the reasons for the first and second disciplinary processes in his conversations with Mr Kelton. His purpose was to influence Mr Kelton's perspective as to the processes and to make it more palatable for him to join ExCo.

<u>10 January 2022 – interactions with the Authority</u>

446. Five telephone calls took place on 10 January 2022 between OAM and the Authority,

at a time when Mr Odey remained the sole member of ExCo and Mr Satt, as compliance officer, was the only employee with any SMF approval. The calls concerned the impending governance changes. They were as follows:

(i) A call at 11am between Mr Odey and Ms Trost, the Authority's Head of Asset Management and Pensions Policy and then Acting Head of Asset Management Supervision (initially attended by Mr Cornwell and Mr Low).

(ii) A call at lunchtime between Mr Odey and Mr David Scott ("**Mr Scott**"), the Authority's interim General Counsel.

(iii) A call between Mr Satt, Mr Cornwell, Ms Trost and Mr Low at 12.30pm.

(iv) A call between Mr Odey (for some of the call), Mr Kelton, Mr Richards, Mr Satt, Mr Cornwell, Ms Trost, and Mr Low at 5.30pm.

(v) A second call between Mr Odey and Mr Scott, shortly after 5.30pm (which meant that Mr Odey left the wider call at (iv)).

The call between Mr Odey and Ms Trost

447. The call took place between Mr Odey and Ms Trost at 11am on 10 January 2022 on Microsoft Teams. Ms Trost made a note which was recorded in an email on the following day and Mr Cornwell converted into a note for record ("**NFR**"). Mr Cornwell and his superior, Mr Warren Low, attended for the initial part. Mr Odey threatened to terminate the call if the Authority did not agree to only one person from the Authority being present and asked that it proceed with Mr Cornwell alone.

448. Mr Odey gave the justification for his conduct pleading in his Reply – that "Mr Odey had asked for a one-on-one meeting in advance and thought that his request had been granted until he joined the call". Mr Odey accepted in cross-examination that assertion was untrue. Even though he had made repeated attempts in the days leading up to the call to make it a 1:1 call, he had been informed by Mr Cornwell in an email on 9 January 2022 that he would be joined by Mr Low and Ms Trost of the Authority.

449. Likewise, Mr Odey's pleading stated that he wanted "to try to ensure an equality of arms between the Firm and the Authority" but Mr Cornwell had also made it clear in an email that Mr Odey could invite colleagues from OAM to join them. Mr Pearey was by this time on gardening leave, since 7 January 2022, but Lord Roborough had not yet resigned and Mr Hanbury remained at the firm as well as Mr Satt. Mr Odey provided no proper justification in evidence or pleading for why he had made these demands that there only be one member of the Authority present on the call. Mr Odey accepted that OAM had an obligation to cooperate with its regulator. The Authority wished to speak with him and Mr Cornwell had first contacted Mr Odey on 7 January 2022 to arrange the call. Mr Odey was the firm's only executive representative. The Authority wished to speak about the firm's serious breaches of regulatory rules, which Mr Odey had caused.

450. It is likely that Mr Odey's repeated attempt to speak to Mr Cornwell by himself was driven by a hope that Mr Cornwell might be susceptible to persuasion or pressure as a single individual or to provide only the one witness to what had been discussed.

451. In any event, Ms Trost accepted that the call could progress with only her on behalf of

the Authority as she was the most senior representative present. She described in oral evidence that Mr Odey was very agitated throughout that call. She accepted that he spoke about the unfairness but only in these terms: "Yes, Mr Odey was extremely agitated during the call and spoke at length both around the unfairness he felt in how he was being judged for how he behaved with female staff in his office and the apparent lack of transparency in our actions. He was very agitated throughout that call."

452. Ms Trost began by saying she was hoping to understand Mr Odey's perspective and would also like an opportunity to explain the Authority's considerations. Mr Odey started by addressing the allegations against him and the disciplinary process, including saying that: "In relation to the other 'girl' he had simply in the context of a lunch offered to help her find out about another role and had taken her number", and, "He did not think it was reasonable that he was being held to requirements such as not being able to buy a girl a scent or giving someone a kiss on the check (sic)."

453. Mr Odey commented to Ms Trost that in his view the Authority lacked transparency and led people to take measures against him even though no detailed corresponding requirements were put in FCA rules. He said in oral evidence that this was manifested by what he considered to be a lack of concrete rules concerning NFM. He explained to Ms Trost that he had "dissolved the governance committees", reference to removing the first ExCo, in light of this. In contrast to Mr Odey's comments at the time and evidence given, we find that the suggested lack of transparency concerning the Authority's rules in relation to NFM had little to do with the 2DH, which had it gone ahead, would have been focused on Mr Odey's alleged breaches of the FWW and the Staff Handbook rules on misconduct etc. rather than F&P.

454. Mr Odey also stated that he had "concluded the disciplinary." This was at least a revelation of his real attitude which was to prevent the 2DH going ahead, at least before the Authority concluded its enforcement investigation.

455. Mr Odey explained to Ms Trost that prospective candidates to ExCo were being put off by the prospect of having a "black mark" against their name for putting themselves forward. Mr Odey stated that prospective candidates "would need to be indemnified by the FCA that they would not need to consider the disciplinary until and unless there was an FCA Enforcement outcome". If that were not agreed to, Mr Odey threatened, he would seek to go public with a letter setting out his views about the lack of transparency of the Authority and would do so that day ahead of the withdrawal forms being submitted. His threat of bad publicity is consistent with his attitude towards the Authority where he later threatened to go to the press as a result of his disagreement with them.

456. Ms Trost's responded as set out in the NFR, references to 'NT' being Ms Trost and 'CO' being Mr Odey: "NT explained that ultimately the FCA has to ensure that a company that carries out a regulated business has appropriate governance structures in place. Whether or not CO would choose to publicise his views was not a relevant factor in our decisions. She was happy to arrange a call with any prospective candidates to ensure it was clear to them that being put forward in itself would not lead to a 'black mark'. However, the new executive would need to be able to form a view on CO's conduct, independently of the FCA's actions…".

457. We accept the reliability of the NFR as a contemporary written record of what occurred on the call. It follows from the NFR that Ms Trost did not agree either personally nor on

behalf of the Authority to Mr Odey's proposal of alignment and sequencing of the 2DH with the Enforcement investigation, there was nothing said from which such an inference could be reasonably be drawn to that effect and that Mr Odey did not in fact leave with that impression. This was also consistent with Ms Trost's oral evidence, which we also accept, that no such agreement was reached.

458. For all the additional reasons below, we reject Mr Odey's account that there was any agreement on alignment or that he reasonably believed there to be.

Call between Mr Odey and Mr Scott

459. There was a call between Mr Scott, General counsel of the Authority, and Mr Odey at around lunch time. Mr Scott's initial email record suggested Mr Odey was seeking a "sensible compromise" between the "F&P test" and he was "happy to face the enf investigation /process whenever that came to a head". Mr Scott's later note records that Mr Odey said there was a possibility for things to go quite nuclear.

460. We find, again, that Mr Odey was prepared in his dealing with the Authority to make threats to seek to achieve his aims including the threat of negative publicity.

461. Mr Odey again stated he self-reported the alleged breach of the FWW and he thought his dismissal would be completely over the top. There was no recorded suggestion by Mr Odey that there had been any reassurance or agreement by Ms Trost in response to Mr Odey's request for alignment / sequencing of the 2DH and the Authority's Enforcement investigation.

462. We consider that in seeking to dictate the terms on which he would answer the Authority's questions on the firm's governance Mr Odey displayed a sense of superiority and arrogant entitlement. The same explains his making direct contact with the Authority's General Counsel.

Call between Mr Satt, Ms Trost, Mr Low and Mr Cornwell

463. At around the same time on 10 January 2022 there was a call between Mr Satt and Ms Trost, Mr Low and Mr Cornwell of the Authority.

464. The NFR records Mr Satt stating that Mr Odey's opinion was that he was keen to resolve the fact he was the firm's only decision maker and was not meeting SYSC 4.2. Mr Satt stated that Mr Odey wanted to put a management committee back in place. The reason for Mr Odey's decision to remove the ExCo was to give the firm a chance to continue and if he had not taken this action the firm would have had to wind up. Mr Satt said this was Mr Odey's opinion. Ms Trost said that the Authority was happy to make themselves available to speak with the potential SMFs; the complication was that from the FCA's point of view, the firm has started the disciplinary process and the Authority would expect this to conclude. Mr Satt stated Mr Odey did not expect the firm's 2DH to go ahead until the Enforcement investigation was completed. Mr Satt stated that the 2DH had been indefinitely postponed by Mr Odey at an ExCo meeting at which only Mr Odey attended. There were no minutes available.

465. Ms Trost ("NT") replied as was recorded ("JS" being Mr Satt and "CO" being Mr Odey):

> "10. NT said that we are therefore at an impasse – the FCA cannot give any kind of assurance that the disciplinary process will not have to go ahead. JS responded that he completely understood, but was there a consideration over timing? The new SMFs may want to conduct it immediately, but may also want to take advice and consider options etc.
>
> 11. NT said that tying the disciplinary to our investigation is problematic and that the firm needs to form their own view in the context of their employment policy. JS said that he wanted to be clear and understands that the hearing is the firm's process. JS has also pointed this out to CO…."

466. Ms Trost continued that in the "absence of concrete proposals we are left with a firm that does not meet its obligations and does not meet its non-financial resource requirements"; that the FCA would have to form a view as to whether it could carry on its current business; and that "difficult decisions" would have to be made fairly soon. Ms Trost stated that "new and existing business needs to be considered", in response to which, Mr Satt queried whether this might result in removal of permissions, or restrictions on new business as to which, Ms Trost said that restriction before removal was more likely.

467. It is apparent from the call that Ms Trost had not, in their earlier call, agreed with Mr Odey or given Mr Odey any reasonable room for Mr Odey to infer the same regarding alignment / sequencing of the two processes.

Call between Mr Odey, Mr Satt, Mr Richards and Mr Kelton for OAM and Ms Trost, Mr Low and Mr Cornwell for the Authority

468. The fourth telephone call of 10 January 2022 took place around 5.30pm between employees of the Authority and the individuals from OAM described above. The Authority did not make a formal note of the call but there is contemporaneous documentary evidence in relation to what was said. This comes from Mr Kelton's note and Ms Trost's email some one hour later. There is also mention of the call in Mr Richards' email to the firm's new lawyers on 14 February 2022.

469. Mr Kelton' s note contains statements but without attributing them to individuals:

> "Change in the executive committee; expectation FCA on certain measures; very happy to act in this function to act and obligations – immediacy to re-open.
>
> Appreciate facts and seek advice as necessary and may take a certain amount of time; at the same time; It is about seeing start the process; difference of regulator and the firm – and the firm being able to form a view.
>
> …
>
> > Some time; whilst this investigation runs it course [sic]; fitness – latitude whilst conclude review into crispin;
> >
> > Options
> >
> > A. Reached this now – if a finding one way;
> >
> > B. Minimum requirements – treating customers fairly;
> >
> > C. Independence – external advice – progress over coming months…."

470. There is no record of any suggestion of an agreement or assurance from the Authority regarding alignment or sequencing. The note is consistent with an expectation that the new ExCo would have some time to get up to speed with the facts before addressing the

disciplinary process and holding a 2DH and that the new ExCo should act independently of the Authority.

471. Likewise, Ms Trost's email at 18.42 on the same day to colleagues in the Authority is consistent. Her email did not differentiate between the different calls of the day but summarised them and recorded as follows regarding alignment or sequencing:

> "In summary I explained that the firm will need to get back to a place where it has governance structures that meet our requirements. That includes being able to form a view on the conduct of key people. Clearly we would understand that any new SMFs would need to form their own view and possibly will wish to seek their own advice, and that may take a little bit of time. We would expect a credible plan of action sooner rather than later, and the firm will have to form its own view independent of any outcome of an FCA investigation.
>
> CO expressed a concern to me this morning that candidates may worry that putting their name forward would lead to a black mark against their record. I called out explicitly in the call with the two prospective candidates that this is not the case."

472. Again, this account is inconsistent with her or anyone from the Authority giving any assurance or making any agreement with Mr Odey's proposed alignment and sequencing between the Authority's Enforcement investigation and OAM's internal disciplinary process. The email reflects the reality that Mr Richards and Mr Kelton would need to familiarise themselves with the background before deciding how to proceed with the 2DH but the two processes would have to be independent.

473. Mr Richards sent an email to Hwyel Jenkins of Herbert Smitth Freehills ("**HSF**"), OAM's new lawyers, on 14 February 2022. This gave an account of the telephone calls on 10 January 2022. There was a potential dispute as to whether Mr Odey attended the group call on 10 January 2022 but Mr Richards recorded Mr Odey as being present in his email to HSF, even if he did not recall this with certainty in his evidence. Further, Mr Kelton recalled Mr Odey attending the call. It is likely that Mr Odey did attend the meeting briefly but then left to speak to Mr Scott for the second time that day.

474. In his account to HSF of the call on 10 January 2022, Mr Richards is recorded as relying on Mr Odey's hearsay report of his call with Ms Trost and Mr Odey's account that the Authority's finding and potential disciplinary hearing would be reviewed by the Authority together and hence the new ExCo would not be bound to hear the 2DH.

475. Mr Richards then stated regarding the call that he and Mr Kelton and Mr Odey were present for on 10 January 2022 that: "It was discussed and agreed with the FCA that new ExCo would carry out an independent review process at the same time as the FCA enforcement process. Therefore Oliver/Tom concluded they would be allowed to use the conclusion of both to inform their judgment".

476. However, this email does not say that the Authority agreed to alignment, only that the two processes could carry on at the same time. It also explains that Mr Richards was relying in part on what Mr Odey said he thought would happen. It appears to be based on Mr Odey misreporting either his mistaken belief as to what had been said on 10 January 2022 or more likely his deliberate misrepresentation of what had been said.

477. Alignment of the 2DH and enforcement investigation was in Mr Odey's interests. It would delay the 2DH, potentially for years, allowing Mr Odey to remain in the firm. It would confuse matters and may have led OAM to conclude that being found F&P by the

Authority (either based on the Authority's lack of jurisdiction or because the substantive thresholds were not met) would mean that he could not be found to have committed gross misconduct by the firm which would otherwise lead to his dismissal. As explained above, these were two different processes and the question of breach of FWW and gross misconduct as defined in the Staff Handbook for the firm were based on different facts and tests from that of an enforcement investigation into F&P.

478. Mr Richards sent an email to Tim Sweeting for the Irish Funds Board at 20.05 on 10 January 2022 to update them on his and Mr Kelton's call with the Authority. Mr Richards' email stated there was an "agreed framework in place that we can propose to them that they find acceptable which involves Ollie and I joining ExCo. This looks to address the Senior Manager threshold concerns and commits to addressing the Disciplinary Matter in a suitable fashion…" This email is also consistent with there being no agreement nor assurance from the Authority regarding alignment and sequencing. If Mr Richards had understood that there was no requirement to proceed with the 2DH until after the Enforcement Investigation it is likely he would have said so. Describing the process as being addressed in a suitable fashion was consistent with the fact that he and Mr Kelton had not reached any firm view as to how they wished to proceed. Mr Richards was also clear in re-examination and in his statement that at the time of the call with the Authority on 10 January 2022, he and Mr Kelton had not reached a concluded view as to whether the new ExCo would need to hold the 2DH, let alone the timing of it.

Final call of the day – second call between Mr Odey and Mr Scott

479. Mr Odey left the call above to receive a call from Mr Scott. Mr Scott's email timed at 17.38 records what happened. Mr Odey expressed a hope that the two people he was proposing would take on the roles, Mr Kelton and Mr Richards, would join ExCo "if they were only responsible for matters from the day of appointment onwards". This implies that they would not be involved in any 2DH. It is consistent with his position in the call with Ms Trost that he had concluded the disciplinary process, and that which he had conveyed to Mr Satt on 5 January 2022 – that it was permanently discontinued.

Mr Odey's case on the 10 January 2022 meetings

480. Mr Williamson KC and Mr Mansell, for Mr Odey, submit that there were in fact three meetings/calls that took place on 10 January 2022: (i) a meeting between the Authority and Mr Satt (ii) a meeting involving the Authority and Mr Odey (iii) a meeting involving the Authority, Mr Richards, Mr Kelton and Mr Odey at which Mr Satt may or may not have been present.

481. Counsel rely on the fact that the Authority has produced notes of the first two meetings but inexplicably no note of the third meeting seems to have been prepared despite Ms Trost in an email of 12 January 2022 asking Mr Cornwell "Do you have a note from Warren of our call with the two prospective candidates? If not I can write that up?" There is therefore a lack of certainty as to what was and was not agreed as a result of all three meetings.

482. They argue that following the interaction between the firm and the Authority on 10 January 2022, Mr Richards felt able to take a place on the second ExCo when previously he had been unwilling to do so. Mr Odey's case is that Mr Richards would not have done so unless there had been an understanding that there could be sequencing between the Authority's investigation and the disciplinary hearing. From Mr Odey's perspective at least, unless such sequencing could be achieved there would be little point in appointing

the second ExCo because they would find themselves in precisely the same intractable difficulty as the First.

483. Mr Satt was asked by counsel, "one method of untangling or untying that knot would be to have some sort of acknowledgement from the Authority that in fact the disciplinary hearing, when it is heard, is able to take into account the FCA's fitness and propriety assessments in relation to - - for the matters which Mr Odey had been placed under investigation for?” Mr Satt answered, “That's certainly one option or potential view that you could seek assurances on" and "it probably would make that sort of the process much simpler.”

484. Counsel contend that whether through silence or in fact from something said that was more positive, the clear impression Mr Richards, Mr Kelton, and Mr Odey derived from the meetings on 10 January was that the Authority, at the very least, was not adverse to the idea of the disciplinary hearing being aligned, so it could take into account the outcome of the Authority’s regulatory investigation.

485. As Ms Trost accepted in evidence, “Mr Odey had strong views that he thought it would be held against anyone if they put themselves forward as a director partner and also that he did not think this hearing or this disciplinary proceeding should take place until the enforcement action was concluded one way or another.” Ms Trost also accepted that her note of the meeting “doesn't deal with sequencing.”

486. Counsel submit that had Mr Richards and Mr Kelton, following those meetings on 10 January 2022, refused to take up their roles as second ExCo, the immediate harms identified as a result of Mr Odey remaining as a senior manager would not have been “cauterised”. This may have resulted in the Authority having to consider placing restrictions upon the permissions of the firm. As well as the risk of legal challenge, such an action in respect of a successful and high-profile firm could imperil the viability of the firm, run the risk of client detriment and cause significant reputational harm to the regulator.

487. They also argue that that both Mr Kelton and Mr Richards did in fact consider that an accommodation with the Authority as to sequencing has been reached. An email from Mr Richards to the firm’s new lawyers dated 14 February 2022 confirms, “In addition CO was in attendance at the FCA call on 10th January with Oliver/Tom where it was discussed and agreed with the FCA that the new ExCo would carry out an independent review process at the same time as the FCA enforcement process. Therefore Oliver/Tom concluded they would be allowed to use the conclusions of both to inform their judgement.” As Mr Richards subsequently reported to the Irish bodies in an email following the meeting: “Ollie and I had a productive call with the FCA, we believe we now have an agreed framework in place that we can propose to them that they find acceptable which involves Ollie and I joining ExCo. This looks to address the Senior Manager threshold concerns and commits to addressing the Disciplinary Matter in a suitable fashion.”

488. Counsel rely on the interviews with the Authority, where both Mr Richards and Mr Kelton indicated that, in their view, the Authority subsequently “moved the goal posts”. Even Mr Kelton who, on any view, was not a sympathetic witness to Mr Odey, agreed that “pressure also came…from the fact that the goalposts had been moved. OK: Correct.” And later, “And you felt as though the Authority had moved the goalposts on that. OK: As we have discussed, that is correct.”

489. They argue that while Mr Satt had a different view as to the understanding, it is not entirely clear whether he was on the call with Mr Kelton, Mr Richards and Mr Odey. In cross-examination, Mr Satt accepted he was not on the call, stating “It appears that I wasn't”. In re-examination, he asserted he was. In any event, Mr Satt accepted that, “at the very least there was no objection from the FCA when that proposal was being mooted on 10 January? JS: Indeed.”

490. Counsel note that Ms Trost sought to maintain in evidence that such alignment was simply not possible as the timelines of the Authority’s investigation and the disciplinary hearing were on different trajectories. However, this is not supported by contemporary documentary evidence. Even the Authority’s own records of these calls do not suggest that that is the case. There is no reason why the notes would not reflect that position, had it been a view held by the Authority and communicated to the firm. The notes do in fact record the fact that the new ExCo should be afforded time before the second ExCo would be required to reconvene the disciplinary hearing: nowhere do they say that the idea of alignment is a non-starter.

491. They submit that, on the contrary, when Mr Odey discussed the issue further with Mr Low at the meeting on 15 February 2022, Mr Low was recorded by the firm’s new lawyers, HSF as saying the following: “I suggest is that among yourselves, put position clearly in writing - I have notes and I understand your position and where the areas of concern are - what I suggest is if you can outline it in writing in a letter - could come from lawyers or personally - I am not in a position to give you a judgment and say that will be ok or not - I don't see any significant issues.”

492. Counsel argue that Mr Low’s evidence that “rather than moving of the goalposts because I do feel that we were quite consistent, you know, internally and … externally, even if it wasn't interpreted as such” is simply not credible. Further, it is inconsistent with Mr Low’s 26 May 2022 email to his colleagues where he said: “but I do think the interim response that they would not conduct a disciplinary until after the conclusion of the FCA investigation has some relevance here – notably as we did not object to this at the time.”

493. They rely on Mr Cornwell who went further and agreed with the suggestion put to him in cross-examination that it was “a mystery to you how the two participants from OAM could believe that the goalposts had been moved and that an ultimatum has been issued? HC: Yeah, I don't - - I don't have a recollection as to why, but I think, you know, our purpose through the meeting was to get an update on their work.”

494. Counsel argue that on the balance of probabilities, there was no mystery. The Authority, through their silence at those meetings on 10 January 2022, left Mr Odey, Mr Kelton and Mr Richards at the very least with an impression that the disciplinary hearing and the Authority’s investigation could be aligned.

Conclusions regarding 10 January 2022 calls

495. We have rejected Mr Odey’s case regarding the meetings on 10 January and made the findings set out above and provide further reasons below.

496. As the Authority notes, there were disputes of fact between the parties regarding the 10 January 2022 meetings which largely centred on two matters.

497. First, there was a dispute as to what, if anything, had been agreed between the Authority and OAM about the approach that the second ExCo could take to the second disciplinary process, in light of the Authority's concurrent enforcement investigations into Mr Odey and OAM concerning the first disciplinary process, and the events covered by it in the 1S&S. This concerns the issue of whether there was an agreement with the Authority that the second ExCo could defer the 2DH until after the Authority's Enforcement investigation into Mr Odey had concluded. This was referred to at the hearing as 'alignment' of the two processes.

498. It is worth noting that 'alignment' is a misnomer as the issue was about any deferral of the 2DH pending the enforcement investigation outcome or its subsequent sequencing. It is also a strange concept because the two processes could never align as they did not necessarily overlap. Even if the Authority's investigation concluded that Mr Odey was fit and proper for the purpose of his authorisation or approval, either because the sexual misconduct allegations were outside the Authority's jurisdiction or not established in a way that would undermine his fitness, this would not be determinative whether he had nonetheless committed gross misconduct for the purpose of the firm's policies and should be dismissed as an employee. The latter was a matter of internal disciplinary, HR and employment law considerations rather than a matter of regulatory compliance. Further, the Authority's enforcement investigation, in part, focused on the 1S&S and the outcome of the 1DH, whereas the firm's disciplinary process and the 2DH concerned the alleged breaches of the FWW and 2S&S.

499. In any event, for the reasons set out above, we are satisfied that Ms Trost in particular and the Authority in general never agreed, on 10 January 2022 or at all, that the second ExCo could defer 2DH until after the Authority's Enforcement investigation had concluded. The Authority was clear that ExCo needed to form their own view of the 2DH independently of the Enforcement investigation. All that the Authority did accept was that the new ExCo would need some time to "bed in", before reaching its own independent view as to how to approach the disciplinary process.

500. Further, none of the contemporary documents in relation to any of the calls on 10 January 2022 contain any explicit indication or implication that such an agreement had been reached. Neither the Authority nor Mr Odey referred to any agreement in any of the other emails or NFRs which record the communications that day.

501. Mr Odey did not mention it to Mr Scott in his call that followed shortly after the one with Ms Trost. This call proceeded on the basis that Mr Odey had not resolved his concerns.

502. The NFR of the Authority's call with Mr Satt later that day also records Ms Trost describing the proposed alignment as problematic. Ms Trost must have communicated her understanding of her call with Mr Odey to Mr Schooling-Latter who then sent an email at 12.41 which stated: "Nike has spoken to Mr Odey this morning – I understand that Mr Odey is looking for assurances that we will not insist on the disciplinary proceeding, which Nike has explained she cannot give."

503. Mr Odey also sent a text message to Mr Hanbury that day, which made no reference to an agreement having been reached. It stated, "Had a good morning in the end with the FCA. To start with no movement…Then I had a conversation with the General Counsel at the FCA who I got to through a friend. Very helpful. Yes we all have a problem. Suddenly

we are all working towards a solution to solve the problem of tomorrow and the replacements for you all who are Ollie and Tom".

504. Moreover, there is no reference to any such agreement between Mr Odey and the Authority in subsequent emails or messages between OAM and the Authority – such as in Mr Satt's emails, letter or plan on 11 January 2022. Mr Odey would in all likelihood have mentioned any such agreement to Mr Satt.

505. The Authority's witnesses at the hearing also rejected giving Mr Odey any reassurance or agreement regarding alignment. Ms Trost rejected this. Mr Low stated in oral evidence that "we weren't in a position to make – to make that kind of pledge." Ms Trost stated that in her call with Mr Richards and Mr Kelton, "I would have been clear on that [i.e. no alignment] because enforcement investigations take a very long time…I think there was no prospect of this carrying on for the many years that an enforcement investigation might take to conclude." Ms Trost explained, there was "no prospect of us letting the firm not form its own view independent of our enforcement investigation. Because effective governance really means that the firm has to be able to look at the conduct of its people…" This is another example of the Authority being clear in its position that each ExCo had to take its own independent view of the Authority's actions and pursue its own course as best as it saw the need to comply with good regulatory governance.

506. Furthermore, Mr Odey's own evidence was equivocal or even inconsistent as to whether he had reached an agreement with the Authority on alignment. He initially answered the suggestion that Ms Trost made no such agreement to postpone the 2DH until after the conclusion of the enforcement investigation with "it turns out she hadn't". However, in a later answer in cross-examination he said, "we had reached an agreement, we didn't know whether in fact that agreement would be honoured." At times he came close to suggesting it was an understanding or implied agreement even if not express.

507. Second, there was a dispute as to what impression the OAM participants were left with regardless of what was in fact agreed.

508. By around 7 February 2022, Mr Richards and Mr Kelton had the impression that the Authority wanted greater urgency in concluding the 2DH than they may have first understood as a result of the telephone calls on 10 January 2022 and than which they thought was necessary. We consider that any difference between the second ExCo and the Authority in their desires regarding the 2DH was primarily a question of timing, rather than the relative sequencing with the Authority's Enforcement investigation. We find that Mr Richards and Mr Kelton did see the merits of deferring the 2DH but that is not say that they had reached a concluded view on this.

509. The two issues on agreement as to alignment and belief about alignment therefore are relevant to whether Mr Odey lacked candour because he later misrepresented to other members of the Authority, in February and April 2022, what had been agreed with them, the Fifth Allegation, and whether he lacks credibility generally. We also find that Mr Odey misrepresented to Mr Richards and Mr Kelton that the 10 January 2022 conversations with Ms Trost or the Authority generally constituted an agreement reached. He attempted to mislead them.

510. We find that these two issues on alignment provide no reasonable justification for Mr Odey's removal for the second ExCo. It is to be noted that Mr Kelton and Mr Richards

were not yet members of the second ExCo on 10 January 2022 and were not in a position to make agreements with the Authority. More importantly, even if Mr Odey was right that the Authority changed its position and reneged on an agreement or an expectation given on 10 January 2022 concerning the timing and sequence of the two processes, it could not justify his conduct in removing the second ExCo. It was for ExCo not Mr Odey to decide how and when to hold the 2DH. Mr Odey's removal of second ExCo prevented it from making the necessary decisions and holding him to account.

11 January to 26 January 2022 – the appointment of the second ExCo

511. On 11 January 2022 Mr Satt sent a letter with the firm's plans to the Authority and a finalised version of OAM's proposed new management structure and the overall governance framework. He believed that he would have discussed the key points contained therein with Mr Richards who gave consistent oral evidence as to this occurring. Mr Kelton went as far as saying that he and Mr Richards had approved the letter before it was sent out. It explained that the new ExCo would look to address the previously postponed disciplinary hearing. It also explained they would need a period of time to familiarise themselves with the facts of the matter and expressed a desire to engage an independent third party to review the process and make recommendations. Again, this letter is inconsistent with any suggestion that alignment or sequencing had been agreed with the Authority or that anyone in OAM including Mr Odey believed so.

512. Following receipt of the letter from OAM, Mr Cornwell sent an internal update to Ms Trost and Mr Low. The email dated 12 January 2022 at 10.54 set out how the Authority would seek to mitigate ongoing risks with the firm's governance. It recorded an intention to "put a date in the diary for 4-6 weeks time to understand how the changes are progressing". Mr Cornwell also sent an email to Mr Satt on 13 January 2022 stating that they would "look for a more formal update on the firm's progress within the next 4-6 weeks…" During cross-examination, Mr Cornwell was criticised for subsequently putting a date in the diary for contacting OAM which was four weeks after the second ExCo's appointment and not six weeks but we agreed with the Authority that this is not a reasonable criticism. It was within the range of time indicated and the Authority was entitled to supervise a non-compliant firm who presented a governance risk.

513. On 12 January 2022 an ExCo meeting took place attended by Mr Odey with Mr Kelton and Mr Richards also present because they were appointed during the meeting to become the second ExCo. Mr Odey resigned at the end of the meeting. The minutes of the 6 January 2022 meeting were approved, despite being false, because Mr Richards and Mr Kelton had no reason to know otherwise.

514. Mr Richards and Mr Kelton then held a further ExCo meeting in which they dealt with the operations business of the firm.

515. On 12 January 2022 Mr Odey signed a letter to clients and prepared a statement which were each titled "EVOLUTION OF STRATEGY AND MANAGEMENT TEAM AT ODEY ASSET MANAGEMENT". We make findings about the letter and statement when evaluating the Fourth Allegation below. We find that Mr Odey was responsible for material misrepresentations in both documents.

516. The former letter began:

> "I am writing to inform you of recent changes to management at Odey, continuing the strategic development I outlined last year. After 20 years with the firm, and six as CEO, Tim Pearey has resigned from the firm. It goes without saying that we are very sad to say goodbye to Tim. We thank him for his great contribution to Odey and wish him every success in the future. Reflecting on Tim's departure, we have accelerated our plans to reorganise the Executive Committee, in particular transferring managerial responsibility to the next generation of Odey talent. In this regard, after five years each on the Executive Committee, James Hanbury and Massey Roborough have stepped back to focus on their respective roles as fund manager and leading research. Meanwhile I am delighted to announce that Tom Richards and Oliver Kelton will join the Executive Committee…"

517. The latter statement was a shorter summary of the former letter to clients. It stated:

> "I can confirm that as of 12 January 2022 Tom Richards, COO, and Oliver Kelton, Portfolio Manager, will be joining the OAM Executive Committee whilst James Hanbury and Massey Roborough have stepped back from OAM's Executive Committee. These changes are part of our commitment to the strategic development of OAM as we usher in a new generation of talent and continue to grow and evolve the business. In addition, Tim Pearey has resigned from OAM. After 20 years at Odey, and six as CEO, we thank Tim for his great contribution and wish him every success in the future."

518. We find that these communications were inaccurate misrepresentations designed to give false and misleading impressions to their recipients. As the Authority submits, rather than mention Mr Odey's removal of ExCo or the 2DH, they gave the untrue impression that the members of the first ExCo had stepped down voluntarily, that the changes had been planned in advance and were part of a longer-term strategy.

519. On 21 January 2022 Mr Satt submitted a Form to notify the Authority that he was assuming the prescribed responsibilities that had formerly been held by Mr Pearey. He remained the firm's sole FCA approved Senior Manager, but as a SMF16/17 he could not also perform these additional roles. Nonetheless, there was no other person to whom those roles could be allocated.

520. After their appointment as the second ExCo, Mr Richards and Mr Kelton with the assistance of Mr Satt, undertook the tasks required. All three gave evidence to the effect that they had a good professional relationship, received proper internal and external advice and cumulatively had the right skillset.

521. Mr Richards and Mr Kelton familiarised themselves and got up to speed with the background to the 2DH including the FWW and 1S&S. As previously mentioned, Mr Kelton was shocked when read the 1S&S and considered it to be very far removed from what Mr Odey had told him when they had spoken about him joining ExCo on 10 January 2022.

522. On 26 January 2022 Mr Richards and Mr Kelton had a meeting with Ms Versey and Mr Satt discussing the Authority's investigations. According to the record of that meeting, it began "FCA: when and what are they looking into? Crispin and Firm. Have made it clear that there are 2 separate investigations. Crispin person one – fitness and prop… The second one is the firm…… On basis of our gross misconduct – we should have found him guilty and dismissed from policy and we did not do it."

523. Assuming this was an explanation of the Authority's investigations, it is consistent with the Authority making clear its concern about whether OAM's Staff Handbook had been properly followed and opening an investigation into OAM. It related to the Authority's

investigation into the firm which related to the 1DH and not the 2DH. Mr Kelton also said in evidence it was not his view and the second ExCo were not involved in the 1DH in any event.

<u>7 February 2022</u>

524. On 7 February 2022 Mr Richards, Mr Kelton and Mr Satt took part in a telephone meeting with the Authority represented by Mr Cornwell, Mr Low and Ms Khandelwal.

525. The Authority's NFR records as follows and there was no dispute about its contents.

526. The purpose of the meeting was to "seek updates on the firm on the disciplinary issue, contingency planning and to reinforce the importance of the new management to the future of the firm." OAM reported two resignations: Lord Roborough, who would leave towards the end of April/May after serving his 3-month notice period, and Rob Marshall-Lee, a recently joined portfolio manager. The new ExCo was "embedding well". OAM had appointed HSF replacing S&S as the firm's legal advisers.

527. Under the heading 'Discussion' numerous points were noted including these regarding the 2DH:

> "14. The firm stated that it is not clear if there should be a disciplinary hearing, however they will follow the process as they understand that everyone is trying to do the right thing. For continuity, Herbert Smith will be advising both the firm and the individuals.
>
> 15. As a new ExCo, they are getting to the bottom of things and they do not want any conflicts, even if there are potential conflicts. Herbert Smith will be advising on next steps for the disciplinary process.
>
> …
>
> 20. The FCA expressed its nervousness in terms of onboarding new investors, given the shadow of the firm…
>
> 24. The firm confirmed that they keep us informed in coming weeks once Herbert Smith has scoped out the work and the timelines."

528. Paragraph 20 of the NFR reveals that the Authority raised the issue of its concern about new subscriptions to OAM, given the circumstances.

529. Mr Kelton and Mr Richards also produced notes of the meeting but Mr Kelton's did not mention the 2DH.

530. Mr Richards' note records that Mr Kelton gave an update on the 'Legal Process'. He is recorded as stating OAM was currently unable to provide a timeline for the "review process" and that "OAM were committed to undertaking the process to ensure that due process was completed and that the ultimate findings were independent. The process will need to be allowed to take the timeframe required to allow for a complete and thorough process so that the ultimate findings provide the correct advise [sic] for the ExCo (whatever that finding may be). S&S [Simmons & Simmons] would be involved up until (18th February) at which point we would update the FCA whom we had appointed to replace them. This was considered an appropriate time to move to new independent advisors to ensure we continued to comply with the FCA's deadlines". In response, "WL [Mr Low]

requested that at the next update, OAM provide an indication of timelines for the SS review process."

531. Mr Odey relied on a suggestion put to the witnesses that the Authority's position at the meeting on 7 February 2022, foregoing alignment and requesting the progress of the disciplinary process at the meeting, had changed from the Authority's position at the meeting on 10 January 2022. We reject Mr Odey's case that there was any 'moving the goalposts' or reneging on an agreement or assurance given by the Authority. The Authority made no such agreement and said or did nothing from which agreement might reasonably be inferred. Mr Kelton did not see this meeting as a moving of the goalposts and turning point in terms of the Authority increasing pressure on the second ExCo. He said in cross-examination: "it wasn't a huge surprise. It was a bit of an annoyance….that's just life".

532. Neither did the 7 February meeting represent the exertion of significant pressure by the Authority on the second ExCo. All that Mr Low asked for is an update on timelines at the next meeting. As before, the pressure was in fact coming from the opposite direction – from Mr Odey. The pressure from him on the second ExCo increased dramatically from 10 February 2022, as we explain below. Mr Kelton stated in re-examination: "Just the pressure from Mr Odey, that's when it changed…to me the big pressure was from Mr Odey. My belief is that the concept of pressure from the FCA is a smoke screen".

533. Nonetheless it is likely that Mr Richards and Mr Kelton both did likely leave the meeting with the impression that the Authority's expectation was that they make a decision and progress the 2DH more quickly than they had previously thought. Mr Kelton was surprised that the Authority was seeking an update at that stage but it was not so dramatic so as to feel the goalposts had been moved.

534. Further, the discussion at the meeting on 7 February 2022 as recorded throughout, is inconsistent with any suggestion that Mr Richards and Mr Kelton had understood that an agreement had been reached with the Authority on 10 January 2022 regarding alignment or sequencing. There is no reference to such agreement or assurance and it would have been relevant to record in any discussion of timing of the 2DH.

535. The notes of the meeting suggest that there was a discussion of the timing and the readiness of the new ExCo to make decision on the disciplinary hearing but not of alignment. It is clear from the note of the meeting that Mr Richards and Mr Kelton had not even decided whether to hold a 2DH. We also accept that it was reasonable for the Authority to be concerned with the progress in relation to the disciplinary proceedings that the firm had made since 10 January 2022. OAM were still seeking to appoint new lawyers, HSF, to advise. The Authority was entitled to ask whether the firm had a governance structure with a new ExCo that was properly functioning and any lack of progress in making decisions regarding the 2DH was relevant to this.

536. Mr Odey also suggested that the Authority raising the question of subscriptions for new clients or investment in the firm's funds at this meeting was a negative intervention and escalation of interference into OAM. We reject the suggestion that this was unreasonable or inappropriate conduct on behalf of the Authority. Mr Kelton in cross-examination stated: "I generally believed that it was the right thing for the FCA to raise, you know, investors needed to understand what was happening, and so, yes, that was the first time it was raised to me. And I consider it to be an important point." Mr Richards also thought that firms should be considering new subscriptions on a "continuous basis…a matter for all firms to consider at all times in this industry."

537. This was not actually the first time new subscriptions had been raised in any event, albeit not in the same words. In an email to Mr Satt on 11 January 2022, commenting on the new governance proposals Mr Cornwell addressed the potential impact of the governance situation and ongoing disciplinary proceedings on the firm's "readiness to onboard clients at this point in time". This was similar language to that recorded in the NFR of the meeting on 7 February 2022.

<u>9-10 February 2022</u>

538. On 9 February 2022 Mr Richards and Mr Kelton spoke to Mr Odey in a call to confirm potential / or intended actions as the majority owner of the Odey Group in the event of either the enforcement action from the Authority or the internal disciplinary matter resulting in him no longer being certified as fit and proper or in him being dismissed. The conversation was recorded in an email from Mr Richards to Mr Satt that afternoon:

> "Crispin confirmed that he considered the actions he took over December/January to be an exceptional singular event. These actions should not be considered to serve a useful purpose or framework for any such future scenario. He confirmed that in the scenario's outlined above he would take no actions to wind up the company, and would work with the Firm to ensure a continuity of business so that the interests of Investors in the various Odey funds would be best served. It should also be noted that there was no pressure exerted from either Oliver or myself in reaching these conclusions. Furthermore he expressed that he believed that it was right to have his commitment to this in writing.
>
> He agreed that OAM also seek legal advice on the above. Following receipt of this advice we will ask him to commit to the above in writing which he confirmed he would be happy do so [sic], having taken due advice on the matter himself."

539. Mr Odey therefore spoke about his removal of the first ExCo being an 'exceptional' event. However, the purported reassurance that Mr Odey gave to the second ExCo that he would place no pressure on them did not take long to be revealed as unreliable.

540. The very next day, on 10 February 2022, Mr Odey performed a volte face, reversing his position and threatened to close the firm down. Mr Kelton spoke to Mr Odey and described their conversation that day in his statement: "Mr Odey had strangely changed his position. It became clear that Mr Odey was unlikely to accept the findings of ExCo's disciplinary process, and he started making threats that he would remove me and Mr Richards from ExCo and close the business down. I felt that Mr Odey entirely changed his position from what he had previously agreed in respect of the conduct of the disciplinary hearing – that he would go if he was found to have done anything wrong. I do not know why he did so. Mr Richards and I had not reached any conclusions at this stage. It did not seem logical."

<u>11 February 2022 Mr Odey's threats to second ExCo and misrepresentation to the Authority</u>

541. On 11 February 2022 three relevant conversations took place to which Mr Odey was a party.

The meeting between Mr Odey and Mr Kelton and conversation with Mr Richards

542. The first was a conversation in the office between Mr Kelton and Mr Odey. Mr Kelton described Mr Odey's demeanour in his statement as being "very aggressive". He stated that Mr Odey again threatened to close the business down during their discussions that day, and Mr Kelton threatened to resign in response: "We did not leave things on good terms that day; I was planning to seek legal advice prior to resigning. Mr Odey's threats came as

a shock to me…I was not going to be treated badly and unfairly by Mr Odey. I felt that Mr Odey knew that threatening to close the firm was leverage over me".

543. Mr Kelton updated Mr Richards on the conversation who recorded it in a note which Mr Kelton agreed with: "OK informed TR he had had a meeting with CO... this morning, CO advised he would only accept an FCA finding of fact on him. OK advised that in this context, he would need to consider position/resign."

544. Mr Richards ("TR") then had a conversation with Mr Odey ("CO") which he also recorded in a note: "TR spoke with CO and advised that the FCA call had implied a requirement to hold the SS review/DH matter promptly and in the event that CO would frustrate ExCo's ability to act as SMF27's (taking the potential negative outcome) TR would need to resign as well. CO said that resulted in a very difficult position and he requested Warren Lo's (WL) contact details at the FCA." Mr Odey agreed in his oral evidence that his position was that Mr Richards would have to go, in light of this disagreement. Mr Richards stated that, "This was the first time that Mr Odey was implying that he would frustrate Mr Kelton and me in our ability to act as members of ExCo over the issue of the disciplinary."

The call between Mr Odey and Mr Low

545. The second relevant call was when Mr Odey then spoke to Mr Low having called him at around 15.20 on 11 February. Mr Low, on 13 February 2022, emailed his colleagues with a note of the call. The notes included the following. Mr Odey began by asking why the Authority had changed its mind. Mr Odey stated that Mr Kelton and Mr Richards were very stressed, dealing with this issue and "worrying about what the FCA is going to do to them/their careers." Mr Odey stated: "we have already done due process – and I threw it into the long grass". In oral evidence Mr Odey disagreed that this was a reference to his decision to permanently discontinue the disciplinary hearing. Mr Odey suggested instead that this was a reference to his purported agreement with Ms Trost from 10 January. We do not accept that this is what Mr Odey meant by "I threw it into the long grass". It is not a realistic or tenable description of what Mr Odey's said was an agreement with the Authority on alignment or sequencing.

546. Mr Odey threatened to "go straight to the fucking press", and described the Authority as "you little guys, trying to do your work in the shadows…sneaking around in the shadows". Mr Odey stated that "you are about to create a crisis. As of Monday – there will be 4.7bn in an unregulated body." In other words, Mr Odey threatened to close the business down in a disorderly manner, and suggested that such a crisis would be created by the Authority.

547. Mr Odey accused Mr Low of "speaking like a lawyer", when Mr Low stated that Mr Kelton and Mr Richards had fiduciary responsibilities as ExCo members. He stated that he had a "verbal agreement with "Trost"" that the internal disciplinary process did not need to proceed before the conclusion of the Authority's Enforcement investigation.

Mr Odey's case on his call to Mr Low

548. Counsel for Mr Odey submit that Mr Odey called Mr Low on 11 February 2022 as he feared that the Authority were reneging on the understanding that he believed had been reached on 10 January 2022 i.e. that there was to be an alignment between the Enforcement investigation and the disciplinary process. As Ms Trost accepted in cross-examination, in her call with Mr Odey on 10 January 2022, "Mr Odey had views that it was pointless to

have further calls if the FCA wouldn't agree to the disciplinary going ahead without the enforcement investigation having been concluded." It was therefore unsurprising that Mr Odey would respond adversely to the news that Authority had, in his mind, gone back on that understanding.

549. Mr Low recognised in cross-examination that the call took place in a context where: "This is his business which he set up 30 years ago, he employed a number of people, their livelihoods depend on the continuation of this business. That's right, isn't it? WL: Potentially, yes". Mr Low accepted it took place against a background where "Clients, his investors are doing really well at the moment. Their returns, their success, that depends on the continuation of this business. WL: Yes."

550. Counsel accept that Mr Odey spoke with passion in the call with Mr Low on 11 February 2022. They submit that it is clear that the call was unscripted and heartfelt. Mr Odey viewed Mr Low as someone who was at least prepared to listen to what he had to say and perhaps take a more pragmatic approach. The call demonstrates that Mr Odey's desire on the call – perhaps, in hindsight, a naïve desire – was to explain and to persuade the Authority to work with him to find a solution, rather than simply viewing Mr Odey as a problem to be managed. Whether, in light of the internal Authority communications around this time, Mr Low was in fact being wholly transparent with Mr Odey when, for example, he told Mr Odey "I…can assure we are not simply 'trying to get you fired'" is for the Tribunal to determine. Mr Low's evidence to the Tribunal was to the effect that he was confronted in this call for the first time with Mr Odey's position that an understanding had been reached. However, Mr Low's note of the call does not record any statement by him that Mr Odey's claims as to the existence of the agreement were invented. Further, there is no evidence that Mr Low actually asked Ms Trost if she had such an agreement. They submit that these are surprising omissions in light of Mr Low's stated position.

Our findings regarding the call with Mr Low

551. We reject Mr Odey's case on this call. We find Mr Odey made a material misrepresentation to Mr Low that Ms Trost had agreed to alignment and Mr Odey knew it to be – we return to this finding when evaluating the Fifth Allegation below.

552. Mr Odey also stated twice that his alleged breach of the FWW was self-reported: "the breach of the terms was reported by myself…When I breached it was reported by me – and you want to see me fired for this – should not be allowed." We have found this to be a false version of events. Finally, he stated that if the Authority wanted to avoid yet another crisis they should have another conversation with Mr Kelton and Mr Richards, "if not they will hand in notice on Monday - and move quickly to a place of crisis – and disorderly wind-down".

553. This call was an example of both threatening behaviour to the regulator and Mr Odey making a false statement to the regulator – demonstrating an absence of candour.

Mr Odey's call with Mr Richards

554. The third relevant call was at 15.28 on 11 February 2022 when Mr Odey had a second call with Mr Richards reporting his call with Mr Low. Mr Odey suggested to Mr Richards that his call with Mr Low started off as a difficult call but had ended on more constructive terms. Mr Odey once again made the point that "as an owner he could frustrate the ExCo's ability to remove him as a partner" and placed responsibility for that frustration upon the

Authority in continuing: "therefore the FCA were putting the ExCo in an impossible position by changing the timeframe of the review of the SS work."

Mr Kelton's concerns

555. Mr Kelton raised questions and sought advice from HSF that evening on 11 February 2022 but was told in an email that he would need to seek independent advice as to his own personal position. HSF did advise him as a member of the ExCo that due to Mr Odey's stance at the time, i.e. not accepting a finding that he was not F&P unless it came from the Authority and threatening to close the firm down, it was advisable to suspend subscriptions. Mr Kelton stated he felt trapped as a result of Mr Odey's volatile approach and this made him approach HSF for advice about his personal position. He was concerned that if OAM did suspend subscriptions and this damaged the value of the business Mr Odey might sue him. Equally, resigning would be contrary to his duties to investors and the firm. He stated, "If Mr Odey was not going to change his mind, we would have to suspend subscriptions very quickly. That did not mean closing the firm but…raised the probability of a panic from investors." Mr Kelton was under significant pressure and experiencing stress. "I sat awake all night worrying about it". This was understandable.

<u>Mr Odey's continued threats on 12 February 2022</u>

556. On 12 February 2022, a Saturday, Mr Kelton went to see Mr Odey at home in order to attempt to obtain reassurance that Mr Odey would be prepared to stop his threats and avoid the risks to the firm and clients. He drove to Mr Odey's house to speak to him. There is no dispute about the meeting which Mr Kelton described in his witness statement as, "We had had a difficult discussion the day before but during our discussion on 12 February 2022 Mr Odey exhibited pure rage, after I had raised the point around there being other stakeholders to consider, specifically employees."

Mr Odey's case on Mr Kelton's visit to his house

557. Counsel for Mr Odey contend that Mr Odey was attempting to resolve the subscription issue through alignment of the disciplinary hearing and the Authority's investigation. Mr Kelton sought a more direct approach, namely, to persuade Mr Odey to remove the possibility of him exercising his rights as a majority shareholder to close down the Firm. As a result, there was a significant tension between the two individuals. Much was at stake for both.

558. They argue that, in considering the heated exchange that occurred, it is important to put it in some context. While Mr Odey responded intemperately, it had been Mr Kelton's idea to attend Mr Odey's house, early on a Saturday morning without notice, to put forward what would by any definition be a controversial proposal and one which would significantly curtail Mr Odey's rights as the majority shareholder of the firm at a time when he was already engaged in a fight for his survival. Had Mr Odey acceded to Mr Kelton's demands, this would remove the need for the Authority to accept that there had to be an alignment between the Authority investigation and the disciplinary hearing. On the other hand, were the Authority to agree to alignment, as was Mr Odey's continued preference, it would remove the risk of closure and by doing so remove any legitimate justification the Authority might have to restrict new subscriptions.

559. Counsel accept that Mr Odey apologised to Mr Kelton at the time. Mr Kelton told the Tribunal in evidence, "as far as I can recall, he moved to retract the things he had said.

They're not the sort of things he should have said." Mr Odey also apologised to the Tribunal for his loss of temper. Mr Odey told the Tribunal, "I am very sorry about that. I am sorry. Ollie is a very nice man, he is a very gentle man. By this stage he was pretty ill. The problems of trying to make decisions was very difficult for him. He was a good fund manager but a terrible manager, and he comes round to my house threatening me that basically, I had to give up the one thing that I had, which was the ownership of the company which allowed me to close it down in the event I was dismissed." Mr Odey explained the strength of his response as being because, as he saw it, Mr Kelton had: "came round to say, "Will you please sign a bit of paper which said if you were dismissed you would not, basically, close the business?"

560. They submit that, Mr Kelton was a particular witness whose objective appeared to be intent on conveying a number of key points rather than directly answering the questions asked. He would often agree and then add the argument he wanted the Tribunal to hear as the following exchange demonstrates: " …there was, for me, a lot of pressures, and I would say that, you know, for (inaudible) there were the day-to-day pressures which we just talked to, whether that's Russia or whether that's people leaving. There was the FCA, which clearly had brought an investigation against your firm and the owner of your firm. There's clearly pressure to that. I don't care what anyone says, there has to be. And then there was - - I'm afraid there was a larger pressure to me from - - from - - from Mr Odey. AWKC: The pressure also came, certainly on 7 February, from the fact that the goalposts had been moved. OK: Correct."

561. In relation to the meeting on 12 February 2022 Mr Kelton said: "I'd gone around early in the morning to see whether it was worth, you know, addressing to me what - - to be two significant issues in terms of the subscriptions, giving it one last go before the legal advice, which was that we should have been suspending subscriptions, potentially…". Mr Kelton said that he: "felt threatened by the fact of his rage. He did not make a verbal threat at me." Mr Kelton accepted that "the conclusion of that meeting was that Mr Odey agreed with you that subscriptions may need to be suspended but he asked you to ask your advisors, HSF, whether that could await the outcome of any meeting with the FCA at the beginning of the week. OK: I have seen that - - I guess, one of the conclusions would have been that."

Our findings

562. We reject Mr Odey's case regarding the meeting on 12 February 2022. Mr Kelton remembers Mr Odey grabbing the kitchen table at which they were sitting having coffee and screaming, "How dare you speak to me like this?"; Mr Kelton had "never seen rage like it; the table was shaking, and Mr Odey was changing colour. He was incredibly volatile. I felt physically threatened…."

563. Mr Kelton said that there were other options that could be explored, such as Mr Odey selling his stake for example but they would have to explore all of the options. "Eventually, Mr Odey rolled back everything he had said and said it was a misunderstanding". This, Mr Kelton regarded as an example of Mr Odey changing his mind and it worried him that it was just his word against Mr Odey's and Mr Odey could simply claim that he had not said any of these things if they were ever challenged.

564. Mr Kelton was likely deeply affected by this and other threats made to him by Mr Odey. He had been made to feel physically threatened. He said Mr Odey's behaviour was not behaviour he had ever experienced the like of in the course of his over 20 year professional

life or indeed his personal life. As Mr Kelton says, it was not professional behaviour and it clearly had the hallmarks of bullying. In oral evidence Mr Kelton said that his interpretation was that Mr Odey had "lost control". Mr Kelton explained that Mr Hanbury's reaction was that Mr Odey's behaviour towards Mr Kelton was like a spoiled child throwing his toys out of the pram.

<u>12-13 February 2022 further events</u>

565. On 12 February 2022 Mr Odey had sent Mr Hanbury a text message that stated. "Dear James I have remarkable calm about all of this. My lawyers are pretty convinced that it is very very difficult for the FCA to rule me unfit and improper if only I can get there. But thank you for your support." To which Mr Hanbury replied, "Really pleased to hear that and let's hope we can roll all the decisions into one."

566. In discussions with Mr Hanbury by text message on Sunday 13 February 2022, Mr Odey indicated that he would consider Mr Hanbury's alternative proposal that Mr Odey would sell his shareholding. Mr Odey replied, "It is easy for me to get rid of my holding but it is also my one weapon against them not having the enforcement enquiry carried out". Even then Mr Odey was thinking in 'nuclear' terms.

<u>14 February 2022</u>

567. On Monday 14 February 2022 there were discussions between Mr Richards, Mr Kelton and Mr Odey. These were recorded in Mr Richards' email to HSF. Mr Odey appeared to change his mind and referred to his previous statement that he would only accept an FCA finding as to his F&P, rather than a 2DH. Mr Odey suggested that there had been a misunderstanding given the emotion of Friday (11 February) and clarified that he would accept all other disciplinary processes from the firm. A possible reason for this change of stance may have been legal advice he received as we explain below.

568. In the discussions on 14 February 2022 Mr Odey again repeated his false assertion to the second ExCo that in his call with Ms Trost in January 2022, it was understood by the Authority that there would be alignment: the Authority's findings and the potential disciplinary proceedings would be reviewed together and hence the new ExCo would not be bound to hear the 2DH. Again, this demonstrates that the alignment agreement was not one that the other members of ExCo volunteered as happening, to the extent they were aware of it; it was a result of the false picture that Mr Odey presented both to the Authority and second ExCo.

<u>15 February 2022</u>

569. On 15 February 2022 there was a call between Mr Low and Mr Khandelwal for the Authority and Mr Odey, Mr Kelton and Mr Richards for OAM. Three lawyers from HSF were present as the lawyers on behalf of ExCo and Ms Jill Lorrimer of Kingsley Napley was present as the personal lawyer for Mr Odey. A note of the call was taken by the Authority in a NFR and in an email circulated by HSF. The meeting was called by OAM to discuss a way forward and find a solution as Mr Odey did not want the internal disciplinary hearing to go ahead in advance of the Authority's enforcement investigation being concluded.

570. Mr Low reiterated that the apparent thinking was incorrect that the Authority had issued an instruction or ultimatum regarding the disciplinary process. He stated that that was not the case, and that the decisions about whether to onboard new clients, and what to do about

the disciplinary process, were for ExCo to take. He said that the Authority "can opine and make a judgment but not decide for the firm".

571. Mr Odey repeated his wish for alignment between the internal disciplinary process and the Authority's Enforcement investigation. He stated that: "He wants to make sure he is there until the enforcement investigation is complete so that he can respond and that the due process of law is followed." We reject that explanation as being his true motive.

572. We accept the Authority's submission that there was not a good reason why Mr Odey would need to remain at OAM throughout the Enforcement investigation: individuals can leave, before an Enforcement investigation is opened or while it proceeds, it does not require the person to remain employed throughout in order to properly respond. Likewise, there was no unfairness in Mr Odey responding to the allegations of breach of the FWW and taking part in the 2DH prior to receiving the outcome of the Enforcement Investigation. It is worth repeating that the two were different processes with different thresholds and different potential outcomes which would not necessarily be determinative of each other. The conduct and outcome of the 2DH, which concerned breaches of the FWW and was a matter for OAM's ExCo applying its Staff Handbook, would not necessarily determine, let alone adversely affect the "due process of law" of the Authority's investigation into Mr Odey's F&P, which was concerned with the allegations considered in the 1S&S which gave rise to the 1DH and which investigation was governed by statute and rules.

573. The two processes were not simply different and aimed at separate matters but obviously independent of one another. The only link might be that if Mr Odey were found not to be fit and proper as a certification employee, fund manager or senior manager by the Authority, then he could not hold these roles in the firm. The converse was not true – even if F&P he could still be guilty of breach of the FWW or gross misconduct and dismissed.

574. Mr Odey stated in the call on 15 February 2022, that "he will not do anything to undermine the company" if his proposal for alignment was agreed. The flipside, and possible threat, was that if that was not agreed, then Mr Odey would not feel constrained in his actions. Mr Odey stated that, "he is not going through the process until he is found improper and unfit" and then said to Mr Kelton, "Is that clear Oli?". This was Mr Odey speaking to Mr Kelton, a member of ExCo, the firm's governing body, which was due to hear the 2DH, in a dismissive manner directing him how the second ExCo should act in relation to the 2DH. It was not his instruction to give. This was all the more inappropriate given it was said during a call with the Authority, the firm's regulator and when, three days earlier, on 12 February 2022, Mr Odey had made Mr Kelton feel physically threatened.

575. However, Mr Kelton, again, stood up to Mr Odey's pressure. Mr Kelton stated on the call that "he had always assumed that an independent inquiry is an independent one and as a director he has duties to fulfil" which point Mr Low agreed with. Mr Low asked Mr Odey to formalise and put his position regarding alignment and not jeopardising the business in writing so that the Authority could consider it. This was a reasonable position for the Authority to take in circumstances where Mr Odey alone was seeking an extraordinary assurance that was outside any normal practice. In any event, neither Mr Odey nor his lawyers ever did put the proposal for alignment in writing, although Mr Richards, on behalf of the second ExCo, prepared a draft letter for the Authority suggesting it on 21 March 2022.

The Meeting between the Authority, OAM and Mr Odey

576. Counsel for Mr Odey submit that the meeting on 15 February 2022 was an important

one. It was attended by the Authority, OAM (represented by Mr Richards and Mr Kelton, (and its lawyers HSF) and Mr Odey (with his lawyers, Kingsley Napley). Mr Odey summarised his position as recorded: "I had understood from meeting a month ago, the issue of the disc. hearing could be heard at the same time as enforcement decision - on that basis, Tom and Ollie could do everything they wanted, including firing me, but from my perspective, I want to still be here to hear the enforcement action and respond to it - due process - on Friday got the sense you agreed. I want clarity that if the hearing could take place at the same time as the enforcement then I will do nothing to get in the way of the exco - will let the firm continue to thrive."

577. At the meeting Mr Low suggested that: "among yourselves, put position clearly in writing - I have notes and I understand your position and where the areas of concern are - what I suggest is if you can outline it in writing in a letter - could come from lawyers or personally - I am not in a position to give you a judgment and say that will be ok or not - I don't see any significant issues."

578. Counsel contend that Mr Low confirmed in oral evidence, what was agreed at the meeting was that the alignment proposal would be put in writing. From the Authority's perspective, the immediate risk of the firm being plunged back into the situation it was in on 24 December 2021 had been averted. While alignment was not Mr Low's decision, he made it clear that he did not see any significant issues (although this important statement was not included in the Authority's note). The following exchange in cross-examination is informative: "JM: You're not saying no, you're trying to find a solution and not just identifying the problem. WL: That's correct. JM: And that's to your credit, Mr Low, as a supervisor because that's what supervisors should do, isn't it, they should work with firms to find solutions to problems? WL: Ultimately it's the responsibility of the executive committee to find and the organisations. We're supervisors, not decision-makers. JM: Exactly. Supervisors not decision-makers."

579. They argued that it was clear that any letter to be sent to the Authority making representations in favour of the alignment of the disciplinary process with the Authority's investigation had to properly come from the firm as the entity conducting the process and not from Mr Odey, the subject of the process. As Mr Satt recognised in oral evidence, "the decisions as to the form the process should take are decisions for ExCo; it's not for the person who is subject to the process to decide or dictate the process, is it ? JS: Correct." Therefore, the firm rather than Mr Odey submitted its proposal on 30 March 2022, that proposal being that the disciplinary hearing be postponed.

580. Counsel suggest, however, that by the time that letter was sent, a new issue had arisen that fundamentally undermined Mr Odey's trust and confidence in the Second ExCo and in its ability to hold a fair disciplinary hearing. That issue concerned the necessity and appropriateness of implementing certain "safeguarding" measures in response to the new joiner allegation received by the second ExCo.

Our findings

581. We reject Mr Odey's case and make the findings above. Mr Odey stated in cross-examination that after removing the first ExCo he was seeking to protect himself partly on two flanks. One was that the sexual harassment allegations would be incapable of rendering him unfit. The second was his belief, which he denied in cross-examination but which he

did state in the minutes of the 6 January 2022 meeting, that he could only be dismissed by the firm at the 2DH if found not to be F&P by the Authority.

582. We have already made findings above as to why Mr Odey was motivated to seek alignment of the two processes. At this stage, it appears that Mr Odey believed that the Authority was unlikely to find him unfit to manage money. It is likely that he wrongly thought that if there were such a finding of the Authority, that he was fit to manage money, before the 2DH or the internal disciplinary process were to progress – then the Authority's finding would prevent ExCo from being able to dismiss him. While wrong as a matter of law, it did not affect his belief - it is likely he would want to use 'clearance' from the Authority as leverage over the firm. In the meantime, the significant time that an Enforcement investigation would take to conclude would buy Mr Odey further time at OAM and the chance to earn further growth in the funds under his management or ownership.

583. Mr Odey was likely therefore able to change position at the meeting with the Authority on 15 February 2022 and in the discussions with Mr Kelton and Mr Richards on 14 February 2022 and to offer to commit in writing not to repeat his threats made to remove the ExCo and close down the business despite having recently and repeatedly made these threats up to 12 February 2022. This was because of the belief he expressed on 12 February 2022, based on legal advice, that he was now more confident the Authority would not find him unfit purely based on sexual harassment allegations. Mr Kelton also considered that Mr Odey's change of position was as a result of legal advice that Mr Odey received.

February and March 2022 - the new joiner allegation

584. Things became even more difficult for Mr Odey in February and in March 2022 for a separate reason. An additional allegation of breach of the FWW emerged and was communicated to the second ExCo. It was referred to by the parties as 'the new joiner allegation', because it involved Mr Odey's behaviour during the induction process for a new employee at the firm.

585. On 8 February 2022 Mr Richards had a conversation with an employee called JT regarding the departure of a recently joined fund manager, Mr Marshall-Lee, who resigned on 2 February 2022. During their discussion on that subject, JT told Mr Richards about a conversation he had with a new joiner – a female employee who had joined the firm in March 2021, a month after Mr Odey had received his FWW.

586. Mr Richards noted in a file note dated 16 February 2022 that JT said that the new joiner had said to JT that: when she had joined OAM Mr Odey had given her a tour of the office, and in doing so had "touched her bottom". The new joiner also "had expressed a desire for this matter not to be escalated."

587. Mr Richards made Mr Kelton aware of this on 16 February 2022 and they sought legal advice from HSF. He had an urgent call with HSF and then circulated his file note to them after the call.

588. On 3 March 2022 Mr Richards held an interview with the new joiner herself and told her that it had been put to him that she may have been the recipient of some inappropriate behaviour during a tour of the office. His 'meeting note' of what the new joiner said expanded upon the original hearsay version of the complaint, although the allegation of her bottom being touched was not raised.

Details of the new joiner allegation

589. The new joiner stated that when she had gone on a tour of the office on 17 March 2021, before officially joining as a new employee on 7 June 2021, Mr Odey had taken her hand and this had made her uncomfortable and she removed her hand. She also stated that the same day, she had attended a lunch with Mr Odey and some external guests, at which the conversation topics were of an inappropriate nature for the workplace, and had made her uncomfortable such that she left the table once she had finished eating. The conversation topics included an anecdote about a mutual acquaintance who engaged in a sexual act with a secretary at a workplace on a work desk and discussion of the idea of placing security cameras to record the end of meetings/dates with women so as to record evidence of consent to sexual activity (for the avoidance of doubt this did not relate to Odey employees or Odey offices). She did add that she continued to feel very comfortable at work since joining in June 2021 and to date had had no further adverse interactions with Mr Odey.

590. It is not surprising that the new joiner had not wished to raise or pursue the matter given she had got on well in the firm since arriving in June 2021. It may also have been something that she did not want to talk about as Mr Richards suggested in cross-examination. That does not mean it was not a potential breach of the conditions in the FWW. The incident had occurred on 17 March 2021 – six weeks after the FWW and the day after the Town Hall meeting at which Mr Pearey informed staff about the measures taken in light of the 1DH and findings about Mr Odey.

The investigation and consequences

591. Mr Richards sent to HSF on 7 March 2022 his note of his meeting with the new joiner. The lawyers gave advice in an email dated 10 March 2022. The advice suggested a number of matters by way of next steps. It included advice on conducting an interview with Mr Odey– to meet with Mr Odey as part of the investigation to seek his view on the new facts and record his response. It also considered safeguarding measures pending the disciplinary process – such as Mr Odey working from home or going on sabbatical, with the latter being the option advised to be more likely the desired result from the Authority.

592. In the following weeks, there were then discussions, amongst a number of other matters, concerning potential safeguarding measures to be imposed on Mr Odey while working at OAM. Those discussions were between ExCo and Mr Odey and also HSF and Kingsley Napley, their respective lawyers. In addition to the two options considered in HSF's initial advice, a third option was canvassed. This was that Mr Odey could work at OAM but in the lower ground floor of the office, a floor of the building with its own separate entrance and which was also used for entertaining clients.

593. HSF, who were also acting for OAM in respect of the Authority's enforcement investigation into the firm, notified the Authority by letter on 21 March 2022 of the new joiner allegation. The letter confirmed the matter would "form part of OAM's internal process", that it had only come to the attention of OAM very recently and it had not yet been discussed with Mr Odey.

594. In addition, on 21 March 2022, Mr Richards sent to Mr Odey for comment a draft letter proposed to be sent to Mr Low at the Authority which was said to follow a discussion Mr Richards and Mr Odey had had that morning. The draft mentioned the merit of deferring the conclusion of OAM's disciplinary process until after the FCA enforcement investigation had reached its conclusion. It stated that in light of the new allegation it would be much more efficient for all parties if the second ExCo were able to consider the position and all the relevant facts in the round including taking account of the Authority's position. The draft also contained options regarding the safeguarding proposals.

595. It is unknown if the draft was sent, and in what form, but it reflects Mr Odey's stated position on alignment rather than Mr Richards'. Mr Richards decided it was necessary to write to the Authority because although it had been agreed at the meeting on 15 February 2022 that Mr Odey would write to the Authority regarding his position on the timing of the 2DH as against the Enforcement investigation, no such letter had been sent.

596. On 23 March 2022 Mr Richards prepared a note of a meeting he had had with Mr Odey about the new joiner allegation. He could not be sure of the precise date of the meeting, 21 or 23 March 2022, or whether there were one or two meetings. He could not be sure whether Mr Kelton was present but Mr Kelton is recorded as also being present in the note.

597. Mr Richards stated in his statement that "the tone of the meeting was aggressive". Mr Richards' note records that during that call Mr Odey requested the name of the new joiner complainant, which Mr Richards gave. Mr Odey stated he would "not take a sabbatical and would not work from home. ExCo can only remove CO if he commits a criminal activity." Mr Richards informed Mr Odey that without controls being in place at OAM, ExCo had been advised that the Authority may require the disciplinary hearing to be held as soon as possible. Mr Odey stated that ExCo should just get on with the disciplinary hearing, which Mr Richards stated that he understood Mr Odey saying this to be on the proviso that it would clear him.

598. The note records Mr Odey also stating that, "if ExCo made an adverse finding against him, he would close the firm down, litigate against ExCo on a personal basis, and remove the D&O cover in place at the firm so that ExCo would not have access to it to defend themselves." Mr Richards told Mr Odey that the threat was unhelpful and made the firm's ability to continue taking subscriptions difficult. Mr Odey then "moved to retract". There is a dispute as to whether Mr Odey actually made a threat to remove the D&O cover – the indemnity insurance – or threatened to sue ExCo on a personal basis and that this would be damaging because there was no D&O cover in place. It does not much matter either way because there was agreed to be a threat made by Mr Odey to litigate against the second ExCo on a personal basis in circumstances where there would be no insurance policy for them to fund their defence, unless ExCo did as he wished.

599. We find it likely that Mr Richards' note is reliable because it was relatively contemporaneous and Mr Richards believed it was accurate caveated only by the question of the point in time of the availability of D&O cover regardless. The note is consistent with Mr Kelton's evidence about the type of threats Mr Odey was making at the time. Mr Kelton's statement states that Mr Odey "threatened to take away our D&O insurance and then sue us personally", and he was not cross examined on that. In his Enforcement interview with the Authority, Mr Kelton recorded threats Mr Odey was making such as "I will take your insurance away, I will sue you."

600. This meeting, in the period 21-23 March 2022, demonstrates the continued threats by Mr Odey to close down the business and that he would not contemplate safeguarding measures of any kind being imposed upon him. It was also the first time Mr Richards felt Mr Odey was trying to demonstrate the potential personal implications for him and Mr Kelton in taking an adverse decision against Mr Odey. Mr Richards did caveat his evidence by stating that he did not know if Mr Odey meant his threats or not and it may have been a negotiating tactic on them to put pressure on ExCo to exonerate him. However, we find that it was not an unrealistic threat and Mr Richards could believe Mr Odey carrying it out. Furthermore, we are satisfied that the pressure used by Mr Odey to attempt to manipulate the outcome of the 2DH or the disciplinary process itself was inappropriate.

601. On 23 March 2022 Mr Satt resigned, giving notice to 30 June 2022, and Mr Richards notified the Authority of this.

602. On 28 March 2022 Mr Richards and Mr Kelton had two meetings with Mr Odey regarding safeguarding – the conditions on which Mr Odey should remain working for OAM in light of the further allegation of breach of the FWW contained in the new joiner complaint and ongoing disciplinary proceedings.

603. At the first meeting Mr Richards explained that the safeguarding proposals had been back and forth via Kingsley Napley and HSF and their respective clients. The proposals included a plan to have a segregation of staff into two office suites that had their own access, meeting rooms and facilities. Mr Odey advised that he would not support such a move and that not having his PA sit next to him was simply not an idea he would entertain. Mr Odey "outlined his view that only addressing his role as F&P was relevant, HR law did not matter here and only a finding on the matter would be accepted by him."

604. Mr Richards advised that the legal advice OAM had received was clear that HR procedures / safeguarding matters were relevant. In response to this Mr Odey called him "fucking spineless" and said that ExCo didn't have to follow legal advice. Mr Odey stated that if ExCo continued considering safeguarding measures, he would consider winding down the firm. Mr Odey further stated that, "If ExCo would not move on this matter then he would have to take over the running of the firm again and deal with the FCA directly. The FCA did not want a disorderly wind down and therefore would have to accept this." Mr Richards and Mr Kelton indicated that if they were unable to carry out their duties then they may need to resign. Mr Odey's behaviour was again, inappropriate.

605. There was then a call between Mr Odey and Mr Low of the Authority which Mr Low recorded in an email that evening on 28 March 2022. Mr Low stated that Mr Odey called to discuss the current situation regarding his ExCo, the conflicts of the owner / employee partnership model and his potential desire to sell down his majority stake in the company. Mr Low stated that contrary to prior conversations, the overall tone was genial.

606. In that call Mr Odey stated that the ExCo were "very worried about what the FCA may do to them". He misrepresented the position regarding the second ExCo saying they were continuing to struggle with the responsibility of the situation. Again, this was misleading in circumstances where in fact the members of second ExCo were worried about being able to perform their duties because of Mr Odey's threats. Mr Odey also stated that "Legal counsel is very scared by 'you lot' and want to bend over backwards to facilitate." Mr Odey had no reason to believe that HSF, OAM's lawyers, were scared of the Authority, or that their advice was driven by any such fear.

607. Mr Odey then stated to Mr Low that he did not want to close the business down and one of the ways forward was selling it – then the new owners would have a choice about what to do with him. If they, the new owners, chose to sack him, he would sue them. We are not satisfied that this proposal to sell the business was meant seriously; Mr Odey was not planning to sell the business – he had demonstrated that ownership of OAM, the company he built, was fundamental to him and he would rather close it down rather than it carry on without him, if he were to be sacked. He wanted to stay in place and so was attempting to buy time and delay or postpone the Enforcement investigation and the 2DH.

608. In reply, Mr Low repeated the Authority's position that the Supervision Division were "neutral on the outcome" of the disciplinary proceedings, and were not aware of the full facts surrounding the alleged conduct breaches, so were not in a position to offer advice on

best next steps. However, Mr Low stated that ExCo's "apparent procrastination is not a good situation and is indicative of the conflicts and their short tenure in the roles." He stated that the situation needed to be moved forward toward an appropriate resolution.

609. Thereafter, on the same date, there was a further meeting between Mr Odey and Mr Kelton and Mr Richards. According to Mr Richards' meeting note, it took place on the fifth floor of OAM. In the course of that meeting, Mr Odey told the second ExCo that he had spoken with Mr Low and that Mr Low had said the following, but Mr Richards noted that the report by Mr Odey of what Mr Low said was "not substantiated by OK [Mr Kelton]/TR [Mr Richards] at the time of the meeting".

610. Mr Odey said to Mr Richards and Mr Kelton that Mr Low was sympathetic to the position of OAM / Mr Odey and the Authority would likely accept the alignment of the disciplinary proceedings / enforcement investigation but Mr Low would not be the decision maker. This was a false representation of what Mr Low had said. Quite the reverse, all that Mr Low had stated in relation to the disciplinary process was that any delay was not good. Mr Richards was right to question in his note whether he had been told the truth by Mr Odey.

611. On 30 March 2022, Mr Richards wrote to Mr Cornwell of the Authority on behalf of OAM. He stated, "We are aware that the ExCo, on behalf of the firm, needs to reach its own view as to the conduct of Crispin Odey…In addition to the matter of which the FCA is already aware, the matters which we are considering will include a set of facts which have come to our attention which post-date the final written warning issued to Mr Odey on 4 February 2021." He was referring to the new joiner allegation.

612. Mr Richards went on to say, "As you know, this is a difficult situation. In addition, we understand that Mr Odey is now exploring opportunities to sell the business". In fact, Mr Odey did not pursue the sale of the business and, as we have found, it was not his settled intention to do so. This much is obvious from what happened the following day as we set out below.

613. Mr Richards also stated in the letter that, "In light of this development, it remains our view that there is significant merit in deferring the conclusion of the internal disciplinary process until after the FCA enforcement investigation has reached its conclusion."

<u>The removal of the second ExCo – 31 March 2022</u>

614. On 31 March 2022, before the Authority could reply to Mr Richards' letter, Mr Odey removed the second ExCo. He again, appointed himself as sole member and did so by written resolution. Again, Mr Odey signed the resolution in his personal capacity as a member of OAM and on behalf of OAMG. While it was his position as controller of OAMG that carried 97% of voting rights, by virtue of the partnership agreement the vote required his participation as a member of OAM in addition in order to be quorate.

615. We address below Mr Odey's lack of integrity in removing the second ExCo. In summary, he removed Mr Richards and Mr Kelton because it was clear to Mr Odey that they would not simply follow his wishes but were prepared to act independently and were prepared to consider continuing to hold a 2DH at which Mr Odey would have been held to account. That may have included his dismissal from the firm. That was too much for Mr Odey to contemplate and he would not permit any dismissal from his own firm, even if it were through a proper and fair process.

616. On 31 March 2022, Mr Richards resigned from OAM giving three months' notice. Once again Mr Satt was the firm's only approved SMF but his time as an employee was about to end because he was due to leave on 30 June 2022 having given notice on 23 March 2022.

Events between April and September 2022

617. Mr Low, Mr Cornwell and Vandan Khandelwal of the Authority visited OAM's offices on 13 April 2022 and held a series of five meetings with OAM employees alone or in pairs, variously Mr Odey, Mr Satt, Mr Hanbury and Mr Richards. The purpose of the meetings was the Supervision Division's need to understand OAM's plan for putting an appropriate governance structure in place and the timescales. The concern was that the firm was not meeting its minimum requirements as per the Authority's Threshold Conditions.

618. In the first meeting Mr Odey misrepresented to the Authority the reasons why he had removed both ExCos stating that he "acknowledged that it is not a good thing and it has been unfortunate that both ExCos have fallen on how to progress with the disciplinary hearing. They took too much time and he wanted to see people making decisions." This misrepresentation we address in relation to the Fifth Allegation. Mr Odey had in fact been seeking either indefinite postponement, delay or alignment of the 2DH rather than a quick decision – because it was clear that the ExCo was not prepared to succumb to his pressure and guarantee he would not be held to account or dismissed. A quick decision was only acceptable if it meant Mr Odey remaining at the firm.

619. Between April and September 2022 Mr Odey attempted to appoint an independent non-executive director ("**INED**") to ExCo – including approaching individuals with whom he had prior personal or professional relationships such as Michael Dobson. He was trying to assemble a third ExCo while all the time remaining the sole member of ExCo, and without any SMF approval, in breach of all the regulatory requirements set out above. This was a much longer period than the 18 days between 24 December 2021 and 12 January 2022 because it lasted over three months from 31 March 2022 to 4 July 2022.

620. Mr Odey reapproached Mr Hanbury to re-join ExCo. He sent Mr Hanbury a text message on 1 June 2022 stating: "Sorry to bother you in the middle of half term but we need to tell the FCA who ultimately we will have on the ExCo and that includes you and Michael Ede and myself plus a new chairman and CEO. Because they have to decide that I am fit and proper to allow me on the EXCO it relieves you and Michael of the pressure. By the time you are sworn in the hearing should be unimportant." Mr Odey continued to believe that the Authority would rule him F&P and that the third ExCo would have to follow this decision. He wanted to apply to the Authority for himself to be approved as an SMF27, as he did on 6 June 2022, which would force them to make this decision on his fitness.

621. On 20 June 2022 Mr Satt gave an exit interview. He said his reason for leaving was that he had been at the firm for eight years and was ready for a change; it had been a challenging period in the last two years with the Authority and Mr Odey's matters. He mentioned that Mr Odey offered him one million pounds to stay at the firm which offer he had turned down but he stated that OAM could not have retained him, even for a million pounds. There was no denial of the offer by Mr Odey. The closest it got was that in cross-examination of the witness, Mr Odey's case was put that £1 million was not a significant amount of money for him, such that he had no recollection of even discussing it with Mr Satt and it might even have been an amount he might joke about. We accept the Authority's submission that this was not a joke.

The third ExCo

622. On 6 June 2022, Mr Odey submitted a Form A to the Authority for approval to perform the SMF27 (Partner) function on his own behalf. Subsequently, on or around 15 June 2022, OAM submitted applications to the Authority for the approval of the appointment of two internal OAM employees, Mr Martin (a fund manager) and Mr Ede (the CFO, who had been Mr Richards' subordinate but took over his job when Mr Richards became COO in 2018).

623. On 4 July 2022, Mr Odey appointed Mr Peter Martin ("**Mr Martin**") and Mr Michael Ede ("**Mr Ede**") to ExCo as two additional members to himself ("the **third ExCo")**. Mr Martin had been an employee of OAM since 2011. Mr Martin and Mr Ede, at the time of the removal of second ExCo on 31 March 2022, had no experience of governance at OAM and were not partners. They were able to carry out the SMF27 functions in the interim having made their applications for approval to the Authority in June. The replacement for Mr Satt as head of compliance, Rupert Brown ("**Mr Brown**") who had been employed only on 29 June 2022, resigned on the same day. His notice period expired on 13 September 2022.

624. On 19 July 2022, Mr Odey withdrew his own application to the Authority for approval - the Authority having indicated on 7 July 2022 that it was minded to refuse the application and inviting him to withdraw.

625. Mr Ede and Mr Martin were later approved by the Authority on 26 October 2022. Mr Martin had a SMF27 interview with the Authority on 27 September 2022. In that interview Mr Martin set out what he understood had caused the allegation of Mr Odey breaching the terms of the FWW. Mr Martin stated, "CO reported he had given the girl his phone number to help her get a job – If that is the case, I do not see this as a major breach.". Mr Martin's understanding appears to have been based on statements made by Mr Odey.

626. At around the same time, on 22 September 2022 the third ExCo was joined by Mr Jeremy Arnold ("**Mr Arnold**") in a non-executive capacity as an INED and third member. Mr Arnold was a solicitor for the firm Charles Russell Speechlys specialising in private client and high net worth individuals. OAM had at the same time instructed this solicitor's firm to advise it in relation to the disciplinary issues. In his INED interview with the Authority on 5 October 2022 "JA" [Mr Arnold], "said he had read the final written warning but had not read the subsequent self-reporting by Mr Odey." It appears that Mr Arnold also believed that Mr Odey had self-reported the potential breach of the FWW.

627. We should stress that neither Mr Martin nor Mr Arnold have given evidence on any matters and are not the subject of any action by the Authority. The Authority opened no investigation into the third ExCo nor took any action regarding the outcome of the 2DH. We make no criticism nor adverse findings against either of them. They depended on what they were told by Mr Odey.

Events following the conclusion of the Relevant Period on 17 November 2022

The 2DH and decision made by the third ExCo

628. On 17 November 2022, the third ExCo sent a letter to Mr Odey reconvening the 2DH. The 2DH took place at 9am on 28 November 2022 at OAM's offices, nearly one year after its original intended date of 14 December 2021.

629. Mr Odey attended together with his lawyer, Mr Salveson of Kingsley Napley and the three members of the disciplinary panel, the third ExCo consisting of Mr Martin, Mr Ede and Mr Arnold. Ms Jane Masey attended in her capacity as OAM's HR representative and note taker. The hearing lasted approximately 90 minutes and the file note of the meeting is 6 pages long. Questions were asked and answers given by Mr Odey about the allegations of breaches of the FWW involving the temporary receptionist and new joiner. Mr Salveson made further comments additional to written submissions that had been filed on Mr Odey's behalf.

630. On 13 December 2022, Mr Martin on behalf of the third ExCo sent an outcome letter to Mr Odey following the 2DH. It was 18 pages long. It included six findings made and the sanctions imposed by the third ExCo sitting as the disciplinary panel on Mr Odey's breaches of the FWW:

i) that Mr Odey did ask the receptionist for contact details while she was a member of staff but the evidence pointed to a mutual consensual exchange of numbers on the basis that Mr Odey might have been able to support her Reiki business and the details were not obtained in a predatory or inappropriate manner but as part of a natural decision to exchange contact details. It noted that Mr Pearey was satisfied on 13 August 2021 that there had been no breach and that the matter could be closed. On that basis the panel did not consider it to be a breach of the FWW. However, the panel found that Mr Odey had, on a balance of probabilities, been disingenuous with Mr Pearey in August 2021 on the topic of his relationship with the temporary Receptionist – he concealed the lunch opportunity from Mr Pearey when they discussed the matter on 13 August 2021;

ii) that Mr Odey did invite the temporary receptionist to lunch without approval in August 2021 but it was unambiguously clear that the lunch was welcomed by her and fully consensual between two consenting adults. It was a technical breach of the terms of the FWW only;

iii) that Mr Odey did exchange non-work messages with the temporary receptionist over iMessage in August 2021 however this was fully consensual and a mutual exchange of mobile numbers between consenting adults. It was a technical breach of the terms of the FWW only;

iv) that Mr Odey did not make inappropriate comments to or about the temporary receptionist. While she was initially embarrassed when he made the comment about her 'taking a lover' the remarks were taken in the spirit of a warm friendship. She had given written evidence that Mr Odey attempted to kiss her but was politely rebuffed – she said that she ducked the kiss. There was no impropriety in this action although the third ExCo noted that Mr Odey denied the attempted kiss took place. They found that there was some misreading of signals between two adults;

v) Mr Odey did make physical contact with the new joiner but it was not deliberate and likely an inadvertent touch. It did not amount to a breach of the FWW – the new joiner continued to work at the LLP and felt comfortable to work both at the LLP and with Mr Odey;

vi) Mr Odey did not make inappropriate comments to the new joiner. There was an inappropriate conversation that took place over lunch on the day in question but the comments appear to have been made by the external attendees or alternatively made as part of contributions to the wider conversation between the group. There was no breach of the FWW in this respect.

631. Only two "technical" breaches of the FWW were therefore upheld. That letter concluded that Mr Odey had breached the FWW, but these were "technical" breaches: "We do not consider that there was any substantive breach or inappropriate conduct by you that can reasonably be described as harassment (whether sexual or on the ground of sex)." The letter concluded that it was not appropriate to apply either dismissal or financial sanction against Mr Odey having considered the findings of two technical breaches and "the wider context of your historical relationship with the LLP".

632. The sanctions imposed were that Mr Odey was (a) required to undertake further compulsory individualised training in DEI [Diversity, Equity and Inclusion] and anti-harassment, (b) subjected to a one-year management embargo from becoming involved in the management of the LLP, and (c) required to comply with the terms of the FWW for 12 months from the date of the letter, but with the examples of inappropriate conduct no longer to apply. The new FWW was therefore shortened in duration and more generous in effect despite him having found to have breached the original FWW.

633. Mr Odey signed the letter on 21 December 2022.

634. The decision letter states: "In reaching our decision it has been instructive to us that the measures were in part, unworkable and extended too far as a restriction upon your personal, private and work life in the long-term. It is particularly important to note that, as drafted these measures contained no time limitation, which meant that they were effectively indefinite in length. We also take into account KN's [Kingsley Napley's] submissions about your lack of focus at the time you signed the Final Warning letter…as is your reasoning for failing to appeal the measures. It seems to us that the timing of the issuance of the Final Warning letter was unfortunate, coming as it did so shortly before your criminal trial began and at a time of great personal upheaval…".

635. The findings we have made regarding the 1DH and findings made by the first ExCo differ from these conclusions about the FWW. We have had the opportunity to hear Mr Odey's account tested in cross-examination – and we have rejected Mr Odey's account as to why he did not appeal the 1DH findings and measures.

636. We address below Mr Odey's reliance on the third ExCo's findings on the 2DH and sanction imposed which fell short of dismissal. To the extent Mr Odey relies on the ultimate result at the 2DH as justifying his removal of the first and second ExCos, we reject it for the reasons set out below. These include that the subsequent decision at the 2DH is not relevant to his integrity and conduct in removing the two ExCos in December 2021 and March 2022 and that the third ExCo did not have copies before it nor sight of significant relevant evidence such as the 1S&S when making its decision.

637. On 9 February 2023 OAM retrospectively certified Mr Odey as fit and proper, having been due to carry out that certification process in March 2022 but having been unable to do so as a result of the delays to the 2DH.

638. On 23 February 2023 the Authority notified Mr Odey it had changed the scope of the enforcement investigation into him from the original terms relating to allegations of sexualised misconduct and inappropriate behaviour towards women (NFM) into the current allegations of lack of integrity in corporate governance in removing the first and second

ExCos in December 2021 and March 2022. On 21-22 June 2022 Mr Odey had been interviewed by the Authority in relation to the enforcement investigation in relation to his sexual misconduct. On 12-13 September 2023 he was interviewed by the Authority in relation to the corporate governance investigation.

<u>The FT articles in June 2023, dismissal of Mr Odey from OAM & Authority's investigations</u>

639. In June 2023, the Financial Times ("**FT**") published articles containing further, and serious, allegations of sexual misconduct. We have not taken into account or considered the allegations contained in those articles which were due to be the subject of concurrent court proceedings. The FT articles in part may have led to the withdrawal of large amounts of investment in OAM's funds. OAM's Prime Brokers and other counterparties had withdrawn services, and liquidity had begun to be removed. On 14 June 2023 OAM announced that it was re-housing funds and transferring certain fund activities to other asset managers.

640. Mr Odey was ultimately dismissed from OAM in June 2023 shortly after the FT articles. The reasons for his ultimate dismissal by the third ExCo in June 2023, six months after the 2DH, were not relevant to these proceedings. Without the need to make any findings, it is likely that the loss of investment funds and non-financial (i.e. reputational) damage caused by the new and detailed allegations contained in the FT articles meant the third ExCo took into account different factors in making their decision from the one they made in December 2022. The allegations and circumstances in June 2023 were different from those in December 2022 or in the Relevant Period.

641. As set out above, in September 2023, Mr Odey was interviewed by the Authority in relation to the enforcement investigation that led to the Decision Notice and current reference.

642. The Authority's enforcement investigation into OAM, including in relation to the 1DH, was concluded without action taken against the firm on 11 December 2023.

643. On 24 May 2024 OAM ceased being authorised by the Authority. Mr Odey having left OAM in June 2023, was readmitted as the only partner in September 2024 following a settlement agreement with the outgoing partners.

644. On 3 March 2025 the Authority issued its Decision Notice in this matter and Mr Odey referred it to the Tribunal on 5 March 2025.

EVALUATION OF FACTS AND CONCLUSIONS ON ALLEGATIONS

645. We have already addressed some of Mr Odey's factual contentions, rejecting most of the disputed ones, in our findings of fact. We now address and reject Mr Odey's case on the Five Allegations. In doing so, we will make some additional findings of fact. We will then evaluate and come to conclusions upon the Authority's Five Allegations that Mr Odey lacked integrity. In doing so, we have largely accepted the submissions made on behalf of the Authority.

THE FIRST ALLEGATION

<u>Mr Odey's removal of both ExCos was deliberately intended to frustrate OAM's disciplinary process and limit his personal accountability; was motivated by Mr Odey's self-interest to avoid the risk of dismissal in respect of his own misconduct, and to avoid or minimise scrutiny</u>

of any further allegations of misconduct against him in future ("**the First Allegation**")

Addressing Mr Odey's case on the First Allegation – Asserted justifications for the removal of both ExCos

646. As we have set out above, Mr Odey relies on a number of arguments and stated beliefs in support of his contention that he did not lack integrity in removing the first and second ExCos. We address the asserted justifications in turn and rely on our findings made above but amplify them with further findings before making evaluative judgments.

647. We begin by making some general observations.

648. We do not accept Mr Odey's major contention that his conduct at any stage can be justified by the 'unprecedented circumstances' in which he found himself or an existential threat to the business he founded and owned. First, many of these purported justifications were not motivating factors and beliefs he held at the time, and second, even if they were, could not reasonably justify his actions. His perception of injustice could not justify him removing OAM's primary and apex governance structure and putting the firm in breach of regulatory obligations and creating risk for its employees and investors.

649. Mr Odey's asserted justifications were primarily relied upon after the event and were not in his mind nor asserted at the time nor relatively contemporaneously. Alternatively, even if he believed and asserted the justifications at the time, there was no reasonable basis for his beliefs. Further, even if any of the asserted justifications were genuinely part of Mr Odey's beliefs and motivations at the time in 2021 and 2022, they do not justify his conduct in any objectively reasonable way. For example, even if he truly believed he was the victim of injustice at the time of the 2DH proceedings before the first or second ExCos, he had legitimate avenues in which he may have pursued this – for example by internal challenges or appeals to any unfair process or outcome in the 2DH within OAM or external legal challenges. He never sought to pursue these or make any formal complaint or even raise any informal complaint.

650. Mr Odey also gave changing explanations attempting to justify his actions in removing the two ExCos. These do not hide the fact that he had no reasonable justification for doing so – he was motivated by self-interest to avoid a 2DH and the outcome of dismissal that he feared.

651. In rejecting each of the justifications relied upon by Mr Odey below, we rely upon the findings of fact we have already made in the section above. We make some additional findings in reaching our conclusions and rejecting the submissions and evidence relied upon by Mr Odey.

A. Unfairness

1.Unfairness of the 2DH

Submissions and evidence relied upon on behalf of Mr Odey

652. Mr Williamson KC and Mr Mansell, for Mr Odey, submit that key to the First and Second Allegations is the question of pressure. In this case, the pressure arose from the Authority's unstoppable force meeting Mr Odey's right to insist on a fair hearing. It is Mr Odey's case that the Authority exerted inappropriate pressure over the first and second ExCos such that he could not receive a fair hearing. The Authority did so as it viewed Mr

Odey's continued performance of his certified function as an ongoing regulatory risk which needed to be, in its words, "cauterised".

653. They contend that the opposing pressure point, which created the Gordian Knot which neither the first nor second ExCo was equipped to unravel, was that Mr Odey was entitled, as an employee, to a fair hearing. He was entitled to insist upon that right, and to exercise his rights as majority shareholder to ensure it was fulfilled. Mr Odey believed that a hearing before an impartial panel would afford him a proper opportunity to argue his case and persuade the firm, as he eventually did, that the alleged breach of the FWW did not require his dismissal.

654. Counsel argue that the unfairness of the disciplinary process to which Mr Odey was subject was principally the product of inappropriate supervisory focus on outcome, coupled with the clear and unambiguous legal advice that Mr Odey was "toast", given by a conflicted adviser whose previous advice had contributed to the firm being placed under regulatory investigation.

655. They submit that, perhaps because the result was pre-determined, the usual safeguards to ensure the impartiality and objectivity of the inquiry were simply not adhered to. Whilst Mr Pearey told the Tribunal that he was "aware of the necessity to avoid the appearance of conflict", his actions demonstrated that this was no more than lip service. Mr Pearey and the First ExCo were hopelessly conflicted on a number of levels, as follows.

656. They rely on the assertion that Mr Pearey was tasked to both investigate the breach of the FWW and chair the 2DH to which Mr Odey was subject. He accepted that he had conducted an interview with Mr Odey "to ask a series of questions as to his involvement." Natural justice dictates that a decision maker should not investigate the matters upon which a decision is required. Mr Pearey accepted he was a crucial witness as to the conversation that took place in August 2021 between himself and Mr Odey at which it was alleged he reminded Mr Odey of the terms of the FWW.

657. Counsel argue that natural justice dictates that an investigator and /or decision maker should not be a witness to matters upon which a decision is required. This was especially important as Mr Pearey accepted his note of that meeting in August 2021 was not contemporaneous and critically made no reference to his disputed oral account that he instructed Mr Odey to delete the contact details of the temporary receptionist and not go for lunch. The following exchange regarding the note is informative: "AWKC: This note was written at a significantly later point, I suggest? TP: At a later point, yes. Sorry, I do not know when that note was written." And later "AWKC: And so no mention of delete details and no mention of don't go for lunch? TP: No, evidently not in that."

658. They submit that natural justice dictates that a decision maker should be objective and not swayed by emotion. Yet Mr Pearey conceded that, with regard to the breach he was investigating, he felt cross with Mr Odey and that Mr Odey, "was imperilling everyone's position." They submit that natural justice dictates that a decision maker should not have to rule on the appropriateness of his or her own previous decision. Yet Mr Pearey knew that the scope of the FWW, given its indefinite length, may be a relevant issue for the disciplinary hearing, as he had chaired the Panel which had initially imposed it. They submit that natural justice dictates that the decision maker should not be incentivised by the decision they are required to make, yet Mr Pearey also stood to benefit from Mr Odey's removal from the firm.

659. Counsel contend that the first ExCo had been advised Mr Odey was "toast", that the choice facing the first ExCo was whether they wanted to go down with him, and further that the firm pro-actively dismissing Mr Odey might have a positive effect on the Authority's investigation into the firm.

660. They argue that, given the situation, Mr Odey's rights as an employee to appeal any decision to dismiss him were in fact theoretical rather than substantive. The same unfairness that contaminated the disciplinary hearing would equally have contaminated any appeal. As Mr Odey explained in cross-examination and in response to the chair's questions: "Since I didn't believe it was properly constituted, there was no point in appealing a disciplinary hearing that I didn't feel was properly constituted." Mr Justice Thompsell: "Well, you could give that as a ground of appeal?" CO: "I wasn't really thinking in those terms, I have to say. Mr Justice Thompsell: Can I ask you who the appeal would have been to?" CO: "Exactly, to the same people who had just dismissed me."

661. Counsel rely on the fact that under the firm's procedures there was in fact no one more senior to hear such an appeal: "Mr Justice Thompsell: …would you foresee a difficulty in that the appeal was meant to be to a more senior manager than that that had conducted the original hearing?" CO: "But there was no more senior manager."

662. They contend that the first ExCo proved itself to be anything but impartial and by 31 March 2022 it was clear that, had Mr Odey not moved again, the second ExCo would have fallen into similar error.

<u>Conclusions and findings</u>

663. Mr Odey relied at the hearing upon the purported 'structural' unfairness of the disciplinary proceedings and 2DH as a reason to justify his removal of the first (and to some extent, second) ExCo.

664. We have rejected most of the argument and evidence already but make some additional findings in coming to our conclusions.

665. This asserted justification was not one relied upon at the time or contemporaneously by Mr Odey but was developed well after 24 December 2021. In his enforcement interview in September 2023 he then raised it stating, "What I was really thinking is I need a fair hearing of this, and I'm worrying that my partners were not going to give me a fair hearing". However, the lack of contemporary belief in the unfairness undermines Mr Odey's argument. In any event there was no objective justification for any belief in unfairness of the 2DH, even if he had held it.

Unfairness of the content

666. We also note that the way Mr Odey's argument as to the unfairness of the disciplinary proceedings has changed. In his oral evidence Mr Odey conceded in cross-examination that it was not the unfairness of the disciplinary proceedings and the 2DH which concerned him but the content of the hearing – by which he also meant the substance or seriousness of the allegations being pursued, the existence of any hearing and any outcome of dismissal. In essence, both then and now, he would not accept that the alleged breaches of the FWW were anything but trivial and that his conduct should be examined and assessed at a 2DH or that it should result in his dismissal.

667. Contrary to the suggestion of Mr Odey that it was the 'content' of the 2DH to which he objected, i.e. that it was unfair to hold the 2DH at all, we consider that it was reasonable

for the first ExCo to decide to hold the 2DH in the first place. There was a case to answer (a prima facie case) for breaches of the FWW, and the second ExCo had received further allegations of breach.

668. The evidence raised in relation to the temporary receptionist allegations and new joiner allegations raised more than reasonable doubts for both ExCos as to whether Mr Odey had complied with the terms or the spirit of the FWW which required investigation and the need for Mr Odey to be held to account at a hearing.

669. The first ExCo was advised by two separate law firms, S&S on 18 November 2021 and Addleshaw Goddard on 22 November 2021, that it needed to hold a disciplinary hearing. This was reasonable advice. There was already a FWW in place as a result of a disciplinary investigation and the 1DH. On the face of it, Mr Odey had breached its conditions in relation to the temporary receptionist. The second ExCo had the benefit of a different law firm still advising, HSF, and further allegations to consider from the new joiner.

670. The first ExCo had further information and evidence in November 2021, when it decided to hold the 2DH, than Mr Pearey had first received in August 2021. It saw the text messages between the temporary receptionist and Mr Odey. Having seen those messages, the first ExCo had significant concerns about whether Mr Odey was complying with the letter and spirit of the FWW. It was rational to recommend a further disciplinary hearing be held.

671. There was prima facie evidence of breach presented. Mr Pearey was given the evidence in the 2S&S that we have now considered and made findings about. Mr Odey had sent the RMS receptionist, a temporary member of staff as covered by the FWW, messages through their personal phone numbers whilst she was still a member of staff in August 2021. As we have found, the communications were not only restricted to helping her with her Reiki business. The messages demonstrated that she was the one who brought the conversation back to that issue. In contrast, Mr Odey sent her messages that made clear he was interested in her personally. He had invited her for lunch without the approval required by the FWW. It is clear from the terms in which, on 11 August 2021, the temporary receptionist both described to Ms Versey her "good banter" with Mr Odey and expressed her concern that Mr Odey might have got the "wrong impression", and also from the terms of his later text messages to her, that he had clearly spent some time in her company, engaged in one-on-one discussions that were not purely for business purposes.

672. On a prima facie basis, and without Mr Odey's explanation, these communications contravened what Mr Odey himself accepted as the purpose and spirit of the FWW, to prevent his attempting to "chat-up" female staff and receptionists in particular. Even the third ExCo, upon whom Mr Odey relies in relation to its findings at the 2DH, later found that Mr Odey had breached the terms of the FWW. They also found, that Mr Odey had concealed the lunch invitation from Mr Pearey which was "disingenuous".

673. The position became even further justified by the second ExCo who had received the new joiner allegation in February and March 2022.

674. The decision to hold and continue with the 2DH would have allowed both ExCos to hear fully Mr Odey's response to the various allegations. At the 1DH, the first ExCo had placed weight on Mr Odey's response - the fact he was contrite and willing to change. It is fair and reasonable against that background, that the ExCos wished to have a proper opportunity to understand from him his stance on these potential breaches.

675. Both ExCo's decisions to hold and continue with the 2DH were rational decisions that could not justify Mr Odey removing them.

Structural unfairness

676. Mr Odey took no steps to challenge the fairness of the second disciplinary process nor 2DH at the time nor asserted that the process was unfair. If he genuinely believed there was any unfairness or it was a motivating factor he could have, for example: asked for the appointment of an external or independent member of ExCo to sit on the 2DH; sought to take a legal challenge against the disciplinary or 2DH or make internal complaints to the firm in correspondence – he had sophisticated lawyers acting for him; he could have awaited the outcome of the 2DH to see if it did result in dismissal – he would only know the outcome once decided and his fear may have been misplaced; if he had not liked the outcome of the 2DH and truly thought the process or outcome was unfair, he could have appealed it or brought a legal challenge to the findings or sanction.

677. Mr Odey did none of these things because any perceived unfairness in the 2DH was not his true motivation for removing the first ExCo. Indeed, the best evidence of this is Mr Odey's oral evidence. In his later asserted explanation before us, he accepted that it was not the process of the 2DH that was his concern but the content: by which he meant the substance of the allegations. He did not believe the allegations of breach of the FWW should warrant the 2DH nor the potential outcome of his dismissal.

678. His answers in cross-examination or questions from the panel illustrate the point:

> "Q. So this was Mr Pearey and ExCo ensuring that they treated you fairly, wasn't it?
>
> A. But the content was unfair. …
>
> Q. So I suggest to you, Mr Odey, that there is nothing unfair whatsoever about the process the executive committee had determined to follow?
>
> A. There was. Not the process, but the content. …
>
> A. My answer was, you know, I had a real argument with the content of this disciplinary hearing.
>
> …
>
> MR JUSTICE THOMPSELL: Was there at any point, can you show us where you made a suggestion of why you thought it was unfair and what needed to be done to remove --
>
> A. The trouble was because it was content, I kept on saying I don't really understand why you are not looking at the facts of the case."

679. As we have found above, in fact the first ExCo and OAM itself went out of its way to make the 2DH fair for Mr Odey. OAM paid for Mr Odey's lawyers. The first ExCo delayed the 2DH from 14 December 2021 to 6 January 2022 because he had changed his legal team. Mr Odey himself complimented the process saying it was a very good process as recorded in the interview with Mr Odey in November 2021 as part of the 2S&S – see the findings above.

680. Even if there were any substance to complaints of unfairness, Mr Odey should reasonably have taken the actions set out above instead of removing the firm's governing body so that no decision could be taken regarding the alleged breach of the FWW and sanction. He should reasonably have taken steps for the 2DH to be conducted in a different way if he had believed there was unfairness. Instead, he sought to indefinitely postpone

the 2DH so no immediate decision would be taken or then, once the second ExCo was in place, to defer it until after the Authority's Enforcement Investigation in an attempt to neuter or derail it.

681. One of Mr Odey's sub-strands for asserting unfairness in the disciplinary process was that there was a lack of independence in the first ExCo which was to conduct the process and hear the 2DH. As before, he did not raise it at the time as it did not form part of his thinking nor motivate him in December 2021. He did not specify what an independent process would have looked like. He accepted that he had no problem with the constitution of the 1DH which was heard by the same people – the first ExCo and Mr Fletcher. Further, Mr Fletcher and Lord Roborough knew Mr Odey well or worked with him for a long time. He did not object to them for lack of independence.

682. The first ExCo was the most suitable body to conduct and hear the 2DH – as well as being consistent with its own procedures. The members had proved themselves to be independent from the Authority in their decision-making – see the findings above. They were most familiar with the FWW and terms of the firm's Staff Handbook. Following consideration of the 1S&S and holding the 1DH they had made findings about his misconduct but decided not to dismiss Mr Odey despite the seriousness of those findings.

683. Further, when Mr Odey sought to appoint an INED for the third ExCo, having removed the second ExCo, his first choice in May 2022 was Michael Dobson who had been his friend for 30 years. Mr Odey considered ""he could not have a better person than MD". His next choice, when Mr Dobson said no, was yet another person whom he knew whom he believed "was a common sense person so I felt he would handle these things in a common sense". Mr Odey's idea of independence was an appointment to ExCo of a person whom he believed would think the same way as he did i.e. dismiss the allegations of breach of the FWW or not dismiss him.

684. Another sub-strand of the asserted unfairness now relied upon by Mr Odey was that Mr Pearey was both investigator and adjudicator in relation to the disciplinary proceedings and 2DH. Mr Odey said that Mr Pearey was a witness to a crucial interchange that would affect proceedings.

685. Again, Mr Odey accepted in cross-examination that this was not a point he thought of at the time. He volunteered that he had not "realised that Pearey was in charge of drawing up the evidence for the disciplinary hearing. I wasn't aware that he was leading the charge on the disciplinary hearing". Mr Odey gave oral evidence that he thought his suggestions about how the process could be made fair "came after the event".

686. The first ExCo were being advised by S&S and they were aware Mr Pearey was holding the interview of Mr Odey as part of the second disciplinary process, which Mr Odey contemporaneously described as very good. S&S never raised any issue about the conduct of the investigation – nor did Mr Odey's lawyers.

687. Further, Mr Pearey was not 'in charge of drawing up the evidence' – S&S were. Mr Pearey's only involvement aside from his note of his conversation with Mr Odey was to conduct the interview with Mr Odey in November 2021. The script was written for him by S&S. Ms Versey took notes. Mr Pearey could not reasonably or properly be said to be leading the investigation nor steering the evidence.

688. Finally, there was no real dispute in the course of the investigation which led to the 2S&S and originally listed 2DH. There was a dispute about whether Mr Odey had

attempted to kiss the temporary receptionist at lunch. However, there was no dispute that the lunch had taken place after the receptionist had left the firm. The real issue that was relevant to the alleged breach of the FWW was whether Mr Odey had exchanged telephone numbers with the receptionist, a female temporary employee, and messaged her privately from his phone in relation to matters other than business and whether he invited her to lunch while she was still a temporary employee. All of that was undisputed.

689. Even if there was any unfairness about Mr Pearey both investigating and adjudicating at the 2DH, and there would be nothing improper about the adjudicator asking the questions, it was academic. In this case the facts of the breaches of the FWW in relation to the receptionist were not disputed. The issue as to whether Mr Odey self-reported his breach of the FWW to Mr Pearey in August 2021 was not in dispute at any time in 2021. The first time Mr Odey ever raised it was in January 2022 after he removed the first ExCo.

690. This asserted unfairness is without merit for all these reasons. It could not reasonably have influenced and did not affect Mr Odey's motivations at the time he removed the first ExCo and is no justification for his conduct. Mr Odey did not attempt in any meaningful way to repeat the argument in relation to his removal of the second ExCo but it was equally unjustified – none of the sub-strands could apply to Mr Richards nor Mr Kelton. They had had nothing to do with the 1DH, nor the second disciplinary investigation.

<u>2.The ExCos had prejudged or pre-determined the outcome of the 2DH</u>

Submissions and evidence relied upon on behalf of Mr Odey

691. Related to Mr Odey's unfairness argument is his complaint that the 2DH had been inappropriately pre-judged or pre-determined by either of the first or second ExCos.

692. Mr Odey's contention is that the first ExCo had pre-determined the outcome of his disciplinary process from the outset.

693. Mr Williamson KC and Mr Mansell rely on the fact that Mr Pearey had told the Authority in interview in May 2023: "Unless Crispin comes up with some new evidence, or otherwise, I cannot see us having any other option than to dismiss him." He had also told the Authority that: "I think we're going to have to dismiss him, unless new evidence comes to light, or during the disciplinary hearing he provides us with other reasonings, which we consider. But, as it stands, based on the evidence gathered, there is a clear breach of the final written warning." Further, Mr Pearey added: "I think I was erring, certainly on the, we don't have a choice here." Mr Pearey also told the Authority: "I think James and Massey, were of a similar view, that we probably didn't have a choice here. And, you know, bear in mind we were also listening to our advisers, so that is the context of that."

694. Counsel contend that in oral evidence at the hearing there was a reluctance on the part of Mr Pearey, Mr Hanbury and Lord Roborough to accept the early determination of the inevitability of Mr Odey's dismissal for the breach of the FWW: he had not had a disciplinary hearing and the opportunity to put his side. Although Lord Roborough told the Tribunal, "I felt like the issue had been determined and we had strong advice on the outcome, but we hadn't reached a conclusion on the outcome because we hadn't had the disciplinary hearing, we hadn't heard Crispin's view on it, his response," the notion that anything Mr Odey said at his disciplinary hearing would have altered the first ExCo's view was simply not realistic, given the inherently conflicted position in which the first ExCo found itself.

695. They submit that in reality, however, Mr Hanbury's statement in interview that the decision was "quite binary" left no room for nuance. Had the first ExCo convened to determine Mr Odey's disciplinary hearing, the outcome was a foregone conclusion. That was that Mr Odey would be dismissed for gross misconduct with the subsequent impact that would have on any future fitness and propriety assessment and the future viability of the firm. Mr Hanbury conceded in cross-examination:

> "Q: The arrows are all pointing in one direction, are they not, Mr Hanbury? You were under investigation, personally liable for failing to dismiss him, the FCA had made a finding that he is not fit and proper to be a controller. Mr Fox is telling you, 'He is toast, the final nail in the coffin, do you want to go down with him?' Objectively speaking, taking yourself out of the frame, as it were, for the moment, that is an overwhelming set of circumstances pointing towards Mr Odey's dismissal, isn't it?
>
> A: Yes, I would say that's right, just looking at that in isolation."

696. In oral closing Mr Williamson KC drew the analogy that if the ExCos had been sitting judicially at the 2DH there would be an appearance of bias such that Mr Odey would not have been able to receive a fair hearing:

> "There is a panel sitting in judgment on an employee and that panel is told by their legal adviser that the rules in this particular area are uncertain but that their jobs are on the line in connection with that decision. That same legal adviser tells the panel that the person being judged is toast. The regulator of each of the members of that panel has expressed a view that a previous decision they made in respect of that person was wrong and that they should have dismissed him and suggested that that previous decision was suspect because of the panel's continued commercial benefit from employing that person, and that at least one member of the panel viewed the person being judged as a roadblock to that panel member's preferred expansion route for the business, an expansion about which they felt so strongly that they were prepared to resign. And lastly, that two members of the panel, in reflection, say that there was overwhelming pressure to find one way. I ask rhetorically: would that independent, imaginary observer say, well, do you know what, there might just be an appearance of bias in that panel?...
>
> Of course, an internal disciplinary procedure isn't the same as the City of London Magistrates or the High Court, the procedural fairness requirements vary, but the requirements of natural justice don't…"

<u>Conclusions and findings</u>

697. We have already rejected most of the points raised in evidence in our findings of fact.

698. We do not consider the analogy with a judicial body to be a good one: the ExCos due to hear the 2DH were internal disciplinary panels within a firm as constituted by the firm's rules – they were not and, by law, never could be independent judicial bodies. Nonetheless, their processes were not unfair for the reasons given above. There are many other distinctions to the analogy drawn – Mr Odey was in fact the greater source of pressure on the ExCo panels and was threatening to close the firm down, entailing the ExCo members losing their jobs, if they found against him. Nonetheless the ExCos demonstrated independence as explained above.

699. The next point to make is that our findings about the first ExCo's evidence are clear. Each of Mr Pearey, Mr Hanbury and Lord Roborough considered it was likely that Mr Odey may be dismissed based on the material that was before them at the time regarding

the receptionist allegation of breach of the FWW, namely the evidence compiled in the 2S&S including Mr Odey's response when questioned. Nonetheless, their evidence was clear that they had not made up their mind at to their findings and potential sanction as of December 2021. Their minds were not closed or shut as regards the result being the dismissal of Mr Odey, or even that the breaches would be proved. They made clear in evidence, supported by the contemporaneous documents which are consistent, that they had not pre-determined the 2DH and were waiting to hear Mr Odey's formal response at a 2DH, together with representations from his newly instructed lawyers, before making any decision. There was nothing inappropriate about forming a preliminary view and making contingency plans in case Mr Odey were dismissed.

700. The reason Mr Odey believed he would be dismissed at the 2DH was not because he believed he was being unfairly pre-judged by the first ExCo but because he realised he had no convincing answer to the allegations. He had breached the FWW and taken actions in clear breach of its terms which he had agreed: that the FWW and 1DH had been last chance to reform his behaviour which he had not taken. His various complaints relied on at the time or subsequently for removing the first ExCo are a smokescreen for his basic realisation that he was going to be held accountable for his actions with a likely outcome with which he disagreed. He unreasonably believed he should not be dismissed because he did not take the allegations seriously. He did not believe his behaviour towards the temporary receptionist was inappropriate or justified dismissal and he did not believe that breaching the terms of the FWW – which was a final warning – was something the firm should act upon. He believed that his own instincts should prevail because he owned the business.

701. In any event, even if there was any unfair pre-determination, or he genuinely believed there to be, Mr Odey should have initially taken it up with the first ExCo – by seeking to make complaints, appoint independent directors to be added to the panel, making a legal challenge prior to the 2DH or awaiting its outcome and then challenging it on an internal appeal and / or in legal proceedings. He did none of those things but removed OAM's primary governance structure instead.

702. Further, there was, at a very minimum, a prima facie case of breach of the FWW: no real factual dispute about the key points establishing the breaches in relation to the temporary receptionist (as there was for the new joiner allegation). It is understandable therefore that any reasonable observer, such as the members of the first ExCo, S&S and others in the Authority thought there was a real possibility or likelihood that he would be dismissed. Mr Odey himself accepted a breach. That everyone thought it likely on the evidence then available that there was a breach did not mean there was an inappropriate pre-judgment of whether there was a breach or of what the consequences of what a breach would be – they were awaiting the 2DH and what Mr Odey would have to say on his own behalf.

703. Mr Odey was going to have his chance to make his case – all members of the first ExCo agreed that this should happen. Mr Pearey had postponed the 2DH from December 2021 to January 2022 so Mr Odey could have further legal advice from his new lawyers. He even chose a day for the meeting – 6 January 2022 – when all of ExCo would be in the same time zone. There was no suggestion that the first ExCo would not give the 2DH its full and proper consideration.

704. As we explain below in more detail, reliance on the result of the 2DH when heard by the third ExCo takes Mr Odey nowhere (even though the third ExCo did find two breaches of the FWW in relation to the temporary receptionist). Any suggestion that Mr Odey

removed the first ExCo because they would not have reached the same decision as that ultimately reached by the third ExCo, cannot be sustained.

705. First, it cannot be assumed that the third ExCo's decision was the right outcome – it is simply a result, his non-dismissal, with which Mr Odey agreed. It cannot be assumed that the first or second ExCo were striving to reach any pre-determined outcome, let alone the one that the third ExCo took. As we explain below, the third ExCo's decision was reached without the benefit of relevant evidence and specialist advice – it cannot be assumed that it was the only reasonable outcome that might have been arrived at. For the reasons explained below and above, it would equally have been reasonable to dismiss Mr Odey. The mere fact the third ExCo concluded that Mr Odey should not be dismissed does not mean that a determination to dismiss him would be unreasonable.

706. It was understandable that Mr Odey's dismissal appeared to be a real possibility even a likely outcome based on the evidence available. That does not mean that the hearing had been unfairly pre-determined.

707. Again, even if there would have been any unfairness in dismissing Mr Odey on the basis of his breaches of the FWW, the proper recourse for Mr Odey was to appeal against that decision. It was not to remove the ExCo before it could even hear what Mr Odey had to say about the issue and make up its mind.

708. At the heart of this argument is the flaw that betrays Mr Odey's motivation and lack of integrity – he was only willing to submit to a governing body that would make a decision with which he agreed, which was not to dismiss him. Far from it being the first ExCo's pre-determination, it was Mr Odey's pre-determination that motivated him.

709. Further, Mr Odey cannot have known what would take place at the 2DH which was eventually heard by the third ExCo many months later. His motivations and actions in removing the first and second ExCos were not aimed at the third ExCo conducting the 2DH – he was seeking to end, indefinitely postpone or defer the 2DH in removing the first ExCo and align or sequence the 2DH in removing the second ExCo – involving a long-term deferral or obstruction of the 2DH taking place. He was not acting at these times in a way to bring about the 2DH taking place before the third ExCo.

710. We find that the unfairness of the 2DH taking place before the first or second ExCo was not a factor that was in Mr Odey's state of mind, or even if it was, it was not a material influence at the time he removed the first and second ExCos. His insistence that all he wanted was a fair hearing is not borne out by the contemporary evidence. It is truer to say that he did not want a hearing where there was a strong possibility that he would be dismissed, whether or not that was fair.

711. Further even if Mr Odey did perceive any unfairness and was motivated by it, it could not have reasonably justified his removal of the ExCos. Mr Odey's primary motivation and real dispute was that he did not believe he should be held to account via the 2DH, and certainly not dismissed, for his breaches of the FWW. He believed that it was not for the firm to investigate him for the alleged or potential breaches of the FWW – as they were trivial – and in any event he should not be dismissed. That was the only outcome he would accept as 'fair'. This was not a reasonable view for him to have held, nor could it reasonably justify his removal of the first and second ExCos.

3.Reliance on the allegation that Mr Pearey was trying to advance his own self-interest

Submissions and evidence relied upon on behalf of Mr Odey

712. Mr Williamson KC and Mr Mansell submit that the proposed transfer of the most profitable part of OAM's existing business to BAM was one which appealed to Mr Pearey, for it would remove any influence Mr Odey continued to hold over the transferred portfolios as Mr Odey would play no part in the management of those funds going forward. The following exchange is informative: "AWKC: …you were to be the CEO of Brook and that that was the more profitable part of the enterprises? …Yes. And you would be the CEO of Brook? TP: Yes, as I was of Odey. AWKC: And as we discussed yesterday, Brook was to have the more profitable of the fund managers within it? TP: Yes, at the time those who - - the funds which we rebranded were profitable, but as was Crispin Odey's fund at the time as well."

713. Mr Odey's case is that, at the time, he was unaware of either these procedural deficiencies or Mr Pearey's duplicity. As Mr Odey told the Tribunal: "I wasn't on the ExCo and I certainly didn't realise what Pearey has already said to everybody else, prior to this. I hadn't realised that Pearey was in charge of drawing up the evidence for the disciplinary hearing. I wasn't aware that he was leading the charge on disciplinary hearing. He was undoubtedly going to be the only person who was chairing that disciplinary hearing because basically James Hanbury and Lord Roborough, they were concentrating on their other jobs and they felt they weren't able to really have any part in this thing because it was in the hands of lawyers."

714. Counsel rely on Mr Odey's evidence as to how and when he came to understand Mr Pearey's motives. He was further questioned: "Mr Odey, are you saying that at this time you didn't realise that Mr Pearey was in your words "promoting his own interests", but you realised it later or are you saying –– CO: Yes, I am saying at the time I blamed the FCA for everything because the way in which he said it was the pressure was coming from the FCA". It was only when Mr Odey, "got control of the company back…in about July/ August 2023 …maybe later", that the extent of Mr Pearey's disloyalty became clear to him: "Mr Justice Thompsell: So are you saying that reading that is what changed your view of Mr Pearey's integrity? CO: As I started to read the communications. Mr Justice Thompsell: So that was towards the end of –– CO: I think it might have been in about July/August of that, of 23, maybe later actually." Counsel submit that, in fact, as Mr Odey confirms in his second witness statement, he did not regain access to OAM's systems until late September 2024.

715. Mr Odey argues that the incentive for Mr Pearey to build his empire may well have been a factor which led to the retrospective drafting of his account of the August 2021 meeting with Mr Odey which refers to details which were highly material to the disciplinary hearing, but which Mr Odey is adamant were not discussed. His counsel contend that Mr Pearey was also deaf to the pleas from Mr Odey to delay the 2DH as the following exchange demonstrates: "AWKC: Did you consider delaying your disciplinary hearing, or at least approaching the FCA to see whether you could delay your disciplinary hearing? TP: No. AWKC: You didn't even consider it, did you? TP: I don't recall considering that. AWKC: No, or even discussing it with the first ExCo TP: I don't recall discussing it".

716. It is submitted that, whether for reasons of self-preservation vis-à-vis the Authority or for reasons of potential personal advancement, Mr Pearey was determined to hold the 2DH. Further, he was contemplating, through the resurrection of the BAM application, a future in which Mr Odey would play no part in the regulated entity, either by actively managing

funds or even as a passive controller. Given Mr Odey's majority shareholding, Mr Pearey's ambitions were in fact entirely divorced from the reality of the situation in which he found himself.

Conclusion and findings

717. In our assessment of the credibility of witnesses and in our findings of fact and above we have already rejected Mr Odey's evidence and case, as pleaded in his Reply, that Mr Pearey "was inappropriately seeking to exploit Mr Odey's position of weakness with the Authority to opportunistically advance his own self-interest within the Firm". In his Reply and his witness statement Mr Odey relied on this as a factor in his mind at the time of the first ExCo's removal.

718. The allegation included that Mr Pearey had led the creation of the BAM brand, which was intended to be separate from Mr Odey who was an obstacle to the Authority authorising BAM so Mr Pearey wanted to get rid of Mr Odey. However, the evidence is not clear that BAM was even a concept that Mr Pearey was leading or wanted to promote. In any event, Mr Pearey had worked with Mr Odey for a long time, and at the 1DH in January 2021 he had chosen not to dismiss Mr Odey when he might have had grounds to do so if he wanted to remove him from the scene. No proper motive has been identified for why it suited Mr Pearey, as opposed to benefiting OAM and its clients and investors, to split the two brands of OAM and BAM. Likewise, if Mr Pearey had wanted to dismiss Mr Odey following the refusal of BAM's authorisation, one might have thought Mr Pearey would use the opportunity in August 2021, when the temporary receptionist allegation was first raised, to open an investigation into Mr Odey's conduct but he did not. Mr Pearey did not initially escalate the potential breach of the FWW to ExCo when first raised in August 2021. It was not progressed until October 2021 when the complaint was raised by RMS.

719. As we have made clear in our findings, this is an example of a justification that was not contemporaneous and Mr Odey has raised after the fact. Mr Odey accepted in cross-examination that in December 2021 he thought Mr Pearey was acting properly which is consistent with the contemporaneous evidence of Mr Odey's attitude towards Mr Pearey. Mr Odey's response to Mr Pearey's resignation in December 2021: "Accepted with great sadness. Happy Christmas. Let's hope that things work out. Warmest regards Crispin". As we have set out above, Mr Odey himself told the Authority in September 2023 that even at that time, he did not think that Mr Pearey had exploited his position of weakness with the Authority opportunistically to advance his own self-interest. He accepted in cross-examination that he thought that Mr Pearey was a man of "great integrity" at the relevant time as he had said to the Authority. It cannot have been a motivating factor at the time in December 2021.

720. Further, the substance of Mr Odey's explanation is undermined by the fact that it was only later, not before September 2024, after trawling through OAM's emails, that he changed his mind about this. More importantly there is no evidential foundation for the allegation beyond Mr Odey's assertion which is unfair and unwarranted. There is no reliable or independent evidence that Mr Pearey had any improper motive to take over at OAM and replace Mr Odey or that he had any animus against Mr Odey, nor that it would have suited him personally to get rid of Mr Odey. We have found that the real motive is that Mr Odey was seeking to undermine and obstruct Mr Pearey in relation to the disciplinary process, including by threats of closing the firm, because he did not want Mr Pearey or the first ExCo to dismiss him.

B. Pressure

1.The Authority’s undue pressure on the firm and its ExCos

Submissions and evidence relied upon on behalf of Mr Odey

721. It is Mr Odey’s case that the Authority sought to impose upon the firm the Authority’s pre-conceived view that he was not fit and proper to perform a certified function at OAM and the fact that he was doing so presented unacceptable regulatory risk. In doing so, and in trying to engineer the outcome of his dismissal from the firm, counsel argue that the Authority crossed the border between appropriate supervisory challenge and inappropriate supervisory pressure.

722. Mr Williamson KC and Mr Mansell submit that in considering whether the Authority exerted inappropriate pressure over the firm it is instructive to break the question into two distinctive parts. First, did the Authority exert pressure on the first ExCo? Second, if so, was that pressure inappropriate? They argue that there was ample evidence that Mr Odey believed at the time that the ExCos were subject to unfair or undue pressure, there was ample evidence that the members of ExCo felt themselves to be under pressure, that that pressure was overwhelming and that that pressure was to do the right thing, and that was to correct the disappointment the Authority had with the 1DH, in other words to dismiss Mr Odey.

723. Counsel contend that the principal evidence of the pressure exerted by the Authority on the first ExCo is found within the Authority’s internal communications, the communications between the Authority and the firm and the witnesses at the firm who interacted with the Authority at relevant points. It seems accepted that there was pressure, although it is the Authority’s case that: "objectively speaking, there was nothing irregular about any step the Authority took towards OAM, including in the period preceding Mr Odey's decision to dismiss First ExCo".

724. They argue that the real issue is whether the pressure exerted by the Authority was inappropriate. If the Authority is unable to establish it did not exert inappropriate pressure, it must prove that Mr Odey’s actions in response to that inappropriate pressure were, in all the circumstances, unreasonable, and that as a result he lacked integrity.

The Authority’s focus on the outcome of OAM’s disciplinary hearing rather than processes

725. Counsel note that it appears to be common ground that regulated firms are responsible for their own decisions. The role of the Authority’s Supervision Division is to supervise: it is not the role of Supervision to direct or manage the firm, or to substitute its decision-making for that of the firm’s senior management. As Mr Cornwell said in oral evidence: "… outcome…. wasn't for us to determine, and it certainly wasn't for me to determine". As the Authority advised the firm in the meeting which took place on 15 February 2022: "It [the Authority] is not in a position to make decisions for OAM". Further, Mr Satt said in his own evidence that: "it’s not for the FCA to run a firm, it’s for the firm to have its own processes, systems and controls in place. However, it does come within the FCA's purview to ask questions and have scrutiny over whether those systems and controls are appropriate, or whether they have been followed."

726. Counsel accept that supervisory interaction which seeks to understand how a firm’s processes operate is legitimate. Mr Odey accepts that such interaction can bring pressure

and any such pressure is part and parcel of the responsibility of being a regulated firm or being an individual who is certified and/or approved.

727. However, they submit that appropriate supervisory pressure has limits. Given Mr Cornwell's concession and Mr Satt's unchallenged evidence, it is not a legitimate use of informal supervisory powers to impose upon a firm the Authority's preferred outcome. Rather, appropriate supervision allows a firm to reach its own decisions in accordance with a proper decision-making process. It must follow that any pressure brought about as a result of illegitimate interaction to achieve particular outcomes or result would be inappropriate.

728. They note that Mr Cornwell in evidence sought to "draw a differential between influence and pressure". In doing so he seemed to accept that influence was appropriate, but pressure was not. Whether termed influence or pressure, where interaction seeks to engineer outcomes rather than test the decision-making process, it oversteps the boundary.

729. Counsel contend that the removal of Mr Odey's ability to perform certified functions was the outcome the Authority desired. Counsel describe the Authority as considering this to be "the right result". As a desired outcome the Authority had statutory tools under FSMA at its disposal which it could have used to try to achieve that outcome. However, those tools involved Mr Odey being afforded rights under a statutory-based enforcement process. Such a process would take time, carry reputational risk, and brought with it no certainty of success.

730. They argue that for the Authority, the simple way to achieve the desired outcome was for the firm itself to dismiss Mr Odey through a disciplinary process. The Authority's internal communications make this strategy clear. The Authority was trying to direct and manage in order to pressure the firm into achieving the "right outcome", even where it knew that the evidential basis for exercising powers was uncertain due to a lack of harm. The Authority was inappropriately using soft power to achieve a certain outcome which under its statutory process, (1) could not be guaranteed, (2) carried reputational risk, and (3) would have taken far longer. It is against that context that Mr Odey's actions must be assessed.

731. They rely on the following examples from the evidence to illustrate the point. First, an internal email in May 2022 from Simon Walls, the interim Director of Wholesale Supervision, summarised the supervisory approach he wished the Authority to adopt. He told his colleagues that, "the right framework for developing the strategy is something like 'establish harms,' 'cauterise' then 'explore/punish' as appropriate." It was a view with which Ms Trost, the Head of Department, agreed.

732. They submit that this is not a strategy focused on the decision-making process but rather on making sure that the right decision is reached. Cauterising is not about understanding process. It is outcome-focused language, and it is strategy which oversteps the boundary between the legitimate role of a supervisor to supervise and the illegitimate role to dictate and manage.

733. Second, on 2 July 2023, Mr Cornwell amended and adopted draft wording being prepared to brief Mr Rathi, the Chief Executive of the Authority, to update the Treasury Select Committee in respect of the supervisory approach adopted in the case of OAM so that it read: "Where we believe firms actions fall short of our expectations we will apply pressure; this may result in change to firm's senior management and governance structures as well as process improvements, reaching the right outcomes without always utilising

formal powers." In a later draft of the email the word "pressure" was replaced with the more neutral "open a supervisory interaction."

734. Counsel argue that the euphemistic language used was designed to conceal the reality of the position: that the Authority had crossed the boundary between a legitimate focus on process and an illegitimate focus on outcome. A significant factor in the Authority's crossing of the boundary in respect of OAM was the stance of the lead supervisor from the Authority for the firm, Mr Cornwell. While he sought to position himself as a relatively junior member of staff who simply escalated information to senior management, it is clear from the 'Schedule of Disclosed FCA Communications' that his views held significant weight with those to whom he reported. In evidence he accepted that, "They [his line managers, Mr Faircliff and Mr Low] relied on you [Mr Cornwell]."

Mr Cornwell as a witness

735. Mr Williamson KC and Mr Mansell submit that there are questions as to the candour and reliability of Mr Cornwell as a witness and he was not a wholly satisfactory one. Having undergone witness training at the behest of the Authority and been provided in advance with full details of both parties' pleadings, he appeared at times to be under the impression that his role was to avoid giving evidence that might undermine the Authority's case rather than assisting the Tribunal by providing the clear, frank answers to what were straight-forward questions.

736. They rely on the fact that while Mr Cornwell considered it "an important part of his role to engage with firms where we think their processes and procedures can be better" he was very reluctant to be drawn as to where the boundary between legitimate supervisory inquiry and illegitimate interference lay. Despite being pressed repeatedly, each time Mr Cornwell was asked a question along the lines of: "Would it be wrong or improper, for you to seek to challenge or to influence the outcome of the firm's internal employment processes?", he would answer along the lines of: "Our approach was to consider and understand how the firm had reached their decisions…we weren't seeking to make their decision."

737. They note that eventually, Mr Cornwell did accept when asked: "would it be wrong/improper for the FCA to seek to influence or challenge the internal employment processes of the firm?" and replying that, "Yes, I think that's correct and I don't think it's something that we could look to do." Mr Cornwell went on to say it: "certainly wasn't what our approach was seeking to do. So I think on that basis in our engagements with the firm, we weren't looking - - we weren't looking to influence or determine the outcome." However, when giving evidence the following day, Mr Cornwell recognised that his concession that it was improper may have damaged the Authority's case and tried to resile from it: "Q: Did you seek to influence the outcome, "yes" or "no"?" HC: "So we look to work on the processes that the firm follows. So, you know, you can see through our engagement with the firm that we were looking to understand the processes that they were following to reach their outcomes… AWKC: "Is that a "no"?" (Pause) HC: "Can I just have a minute to come back on that?" When pressed again, Mr Cornwell then reverted to, "We didn't look to determine the outcome. So that would be my - - that would be my response."

738. Counsel submit that despite Mr Cornwell's final denial, the overwhelming evidence is that the Authority did try in its interactions with the firm to engineer outcomes. The emails in the 'Schedule of Disclosed FCA Communications' amply shows the Authority's purpose in doing so, in direct contradiction to Mr Cornwell's final oral evidence.

Date	Communication
30 July 2020	Mr Hall says, "I think that there could and should only be one outcome."

2 October 2020 Mr Cornwell asks, "Would they have reached a different outcome if everyone was in the office?"

15 October 2020 Mr Cornwell writes, "We will now wait for the outcome of the investigations before considering our next steps."

4 November 2020 Mr Cornwell states that, "Enforcement are also engaged on this one from the Threshold Conditions perspective, with the approach of the firm to be considered depending on the outcome of the investigation."

2 December 2020 Mr Cornwell states that, "I view the work that S&S are doing to be positive in terms of ensuring the firm reach the right outcome."

18 January 2021 Mr Faircliff told Mr Cornwell, "We will also need to escalate internally depending on the outcome."

25 January 2021 Mr Cornwell writes in respect of the FWW, "This outcome feels unsatisfactory. Odey's behaviour has clearly been unacceptable over a long period and it is debateable whether this behaviour by other members of staff would be tolerated; it is also behaviour that is likely to have made colleagues uncomfortable and set the wrong culture."

1 February 2021 Mr Cornwell writes to the then Director of Supervision, "Supervision also believes it to be unlikely that other staff members would have received a similar outcome, or been allowed to behave in this way for an extended period of time."

23 February 2021 Email to Mr Kippax and others from Authorisations: "Have we all sat down and worked out what the right outcome for this firm is and then we can help achieve this through our questions/actions?"

5 March 2021 Authorisation followed up with, "It might be good to set up a joint meeting for us all to discuss the right outcome for the firm."

739. Counsel rely on the fact that Mr Cornwell was cross-examined about examples such as these of the numerous communications where the language used was indicative of a focus on outcome rather than process. In relation to each, he continued to try to hold the line that he was focused on process, not outcome. For example, in relation to the email of 25 January 2021, he said his, "view based on the information that was available to me and the conversation with Darren. … So this is a question around the process they followed. AWKC: "Is it? Is it, Mr Cornwell?" HC: "Yes, I think it is." However, they submit that the mask sometimes slipped when Mr Cornwell was challenged as to his email to the firm: "AWKC: Why did it not result in dismissal? I mean, they're your words." He said, "So, yes, was it an appropriate - - was the outcome an appropriate sanction?" AWKC: "Yes, that's the word, outcome, isn't it, Mr Cornwell?" Realising his error, Mr Cornwell followed up with, "But the firm's outcome, yes." He also accepted that his questions directed to remuneration were questions directed to outcome, "I think that's fair".

740. They submit that repeatedly in evidence, Mr Cornwell tried to avoid answering the question as to the focus on outcome over process. For example: "AWKC: You really are concerned with the outcome, aren't you?" HC: "May I just go back a step. You talked through a number of points that are speaking to the outcome. …AWKC: "Did you have a meeting at which you resolved what the right outcome was?" HC: "Can you show the

reference, please, or ...?" AWKC: "No, I don't - - it's a question, Mr Cornwell. I don't have it. That's why I'm asking you - -" HC: "Okay".

741. Counsel argued that Mr Cornwell's reluctance on oath to accept that OAM had been subject to outcome-based supervisory pressure was not consistent with his earlier willingness to claim credit where supervisory "pressure" had resulted in OAM applying a downward revision to Mr Odey's remuneration following the first disciplinary hearing. An example is the following interchange where he was cross-examined about his interactions with the firm and his communications within the Authority:

> AWKC: …[regarding internal email Mr Cornwell sent on 17/6/23] "Under pressure from Supervision and Authorisations the firm later informed us that their remuneration recommendation had been revised..." You certainly seemed keen to claim that it was the result of pressure there."
>
> HC: "I mean we had - - as you pointed out, we raised that we did raise it with the firm and they obviously then made the decision to amend."
>
> AWKC: "My question was: would it be improper for you to seek to do so?"
>
> HC: "We would not seek to do so."
>
> Mr Justice Thompsell: "Because it's improper or just you don't fancy it?"
>
> HC: "Well, I would say it's not in line with, you know, our objectives, and it's not in line with what we would seek to do with firms. So, yeah, it's not how we would approach things."

742. Nonetheless, Mr Cornwell also conceded: "I can't speak to why I would have chosen that particular word [pressure]. Maybe I did want to feel that there is some credit to supervision, you know, where we had got to."

743. Counsel submit that the evidence suggests that once Authority was aware, in July 2020, of the allegations Mr Odey faced, it was not interested in probing the suitability of OAM's decision-making processes but rather securing a particular outcome – namely, a decision by the firm to eject him.

Mr Cornwell's determined view that Mr Odey should have been dismissed at the 1DH and lacked F&P

744. Counsel note that, as well as maintaining that his only concern was with process and not outcome, Mr Cornwell also sought to persuade the Tribunal that the 1S&S had not in fact led him to consider that Mr Odey should be dismissed. When pressed, his responses seemed focussed more on avoiding the question asked of him than of assisting the Tribunal with a straightforward response:

"AWKC: "Was it your personal view that Mr Odey should be out?"

HC: "So we haven't said that."

AWKC: "No, I'm asking you a question, Mr Cornwell."

HC: "So at this stage the firm has made a determination, which is for the firm to do, and we are in the process of following up with the firm, so we have a conversation, I think on 10 February [2021], around understanding how the process reached the outcome that the firm determined. The fact that we then stepped back says that we accepted the firm's outcome, and it wasn't for us to determine, and it certainly wasn't for me to determine."

AWKC: "No, I'm going to come to all of that. My question, Mr Cornwell, was whether you personally, your belief, the right outcome would be if Mr Odey were out?"

HC: "So yeah, our outcome or our determination was that the firm had reached our outcome - - I had outlined previously , and we've covered this, as to why I thought that was a different outcome to ones that other people within the firm may have been subject to in the same circumstances." …

AWKC: "I suspect that people may understand that my position, Mr Cornwell, is that you have not answered my question."

HC: "Well, I –"

745. Counsel submit that Mr Kippax was far clearer in his evidence and when asked by Mr Williamson KC: "Did you think Mr Odey should have been dismissed in the first disciplinary hearing?" HK: "I think that would - - that was a potential for an option." AWKC: "We know it's an option. My question was did you think he should have been?" HK: "Yes."

746. They contend that in reality, whatever his protestations to the contrary, it is clear from Mr Cornwell's actions – as reflected in the Schedule of Disclosed FCA Communications and the underlying documents - that long before the Authority received the 1S&S in January 2021, Mr Cornwell had reached a view based on mere unsubstantiated allegations that Mr Odey was not fit and proper to perform certified functions. Mr Cornwell did not waver in that view before, during and after the Relevant Period.

747. On 24 September 2020, Mr Cornwell had a call with Mr Pearey and Mr Satt. He immediately escalated the content of the call to his manager Paul Faircliff reporting, "CO continues to work in the business and they consider him F&P for managing money. I also said they are carrying risk by considering him F&P, and that as SMFs they are individually accountable for the conduct in the firm. We have certainly seen examples of firms suspending individuals while investigations take place... Personally, this feels like the wrong outcome."

748. While his engagements with the firm were ostensibly concerned with the adequacy of the firm's processes, Mr Cornwell had in reality formed a clear view that the firm had reached the wrong outcome even before he had seen any evidence. During this period he was, unknown to the firm, liaising with Enforcement and taking the lead role in drafting the IOD which in due course was used to persuade the IDC to commence an enforcement investigation into both the firm and Mr Odey personally.

749. Further, the Authority anticipated that first ExCo would take the decision to dismiss Mr Odey. On 21 January 2021 an email exchange between Mr Cornwell and his manager Mr Faircliff contained the observation that: "it sounds like they are prepared and that they expect the hearing not to go well for CO."

750. When the Authority on 22 January 2021 learned of the first ExCo's decision to impose a FWW, internal communications demonstrate the extent of its disapproval. On 25 January 2021 - prior to receipt of a copy of the 1S&S - Mr Cornwell told Mr Teasdale that: "Odey's behaviour has clearly been unacceptable over a long period and it is debatable whether this behaviour by other members of staff would be tolerated."

751. On 29 January 2021, having reviewed the 1S&S, Mr Cornwell told colleagues: "there is clearly a pattern of behaviour, both in terms of CO's actions but also the culture within the firm. On the former it would appear to me that the firm have concluded that CO has breached the rules in the staff handbook and is guilty of harassment, yet the firm have not applied their own disciplinary rules in determining the outcome."

752. Counsel submit that internal Authority communications illustrate that attempts by the firm to address the Authority's supervisory issues were swiftly dismissed as inadequate. As Mr Cornwell wrote on 23 February 2021, "It looks pretty clear that this response is 'backfilling' and not necessarily representative of the discussions held by the Board…the firm appear to have found dismissal legally too difficult and appear to be making excuses."

753. They argued that even when Mr Odey was acquitted in his criminal trial, in March 2021, such was Mr Cornwell's pre-determined mindset that he told colleagues, "I don't think it makes a significant difference to how we are looking at the case – clearly a conviction would have effectively closed the work with him leaving the business and us progressing a TCT prohibition case. We haven't really focussed on the criminal case up to now, while acquitted that is a different matter to his behaviour in the office and the known issues. The court detail points to someone who didn't read the signs in an interaction with a female and an inappropriate approach; to me this fits the pattern of behaviour."

754. Against this background they argue that it is no surprise that by the time of the IDC meeting on 13 May 2021, there was nothing qualified or conditional in Mr Cornwell's presentation as to his view of the matters set out in the 1S&S, and the impact that had of Mr Odey's ongoing fitness and propriety to perform certified functions, as the minutes show:

> "Howard Cornwell (HC) introduced the matter and highlighted Supervision's main concerns regarding this case. HC summarised that Odey Asset Management LLP (OAM) received authorisation in 2002 and is predominately active in hedge fund and investment related activities. The firm was founded Robin Crispin Odey who is the controller and was the CEO until November 2020. HC summarised the allegations of sexual harassment and non-consensual behaviour and that it appears to be a pattern of misconduct since the firm's inception. Supervision believe the first evidenced complaint of Mr Odey's behaviour was made in 2003. Supervision is aware of criminal allegations brought against Mr Odey, which predate the millennium. HC highlighted that such allegations are not a part of the IOD, but they evidence the long-standing nature of Mr Odey's misconduct."

755. They contend that the extent of Mr Cornwell's animus against the firm is illustrated by the fact that he erroneously asserted to the IDC that "OAM have provided no evidence of how they concluded that a final written warning, rather than dismissal, was the appropriate sanction for Mr Odey", In fact, as Mr Cornwell was aware, Mr Pearey had submitted a detailed six-page response explaining the firm's decision making in a letter dated 22 February 2021.

756. Faced with this body of evidence, Mr Cornwell's repeated insistence that he had formed no view and that his focus was solely on process was surprising given the depth of the underlying evidence to show that (i) Mr Cornwell was focused on outcome not process, and (ii) he reached a pre-conceived view as to outcome. Counsel argue that the Tribunal should reject Mr Cornell's evidence on this crucial issue. While it provides no excuse, it is perhaps understandable that Mr Cornwell was reluctant to concede that the supervisory focus was on outcome rather than process and that there had in fact been a pre-determination that Mr Odey lacked fitness and propriety and the firm's lead Supervisor that the Authority had engaged in supervisory overreach.

Inappropriate pressure

757. Counsel contend that, in that context, any pressure brought to bear by the Authority on the firm was inappropriate. Likewise, the existence of inappropriate supervisory pressure would support Mr Odey's belief that the First ExCo was unable to make a fair and balanced decision in relation to his alleged breach of the FWW. This would in turn support the reasonableness of Mr Odey's actions, in such exceptional circumstances, in dismissing the first ExCo.

758. They accept that the indication by the Authorisation team that it was minded to refuse the BAM application was in itself potentially a legitimate decision. Similarly, the decision to investigate the Firm for its decisions to impose a FWW was also potentially legitimate. Mr Odey does not seek to criticise the Authority in either respect. However, they submit that the combined effect of the refusal to authorise BAM and decision to investigate the firm / Mr Odey produced undue pressure on the first ExCo.

759. They submit that the actions by Authorisations and Enforcement must be seen against a background of supervisory overreach. In his evidence Mr Cornwell sought to persuade the Tribunal that there was a material difference between Mr Odey's fitness and propriety to be a controller of the new entity, BAM, applying for authorisation, and his fitness and propriety to remain a controller of a regulated entity. However, the legal test is in fact the same. In a cross-examination exchange with Mr Kippax, he confirmed the point. That being the case, they argued that it is disingenuous for the Authority to dismiss the impact of an assessment by the Authority that Mr Odey lacked the fitness and propriety to be a controller of BAM upon the minds of the First ExCo in dealing with Mr Odey as a certified person.

760. Mr Kippax also accepted that the assessment by the Authority that Mr Odey was not fit and proper to be the controller of a new entity had implications for his ongoing fitness and propriety in any roles he holds where that is an FCA requirement. This issue was immediately recognised by Mr Pearey at the BAM meeting on 25 June 2021 when he is recorded as commenting that: "this was devastating news about the issues regarding Fit & Proper Assessment for (CO) at BAM & OAM, for the ExCo, Staff and clients that he will be barred from running money."

761. At the same meeting on 25 June 2021, the firm was notified by the Authority that it was to be placed under regulatory investigation. The Authority made it clear that amongst other matters, it had concerns as to the decision of the first ExCo to impose an FWW upon Mr Odey in respect of the matters contained in the 1S&S. These concerns were reflected in the Notice of Investigation when it was issued. It alleged that the Firm: "appears to have pursued a disciplinary outcome which does not reflect the seriousness of the findings and in doing so, may have failed to apply the firm's disciplinary rules, which state that harassment would be an example of gross misconduct which would normally lead to dismissal without notice or pay in lieu of notice (summary dismissal)."

762. As Senior Managers each ExCo member was subject to the SMCR and to the Authority's Rules and Principles. The first ExCo was well aware that the Authority disagreed with its decision to impose an FWW and indeed had placed the Firm under investigation in respect of this decision. There was therefore an ongoing risk, compounded by the opened-ended nature of the investigation, that the Firm's investigation might be expanded to include allegations of personal misconduct against those senior managers on First ExCo.

763. Counsel submit that it is fanciful to suggest that these matters were not weighing heavily upon the minds of the members of first ExCo when in November 2021 they were

faced with the prospect of conducting a new disciplinary hearing in respect of allegations that Mr Odey had breached the FWW. On one hand they had to properly discharge their obligations to Mr Odey to conduct a fair hearing; on the other it was patently obvious the Authority would look to the first ExCo to correct what the Authority considered to be its earlier erroneous decision to issue an FWW to Mr Odey rather than to dismiss him. Their position was hopelessly conflicted and intolerable, as Mr Odey recognised.

The evidence of the first ExCo as to the pressure they were under

764. Counsel accept that the firm was not, of course, sighted on the internal communications of the Authority around this time. It was not therefore in a position to assess accurately whether the supervisory pressure the Authority applied was legitimate supervisory pressure or supervisory over-reach. However, they suggest that what is clear from the evidence is that first ExCo did feel under pressure as a result of their interactions with the Authority.

765. Mr Pearey was clear in his oral evidence that he felt under pressure from the Authority from his very first interactions with Mr Cornwell. When the allegations were first reported, the Authority's clear expectation was that Mr Odey should be suspended. Mr Pearey stated in cross-examination, "Q …24 September 2020 15.55 is the time. He [Mr Cornwell] told you, didn't he, he gave you the clear impression that not suspending Mr Odey was the wrong thing to have done? Tim Pearey (TP): Yes, I think that certainly was the impression, that they felt that that was the right course of action." He went on to say: " yes...I seem to recall there was certainly a look of surprise when we told him, by sort of a raised eyebrow..."

766. In respect of the firm's decision to impose the FWW, Mr Pearey said in cross-examination: "it certainly wasn't a decision which, when made, they simply said, 'Thank you for that, carry on'. They wanted much more information about how we had reached our decision. So all of that left one with the impression that they didn't agree with our decision." Mr Pearey also agreed that the first ExCo retrospectively reduced Mr Odey's share of the annual management fee from 15 to 9% as a direct result of the Authority's concerns that Mr Odey's remuneration had not originally been impacted by the FWW. With regard to the first ExCo's consideration of the alleged breach of the FWW, Mr Pearey accepted that the fact that the firm was under the Authority's scrutiny at the time did bring pressure to bear upon the firm.

767. Lord Roborough was more direct in his assessment of the pressure felt by the first ExCo. He told the Tribunal in cross-examination: "I think we did feel under pressure and it was made clear to us also that if we made a decision that the FCA later disagreed with, then it was threatening to our ability to remain, you know, regulated by the FCA and thus stay in employment." He said: "this was a very pressured situation for all of us on ExCo."

768. Mr Hanbury told the Tribunal in cross-examination: "there was certainly a sense from Tim that they were disappointed with the first finding [at the 1DH] and so there was a sense, there was definitely an extra pressure to do the right thing". He also accepted that there was pressure to reach a particular outcome. Mr Hanbury accepted that his status as a Senior Manager added to that pressure, he said "it was a kind of extra pressure on the role. I think we were fully aware of that extra pressure of trying to get to the right decision." While Mr Hanbury felt that he could withstand the pressure, he did accept the fact that there was a basis for Mr Odey's view as to the pressure the first ExCo was under. The following exchange is informative: "AWKC: Looking at it, there was a basis for his view, wasn't there, that you were under pressure? JH: Yes, absolutely."

769. Counsel also rely on further oral concessions of Mr Hanbury in cross-examination. He was asked about paragraph 73 of his witness statement which said: 'I do not think that the fact that the Authority was investigating the firm had any impact on the investigation or the disciplinary process. No member of ExCo expressed the view to me that they felt that they were pressured by the authority to reach a particular outcome on the disciplinary process.' There was then an exchange: "Question: We have agreed, have we not, that there was pressure to reach a particular outcome?" Mr Hanbury: "Answer: Yes. "Question: And whether that comes directly or indirectly from the Authority, it remains the case that that pressure existed? "Answer: Yes, there was pressure."

Conclusion and findings

770. It has been appropriate to recite the submissions for Mr Odey on this topic at length. A major plank of Mr Odey's case was that the Authority placed the ExCos (the first ExCo in particular) under undue pressure to hold the 2DH and dismiss Mr Odey from OAM.

771. Nonetheless, we have already rejected much of the argument and the reliance on evidence raised in our findings of fact. We have found that the Authority did not exert undue or inappropriate pressure on OAM or its ExCos, that the firm did not consider that it was subject to undue pressure throughout, it was not overly concerned at the Authority's enforcement investigation and demonstrated its ability to make independent decisions throughout.

772. We add some further observations and findings.

773. Shortly after the firm was first aware of the Authority's enforcement investigation in June 2021 but before it was formally notified in October 2021, Mr Pearey became aware of Mr Odey's first breach of the FWW in August 2021.

774. The Authority has always accepted that the opening of an investigation in 2021 into the firm in relation to a number of matters, including its decision to impose the FWW after the 1DH, would always have placed the first ExCo and the firm's management under pressure. Likewise, the members of the first ExCo accepted as such in their evidence. The existence and potential outcome of that investigation would naturally place pressure on ExCo as part of its responsibilities in managing the firm and the 2DH. The ExCo would be aware of the Authority's scrutiny of its former and current actions.

775. Nonetheless, there was nothing undue or inappropriate about this.

776. As the evidence reveals, and we have found, the first ExCo was well equipped and able to function and were not concerned about the Authority's investigation into its previous actions.

777. There are numerous additional reasons why we reject such a challenge. The first is that the Authority, in particular the Supervision Division, was entitled and indeed needed to take a view on Mr Odey's conduct and its consequences in order to supervise the firm. There was nothing inappropriate about the Authority having a view about the process and outcome of the 1DH for the firm and for Mr Odey. It would be strange if it had no opinion as to what Mr Odey had done to employees at the firm and the likely consequences – the Authority needed to take a view so as to perform its role as regulator of the governance of the firm and Mr Odey personally. The Supervision Division had a forward looking role.

778. In contrast, the Enforcement Division's role was a backwards looking one, including to investigate Mr Odey's behaviour that had led to the 1S&S and 1DH and the firm's decision on the outcome. It was bound to have formed a preliminary view about past events.

779. Likewise, the Authority was entitled to indicate its view on Mr Odey's or OAM's conduct, including the Authorisations Division indicating that it could not authorise BAM because Mr Odey was subject to an enforcement referral. This could not amount to 'undue pressure', let alone any action that could justify Mr Odey removing the ExCos and putting it in breach of its regulatory obligations.

780. While undoubtedly the Authority's investigations into both OAM and Mr Odey would have and did place the first and second ExCos under some pressure to make sure their governance procedures were effective and the disciplinary proceedings and 2DH properly carried out, this was not undue or inappropriate pressure. It was what is to be expected of the regulator doing its job.

781. The nature of the pressure said by Mr Odey to have been applied by the Authority to OAM has also changed.

782. In the letter to members on 24 December 2021 Mr Odey claimed the Authority had subjected OAM to undue pressure through "regulatory overreach". This presumably referred to the enforcement investigations into OAM itself as well as Mr Odey personally. In the inaccurate minutes of the ExCo meeting of 6 January 2022 Mr Odey described the authority as pursuing a vendetta against OAM and him.

783. In an enforcement interview with the Authority in 2023, Mr Odey had accepted that his position was wrong, and said it was "very unfair" of him to think that the Authority had been driving the 2DH. He stated that "it wasn't really that you were saying very much to them [first ExCo] beyond saying you've got to make the decision" and that the pressure "wasn't really coming from yourselves, it was coming from the lawyers". This was a marked change of position from 2021. However, this was changed again in his Reply pleading in 2025, in which he reverted to the case that there was "regulatory overreach" and that the Authority was "looking for a high-profile case that would publicise its drive to hold individuals to account in respect of matters which did not directly relate to the performance of their role as a certified person".

784. At paragraph 71 of his Reply, Mr Odey pleaded that the Authority had placed "undue pressure" on OAM to take a particular view on the 2DH because:

a. Pressure could be "communicated consciously or subconsciously, directly or indirectly"; it was the "Firm's perception of pressure, whether actual or real, which is material".

b. Disclosure of documents held by the Authority showed a "clear assessment by the Authority of Mr Odey's lack of fitness and propriety and a concerning loss of objectivity by the Authority when dealing with relevant supervisory issues"…

d. The firm had been placed under investigation; and knew that the Authority "considered that Mr Odey was not fit and proper".

e. "The uncertainty caused by the NFM agenda and the Authority's response to the FWW created an environment where the risk of personal exposure made it impossible for the Firm to fairly discharge its responsibility to Mr Odey as an employee, namely to undertake a fair and impartial process."

785. In the course of cross-examination of Mr Cornwell, the focus was not so much “undue pressure”. It was more upon the actions that the Authority had taken, or words said, in email communications or phone calls with OAM’s ExCos and internally within the Authority, which were adverse to Mr Odey. In Mr Odey’s case “undue pressure” included simply the asking of questions by Supervision of OAM or querying its procedures or Mr Cornwell raising an eyebrow in one conversation with Mr Pearey.

786. We, like the Authority and OAM’s witnesses, accept that the opening of Enforcement investigations into OAM and Mr Odey did place the ExCos under some pressure but the investigations were defensible on rational grounds and did not place the ExCos under ‘undue pressure'. They were able to act independently throughout as they demonstrated in their actions and as we have found above.

787. The following further points undermine this part of Mr Odey’s case.

788. Much of Mr Odey’s case on undue pressure involved examining internal emails within the Authority or discussions between the Authority and the two ExCos that Mr Odey was not party to or aware of at the time. They cannot have had any effect on Mr Odey’s beliefs and actions at the time. In the case of examining the internal emails and documents within the Authority, for example the IOD in May 2021, no-one at OAM including the ExCos, was aware of their contents at any time during the Relevant Period. This material cannot have affected ExCo’s state of mind and conduct at the relevant time, nor Mr Odey’s. The internal documents and communications are simply irrelevant to Mr Odey’s actions which are said to be premised on him believing that the ExCos were under undue pressure.

789. The argument that Mr Odey was the Authority’s “poster boy” did not have substance. The Authority did query the robustness of the 1DH, including whether the first ExCo had erred in its conclusion – either through the Supervision Division asking questions about the process previously held, the process for the 2DH or by opening an enforcement investigation into the 1DH. This was neither undue pressure nor a “vendetta” against Mr Odey. It was suggested to Mr Cornwell, in cross-examination, that he was “keen to get Mr Odey for whatever you could find” and “Mr Odey was a big scalp that you wanted to take”. Nonetheless there was and is no credible or independent evidence to substantiate that suggestion which Mr Cornwell did not answer directly but did not accept.

790. More explicitly, when asked in cross-examination about contact with Lynda Vesco in the Enforcement Division, Mr Cornwell gave the following evidence, “Q. My question was, you were on the lookout for anything and everything that you could put into a threshold conditions case, “yes” or “no”, Mr Cornwell? A. No, I’d say no. I think this is more we’re in contact with Lynda, and we’re – you know, we’re making sure she’s aware of and is up to speed with everything that is happening within the firm more broadly.”

791. A fair assessment of the contemporary evidence is that the Authority was performing its job to scrutinise the past governance performance of OAM through an Enforcement investigation and to supervise future governance of OAM through the Supervision Division as appropriate. This included reminding and focusing the ExCo of its obligations and responsibilities to follow a thorough process in holding the 2DH according to its own procedures.

792. The Authority had statutory responsibility to regulate firms such as OAM, and their governing bodies such as ExCo being senior managers with particular responsibilities that are required be held to account. It is accepted that ExCo felt under some “pressure” and rightly so. Mr Pearey acknowledged in his evidence: “Operating in the regulatory

environment as a Senior Manager does incur a certain amount of personal pressure. The regime is designed to make individuals personally accountable." The members of the first ExCo accepted the enforcement investigation into OAM created a certain amount of pressure but it was not undue. They were confident that the firm's processes and decision making around the 1DH would stand up to scrutiny and they were not unduly worried. They demonstrated that they would act independently of the authority in their decision making. All of this is subject to findings above. The two ExCos had the benefit of external advice from lawyers and acted independently.

793. Mr Odey accepted in cross-examination that he understood in December 2021 that the role of the Authority was to regulate firms such as OAM to ensure that they had effective governance in place; and one of its roles was also to scrutinise and, where necessary, challenge the competence of SMF27s to carry out their senior management functions.

794. Although we agree that there were certain actions of the Authority, such as the opening of the investigation into the firm, which communicated to the first ExCo that the Authority had concerns about the robustness of the process adopted for the 1DH, there was nothing "undue" about this. The Authority was entitled: (i) to open an enforcement investigation; (ii) through Supervision to ask questions about ExCo's approach to its governing functions and the 2DH; (iii) and through Authorisations, to refuse to authorise BAM on the basis that, amongst other things, there was an ongoing investigation into Mr Odey and the Authority had concerns about OAM's culture. This was the Authority performing its various functions, to regulate and ensure effective governance.

795. In relation to the Enforcement Division, as we have found above, the first ExCo were not concerned about the enforcement investigation and, in Mr Pearey's words, thought that it would "run its course". They received clear advice from Ms Sutcliffe of S&S on the call on 18 November 2021 that there was a distinction between Mr Odey lacking fitness and propriety "now (i.e. in November 2021) but still agreeing with the previous findings before based on information and investigation at the time" (i.e. that the outcome of the 1DH in January 2021 was not wrong). We accept the Authority's submission that to the extent that the Authority's investigation did influence the first ExCo's thinking, that appears to have resulted in a determination to follow a robust process, not simply to dismiss Mr Odey because it thought the Authority might want that.

796. In relation to the Supervision Division of the Authority, its correspondence with OAM in relation to the 2DH was professional and appropriate for a regulator in seeking to question and ensure proper procedures were followed – see our findings above.

797. In relation to the Authorisations Division, Mr Pearey knew in June 2021 that the Authority considered Mr Odey not fit and proper as a controller of BAM, and that the firm was being referred to the Enforcement Division. As the Authority submits, if this was a serious consideration in Mr Pearey's thinking about Mr Odey's remaining at OAM, one would have expected him to have taken a different decision in August 2021 and attempted to open a disciplinary investigation then when a potential breach of the FWW was first raised. He did not. He, and the first ExCo, acted independently of the Authority. They had different interests to consider.

798. Further, the Authority's decision-making in opening investigations or taking other actions is not on trial. It is not reasonable for Mr Odey now to rely upon an argument that the Authority was wrong to open an enforcement investigation personally into him for NFM, as it did at the time, on the basis it had no jurisdiction to do so i.e. because sexualised misconduct fell outside its regulatory remit. If he had wanted to challenge that as an

unlawful or unreasonable motivation driving the Authority, and hence the reasonableness of his response to ExCo, he should have pursued the JR he abandoned in December 2021 rather than remove the first ExCo.

799. Nor can the fact of the investigation substantiate Mr Odey's claim that the 2DH would be unfair. First, as we have already observed, the enforcement investigation focused on the 1DH and 1S&S, not the 2DH. Second, irrespective of whether the Authority had jurisdiction to examine the NFM, it was clearly a relevant matter to the issue of OAM's disciplinary proceedings against Mr Odey for gross misconduct. The two proceedings were independent of each other. Third, as Mr Odey accepted in cross-examination, it cannot be right that as soon as an area of decision-making inside a firm is under scrutiny by the regulator, the firm's governing body is excused and able to abandon all responsibility for that area of governance in the meantime.

800. Finally, there was no evidence of the ExCos succumbing to pressure from the Authority, whether undue or not. One example that was focused upon on behalf of Mr Odey was the first ExCo later reducing Mr Odey's remuneration under influence of the Authority after originally failing to take into account his conduct as found in the 1DH and FWW. Mr Odey's share of the partnership profit for April 2021 was reduced to 9% and attributed profit share was £220,048.

801. We reject any suggestion of undue pressure being placed on the first ExCo by the Authority in this regard. It is likely that it was Mr Pearey who first mentioned Mr Odey's remuneration, prior to the 1DH, in October 2020 at a time when it was anticipated that OAM's investigation would conclude prior to the December 2020 bonus decision. The 1DH in January 2021 took place after the December bonus decision. Therefore, the Authority's Supervision Division, through Mr Cornwell, queried what the impact on Mr Odey's remuneration would be. Mr Pearey accepted in his evidence that he had the impression that the Authority wanted the firm to consider the impact of the 1DH on Mr Odey's remuneration and the Authority thought it had erred by not letting the outcome of the 1DH have an impact on Mr Odey's remuneration. He accepted that the Authority was keen that it should be more explicit in the firm's remuneration policy that an employee's conduct might affect their remuneration.

802. Therefore, Mr Pearey accepted in his oral evidence that Mr Odey's profit share in April 2021 was reduced in response to the Authority having raised the issue. However, he rejected that this was a result of "pressure". His evidence was to the fact that, independently, ExCo had also felt it was appropriate "given the time and energy, resources exhausted by the firm in this process". The first ExCo was entitled to and did take into account the Authority's questioning and expressed views on the topic but there was nothing inappropriate and even if characterised as 'pressure' there was nothing in the questions asked about remuneration that made it undue pressure by the Authority. The Authority was properly entitled to ask the firm to review whether it had taken into account Mr Odey's conduct and its own policy when calculating his remuneration.

803. Mr Odey failed to establish any example where it was illegitimate or wrong for OAM to have taken the Authority's view into consideration when deciding what course of action to take in relation to any of the disciplinary proceedings or otherwise in relation to Mr Odey.

804. Furthermore, the only undue or inappropriate pressure upon the first ExCo came from Mr Odey and his threats – that he could close the firm if they dismissed him at the 2DH - nonetheless the ExCo members even withstood these prior to being removed.

2. Pressure on the second ExCo

Submissions and evidence relied upon on behalf of Mr Odey

805. Mr Odey's case is that he knew that the difficulties which the first ExCo encountered were the product of the decision to hold the disciplinary hearing in relation to the alleged breach of the FWW at a time when the Authority's investigation into Mr Odey's fitness and propriety had not reached a determination. His view, not unreasonably held, was that a determination by the Authority that he was not fit and proper would render the outcome of the disciplinary hearing inevitable, but on the other hand a conclusion by the Authority that the matters under investigation did not definitively impact upon his ability to perform a certified function would provide relevant information which the hearing could take into account when determining whether or not Mr Odey should be dismissed. Mr Odey therefore sought to achieve this separation by removing the pressure upon the first ExCo to dismiss him.

806. Mr Williamson KC and Mr Mansell submit that another method was to persuade the second ExCo to delay its consideration of the alleged breach of the FWW and to align it with the Authority's investigation ('alignment'). Unless this could be achieved, Mr Odey contends that the second ExCo would be in precisely the same impossible position as the first ExCo had been. The sequencing of the disciplinary hearing with the Authority's investigation therefore became an overarching concern. Further, by removing the first ExCo and temporarily assuming its functions, Mr Odey put himself in the position where the Authority had to engage with him directly, whereas previously he had had no contact with Supervision at all. It therefore put him in the best possible position to engage directly with the Authority to try to achieve an outcome which he genuinely believed was in the best interests of the Firm and its clients.

Pressure from the Authority on the second ExCo in February 2022

807. Counsel submit that following the appointment of the second ExCo on 12 January 2022, the Authority recognised that its members, Mr Richards and Mr Kelton, needed time to familiarise themselves with their new roles and responsibilities. Mr Cornwell indicated to colleagues on 12 January 2022 that "We will also put a date in the diary for 4-6 weeks time to understand how the changes are progressing". He also recognised that they "need some time to consider how they will structure their roles and activities, and to understand the issues of the firm, but we obviously need this to happen within the 12 weeks and prior to conclusion of the disciplinary process."

808. They argue that it is clear that Mr Cornwell had already identified that the applications from Mr Kelton and Mr Richards for senior manager approval presented an opportunity to exert leverage over the second ExCo and to drive the Authority's desired outcome. An email to Mr Low referred to the Form As and spoke about using the "call with Jack [Mr Satt] to drive our approach here, specifically around how they are dealing with the disciplinary and what contingencies they have in place." Mr Low replied it "sounds like a plan". Internally the Authority was linking the fitness and propriety of Mr Kelton and Mr Richards' applications to be senior managers with the conclusion of the disciplinary hearing. As Mr Schooling-Latter opined in an email dated 4 February 2022: "a senior management that allows suppression of disciplinary against itself does not meet the required standard." Mr Odey's justifications for the actions he took had simply been pre-emptively dismissed by Supervision out of hand. At an organisational level, Supervision assumed no responsibility for the consequences of their outcome-based supervisory approach.

809. Counsel submit that when second ExCo met with the Authority on 7 February 2022, the Authority used the meeting to ramp up the pressure. The meeting was just 26 days after appointment rather than the 28 - 42 days initially envisaged by Mr Cornwell in January: this set the tone for the increasing pressure to be brought to bear by the Authority on the newly-appointed Second ExCo.

810. At the meeting between the Authority, Mr Richards and Mr Kelton on 7 February 2022, the Authority raised two issues which set off a chain of events culminating in the second ExCo being placed in an even more difficult position than the first ExCo had been. Mr Richards told the Tribunal that: "given the history around the Simmons & Simmons Review, the complexity around the topic, needing to appoint fresh advisors and familiarise ourselves with the matter, certainly our expectations were that we were looking at months rather than days process to come to some conclusion or agreement of the way forward on the disciplinary matter." He said: "we felt that it had been agreed that we may conclude that we could defer it, so we were broadly thinking that we had alignment…So we had an expectation that we may conclude that we could align the enforcement action with the disciplinary hearing." He said, "we had talked a lot about alignment… we felt they had left room for us to conclude that…certainly for me, it was considered to be the preferred and likely scenario."

811. However, at the meeting Mr Richards said that contrary to those expectations "the FCA were requiring, requesting, were certainly implying that they wanted us to give them a response on to the state of the hearing ahead of - which would differ from an aligned process." He went on to say "we felt at that meeting that they were implying that we would need to hold the disciplinary hearing, or assess the status of that hearing in a more timely fashion than we had expected to be able to do."

812. Counsel argue that at the meeting, not only did the Authority raise the timing of the disciplinary hearing but they also, out of the blue, raised the questions of new subscriptions. The justification for raising the issues of new subscriptions in the Authority's meeting note is expressed as: "The FCA expressed its nervousness in terms of onboarding new investors, given the shadow over the firm." In Mr Richards' note of the meeting, it is recorded that "the FCA will be inquiring how OAM are exercising their fiduciary responsibilities in accepting new subscription monies being received into the Funds given the current uncertainty."

813. Counsel contend that either way, the import of the Authority's statement was clear. The uncertainty to which the Authority was referring was that they perceived to be caused by Mr Odey's outstanding disciplinary and his threats to close the firm if he were to be dismissed through an unfair process. The Authority's outcome-based strategy was clear: to use any tool available to cauterise the harm by securing the dismissal of Mr Odey by the firm. The Authority made it clear to the firm that they had to either hold the disciplinary hearing or not take on any new business. The second ExCo knew that any awareness in the market of a restriction on new subscriptions would pose an existential threat to the firm. This issue had not been raised by the Authority in January when faced with a far more immediate supervisory challenge. The only reasonable inference to draw is that it was a device to achieve, through the application of inappropriate pressure, what the Authority perceived as the right outcome, namely the removal of Mr Odey from his certified role.

814. In deliberately raising these issues, Mr Odey contends that Mr Cornwell knew that he was, as Mr Mansell summarised, "you basically rip off the band aid" and the stability in the firm's governance which had followed the appointment of the second ExCo would be put

at risk. He felt able to pursue that course as the appointment of the second ExCo had addressed the immediate supervisory challenges created through the removal of the first.

815. Counsel argue that the meeting of 7 February 2022 had profound consequences for the second ExCo. It had been made clear by the Authority that there would be no alignment of the disciplinary hearing as they had been previously led to believe and that if Mr Odey's position were not resolved, the Authority might seek to restrict the Firm from taking on new subscriptions. As Mr Kelton said: "our suspending subscriptions would in any firm, let alone one where you have a relatively high profile owner of that firm, would likely lead to - - as we saw in the summer of 2023 - - would likely lead to investors shooting first before thinking and so, yes, it may lead to - it may lead to, as I say in my witness statement, panic."

816. At the same time, the second ExCo had been reviewing the circumstances surrounding the disciplinary hearing. A contemporaneous note of Mr Kelton's, based on a meeting with Mr Satt and Mr Richards, records the following: "On basis of our gross misconduct — we should have found him guilty and dismissed from policy and we did not do it." The second ExCo would have also had access to Mr Fox's advice that Mr Odey was "toast". For his part, Mr Richards accepted in evidence when asked if he knew that the Authority's position was that the first ExCo should have dismissed Mr Odey and stated that "I believe I had a general awareness that that was a view I think that some of the firm had."

817. Counsel submit that the pressure now being exerted by the Authority on the second ExCo was even greater than that placed on the first ExCo. The risk of a restriction being placed upon new subscriptions presented an immediate existential threat. The second ExCo had three options to resolve this threat: a) it had to either persuade the Authority that such restrictions were not necessary, b) persuade Mr Odey not to exercise his rights to close down the firm, or c) remove the uncertainty identified by the Authority by proceeding to hold the 2DH without delay.

818. They argued that the issue with the third option was that, by this point, the second ExCo was facing fundamentally the same challenges as their predecessors. If anything, the position had become even harder to resolve. The firm remained under investigation in respect of how it dealt with the 1DH. Acting as second ExCo, both Mr Richards and Mr Kelton could be personally investigated by the Authority if they made a decision in respect of the second disciplinary process with which the Authority disagreed. They were both well aware that the original decision to impose a FWW was not one with which the Authority agreed. Equally, they were aware that Mr Odey was not considered fit and proper by the Authority to be a controller of BAM and the consequences that that had for OAM.

819. Finally, both Mr Kelton and Mr Richards were acutely aware that they were performing the Senior Manager roles in a temporary capacity and a refusal of their applications for approval by the Authority could have adverse consequences on their own futures within the regulated sector. As Mr Satt acknowledged, the Authority, "would be benchmarking the application based upon the conduct that the individual has displayed during the period that they are operating under the 12-week rule. JS: Not exclusively. JM: Not exclusively but it would be a consideration, perhaps you could agree with me with this, it would be a consideration, Mr Satt? JS: Yes." Further, as Mr Satt acknowledged, a "refusal of authorisation to be a senior manager might impact upon your future if you apply for authorisation to be a senior manager in future, is that fair? JS: Yes, it could be an effect." The combination of these factors made the immediate holding of the disciplinary hearing a

deeply unattractive option for Mr Kelton and Mr Richards, and one fraught with regulatory risk.

Conclusion and findings

820. In relation to the second ExCo, we again rely on our findings set out above that the two members were not placed under undue pressure from the Authority to dismiss Mr Odey at the 2DH, nor did they consider themselves to be.

821. We consider that there was also no reasonable basis for Mr Odey to believe that the second ExCo was subjected to undue pressure by the Authority. There is no reliable or independent evidence that the conduct of the Authority had any impact upon the second ExCo's decision-making in a manner which could have adversely affected the fairness of the second disciplinary process. It was not this belief that really motivated Mr Odey to remove the second ExCo.

822. We have already accepted that being a senior manager carries inevitable pressures, Mr Kelton accepted that there was pressure from the Authority in terms of the investigation into the firm but stated in re-examination that "the big pressure was from Mr Odey" and that "the concept of pressure from the FCA is a smoke screen." Both Mr Richards and Mr Kelton demonstrated independence and that they were not simply going to do whatever the Authority wanted. They had reached no concluded view on the outcome of the 2DH even by the time they were removed – just like the first ExCo, they would have wanted to see the process through and heard whatever Mr Odey wanted to say.

823. This reflects all the contemporaneous material which establishes that the Authority made clear in its communications with Mr Richards and Mr Kelton as ExCo that it was for them to decide how to proceed. That was the requirement of their roles. Their actions were not driven by pressure from the Authority whether undue or otherwise.

824. As the Authority submits, even if the Authority had "moved the goal posts" on 7 February 2022, or Mr Richards or Mr Kelton believed that it had, by seeking an update as to timing for their decision, and raising the question of subscriptions, there was nothing unreasonable in the Authority's conduct. It was seeking to reduce risks in a firm that it had identified had presented risks by virtue of Mr Odey's interference in the governance. In particular, neither Mr Richards nor Mr Kelton viewed the Authority's conduct as unreasonable.

825. We have accepted their evidence that the Authority's position on 7 February 2022 was little more than an annoyance, subscriptions were a legitimate matter for the Authority to raise, and something they should have been considering anyway. As Mr Kelton also stated in evidence, the real source of pressure came from Mr Odey's change of position from 10 February 2022 onwards.

826. The reality is that for the second ExCo, as for both ExCos, any "undue pressure" seems to have come about because of the threats made by Mr Odey, in particular to close the business. In relation to the second ExCo he adopted an antagonistic attitude towards any suggestion that there might not be alignment / sequencing and that there might be safeguarding measures put in place, even if these were pending his preferred process of alignment. Mr Odey was not willing to countenance that his views should not prevail in relation to the decisions made about him because he owned the firm.

827. None of the evidence or arguments establish a case that the first or second ExCo would have dismissed Mr Odey in January or March 2022 at a 2DH simply if they thought that this is what the Authority wanted by way of outcome.

828. We conclude that there was no undue pressure from the Authority on the ExCos and they were acting independently throughout. The ExCos were not under undue influence or pressure to dismiss Mr Odey in order to comply with the regulator's wishes and that was not the aim nor the purposes of the Authority's actions with the firm.

829. The fact that the Authority's Enforcement, Supervision and Authorisations Divisions had respectively: opened an enforcement investigation into Mr Odey and OAM; had ongoing contact with the ExCos in order to check that the 2DH was proceeding according to the firm's own procedures and in accordance with regulatory obligations; and indicate it would refuse authorisation for BAM for reasons which included Mr Odey's lack of fitness and propriety (because there was an open investigation into his conduct) did not represent undue pressure but proper regulation. It did not entitle Mr Odey to remove OAM's primary governing body twice, nor to unilaterally take over the decision-making function himself. Nor did it justify putting the firm in breach of its regulatory obligations.

<u>3.Pressure on the ExCos from the lawyers and uncertainty re the Authority's jurisdiction on NFM</u>

Submissions and evidence relied upon on behalf of Mr Odey

830. Mr Williamson KC and Mr Mansell submit that the first ExCo was faced with Mr Odey's alleged breach of the FWW and hence the firm turned to its legal advisers, S&S, for advice. S&S were themselves conflicted, for on one view, it was as a result of following their advice that Mr Odey could properly remain in a certified role, that the firm had been placed under investigation.

831. They argue that the advice the firm received on 18 November 2021 was clear and robust: Mr Odey's career was over and the only choice for the first ExCo was whether it wished to remove him in order to save the firm and their own careers in the regulated sector. The first ExCo was advised in the following terms by two of the lawyers from S&S as recorded in the NFR:

> "[Emma Sutcliffe] - FCA backdrop – being investigated for this issue – they will watch this and how you react will demonstrate systems and controls and independence. Need to consider as senior managers how you will handle it… an element of putting own reputation and livelihoods on the line for this. If you don't take steps now that are robust, it will be used by the FCA. It needs to be a firm decision, made by ExCo.
>
> …
>
> [Darren Fox] – 'CO is toast' and will be found by FCA to not be F&P - final nail in coffin. Firm is different – 'do you want to go down with him?' If he doesn't resign its better you make decision on that as an F&P staff member. Shows backbone."

832. Counsel contend that while Mr Pearey in his oral evidence generally resisted the notion that he was under pressure as a result of the legal advice received, he accepted that Mr Odey might have held the view that they were under pressure: "AWKC: …you knew that his position was that you, as a committee, were under pressure and you were under pressure from your legal advice? TP: Well, that may have been his impression, that we were making ill decisions based on the legal advice." Mr Pearey also accepted that: "it added to the mix of what was a pressurised situation, certainly."

833. They rely on the evidence of Lord Roborough ("LMR") being more forthright in oral evidence than Mr Pearey as to the effect of the legal advice received. He accepted the following: "The perception of the pressure that I had was that we had an FCA investigation ongoing, which we were conscious of, and we were taking advice from lawyers that we considered to be the best at understanding what process the FCA would follow and what was reasonable and not, so the pressure came from their advice as well." He also accepted that the first ExCo had formed a clear view by 18 November 2021, before Mr Odey had even been informed that there was to be a disciplinary hearing, that Mr Odey had breached the terms of the FWW: AWKC: "… it is clear that he has breached - - he Mr Odey - - has breached the conditions of the letter, that is he has breached the final written warning? LMR: I agree, that was our view in this meeting."

834. Lord Roborough went on to say: "We had relied very heavily on Mr Fox's advice with the first disciplinary process and he had judged that Crispin was on the right side of the line after that process as far as fit and proper was concerned. So the fact that he is now saying Crispin is on the wrong side of the line and we have to find that, that was overwhelming for us."

835. Counsel submit that the obtaining of a second opinion from Addleshaw Goddard was intended to shore up Mr Fox's advice to dismiss Mr Odey. However, when it came back in more equivocal terms, this did not cause the first ExCo to reflect and alter course. As Lord Roborough said: "having relied on Mr Fox's advice earlier in the year and felt like we followed the right process, to diverge from that would require something quite compelling which Mr Fox would also have to agree, you know, overwhelmed his advice."

836. They argue that Mr Hanbury accepted that the first ExCo "leaned" on S&S's advice; he said, "It was regulatory and employment law, where we certainly didn't have the kind of professional expertise that I think we felt as a group was required. So hence why we leaned on them for the advice." He agreed it was "quite complicated". He said he remembered Mr Fox: "giving some pretty strong views and thinking, that it was quite emotional". He also accepted that it was Mr Odey's belief that he felt the first ExCo was under pressure from the lawyers; he said: "Yes. I was quite clear about his view at the time." Mr Hanbury also agreed with the suggestion made to him that it was an "overwhelming set of circumstances".

Conclusion and findings

837. We reject Mr Odey's complaint that there was indirect pressure on the ExCos coming through the firm's lawyers which meant the members could not act independently and this could justify their removal. We have already found that the members of the first ExCo were capable of making up their own minds and did so. They acted independently. For example, it was S&S's advice to the first ExCo that Mr Odey should be suspended or that he should be made to work from home pending the 2DH. The first ExCo did not accept the advice and did neither of these things.

838. Equally it is important to understand the nature of S&S's advice concerning the 2DH in November 2021. It was about both the employment law issue of whether there had been gross misconduct and the regulatory law issue of the implications of F&P as well. ExCo knew on the employment issue that they would have to make a finding as to whether there had been gross misconduct by Mr Odey which should result in dismissal according to the Staff Handbook. The question of Mr Odey's fitness and propriety, as the firm would be required to certify or the Authority to investigate, was separate.

839. We have made findings about the meeting on 18 November 2021 when S&S advised the first ExCo and Mr Fox said that Mr Odey was "toast". When asked about the "exam question" as to whether Mr Odey would be found unfit, Mr Fox did not say, "yes" – he said, "if what has been alleged is true, then yes". In any event, it is not surprising that Mr Fox was so clear in his advice to the firm, and indeed with Mr Cornwell when he spoke to him at the beginning of the year. The documentary records of advice given reveal that the advice and decision not to dismiss Mr Odey at the 1DH in January 2021 had been a finely balanced and a difficult one and Mr Fox would have advised against Mr Odey being F&P to hold a SMF27 role as a senior manager over people – simply that based on the 1S&S he was able to advise that Mr Odey was F&P to manage money only. The Authority was not responsible for Mr Fox's advice and it did not overwhelm the first ExCo in any way. We have accepted the evidence given by the first ExCo who decided to seek a second opinion and were clear that they were not concerned by the Authority's investigation into the firm. They were only concerned about ensuring the proper process for the 2DH as a result.

840. In relation to the second ExCo, likewise Mr Odey asserted he feared that Mr Richards and Mr Kelton paid too much regard to legal advice. This too was without foundation. The legal advice received by Mr Richards and Mr Kelton regarding safeguarding measures pending progress of the disciplinary process was from a leading firm in HSF. It was consistent with the advice that had been received from S&S.

841. The fact that the second ExCo accepted the advice on safeguarding should not be overstated. First, the second ExCo did not seek to suspend or remove Mr Odey from the office pending the 2DH but only sought to implement the least intrusive measure advised of him working from the basement. Second, ExCo's acceptance of the legal advice did not reflect an undue willingness to bow to the perceived wishes of the Authority or the lawyers. As the Authority submits, it flowed from the reality that Mr Odey had proven himself to be untrustworthy when it came to his dealings with the firm, and with female employees, and this required immediate action. As with the first ExCo, the legal advice only imposed pressure because it was necessary to obtain it and it was reasonable to follow it. Mr Richards and Mr Kelton both properly reflected their understanding of their duties. They recognised that they should sensibly follow the advice. The fact is that Mr Odey did not like the nature of the advice given. Therefore, he made threats in order to dissuade the second ExCo from following it.

842. The ExCos may have felt under "pressure" in relation to the 2DH and outcome because the advice from the lawyers was adverse to Mr Odey. It was accepted to be a high-pressured situation for them. Nonetheless that did not mean that there was anything wrong with the process or that Mr Odey was entitled to remove the ExCos. Again, if Mr Odey had any genuine concerns about malign or undue pressure from lawyers, the reasonable reaction would have been to make approaches about that through his lawyers and/or submissions at the 2DH. Alternatively, he could have appealed any dismissal decision afterwards or taken legal action. However, the "undue pressure" was caused by Mr Odey's repeated threats to close the business.

843. Again, Mr Odey chose unilaterally to remove both ExCos, suggesting that he thought only he was in a position to determine what the right outcome should be despite that not being within his proper gift.

<u>4.The relevance of the Authority's NFM Agenda</u>

Submissions and evidence relied upon on behalf of Mr Odey

844. Mr Williamson KC and Mr Mansell submitted that the Authority's interaction with the firm and Mr Odey before, during and after the Relevant Period must be viewed in the context of the Authority's NFM agenda, which it had been pursuing since 2018.

845. Counsel rely on the fact that senior figures at the Authority gave a range of speeches in 2018 and 2019 making clear to the regulated sector the Authority's view that misconduct was misconduct irrespective of whether it was directly linked to a firm's regulated activities. They suggest that NFM was a key operational priority of the Authority from 2018 / 2019. They contend that in November 2020, the Authority demonstrated its increasingly assertive attitude towards NFM by prohibiting three individuals based on criminal convictions unrelated to the performance of regulated activities. There followed further public speeches in which the Authority pledged to take NFM seriously.

846. Counsel rely upon evidence that the Authority was aware at the time of the uncertainty within both the regulated sector firms and their advisers as to the regulatory expectations on the issue. In an internal email dated 21 April 2021 from Mr Cornwell to Zeeshan Ghaffar, Mr Cornwell noted: "Feedback from regulatory lawyers has suggested that while SMCR has provided some clarity, NFM is a relatively grey area with few cases for them to benchmark against. In addition, historic allegations cannot be considered against Conduct rules making Enforcement cases more complex." Ms Vesco from Enforcement told Mr Cornwell that "a nexus between the NFM and his [Mr Odey's] performance of his APER/SMF roles is important to draw out, where there is any evidence of this." In February 2021 she concluded: "I don't think we currently have enough for a FIT case, but we will keep this under review as we put together the IOD [Investigation Opening Document]."

847. They submit that this uncertainty caused Mr Cornwell to raise the following concern with his line manager Mr Faircliff on 29 January 2021 following the 1DH: "How this works in terms of the conduct rules may be more complex. Simmonds and Simmonds [sic] referred to the lack of clear guidance around breaches and how their assessment was a judgement call; do we have a clearer determination of this internally, or other cases that we can use as a point of reference?" In an email dated 5 May 2021 from Mr Cornwell to Ms Vesco, Mr Cornwell states: "I think our job is to point out all the allegations and if this means there is a gap in our rules around NFM this is not something we can solve."

848. Counsel argue that despite acknowledging the gap in its own rules, the Authority nevertheless expected firms to be on top of the issue, as is illustrated by an email dated 12 May 2021 from Ms Vesco in which she indicated that: "a firm which tolerates NFM / has senior managers engaged in this behaviour is likely indicative of other poor behaviours / culture and an indicator of potentially wider issues at the firm…This is something that directors have said publicly in the past." A note of an internal meeting on 13 May 2021 sent by Ms Vesco to herself expressed the view that "this [the Odey case] is one of the more serious cases of NFM that we have seen" and in the same note Ms Vesco records that the Authority "want a clear message that[s] not acceptable" and "[you] don't get precedent without taking the case first."

849. In July 2021, the Authority issued a Discussion Paper DP21/250 followed by Consultation Papers CP23/2051 in July 2023 and CP25/1852 in July 2025. At paragraph 4.16 of CP23/2051, it states that: "In our view, there is a risk to public confidence where individuals have committed serious non-financial misconduct, whether inside or outside the workplace, such as sexual or racially motivated offences, but are permitted to continue working within the sector."

850. Counsel rely on the decision, in August 2021, in the case of *Jon Frensham v The Financial Conduct Authority* [2021] UKUT 0222 (TCC). They submit that the Upper Tribunal had, contrary to the Authority's position, held that "the basis on which the Authority seeks to link Mr Frensham's lack of personal integrity to his professional role on the basis of the nature of the offence alone is speculative and unconvincing" and that there, in effect, had to be a causal link between the criminal conviction relied on and the professional obligation. The Tribunal referred to the finding in *Ryan Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 that a regulatory obligation to act with integrity "does not require professional people to be paragons of virtue."

851. Mr Williamson KC and Mr Mansell contend that OAM therefore found itself in what was then a developing regulatory landscape, fraught with risk for firms and those managing them. There was uncertainty on the part of the Authority, the regulated sector, and advisers as to the scope of NFM, and unambiguous signals from the Authority as to its own view of Mr Odey's fitness and propriety. However, what was very clear, and supported by the legal advice being received by the firm at the time, was the extent of personal accountability of senior managers under the SMCR, were they perceived by the Authority to get it wrong. Before, during and after the Relevant Period, the Authority's approach to NFM was evolving. Throughout the Relevant Period, despite the Authority's pronouncements and expectations, there was still a legitimate debate to be had as to whether NFM was an area of proper regulatory focus. There was uncertainty as to whether a financial conduct regulator should be policing matters which are related to non-financial conduct at all.

852. They argue that during the Relevant Period the supervisory approach was driven by where the Authority thought the rules around NFM should be in the absence of a rules-based framework. Cases provide precedent and the Authority plainly viewed Mr Odey's case as a totemic one which could in the "Me too" environment be used as exemplar to educate the regulated community and drive up standards.

853. Counsel rely on the fact then asked about the NFM agenda in evidence, Mr Cornwell (HC) seemed reluctant to accept the importance of NFM to the Authority: "…Did you want to tackle [NFM] or leave it untended to?" HC: "So that wouldn't be a decision for me as a - -" AWKC: "I'm not asking if it's a decision for you, Mr Cornwell. …I'm just asking you a really simple question: did you want to tackle it? Did you think NFM needs tackling?" HC: "And I will answer it, but I think again there are a couple of ways to look at it." Mr Justice Thompsell: "Were you in a position to advocate that more work might need to be ..." HC: "Yes, I would have been in a position to say: this is what I'm seeing and this is why we may want to do more work in this space."

854. Mr Odey's case is that he believed that the policy focus upon NFM and the lack of clear rules-based guidance unfairly impacted upon the way in which the Authority interacted with the firm. This in turn might go some way to explain why the Authority's supervisory over-reach caused Mr Odey to take the actions for which he is now being criticised.

855. It is submitted that whether directly sighted on them or not, these factors informed Mr Odey's state of mind. The Authority's NFM agenda played an important part in explaining why Mr Odey considered it necessary to take the actions he took. Mr Odey believes that the uncertainty which existed both within the Authority and within the wider industry as to the regulator's approach to NFM before, during and after the Relevant Period unfairly impacted upon the way in which the firm interacted with him and how the Authority interacted with the firm.

Conclusion and findings

856. We reject these submissions for the reasons we have already given and the findings we have already made. Even if Mr Odey were to establish that there was "general uncertainty" amongst regulated firms and their advisors as to the "limits of regulatory concern and regulatory overreach", the meaning of which is unclear, such a finding would not materially assist us in deciding whether Mr Odey lacked integrity when he acted as he did in the Relevant Period.

857. Most of the evidence about NFM relied upon by Mr Odey consists of internal communications of which he was not aware at the time, or in the Relevant Period, and cannot have played on his mind nor motivated him in removing the ExCos. To the extent that he considered the Authority's enforcement investigation into him, opened in May 2021 and notified in October 2021, was outside its jurisdiction he had the opportunity to challenge this. Indeed, he intimated and then withdrew a JR in December 2021. Thereafter he took legal advice and likely formed a view that it could not impact on his F&P. Thus, he sought alignment of the 2DH and enforcement investigation – incorrectly considering that if NFM was not relevant to F&P it could also not determine the 2DH. The reality is that the established NFM at the 1DH and alleged breaches of the FWW to be considered at the 2DH, were always relevant to the question as to whether he should be dismissed by the firm for committing gross misconduct according to its rules and procedures under the staff handbook. Therefore any questions as to the law on the relevance of NFM to F&P could not render the conduct irrelevant to the firm's considerations.

858. Mr Odey also relies on uncertainty in this area of the law in support of both the Authority's agenda but also on the pressure exerted by the lawyers.

859. However, Mr Odey has not established his case that there was widespread uncertainty in this area of regulation at this point in time in November 2021 when the advice was being given – whether NFM could render a person unfit. We accept of course that Mr Fox had earlier caveated his particular advice to the first ExCo in January 2021 for the 1DH as to whether Mr Odey would be F&P to manage money based on the NFM set out in the 1S&S in the following terms: "Both of the questions on which I was asked to advise are essentially quite difficult judgement calls about where the relevant line is and whether it has been breached. This is not an easy call as there is a paucity of guidance available in relation to these types of issues. There are some statements made by [Megan] Butler and other FCA staff but they lack any concrete detail. It would be helpful for people like me who are asked to advise on these types of situation to have some more detailed guidance from the FCA. My decisions have also involved some difficult judgement calls about how to factor in allegations which are disputed or contradicted. I have also had to decide what weight to give to allegations that date back some time (in particular the incident I described earlier which appears to have occurred more than 15 years ago. Again, there is no guidance as to whether [historical] events should [be] for the purposes of the fitness and propriety test be viewed though a different lens."

860. However, there was no evidence that S&S's advice for the 2DH in November 2021, which assumed NFM was relevant to F&P, was an "outlier": the word used by Mr Hanbury, in explaining why first ExCo wanted a second opinion – "I think part of the reason that we were talking about having advice from a second law firm was trying to see whether the Simmons & Simmons advice was a big outlier."

861. Mr Odey has not shown that S&S's advice to the first ExCo in respect of the 2DH - that Mr Odey was unlikely to be fit and proper - was unreasonable or wrong advice. It appears to follow the balance of the evidence then available – without the 2DH actually having

taken place and Mr Odey having had the opportunity to put his case. S&S is an established law firm giving advice across a range of disciplines including specialism in the relevant areas of law.

862. Mr Odey's case was that the Authority's jurisdiction over NFM was a grey area with not much guidance. This was not forcefully pursued at trial but in any event, the first ExCo, by seeking a second opinion from Addleshaw Goddard, used two firms of experienced regulatory lawyers well-placed to advise. As the Authority submits, it cannot be an answer for a lay person such as Mr Odey, wherever the law is unclear, to decide unilaterally that gives them the right to decide what the answer should be. This cannot be used as any reasonable justification for Mr Odey's conduct in removing the ExCos.

863. Furthermore, NFM could not have operated on Mr Odey's motivations in removing the ExCos as there is no contemporaneous evidence of this - he did not state to either ExCo at the time of removing them that this was an operative factor. Indeed, there is no communication or written document recording Mr Odey before 24 December 2021 raising the issue that he was concerned that the Authority's approach to NFM was impacting upon his ExCo or his decision to remove them. In his 24 December 2021 letter Mr Odey simply refers to regulatory "overreach". On 24 December 2021 he received the Authority's reply to his intimated JR arguing that NFM was within the scope or jurisdiction of an Enforcement Investigation. Mr Odey then abandoned the JR on 30 December 2021.

864. It is only on 6 January 2022 that Mr Odey asserted to members and to his own company (in the false minutes) that NFM was driving the Authority and this was a motivating factor in removing the first ExCo. Indeed, even if his supposed belief in the Authority's 'NFM agenda' did motivate him to remove the ExCos at the time, this could not be reasonable. He was not entitled to remove the ExCos even if they were being subject to pressure from the Authority regarding the regulation of NFM. He should reasonably have challenged the ExCos both before and after the 2DH as to the fairness of their procedures and outcomes rather than remove them and substitute himself.

865. It is to be noted that Mr Odey was entitled to and did take legal advice in January / February 2022 regarding the legal basis and jurisdiction of the enforcement investigation initiated by the Authority against him for NFM in May / October 2021 and come to a view whether it would be successful (however he did not revive his intimated JR). He had a proper route by which to address this quite independently of the removal of the ExCos. There is no objective measure or decision to which Mr Odey can point to establish that the Authority's investigation into him for NFM was unlawful, and even if so, that it could form a ground for him acting unilaterally to remove the ExCos rather than continuing his legal challenge.

866. We also note that there is an important distinction between an allegation of actual/perceived pressure on ExCo which we addressed above and the vague allegation pursued regarding NFM which extends to the entire regulated sector. Even if this generalised allegation were established, that would not in turn support his case as to "his view" or "his belief". First, Mr Odey did not in fact clearly allege in his Reply that he held a belief in the terms pleaded in the Reply, [at 43(c)], and in any event, his witness statement does not include any evidence addressing his own beliefs concerning such matters. Second, the allegation is pleaded in such abstract terms that it is impossible to see what we could usefully take from it, in making an assessment of Mr Odey's actual state of mind or the pressures ExCo were allegedly under at the material time.

C. Existential Threat

<u>1.Actions taken were reasonably considered to be in the best interests of OAM, staff & clients</u>

Submissions on behalf of Mr Odey

867. Mr Williamson KC and Mr Mansell submit that as the majority shareholder of the firm, Mr Odey was under no legal, regulatory or moral duty to keep operational a firm in which he could play no active part. As Mr Satt said in evidence: "He's under no obligation to keep the firm running". In any event, the closure of the firm shortly after Mr Odey's departure in June 2023 shows the extent to which the firm was Mr Odey and Mr Odey was the firm. Whatever the primary cause of the firm's demise, the reality was that the fate of the firm and Mr Odey were fundamentally intertwined. The firm could not survive Mr Odey's departure. Mr Odey recognised this reality even if the firm and the Authority did not.

868. Mr Odey's case is that he reasonably believed that closing the firm would have had disastrous consequences for the firm's clients, who were enjoying record returns, and for the livelihoods of the firm's employees. Mr Odey's efforts to ensure due process were therefore entirely aligned with the interests of the firm's clients and staff. Had Mr Odey not acted, the inappropriate pressure being exerted upon the firm by the Authority to dismiss him created an existential threat to OAM.

869. Counsel argue that Mr Odey foresaw the harm and acted pre-emptively. The situation Mr Odey was confronted with was highly unusual, by acting as he did, he ensured the due process to which he was entitled and prevented the harms that would have resulted to OAM and its clients caused by his dismissal through an unfair process. Any harms caused by Mr Odey's protective actions were theoretical and outweighed by the necessity that drove them.

870. Mr Odey asserted that his actions in removing the first ExCo were "actions he reasonably considered to be in the best interests of the Firm, its staff, and its clients". He relied on what he asserted to be an existential threat to the firm. Had he not removed the ExCo, they would have dismissed him from the firm which would "lead to the closure of the Firm." He asserted that any "risks and/or harms arising from the actions taken by Mr Odey were…outweighed by the detriment that would have been caused to OAM, its staff, and its clients had he been forced out of OAM as a result of a disciplinary process that had not been conducted fairly". Mr Odey's case is in part that he was therefore avoiding a greater harm because if he had not removed the ExCos, he would have been dismissed from OAM, and the firm would have closed, even though this is because he would have closed it, and that closure was not in the investors' interests.

871. For all these reasons, Mr Odey contends that he was entitled to intervene in what was a pre-determined and unfair process by exercising his rights as majority shareholder to dismiss the first ExCo. Not only were his actions lawful as a majority shareholder, but he was also motivated by a desire to keep the firm operational. He was under no obligation to keep a firm in which he could play no part active. Further, in taking steps to ensure the process would be a fair one, the interests of Mr Odey, its clients and its people were aligned, for that would give the best chance of the firm remaining operational.

872. Mr Odey has consistently maintained that his action in dismissing the first ExCo was to extricate them from the impossible position in which they found themselves due to the opposing pressures from the Authority and the legal advice they received on one hand, with their obligation to afford Mr Odey due process on the other.

873. Counsel argue that neither Mr Pearey, Mr Hanbury nor Lord Roborough has ever stated that they considered Mr Odey's belief not to be genuinely held. When asked during evidence, "that his concern, may be personally affronting to you, but that he wasn't going to get a fair hearing?" Mr Hanbury accepted that "that was his concern." Lord Roborough went so far as to tell the Authority in interview that he did not consider Mr Odey's actions in removing the first ExCo to evidence a lack of integrity.

874. They suggest that after Mr Odey took that action, members of the first ExCo were relieved to be removed from the pressures of the decision they would otherwise have been required to take. Mr Hanbury in cross-examination accepted that "being removed from ExCo on Christmas Eve was to an extent a relief for [him]." His sense of relief was further reflected in a phone message Mr Hanbury sent to Mr Odey in June 2022 where he said: "The last period of being on Exec Co was a real low point for me, I hated the conflict, the legal meetings, the time it took up... It impacted my health and with my [health conditions] it exacerbates other health risks. The lawyers are also quite clear that as a senior manager a false step in this situation (intended or unintended) can leave you exposed, so as a senior manager in the interim period it is a rol[e] that one has to be very focused on. This may be them being overly conservative but it certainly adds pressure to the situation."

875. They contend that even Mr Pearey recognised the pragmatic nature of Mr Odey's actions, telling Mr Satt on 24 December 2021: "I think this is the least worst outcome, I think it's a very pragmatic solution, I have to say. I think what this will mean is, should he lose his judicial review, whenever it may be heard in July or September, I think he will be much more amenable to the business being able to carry on without him and either spinning off into Brook or just repurposing the company as is and at that stage, one can have much more meaningful conversations about, you know, what he is going to do and what the business is going to do."

876. Counsel submit that the fact that the first ExCo members – those with firsthand knowledge of the pressure under which they found themselves – contemporaneously viewed their removal by Mr Odey as a relief or as a pragmatic solution gives further support to the conclusion that Mr Odey's actions were, in the exceptional circumstances presented, reasonable and motivated by legitimate intentions not, as alleged by the Authority, self-interest.

877. Mr Odey argues that he had to balance the competing harms of action versus inaction. Any actual harm caused by his actions were outweighed by the potential benefits of the firm remaining operational. His response therefore was not unreasonable and disproportionate and his actions as result are not ones upon which a breach of ICR1 and/or an alleged lack of fitness and propriety can properly be founded.

Conclusion and findings

878. We have already rejected some of the evidence given and arguments raised in our findings of fact.

879. We reject Mr Odey's case as to his asserted motivation of acting in the firm's best interest in response to an existential threat as providing any reasonable justification for his actions for a number of reasons.

880. Mr Odey denied that he had other options than closing the firm if he were dismissed, irrespective of whether this was fair or unfair. However, he did have a number of options if dismissed by ExCo. The evidence revealed that he knew of them at the time. First, Mr

Odey could have sold his shareholding in the business and he accepted this in oral evidence together with the fact that doing so would have been better for staff and employees than a sudden closure of the business. Mr Odey stated he would have made less money by selling the business at the start of the year than the end of the year. When asked, "That would have been better than nothing, wouldn't it?", Mr Odey stated: "Well, I'm a proud man, I'm afraid."

881. Second, he could have supported the contingency plans Mr Pearey was developing for the situation in which Mr Odey were dismissed. Mr Odey accepted in questioning that he would stonewall discussions of the points in December 2021 because he "wasn't interested in how Tim Pearey was going to take my business without me and run it off into the deep blue yonder".

882. Third, he could have challenged his dismissal by ExCo if he considered it unfair. There were a number of avenues he could have pursued, such as legal redress, rather than remove the ExCo. He could have appealed ExCo's decision as was his right within the terms of the firm's handbook. He could have taken legal action against ExCo, including through the courts or employment tribunal. Mr Odey was not clear in cross-examination whether the idea of taking legal action had occurred to him at the time but he stated in oral evidence that it would be like "suing myself for wrongful dismissal". Mr Odey should reasonably have been aware of his potential to take legal action in one form of another or use internal appeal routes to challenge any dismissal by ExCo.

883. Mr Odey had access to high quality legal representation paid for by OAM – and these options existed whether or not he thought of them at the time. It is likely that he did not contemplate these avenues at the time because he was not prepared to let ExCo make an adverse decision against him in the first place. He was acting in his own self-interest. Even if there had been some unfairness in his dismissal, he did not want to take appropriate action as he could not guarantee that an independent decision-maker would agree with him as to the challenge he brought. He was driven to remove the ExCos in order to guarantee getting the result he wanted, for him to stay at the firm as an employee, notwithstanding the existence of a 2DH.

884. Furthermore, there is no real dispute that the firm could have carried on without Mr Odey as an employee even if he had been dismissed. He could have chosen not to take any action as controller or owner and the funds under his management could have been passed to other fund managers. There was already a contingency plan for OAM in the event Mr Odey was unable to continue at the firm as an employee. This plan was required by the Authority and was explained in the email from Mr Pearey to Mr Cornwell on 10 December 2021. The scenario plan provided for Mr Neave to continue to manage the portfolios. Mr Neave had co-managed the funds with Mr Odey since 2019. Mr Odey's response to this in oral evidence was that when Mr Neave had managed the fund in 2023 following Mr Odey's eventual dismissal, the fund had decreased in value by 15%. However, that was a different year and there is no evidence that this would have happened in January 2022. In any event, it would still have been preferable to an unplanned closure of the firm in terms of the impact on staff and investors.

885. The reality is that Mr Odey, as owner, was not willing to let OAM continue without him employed in a fund management role. He had no interest in keeping the business alive with him simply as a controlling shareholder. He wanted to close it if he could not get his own way. In oral evidence he stated concerning the prospect of OAM carrying on without him present, "And why would I want that to happen?".

886. Mr Odey accepted in oral evidence that OAM could have carried on without him as an employee but he would not let that happen. He stated in his witness statement that, "if they did remove me, then it would in practicality lead to the end of OAM". What this really meant was that he would close the firm. He accepted in cross-examination, "It [the firm] could continue without me but since I was the owner of the business I had the option to close it down.". In response to the chair of the panel's question, he stated that he would have closed the firm in any event. He stated: "The answer is why would I continue to have, to own something which I could get no economic interest out of?" He would have closed the business because he was concerned about his status as a fund manager and the financial benefits of being both employee and owner. His motivations were clear and were self-interested.

887. In September 2023, Mr Odey had an interview with the Authority and was asked about his claim that investors were at the "heart of it". He was asked why, if that were true, he had not engaged in contingency planning. Mr Odey's response was: "The answer was that – you know – I didn't have many weapons, did I?" He denied during cross-examination trying to retract in his interview the use of the word 'weapons.' When also asked in cross-examination if he regretted giving the answer regarding "weapons" in his interview, Mr Odey, responded: "No, I don't, I'm sorry. You know, every time you put something up I feel, wow, I'm so glad I said that." He also used the language of weapons in his text message with Mr Hanbury on 13 February 2022 set out above. Using the threat of closing the business as a weapon undermines his account of being a person acting with integrity seeking to protect the interests of investors and firm against a balance of harm.

888. Mr Odey's self-interested financial motives were highlighted during cross-examination. He did not want to leave the business at that time because he was making money and wanted to make more. In oral evidence he stated that his fund was "in the middle of a move in which my clients made £800 million over the next 12 months". His rationale was that the clients would not have made this money without him. However, there was no evidence for why Mr Odey was the only fund manager at OAM that could have made this money. Mr Odey could not know whether and how much money he would make in the future. His interest was not only in making money for investors but for himself: almost half the money he managed in his funds, belonged to him or his family so his clients were substantially him or his family.

889. In any event, the possibility of future returns did not entitle Mr Odey to put at risk all investors, not just those in his fund, by removing ExCo and the governance controls that they provided, and the rules required. It is self-evident that a fully functioning ExCo was necessary for the proper protection of all investors. Mr Odey's conduct, even partly on his own argument, involved putting at risk investors' interests in the hope of and desire to make more money for the investors in his fund.

890. In reality, Mr Odey being dismissed would not have been the worst outcome for clients or investors. Furthermore, if Mr Odey had been dismissed but remained as owner and cooperated with the contingency plans rather than winding down the business, the investors would have had a choice about whether to stay at OAM without Mr Odey, or leave and withdraw their money. He was asked about this in cross-examination and answered, "Q. That should have been their choice, not yours, shouldn't it? A. Well, if you are the owner of a business, you are free to close that business down or do you not believe that?".

891. This betrayed Mr Odey's hubris when using his ownership to deflect, delay and frustrate his own disciplinary proceedings and the 2DH. He also gave evidence that it

would be the worst outcome for him to be dismissed. He was challenged on this but gave the following answer that repeated his misplaced sense of entitlement, "Q. The worst outcome for the firm, its employees and all of its clients would be the forced sudden liquidation of it by you, wouldn't it? A. I'm not interested in that. I'm the owner." He also ignored other investors in other funds, which comprised two-thirds of the business – he only managed approximately one third of the AUM.

892. Finally, Mr Odey's evidence and rationale as to his investors making money appear to ignore the firm's other partners or the firm's staff. They do not appear to have featured in Mr Odey's thinking at the time. Mr Hanbury gave unchallenged evidence that in December 2021, Mr Odey would say "openly to people on his floor" that "if the disciplinary hearing did not go his way, he would just close the business down". That was "an unhelpful comment to make given the number of employees with mortgages and so forth". Mr Odey told Lord Roborough in a text message on 20 December 2021 that he "did not have much sympathy" for his fellow partners.

893. We conclude that Mr Odey's real motivation was not the protection of the firm, its staff or its investors but his self-interest and self-preservation. He prioritised his desire to protect his own status and employment in the firm, to avoid accountability for his conduct and to keep making money for his fund.

894. The "greater harm" Mr Odey attempted to rely on – closing the business in a disorderly and immediate fashion if he was dismissed - was what Mr Odey, in his self-interest, was willing to cause to happen. He alone would be responsible for it happening. The protection of the firm for its investors and staff from the greater harm of the firm being closed was not a true belief he held and even if it were genuinely held at the time, it is not reasonable for him to rely upon for the reasons set out above. Mr Odey prioritised his own self-interest ahead of everything else.

895. Mr Odey's own words used in a text message he sent to Mr Hanbury on 20 June 2023, "Self interest is the heart of good governance". He accepted this was his authentic view in cross-examination. His own words condemn him and reveal his true motivations.

2. Justification for removal of second ExCo – alignment or sequencing of the two processes

Submissions and evidence relied upon on behalf of Mr Odey

896. Mr Williamson KC and Mr Mansell set out Mr Odey's account on alignment and sequencing in detail relying on his assertions of fact as to the meetings that took place between 10 January and 15 February 2022. It is argued that the Authority changed its position having previously agreed to alignment or sequencing of the 2DH and enforcement investigation. The lack of agreement on alignment was an obstacle to the 2DH progressing and the second ExCo did not progress any such agreement. The stagnation thereafter led Mr Odey starting to lose confidence in the second ExCo conducting a proper process regarding the 2DH – which ultimately led him to remove the second ExCo when the new joiner allegation and safeguarding proposals then surfaced.

897. They rely on the respective positions of the second ExCo, Mr Odey and the Authority as important context in what followed – in particular, the meetings with the Authority on 10 January 2022 and 7 February 2022, Mr Odey's call to Mr Low on 11 February 2022, Mr Kelton's visit to Mr Odey's home on 12 February 2022, and the meeting involving Mr

Odey, the Firm and the Authority on 15 February 2022.

898. Counsel argue that as a result of Mr Odey's call with Mr Low on 11 February and Mr Kelton's visit to Mr Odey's home on 12 February, the meeting of 15 February 2022 became key as to how both the question of alignment and the issue of subscriptions would be resolved.

Conclusion and findings

899. In making our factual findings above, we have rejected the submissions and interpretation of evidence relied upon by Mr Odey in relation to the events of 10 January, 11, 12 and 15 February 2022. We have made findings that no alignment was agreed by Ms Trost or anyone at the Authority on 10 January 2022, there was no reasonable justification for Mr Odey to believe there was any such agreement and he did not believe such to have occurred. The second ExCo were entirely reliant on what Mr Odey told them about this and were misled by him. There was no 'moving of the goalposts' by the Authority on 7 February 2022 and the second ExCo did not consider the Authority's position to pose them a problem. We have found that Mr Odey mispresented the existence of an agreement to Mr Low on 11 February and made Mr Kelton feel physically threatened on 12 February 2022. The real obstacle to the 2DH taking place was not alignment but Mr Odey's unreasonable threats and obstruction. The lack of alignment was not an obstacle to the 2DH taking place or being progressed and Mr Odey had no reasonable basis for relying upon it as one of the justifications for removing the second ExCo.

900. The reality is that Mr Odey took the view that the allegations of sexualised misconduct, harassment and inappropriate behaviour towards female employees at OAM were not capable of rendering him unfit or improper. He admitted in oral evidence that this was one of the two flanks by which he sought to protect himself. Mr Odey did not dispute that he came to the conclusion that the second ExCo could only dismiss him if the Authority had first found him not fit and proper – hence he sought alignment or sequencing of the two processes.

901. The position he adopted was that unless he was found not fit and proper by the Authority then ExCo could not dismiss him at the 2DH. In his telephone call with Mr Richards and Mr Kelton on 28 March 2022, shortly before he removed the second ExCo, Mr Odey stated that "only addressing his role as F&P was relevant, HR law did not matter here and only a finding on the matter would be accepted by him."

902. There is no reasonable basis for the position Mr Odey took.

903. As we found above, Mr Odey had consulted lawyers and believed by 12 February 2022, on advice, that it was unlikely he would be found unfit on the basis of the NFM allegations considered at the 1DH and under investigation by the Authority. Therefore, he wanted the 2DH to post-date the investigation and a decision on his F&P by the Authority's Enforcement Division. That is why he wanted alignment / sequencing between the two processes. He was prepared to mislead Mr Low about whether he had achieved an agreement on alignment with Ms Trost, he was prepared to mislead Mr Richards and Mr Kelton about whether alignment had been agreed and exploit their lack of knowledge as to the true position to delay the 2DH being progressed.

904. In any event, even if Mr Odey were found to be F&P by the Authority on the basis of the allegations being NFM then this would not clear him of the internal employment and disciplinary proceedings within OAM. Furthermore, the Enforcement Investigation of the Authority was focused on the 1S&S and 1DH whereas the firm's disciplinary proceedings were focused on the 2S&S and 2DH. There was no necessary connection between the outcome of the internal 2DH and the Authority's enforcement investigation. These were two separate and independent processes. The first was to consider sanctioning Mr Odey for misconduct and ensured Mr Odey abided by the FWW and protecting OAM's staff. The latter was an assessment of Mr Odey's fitness and propriety to manage money. The two processes involved applying different rules and tests were looking at different issues, over different timescales.

905. Mr Odey was seeking to gain advantage and delay through adopting this position. He believed there was a fair chance that he would be found F&P because any sexualised misconduct fell outside the Authority's jurisdiction because it was NFM. However, the Authority's enforcement investigation and OAM's 2DH involved the application of two independent and unrelated tests – ExCo could obviously dismiss him based on sexual harassment or bullying allegations, or other gross misconduct by application of the Staff Handbook.

906. Ultimately Mr Odey's position became impossible because the second ExCo acted independently and took steps towards progressing the 2DH before they were thwarted by his removal of them. The meeting between the Authority and the second ExCo on 7 February 2022 prompted them to progress the 2DH more quickly. It was clear to Mr Richards, Mr Kelton and Mr Odey that his preferred alignment / sequencing of the two processes was unlikely to be achievable. At that stage Mr Odey repeated the threats he had first made to the first ExCo to close down the business because his attempt to 'indefinitely postpone' or kick the 2DH into the long grass was not working. In making his threats the to the second ExCo, he now knew that they were now seeking to progress the 2DH.

907. Mr Odey therefore reverted to his position that he would only accept the Authority's finding on F&P. He stated in his call with Mr Richards on 13 February 2022 that if the second ExCo were changing the timeframe of the review of the SS review / 2DH, then "as an owner he could frustrate ExCo's ability to remove him as a partner". On 15 February 2022, Mr Odey told the Authority that if his proposal for alignment was agreed "then he will not do anything to undermine the company". However, it was a combination of the alignment not being agreed and then the safeguarding concerns being taken seriously and progressed the following month that he took the steps to remove the second ExCo.

908. Likewise, nor was Mr Odey's position on alignment or sequencing a reasonable one. His position that only a decision from the Authority on F&P could lead to his dismissal. It was based on his belief that he would not be found unfit. He therefore thought it would lead to him avoiding sanction from his own firm as well. His position was irrational or unjustifiable. If only the Authority could sanction him for matters that fell outside their purview but within the staff handbook as capable of resulting in gross misconduct, this would grant him impunity. It would also erode or extinguish the ability of the firm to protect its female staff from Mr Odey or hold him account for any improper conduct. It reflected Mr Odey's belief that only money and not conduct matters - that if he was generating returns for his clients, then nothing else should matter. Further his proposal to

suspend the disciplinary process of the firm pending the resolution of an external and potentially indeterminate process by the Authority would undermine any confidence within OAM, its ExCo, its employees or its clients in the adequacy of its governance.

3.Justification for removing second ExCo – avoiding safeguarding proposals

Submissions and evidence relied on by Mr Odey

909. Mr Odey's case relies on his concern in respect of the safeguarding measures being proposed - that these were in all the circumstances a disproportionate response to the matter reported and would have made it very difficult or impossible for Mr Odey to work effectively at the firm.

910. His counsel argue that in February / March 2022 the second ExCo wished to defer the 2DH. However, it was acutely aware that the Authority's expectation was that it should proceed to hold the disciplinary hearing as soon as possible. The second ExCo, on legal advice, adopted a strategy whereby it could use the implementation of safeguarding measures in respect of Mr Odey as a basis to persuade the Authority that the disciplinary hearing could safely be deferred until the conclusion of the Authority's investigation. As Mr Satt accepted, "Q…part of the reason we're doing (safeguarding) that is because we think we're more likely to get a suspension of the disciplinary hearing - - which we're going to write to the FCA and tell them that we're not going to do if we have safeguarding measures in place? JS: Yes, it's an additional mitigant."

911. They rely on evidence Mr Richards gave, "in the absence of the safeguarding measures and demonstrating good governance, we were being advised that we may need to hold the hearing - - the FCA may not agree to align the processes." He further told the Tribunal: "Safeguarding was important to demonstrate our effective governance, and only by displaying our effective governance, did we feel that the regulator may consider alignment."

912. Mr Odey's case is that a requirement that Mr Odey should work entirely from home, or in the basement or on a floor vacated by other employees, would have impacted adversely on the firm's clients. The reasons for this were explained by Mr Pearey in respect of his own decision not to suspend Mr Odey when the matters forming the subject matter of the 1S&S report came to light in 2020. As Mr Pearey had told the Tribunal, "in terms of the interests of the underlying clients in his fund, you know, Crispin's ability to manage that money was much enhanced by him being in the office rather than being at home with a computer which isn't working terribly well." Mr Pearey told the Tribunal that Mr Odey was: "technically illiterate with regards to IT". The firm therefore rejected what Mr Pearey described as Mr Fox's suggestion that Mr Odey work from home, stating that "they certainly made the suggestion he should work from home. AWKC: We have covered that, that was not in the best interests of the investors? TP: Yes."

913. Counsel note that in March 2022 Mr Odey had been on holiday: when he returned and when he learned of the firm's intentions to impose safeguarding measures, he pushed back strongly. As Mr Kelton said he "got back from his holiday/being away, he was probably very surprised by it. I was very surprised by it". Throughout March 2022, Mr Odey's trust and confidence in the second ExCo to deal appropriately with the new joiner allegation were eroded. His concern was that they appeared fundamentally unable to respond

proportionately to the issues raised in a way which did not cause unnecessary detriment to Mr Odey’s own interests and those of his clients.

914. They rely on Mr Odey’s evidence that by the end of March 2022, matters were reaching a head. On 28 March 2022, Mr Odey called Mr Low and in the call said: "They’re [ExCo] making my life pretty impossible. They are very worried about what the FCA may do to them." He further explained: "My ExCo is almost exhausted – in a silly and idiotic way – they need to act appropriately as the firm is not working as well as it could and should work. Legal counsel is also very scared by ‘you lot’ and want to bend over backwards to facilitate. I do not want to close the business down." Mr Odey was, as Mr Low accepted, calling him and using him "as a sounding board for all his frustrations in a rather candid and cooperative - - in a candid way."

915. Counsel suggest that by 30 March 2022, Mr Richards had indicated that he was "considering his position" on ExCo. As Mr Richards told the Tribunal, "Crispin was quite clear in that meeting that he wanted to bring in an ExCo with greater experience at dealing with regulatory matters, and I think given the challenges we had faced to date and in light of that, I had indicated that I wanted to resign."

916. They also note that Mr Kelton was finding the situation he was confronted with a strain. He told the Tribunal that: "I had no experience in terms of having FCA investigations." He also said: "The last thing in the world I really want to do is be a manager, let alone a chief executive, but I did this job, which I didn't get paid for, but I did it out of duty, fiduciary duty to my clients." They argue that, however well-intentioned, Mr Kelton was performing a role to which he was unfortunately unsuited and the pressures of which were making him unwell. By this time Mr Kelton was unwell, Mr Richards wished to resign and the Authority moved the goalposts. This prompted Mr Odey to act.

917. Mr Williamson KC and Mr Mansell submit that the issue of safeguarding highlighted the extent to which the second ExCo lacked experience in dealing with these issues. As time passed, it became increasingly clear to Mr Odey that the second ExCo was simply not equipped to ensure that any disciplinary processes to which he was subject would be fair and free of inappropriate influence. Their proposals in respect of safeguarding were disproportionate to the level of risk, even taking the allegations at their highest, and risked harm to the firm and its clients. Further, the second ExCo was under even more pressure from the Authority than the first. The pressure from the Authority continued, in the form of supervisory interactions and the on-going Enforcement investigation into the firm. Further, the risk that the Authority may impose a restriction on new business remained an on-going threat to the future of the firm. Particularly acute was the pressure on the two members of the second ExCo by virtue of their outstanding applications for approval as senior managers.

Conclusion and findings

918. We reject these submissions and rely on the factual findings we have already made together with these further reasons and findings.

919. The immediate prompt for Mr Odey removing the second ExCo was when they took seriously the proposal that safeguarding measures be adopted around his working for OAM. This had been prompted by the new joiner allegation coming to light in February and March

2022. Mr Odey accepted this in his oral evidence. Mr Odey admitted in cross-examination that he thought the "safeguarding was a ridiculous idea" and that "I was starting to realise that the ExCo needed to be put to bed." Mr Odey accepted that his disagreement concerning safeguarding was the immediate trigger to removing the second ExCo. As set out in his Reply pleading, he considered the safeguarding proposals were draconian, unfair and disproportionate, intolerable and the final straw that destroyed the confidence he had in ExCo. This convinced him that the ExCo lacked the skills, independence and experience to conduct the disciplinary process.

920. He did not think that his behaviour towards female employees was either inappropriate or that others required protection from him. He was asked and answered in cross-examination:

> "Q. Do you accept that your insistence on this position left ExCo, that is the body you have agreed was responsible for the wellbeing of OAM staff, utterly bereft of the Authority it needed to protect female members of staff from your conduct?
>
> A. That's why I got rid of them."

921. Firstly, the safeguarding measures were properly and reasonably justified. The context and background was the number, variety and seriousness of the allegations and findings of misconduct towards female employees contained in the 1S&S and FWW decision letter following the 1DH which Mr Odey had accepted. We address the contents of the 1S&S in further detail below. The terms of the FWW had been alleged to be breached first in relation to the temporary receptionist allegation and then the new joiner allegation.

922. The alleged breaches occurred in March 2021 and August 2021, the former only shortly after Mr Odey had agreed to the terms of the FWW in February 2021. Either Mr Odey was demanding that there be alignment – in which case the 2DH might not conclude for a substantial period of time because of the length of the enforcement investigation – or the 2DH was to proceed as the 2DH and it might still take some time to conclude. In either situation, we consider it was entirely appropriate for the second ExCo to decide to adopt interim measures to safeguard female employees from Mr Odey's unwanted attention. HSF had advised, and the second ExCo acted reasonably in accepting that advice, that some measures would be appropriate. By way of background S&S had even advised in November 2021 that Mr Odey should be suspended or work from home pending the holding of the 2DH. That earlier advice was given in the absence of the new joiner allegation or Mr Odey's attempt to delay the 2DH through alignment. The rationale for the advice was objectively reasonable.

923. Secondly, various options regarding potential safeguarding measures were given to Mr Odey. These included a sabbatical or working from home or working in the lower ground floor (also called the basement) of the OAM office. The latter was a comfortable space with its own entrance and used for entertaining – not the "dungeons" that Mr Odey described it as. Mr Odey was clear in his oral evidence that this was an affront to his perceived status and dignity and he did not for a moment take seriously any of the independent evidence, and his own admissions, that he had behaved improperly towards women and therefore posed a risk of inappropriate behaviour towards women that they were entitled to be protected from. He stated in cross-examination that in refusing to work in the basement, "Why did I need to have been moved?" When it was suggested to him that working on the lower ground floor would not have impeded his ability to work, Mr Odey

admitted: “I did not want to work in the basement.”

924. We agree with the Authority’s submission that his answers revealed Mr Odey’s true position: it was not that there was anything objectively wrong or unreasonable with moving Mr Odey’s location; it was that he was overly sensitive to any insults to his person – we reject Mr Odey’s denial of this. He was unable to appreciate that these issues might impact on people other than himself.

925. At its heart Mr Odey thought that the allegations of the FWW were trivial and should not be taken seriously, let alone acted upon or result in any sanction such as his dismissal. He simply could not see the merits in or countenance the contrary view. He ignored the fact that he had agreed the FWW and its terms and that they were justified because his judgment could not be trusted on how to behave with female staff. He could not help himself around some female staff – he had demonstrated that he did not know where appropriate boundaries were to be drawn. At the times when he behaved inappropriately, he did not care – his impulses and his own view of what was proper were all that mattered to him.

926. The proposed imposition of safeguarding measures by the second ExCo cannot reasonably justify Mr Odey removing them.

<u>4. Indecision of the ExCos as justification</u>

Submissions and evidence relied upon by Mr Odey

927. Mr Odey also relies on the paralysis and indecision which he says was gripping the ExCos which justified his removal of them.

928. His case is that the paralysis gripping the second ExCo in respect of the safeguarding issue led Mr Odey to conclude, as March 2022 wore on, that the impasse in respect of alignment could be addressed by the putting in place of a suitably experienced and properly independent ExCo able to progress the 2DH without the benefit of the conclusion of the Authority’s investigation. The recruitment of an experienced external INED or Chairman had been an ambition for some time. However, it became a necessity given the challenges the second ExCo was facing.

929. It is contended that Mr Odey realised that, to the extent that the Authority were not minded to agree to alignment, the most practical way through would be by the appointment of an independent and experienced Chairman to ExCo. As Mr Odey told the Tribunal: "the joy was that as soon as I could get an independent chairman, we could then have the disciplinary hearing and, therefore, the alignment wasn't so crucial."

930. It is argued that while Mr Odey acting as majority shareholder could exercise his right to remove ExCo, it was not for him as either an employee or majority shareholder to dictate to either ExCo how it should conduct the 2DH to which he was personally subject. However, the idea of bringing in an independent Chairman was not something that either the first or second ExCo appears to have considered.

931. Counsel rely on the fact Mr Pearey had not contemplated this as an option is evidenced by the following exchange in cross-examination: "Q. One solution to imperfect objectivity might be to have an external decision-maker on the disciplinary panel. You did not choose to do that. TP: No, not for - - not for this first disciplinary hearing, but I did embark, if I may just say, on a process of recruiting an independent non-executive director." Mr

Hanbury was also less than enthusiastic when asked, "Did you think overall it would be better to have an independent person who was not tainted - - I don't mean it pejoratively, but tainted by the past proceedings?" He replied: "There were pros and cons." For his part Mr Richards accepted that: "an independent, experienced INED would provide comfort to Crispin that it was a fair process", but despite this acceptance when giving evidence, there is no suggestion a delay to the disciplinary process was ever requested by the second ExCo on this basis.

Conclusion and findings

932. Mr Odey has claimed that one of the reasons he removed the ExCos was because of their paralysis, indecision and failure to progress or decide the 2DH. We have rejected this case in relation to both ExCos.

933. In relation to the first ExCo, Mr Odey stated that it was in a "paralysis of indecision". He argued that removing the first ExCo would in part unblock the paralysis. However, the first ExCo was not indecisive – it had taken action by investigating the issues of the alleged breach of the FWW through commissioning the 2S&S and by setting a date for the 2DH (as it did in relation to the 1S&S and 1DH). It had sought advice from two sets of lawyers, S&S and Addleshaw Goddard. Mr Pearey had undertaken contingency planning with Mr Satt should Mr Odey be dismissed. There was no logjam, unreasonable delay nor paralysis. In cross-examination Mr Odey suggested, inconsistently, that the "paralysis was in regard to the business" but when asked, accepted that investors were doing well from the firm and performance was good – "it was a very good time". The suggestion of indecision as a material reason for removing the first ExCo had no reasonable basis.

934. Mr Odey attempted to justify his removal of the second ExCo in part by suggesting they lacked the skills and experience to conduct the disciplinary process – that they were not 'up to the job' or they were indecisive. There is no evidence that this was the case. Mr Richards and Mr Kelton had performed well and the difficulties they were having with the disciplinary process were due to the obstacles that Mr Odey was presenting – either by focussing on alignment or the lack of need for safeguarding. Indeed, it is unlikely Mr Odey thought they were managing the business poorly as he was making significant financial returns during this period. Indeed, but for the 2DH he could have had no complaint. The real source of his disagreement with and complaint against the second ExCo was they were not bending to his will – they disagreed with him. He himself never suggested to either ExCo that an INED should be appointed for the 2DH and it was not unreasonable for them not to consider one to be necessary. The ExCos were independently advised and following the firm's processes. Mr Odey never stated at the time that he removed the ExCos because they would not appoint INEDs and it would make no sense to do so – an INED would be an addition to the ExCos and not a substitute. It cannot have justified their removal.

935. The reality is that the ExCos were not indecisive nor was there paralysis. They were not aborting the 2DH nor delaying or postponing the disciplinary process as Mr Odey attempted to make them do by: threatening to close the business; insisting on alignment; urging them to postpone the 2DH irrespective of the advice and views they were receiving from lawyers and the regulator; or by resisting them implementing safeguarding measures. In any event it was not for Mr Odey to decide how the ExCo were to manage the 2DH or any other matter within their remit. This argument, whether or not it was relied upon or believed by Mr Odey at the time, cannot reasonably justify the removal of the ExCos.

D. The result of the 2DH

1.Reliance on the findings and sanction applied by the third ExCo following the 2DH

Submissions on behalf of Mr Odey

936. Mr Odey relies on the fact that when the 2DH eventually took place in November 2022 the third ExCo decided in December 2022 not to dismiss him or find him guilty of gross misconduct nor any substantive breach of the FWW. The third ExCo found only two technical breaches of the FWW conditions, requiring him to undertake some training but relaxing the terms of the FWW overall. He argues that this also justifies the actions he took in relation to the first and second ExCos.

937. Further, Mr Odey also points out that the Authority could have brought a case against the firm in relation to its decision, through the third ExCo, not to dismiss him for the found breaches of the FWW. Not only did the Authority choose not to do so, but it also purposely framed the Relevant Period of these proceedings so as to exclude the decision of the third ExCo from its scope. The Authority did not even investigate the appropriateness of the 2DH decision. Therefore, he submits that it is not open to the Authority in these proceedings now to seek to undermine the findings on the 2DH or the actions of the third ExCo.

938. Mr Williamson KC and Mr Mansell argue that on 31 March 2022, Mr Odey discharged the second ExCo with a view to re-constituting it as quickly as possible with suitably experienced, independent individuals able to progress the 2DH without further delay and without the need to await the Authority's agreement on alignment. While that did not happen within the time periods anticipated by Mr Odey in March 2022, because Mr Dobson did not in fact take up the role, Mr Odey was determined to ensure that once suitably experienced, independent individuals were in place his disciplinary hearing could take place without the need for alignment.

939. Consequently, within weeks of the third ExCo being constituted on 4 July 2022 and its members approved by the Authority in October 2022, it met and determined the appropriate action to take in respect of Mr Odey's alleged breach of the FWW. That decision has never been the subject of any formal investigation, and no one has ever been interviewed by the Authority in connection with its appropriateness.

940. Counsel rely on the fact that the role of the third ExCo in Mr Odey's reconvened disciplinary hearing was to determine whether Mr Odey had breached the terms of the FWW and, if so, the appropriate action to take. That required factual findings as to the nature and gravity of the breach. The breaches identified by the third ExCo at the 2DH were technical and had the FWW been implemented in more proportionate terms initially, might not have amounted to breaches at all.

941. They accept that it was no part of the role of the third ExCo to re-open the question as to whether the firm had been right to impose a FWW in respect of the matters of NFM contained in the 1S&S or to reassess the gravity of the matters contained within it. The firm had made its decision in respect of those issues.

942. Counsel reject the Authority's suggestion that the third ExCo's decision-making was deficient simply by virtue of the fact that it restricted the scope of the hearing to the issues that it was mandated to determine. The Authority's implication that allowing Mr Odey access to legal advice at the 2DH was reflective of bias is also without basis and

inappropriate. This was a hearing being conducted under the Authority's intense focus. The outcome had wider repercussions for the firm and the firm's clients. It was not unreasonable for the firm to permit Mr Odey legal representation.

943. Counsel submit that the Authority's belated and unpleaded attack on the decision of the third ExCo ,which it pursued at the hearing, in effect amounts to an allegation that Mr Odey "loaded the dice" by placing acolytes on the third ExCo who simply followed his instructions. This is a deeply disparaging and personally prejudicial allegation to make of each of the third ExCo members. Mr Arnold, Mr Ede, and Mr Martin were experienced and regulated professionals, whose integrity is beyond question. They also had a degree of forensic and procedural expertise suited to conducting a disciplinary proceeding beyond the previous ExCos, Mr Arnold as a solicitor with some four decades' experience, and Mr Ede as a trained accountant and experienced supervisor of compliance, risk and HR functions.

944. They argue that if this is an allegation which the Authority wished to make in these proceedings, it should have been properly investigated and pleaded and the Relevant Period extended accordingly. Counsel contend that the fact that the Authority now invites these inferences without any inquiry is both opportunistic and shocking. Further, by not following due process the Authority have deprived those persons of their third-party rights under section 393 FSMA and Mr Odey has been denied the opportunity to call evidence to refute the unpleaded suggestions now being made.

945. Mr Williamson KC and Mr Mansell submit that in reality, the Authority's unpleaded attack on the decision of the third ExCo is an act of desperation. The Authority knows that without such an attack the third ExCo's decision provides robust independent justification for Mr Odey's actions. They point out, as Mr Odey told the Tribunal: "You had the choice, you had the chance to do this when you were interviewing Jeremy Arnold afterwards, and you had the chance to say that this disciplinary hearing was not okay. That's what you are allowed to do as the FCA. You didn't, and now you are now kind of undermining the disciplinary hearing, which I think you didn't at the time."

946. Counsel submit that in mounting this attack for the first time in the course of the hearing, the Authority has simply shown just how divorced it has become from the usual norms of fairness which the Tribunal and Mr Odey should be entitled to expect from a public body discharging statutory functions.

947. It is against the context of all the matters set out above that they submit that Mr Odey's actions in dismissing the ExCos were, in all the circumstances, reasonable.

Conclusion and findings

948. We reject these arguments.

949. First, we agree with the Authority that the outcome of the 2DH, in December 2022, after the Relevant Period, is irrelevant. Even though a differently constituted disciplinary panel in the third ExCo reached a decision that Mr Odey agreed with, this does not justify his actions in removing the first and second ExCos.

950. We are required to examine Mr Odey's motives and actions in December 2021 and March 2022 in deciding whether he lacked integrity and not with the benefit of knowing the ultimate outcome of the 2DH. Mr Odey could not know the result of the 2DH at the time he removed them – that is but one reason why he should have waited for the outcome and only if he had been dismissed would he need to challenge it, if there were reasonable

grounds to do so. Indeed, if Mr Odey was ultimately not going to be dismissed at the 2DH and was confident that he had done nothing wrong and dismissal was not a likelihood, it gave him even less reason to remove the ExCos.

951. That disposes of the argument in its entirety.

952. Nonetheless, and in any event, we accept that it is right that the Authority does not and has not sought to impugn the decision taken by third ExCo at the 2DH by way of any formal action – either by including it in the Relevant Period in respect of Mr Odey or by taking action against the firm or third ExCo members.

953. In our findings above which we rely upon, we made no criticism of the third ExCo in making the decision at the 2DH and do not accept that the Authority has sought to go behind its own decision-making. It has chosen to focus on Mr Odey's conduct in removing the ExCos and has not made any formal allegations or taken enforcement action against the third ExCo in relation to the result of the 2DH.

954. We are not required to decide whether the third ExCo reached the 'right' conclusions at 2DH or even ones within a reasonable range of decisions that might be made. There may be a number of reasons for the outcome it came to which do not need to be explored – for example the third ExCo may have not had all the relevant material before it.

955. However, the fact that the 2DH findings and outcome are not positively impugned does not stop the Authority pointing out, nor the Tribunal finding, that there are many reasons why the 2DH finding cannot be positively relied upon in Mr Odey's favour as he seeks to do. We are required to consider the 2DH findings and outcome in rejecting Mr Odey's reliance upon them. In essence, while the result of the 2DH and the third ExCo's decision-making cannot be found to be 'wrong' – because of the lack of enforcement action against or formal criticism of the third ExCo - that does not mean that Mr Odey can reasonably rely upon it either.

956. The Authority was entitled to identify, and we find that there are, a number of reasons why Mr Odey cannot reasonably rely on the 2DH findings and decision taken by the third ExCo positively in his favour even if they are relevant to take into account despite occurring after the Relevant Period.

957. The first is that, having heard a fuller range of written and oral evidence than the 2DH did, we do not accept Mr Odey's case he is entitled to rely on the findings that the breaches of the FWW committed by him were 'technical'. Mr Odey's contact with the receptionist in August 2021, in breach of the FWW, was not only motivated by Mr Odey's desire to assist her in finding a job or assistance with her Reiki healing practice, but also in trying to establish a personal relationship with her. The text messages throughout August 2021 are flirtatious and evidence desire for a personal relationship. Mr Odey's physical contact with the new joiner in March 2021, even though it involved only holding hands, made her feel uncomfortable and was again one of a pattern of flirtatious and sexualised behaviour towards women. Mr Odey took her to a lunch where obviously inappropriate sexual matters were discussed which were not part of any professional or business function causing her to leave early. These breaches were committed shortly after the FWW and terms were imposed in February 2021, which conditions fairly and proportionately reflected the serious nature and number of findings made against him in the 1DH which he had accepted.

958. Second, it does not appear that the third ExCo had before it at the 2DH important documents relating to the 1DH, such as the 1S&S or the FWW decision letter dated 4 February 2021 setting out the five findings against Mr Odey. These documents are not within the list of documents and written evidence recorded in the File Note of the hearing on 28 November 2022 under the heading 'Documents and written evidence' at paragraph 3 - the 2S&S is not even mentioned in the list. Mr Odey did not dispute that it appears that the third ExCo did not have the 1S&S before it. The file note of the 2DH does record that there was consideration of some of the documents relating to the alleged breaches relating to the receptionist and new joiner. The third ExCo were relying on what they told, particularly what Mr Odey said or presented to them, having no previous or independent knowledge. Thus, the third ExCo appears to have been judging the significance of breaches of the FWW in isolation, without being given the background context - consideration of the conduct that had given rise to it.

959. The 2DH decision letter dated 13 December 2022 went further than required – the third ExCo judged the original FWW to be overly-prescriptive and unhelpful without appearing to have been given significant material and findings that justified the terms and conditions. The third ExCo said in the decision letter, "Whilst we understand why the previous disciplinary tribunal approved these Measures (set in the context of a concurrent criminal trial against you in the Westminster Magistrates court)…Adopting a principle lead approach on the substantive issues of good conduct and anti-harassment would have avoided unnecessary examination and forays into areas of human conduct where an employer or partnership has no right to trespass". This is a view of the conduct and measures reached without the benefit of the full picture being given to the third ExCo and inconsistent with what the 1S&S and the findings the first ExCo found established at the 1DH. Those findings did not overlap with the allegation in the criminal trial which took place subsequently in March 2021 and for which Mr Odey was acquitted but which did not arise in a work context.

960. Third, Mr Odey chose the candidates and members of the third ExCo, as he was the person responsible for seeking to recruit them. Mr Odey referred in his witness statement to the "identification of the sort of experienced and robust business leaders whom I wanted to appoint to ExCo." In the Authority's Supervisory visit in April 2022 Mr Odey highlighted the then proposed INED, Mr Dobson's, "common sense" in relation to "these issues". He accepted in cross-examination that he was referring to complaints of sexual harassment made by women at work. We accept the Authority's submission that Mr Odey's perception of "robustness" and "common sense" is likely to have meant someone who shared his own views about how such issues should be approached.

961. Fourth, the third ExCo only heard oral evidence from Mr Odey and did not hear from any witness – Mr Pearey or Ms Versey – who could have gainsaid Mr Odey's account of "self-reporting" his breach of the FWW in relation to the temporary receptionist. Reliance was placed on Mr Odey's alleged, but untrue, self-report in his written submissions to third ExCo.

962. Fifth, the third ExCo does not appear to have had any employment law advice in relation to the disciplinary process. There is no evidence of any such advice, and Mr Odey accepted in cross-examination that he was not aware of any despite now having access to all of OAM's files now, and having procured a waiver of other legal advice OAM received in relation to this disciplinary process. Mr Odey's then lawyer, representing him at the 2DH, was not an employment law specialist. He answered a question at the 2DH regarding the duration of the FWW compared to other like final written warnings imposed by other firms.

While OAM's Handbook concerning the conduct of disciplinary hearings did not permit legal representatives to attend or any representatives to answer questions, we accept that it may have been reasonable for there to be generous latitude in the process. Nonetheless, the ExCo took into account the representations of a non-employment lawyer on behalf of Mr Odey on an employment law issue without appearing to have had the benefit of its own specialist advice.

963. For these reasons, we consider that Mr Odey cannot reasonably rely on the conclusions of the third ExCo at the 2DH positively in his favour to justify his earlier removal of the first two ExCos.

E. The FWW conditions and their basis

<u>1.The terms of the FWW as unreasonable and disproportionate</u>

Submissions and evidence on behalf of Mr Odey

964. Mr Williamson KC and Mr Mansell contend that the terms of the FWW were unduly restrictive and disproportionate. A related justification of Mr Odey's for removing the first ExCo was that the terms or conditions of the FWW themselves were overly onerous, disproportionate and restrictive such that it was unreasonable or unfair either for the 2DH to proceed or for him to be at risk of dismissal for breach of their terms.

965. Counsel submit that Mr Odey had never suggested that the decision of the first ExCo to impose a FWW was wrong in principle. His position, ultimately accepted by the third ExCo, was that its scope and open-ended nature encroached unfairly on his rights. As Mr Odey told the Tribunal, the list of conditions was onerous and impractical and "the only thing that was bad about this was that it should have had a time period to it."

966. They argue that the scope of the FWW put Mr Odey in a situation that any small talk - for example asking a female employee whether or not she had had a good weekend or whether the weather was nice - would put him in potential breach. Female employees would have been unaware of the restrictions and might have been concerned that the owner of the firm was not engaging in such normal exchanges while he continued to engage in such talk with male employees.

<u>Conclusion and findings</u>

967. We reject this argument and rely upon the findings made above and additional reasons below.

968. Again, we note that the unreasonableness and proportionality of the FWW were not points that Mr Odey raised contemporaneously with the FWW being imposed or at the relevant time he removed the ExCos. It was not a belief that motivated him at the relevant time. Mr Pearey sat down with him on or around 4 February 2021 to go through each of the conditions and Mr Odey stated at one point, "I need to change, the world has changed, I haven't, I have perhaps become too insular". He did not deny this in cross-examination.

969. Mr Odey had clear opportunities to raise any issues he had with the FWW if he wanted to. Mr Odey did not raise any issue with the conditions in February 2021, at the time of their imposition, or in the weeks or months following. Even when interviewed by Mr Pearey in the context of the second disciplinary investigation in November 2021, Mr Odey did not say that the terms of the FWW were onerous and impractical. As recorded in the

final appendix to the 2S&S, he complimented the process as being very good and right to go through.

970. Mr Odey argues that he was busy fighting his criminal trial which took place in March 2021, a month after the imposition of the FWW. However, he was still attending work, and managing investors' money. He did not even, after the criminal trial had concluded, return to Mr Pearey to complain about the terms of the FWW.

971. If Mr Odey had genuinely believed the nature of the conditions in the FWW to be restrictive, he could have objected to the 2DH by suggesting to the first ExCo in December 2021, that the terms should be relaxed. Instead, he threatened repeatedly to close the firm. When this was put to him in cross-examination, Mr Odey said: "I wasn't inclined to relax the conditions, I wasn't in breach of the conditions apart from the technical one." One reason that Mr Odey did not raise the conditions with the first and second ExCos, was that it was not a motivating factor for removing them – and it could not justify their removal even if it was.

972. Mr Odey presented himself as a man willing to change at the 1DH, and the first ExCo and S&S had placed weight on this when issuing and drafting a FWW rather than dismissing him or considering him not F&P. Arguing about the terms of the FWW some 10 months later, in December 2021, would also have revealed a truth about Mr Odey - that he would or could not abide by the conditions that had been imposed. What he really considered disproportionate at the time of the proposed 2DH was not the terms of the FWW, but being held to account for alleged breaches of the terms – because he considered the breaches trivial and that he should have free rein to conduct himself with female staff according to his own impaired judgement as to what was appropriate.

973. In any event, by the time of the hearing, Mr Odey did suggest that the conditions and stipulated prohibitions in the FWW were unreasonable, restrictive and disproportionate. Mr Odey relied upon a number of ways in which he says that the terms of the FWW were unreasonable or disproportionate but we reject each one of them.

974. First, he suggested that it was unreasonable that the conditions were to last for an indefinite period without limitation – he suggested they should only have been imposed for 12 months (as the third ExCo later decided, albeit to last a further 12 months from the date of their decision in December 2022). There is a problem with this argument in that it made no difference that the terms had originally been imposed indefinitely. All of Mr Odey's alleged breaches of the FWW occurred within one to seven months of it being imposed in February 2021. Even if the conditions of the FWW had only been imposed for a 12-month period, it would not have assisted Mr Odey.

975. In any event, there was nothing unreasonable about the indefinite period for which the FWW lasted. The Staff Handbook permitted this at paragraph 11.2 stating that "a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct, a final written warning may state that it will remain active indefinitely." The duration for which the FWW conditions were imposed fairly reflected Mr Odey's conduct as found by ExCo following the 1DH. We address the contents of the 1S&S and findings made in the FWW decision letter in more detail below. In essence, there were findings of repeated, persistent and prolonged pattern of misbehaviour by Mr Odey that had affected a number of employees. These findings evidence that Mr Odey did not understand what constituted appropriate behaviour in the workplace, or if he did, could not act accordingly. Mr Pearey stated in his statement that his view at the time was that any change in Mr Odey's behaviour "had to be permanent".

976. Second, Mr Odey suggested that the conditions proscribed by the FWW were too prescriptive, onerous or impractical. However, he accepted in cross-examination that none of the six stipulated examples of prohibited behaviours interfered with his ability to be a fund manager. There was no reason why he would need to: touch a female employee other than the shaking of hands in a professional context; invite or accompany an unaccompanied female employee to lunch without first speaking to HR or Mr Pearey; take such an employee shopping; exchange non-business-related messages on his personal phone; or have a female employee's personal contact details at all.

977. In his Reply pleading Mr Odey had claimed that the terms, conditions or measures of the First Written Warning were "overly restrictive", and "encroached disproportionately on Mr Odey's rights and freedoms as a citizen". In his witness statement he claimed the list was "onerous and impractical". However, he was not able to maintain this position in cross-examination. This can be illustrated in relation to each of the six stipulated examples of non-professional and unacceptable conduct prohibited by the FWW in respect of which Mr Odey accepted in cross-examination that the conditions were reasonable. We accept the Authority's submissions in full by reference to the evidence Mr Odey gave in cross-examination.

978. He accepted in relation to the first stipulated condition that OAM as his employer was well within its rights to impose upon him the condition not to touch staff other than via a business hand-shake.

979. He accepted that the second stipulated condition - not to invite or take unaccompanied female staff to any event alone without prior approval from OAM - was a measure designed to protect female staff from sexual harassment and replied, "I'm saying the only thing that was bad about this was that it should have had a time period to it."

980. In relation to the third stipulated condition - concerning shopping trips, and the buying of gifts for staff - Mr Odey was asked in cross-examination, "OAM as an employer could not allow a repeat of the situation which you had created, in which you bought gifts, including perfume, for [Individual B] who you found to be, and I quote from your interview, 'a nice lovely flirt', but not a receptionist [Individual A] you thought was, I quote from your interview 'a boot face'. Stepping back, can you understand that the ExCo could not tolerate a repeat of that disparity?" Mr Odey replied, "I hear that."

981. In relation to the fourth stipulated condition - which prohibited Mr Odey from exchanging messages with female staff otherwise than via the firm's own systems - Mr Odey was asked, "[In] light of the text exchanges we saw earlier, between you and [Individual B] in the middle of an afternoon at work, about you wanting to go to bed with her, do you accept that in light of that evidence if no other, they were not only within their rights, ExCo was acting prudently in forbidding you from texting female members of staff in future?" Mr Odey replied, "I hear you." He added, "I think they again, I think they were probably acting sensibly, but I would always say there should be exceptions to any of these rules. That is why I said the principles were what we guided the last ExCo whereas these were very prescriptive and reflected, as you say, basically any incidents before then which they felt, and I felt, were also inappropriate." Mr Odey did not explain how ExCo might sensibly have identified exceptions to this condition or allowed him to carve out his own.

982. In relation to the fifth stipulated condition - not to ask female staff for their personal contact details - when asked if this was a reasonable and practicable measure to enforce the fourth condition, Mr Odey said that, "As always with these things, everything is reasonable until there's an excuse for why it isn't reasonable".

983. In relation to the sixth stipulated condition - forbidding him from talking about staff or others in a manner which is inappropriate - he agreed that there was nothing onerous or impractical about the condition.

984. His evidence was also consistent with accepting the need for the requirement in the paragraph following the six stipulated examples of prohibited behaviours in the FWW. There was a final requirement that "any one-on-one discussions or meetings with female members of staff" which Mr Odey conducted "in the office" had to be restricted to "business purposes only". Despite this, Mr Odey asserted in cross-examination that he did not understand why his conduct towards the temporary receptionist in July and August 2021 was "ending up as a disciplinary hearing". He stated he was not "in breach of the conditions apart from the technical one" which referred to the taking of the telephone number.

985. In contrast to accepting the need for the prohibitions and requirements in cross-examination, Mr Odey did not even accept that he had on many occasions unwittingly made women feel uncomfortable without meaning to. He said in cross-examination that what he "really took away from the disciplinary hearing: that actually it was not appropriate that I should be trying to chat-up, make the reception feel at home."

986. The six stipulated FWW conditions were not designed by accident but were connected to the specific complaints against Mr Odey which the ExCo had upheld in its findings on the 5 allegations following the 1DH.

987. Mr Odey accepted in cross-examination that more than one allegation related to his conduct whilst at lunch alone with a female member of staff. He accepted that there had also been an allegation at incident 39 of the 1S&S by a member of staff that Mr Odey had constantly invited her out to lunch and she had to avoid it by making excuses; there had also been correspondence between the woman and OAM where she had said: "Cannot continue working for the Company without serious risk of sexual harassment when the Company moves office locations shortly." A settlement agreement was reached between OAM and the woman.

988. Mr Odey accepted in evidence having sent text messages to a female member of staff, in the middle of an afternoon at work, in which he indicated he wanted to go to bed with her. As above, Mr Odey accepted in this context that the ExCo were "probably acting sensibly" in imposing a condition about his communications, but he "would always say there should be exceptions to any of these rules".

989. We accept that there was a need for the FWW to contain clear rules so that Mr Odey understood what was acceptable, as Mr Hanbury put it – that Mr Odey could know what the parameters of appropriate conduct were. This was because he appeared often to have been unable to restrain himself or recognise appropriate boundaries with women previously.

990. Mr Odey cannot reasonably rely upon the views of the third ExCo in relation to the restrictiveness of some of the measures just because they agreed with him in part. Just because a different judgment was made by the third ExCo, and notwithstanding the fact it did not appear to have the 1S&S before it, does not mean that the first ExCo's imposing the terms of the FWW was unreasonable.

991. We have set out above in more detail our reservations about Mr Odey's reliance on the decision of the third ExCo at the 2DH in December 2022. We reiterate the following points.

The third ExCo had not been party to 1DH and does not appear to have had all the relevant material. It made a proportionality judgment regarding the terms of the FWW but does not appear to have considered the nature and seriousness of the misconduct evidenced in the 1S&S and as found proved in the 1DH findings.

992. We consider therefore that the terms of the FWW were not objectively unreasonable nor disproportionate. They were within the range of reasonable conditions that the first ExCo could have justifiably imposed. Although we do not have to determine the ultimate merits of this argument, it was not unreasonable for the Authority to form the view that Mr Odey was lucky not to have been dismissed altogether. We note that Mr Odey has since resiled from the asserted contrition which was relied upon in his favour by the first ExCo when imposing such terms in the FWW rather than directing his dismissal.

993. We are satisfied that the terms of the FWW can form no proper basis to excuse Mr Odey's actions in removing the first ExCo in December 2021, nor the second ExCo at any time thereafter. The conditions of the FWW were not unreasonable and cannot justify the removal of the ExCos. They were rationally imposed in the context of the 1DH following which the first ExCo made multiple findings of serious, even if not gross, misconduct.

<u>2. The admissibility of the 1S&S and reliance upon NFM allegations by the Authority</u>

Submissions on behalf of Mr Odey

994. Mr Williamson KC and Mr Mansell submit that Mr Odey is not required to meet any other case than the Five Allegations of lack of integrity pleaded by the Authority. It would be manifestly unfair and unjust for the Tribunal to make any adverse findings based on facts that in effect, amount to unpleaded allegations forming no part of the subject matter of the reference. In this regard they note that the Authority did not contend that the allegations of NFM against Mr Odey (i) were true, (ii) formed the basis for a conclusion that Mr Odey was not a fit and proper person, or (iii) formed a basis for the conclusion that Mr Odey had breached ICR1. If the allegations had been pleaded as separately pleaded allegations of misconduct, Mr Odey would have given his account of them in his witness statement and called corroborating evidence.

995. They rely on the fact that the Authority could have brought a case alleging that the matters of NFM in the 1S&S themselves evidence of a lack of fitness and propriety on the part of Mr Odey. The Authority not only chose not to make any allegations of NFM: these matters had, in fact, been fully investigated by the Authority before deciding, based on all the evidence before it, to formally discontinue the investigation. On 23 February 2023 the Authority notified Mr Odey that: "the scope of the investigation set out in this Amended Memorandum of Appointment of Investigators and the Notice of Change of Scope of Investigation dated 23 February 2023 supersedes the scope of the investigation outlined in the Notices of Investigation and Memoranda of Appointment of Investigators dated 4 October 2021 and 17 May 2022. Accordingly, the FCA is no longer investigating the matters previously notified." Indeed, the case the Authority did bring purposely defined the Relevant Period from December 2021 to November 2022 so as to exclude that conduct (which was alleged to have occurred between 2003 and 2020).

996. Likewise, having opened an enforcement investigation in 2021 into OAM, the Authority was free to bring a case against the firm in relation to its decision-making about Mr Odey at the 1DH and in particular the decision to impose a FWW rather than dismissal and to continue to find him fit and proper to manage money. Nonetheless, the Authority

not only chose not to do so but made a decision in 2023 formally to discontinue its investigation into the firm in respect of that decision based on all the evidence before it. It cannot now go behind that decision and expressly or implicitly criticise or impugn the first ExCo nor the result of the 1DH.

997. Counsel argue that, notwithstanding its limited pleaded case, the Authority was wrong to (i) extensively cross-examine Mr Odey on the allegations of NFM, including explicitly putting it to Mr Odey that he had sexually assaulted an employee in 2005, and (ii) extensively deploy the 1S&S which formed the basis of the 1DH. The matters were of limited relevance to the Authority's pleaded case and therefore of limited probative value. The effect was that his cross-examination on those matters caused substantive unfairness and prejudice to Mr Odey.

998. It is contended that now the Tribunal has had the opportunity to hear all the evidence, it should exclude those matters and that evidence from its consideration as matters of misconduct. The proper scope of the relevant evidence should be confined to the Authority's pleaded case.

999. Mr Williamson KC and Mr Mansell submit that the Authority's strategy is one that has caused unfairness and prejudice to Mr Odey. The dangers of the unfairness caused by the Authority's approach were highlighted by Mr Mansell in his application to curtail the use of the 1S&S made during the trial on 12 March 2026 when he said in oral submissions:

> "The reality is whatever the Tribunal may think of that conduct, the Authority has accepted through the change of scope which it issued, and subsequently not only in the change of scope, but in the warning notice, the decision notice, the statement of case, that it is simply not appropriate now for that conduct to form part of the allegations of misconduct that Mr Odey now faces.
> …
> The subject matter of the reference in this case is not background facts. It is the allegations of integrity which have been so carefully and precisely pleaded by the Authority at section F of the statement of case. That is the conduct which the Tribunal consider."
> …
> It would be manifestly unfair for the Authority to start taking matters which are outside the subject of the matter of the reference and start imposing its own value based assessments to whether those matters in fact constitute a lack of integrity or a lack of fitness and propriety on behalf of Mr Odey. Its further unfairness is caused for the simple reason that the Tribunal is not armed with all the facts. You are not in a position to question, challenge or disagree with the evidential assessments which the Authority has made in deciding not to take that reference, the reference that was formulated in the first investigation before this Tribunal. They clearly had good reasons to do that. That is the end of the matter, we say, and as far as it should go. The exercise is not necessary, but more than that, in the interests of justice, in the interests of fairness, it should be avoided."

1000. Counsel argue that now the evidence has been heard, the potential for injustice to Mr Odey through the evidence the Authority has sought to adduce is even more manifest. By not pleading allegations of NFM as specific allegations of misconduct, Mr Odey has been significantly prejudiced in four ways.

1001. First, Mr Odey has been unable to challenge as a matter of law whether during the Relevant Period it was legitimate for the Authority in the absence of specific rules addressing NFM to consider such conduct to be within the scope of ICR and/or section 56

FSMA, or whether such conduct would itself be relevant to whether Mr Odey was a fit and proper person under section 56 FSMA. This would be an argument as to jurisdiction.

1002. Second, Mr Odey has been denied the opportunity to address the issues raised in cross-examination by the Authority in the evidence he presented to the Tribunal.

1003. Third, the Authority has sought to obtain the perceived reputational and publicity benefits of bringing an NFM case, while avoiding the practical and jurisdictional difficulties of actually taking such a case to the Tribunal. By effectively introducing an NFM case through the back door, the allegations and the motives of any complainants have not been probed and tested through cross-examination. That would have, potentially at least, provided further context to any admitted allegations on the part of Mr Odey.

1004. Fourth, no witness statement from any complainant has ever been sought by the Authority. Instead, the evidence relied on is either direct hearsay or, where complaints are raised by third parties, the allegation made is hearsay upon hearsay (second hand hearsay). It is no answer for the Authority to argue, as it seeks to do, that it has only sought to introduce and rely on conduct accepted by Mr Odey.

1005. Mr Williamson KC and Mr Mansell submit that notwithstanding any bare admissions made by Mr Odey in respect of the underlying facts in the 1S&S, in a properly pleaded and brought NFM case those matters would have been the subject of extensive cross-examination. Through the approach taken by the Authority, Mr Odey has been denied the possibility to properly explore and challenge the facts relied on. Instead, what Mr Odey has had to confront is half a story, devoid of all context and where the surrounding circumstances and the attitude of the complainant now is unknown. Further, for example, in relation to the 2005 sexual assault allegation, Mr Odey was denied the opportunity to have served evidence in support of his own account, including medical evidence relating to the effect of the dental sedative he had been given.

1006. They contend that Mr Odey is not the only party to have suffered prejudice as a direct result of the Authority's approach. It appears that the Authority did not consult with any complainant about the fact that accounts provided to S&S - with a reasonable expectation that these would be kept private and confidential - would be used as evidence in public proceedings.

1007. Mr Williamson KC and Mr Mansell submit that the Authority does not appear to accept the decision of the first ExCo only to impose a FWW rather than dismissal and it appears that the Authority considers Mr Odey not fit and proper as a result of the NFM matters related to the 1S&S upon which he was questioned.

1008. They contend that the Authority's approach at the hearing of the reference is fundamentally inconsistent with its own internal decision-making. It decided to take no action against the firm for continuing to find that Mr Odey remained fit and proper following the 1DH. Had the Authority wished to criticise this decision, fairness dictates that the impugned conduct should have been pleaded by the Authority and the Relevant Period widened. In effect, the Authority has sought to pursue the totemic case it wished to pursue on NFM based upon a discontinued investigation without the procedural and evidential safeguards to which Mr Odey should and ordinarily would have been entitled.

Discussion and Decision on admissibility

1009. We have already rejected these submissions which repeat and expand upon some of the submissions which were made during the trial.

1010. Judge Jones gave an ex tempore oral ruling on behalf of the Tribunal on 12 March 2026. He gave the panel's reasons for deciding that the 1S&S and cross-examination upon the evidence contained therein were admissible in these proceedings. This was on the basis that the evidence was relevant to issues in the case and it was just and fair, in accordance with the overriding objective, not to curtail or exclude the evidence. The decision was made pursuant to Rules 2(1) and 15(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("**the Tribunal Rules**").

1011. We do not repeat the reasoning set out therein but continue to rely upon it. We also noted in that ruling that any use of the material in the 1S&S and cross-examination by the Authority should be proportionate to the issues to be considered at trial. We do not consider there to have been disproportionate nor undue focus upon the 1S&S during the hearing. The primary focus of the cross-examination was on the First and Second Allegations of Mr Odey's lack of integrity in corporate governance.

1012. We note that this case management decision was made during the course of trial and before witnesses for either party were cross examined in detail, most importantly before Mr Odey gave evidence and was cross examined upon the 1S&S. He had an opportunity to challenge the ruling during proceedings, such as by appealing to the Court of Appeal, and chose not to do so. We agree with the Authority's observation that the matter is res judicata so far as the Tribunal's decision on admissibility of the 1S&S is concerned. Nonetheless, we do address further matters contained in Mr Odey's closing submissions in any event.

1013. We accept of course that the Authority did not pursue a lack of integrity case in relation to the NFM allegations contained in the 1S&S and changed the scope of its investigation and decision-making to consider only Mr Odey's unfitness and lack of integrity in relation to the Five Allegations. However, this does not render the 1S&S and cross-examination thereupon irrelevant or inadmissible in these proceedings. The Authority's approach does not involve any implied criticism or contradiction of the Authority's decisions not to continue to pursue the NFM in F&P enforcement proceedings against Mr Odey nor to discontinue any action against the first ExCo in relation to the result of the 1DH.

1014. We also note that the various complainants in the 1S&S made complaints or gave information to S&S, rather than the Authority, often through intermediaries as second-hand hearsay, and on anonymous or confidential terms not necessarily expecting it to be utilised any further, passed to the Authority or deployed in proceedings. They have not provided written nor sworn evidence and the substance of the complaints have never been tested by OAM, S&S, the Authority nor Mr Odey's counsel in cross-examination. However, we are not required to determine the truth of all complaints nor make factual findings on NFM beyond that which Mr Odey has always accepted (or purported to accept) in agreeing the FWW and the findings therein.

1015. The evidence relating to the 1S&S and the 5 allegations, as partially accepted by Mr Odey at the 1DH and found proved by the first ExCo in its findings underpinning the FWW conditions, are relevant and admissible in these proceedings for a number of reasons.

1016. First, the 1S&S is part of the relevant background facts, as pleaded in [61.2] and [63] of the SoC, that explain the findings on the 5 allegations, as pleaded at [68] of the SoC, and the reasons for the FWW which in turn explain and justify the seriousness of the allegations of breach of the FWW that were to be decided at the 2DH.

1017. Second, the evidence rebuts the suggestion by Mr Odey that he has raised in these proceedings that the FWW was unreasonable, disproportionate or unfair either in being imposed at all or in the conditions imposed – the evidence in the 1S&S forms the basis for the findings and conditions in the FWW.

1018. Third, the evidence in the 1S&S undermines Mr Odey's credibility when he has specifically and subsequently sought to disavow or distance himself from the nature of the findings he accepted at the 1DH in his witness statement for these proceedings. Cross-examination also focused on Mr Odey's answers in interview with the Authority in June 2022 regarding the 1S&S where he was more forthcoming. It concerned Mr Odey's accounts of himself and his explanation and revelation of his own attitude towards OAM and its staff in the present tense during the Relevant Period and at a time when he was the sole member of ExCo, its governing body.

1019. Fourth, the evidence and Mr Odey's understanding of the 1S&S and 1DH / FWW findings explain his motive for wanting to remove the ExCos and postpone the 2DH believing or fearing that he would be dismissed for breaching the FWW at the 2DH.

1020. Fifth, the evidence in the 1S&S underpins the finding on allegations 4 and 5 in the FWW and which forms the Third Allegation in these proceedings - that in removing the ExCos, becoming sole member of ExCo and postponing the 2DH, Mr Odey was entrenching a culture where employees feared speaking up about his misconduct at OAM which had become normalised.

1021. We reject each of Mr Odey's objections in turn.

1022. First, Mr Odey's counsel object to the suggestion that the 1S&S is relevant because it underpins the decision-making of the Authority. They submit that the Authority fails to acknowledge that its two key decisions in respect of the 1S&S were (i) the decision to open an investigation into Mr Odey based on its contents; and (ii) the decision, having fully investigated these matters, to close the investigation without any action being taken against him. In those circumstances, it is not appropriate for the Authority to re-open the facts of the 1S&S, having made the conscious decision to discontinue its investigation.

1023. We do not accept these submissions – we agree with the Authority that the Tribunal cannot assess the seriousness of the postponement of the 2DH and removal of ExCos without understanding the seriousness of the underlying conduct that the frustrated process was designed to address. The breaches of the FWW can only be understood by examining the basis of the FWW and findings on the 5 allegations. One cannot understand the findings on the 5 allegations without reference to the 1S&S. The report and the findings would have been factors that the first ExCo and Mr Odey would have taken into account when considering the allegations of breach of the FWW.

1024. Second, his counsel argue that Mr Odey has never sought to challenge the factual findings of the first ExCo or the aims it sought to achieve by the imposition of a FWW. Indeed, he expressly states in his witness statement that he "was in complete agreement with the principle that, in the words of the letter, I needed to ensure that my 'interactions (whether face to face or otherwise) with all staff (whether temporary or permanent, and whether provided via an agency or otherwise) are professional.'" Rather, Mr Odey's concern was whether the specific terms, scope and duration of the FWW were an effective and proportionate way to achieve that objective.

1025. Third, his counsel contend that the Authority's claims are unfounded that a re-examination of the facts which form the subject matter of the 1S&S is necessary to assess Mr Odey's credibility. Mr Odey's alleged lack of credibility is founded upon allegations that he lacks candour rather than the 1S&S. Again, the Authority is seeking to unfairly extend the focus of the Tribunal beyond the pleaded allegations.

1026. We reject these two arguments. Mr Odey put in issue both the necessity for the FWW, its conditions and his credibility due to his evidence in his witness statement regarding the 1S&S and FWW findings.

1027. In relation to credibility, Mr Odey cast doubt on the nature of the 5 allegations in the 1S&S and findings made in the FWW as conceded at the 1DH. At paragraph 13 of his statement, Mr Odey said that he was straightforward and frank when interviewed by S&S in December 2020. That was not true for the reasons we find below – in essence, he claimed to S&S not to recall many incidents that he was later well able to recall. We do not accept Mr Williamson KC's submission that it was unfair to cross-examine him about these allegations and previous answers because Mr Odey had put them in issue in his statement. We do not accept that Mr Odey may not have had the proper context in 2020 when interviewed by the S&S hence was not able to recall what he was later able to recall when interviewed by the Authority in 2022 or when cross-examined during the hearing in 2026. We do not accept that he may have put matters to the back of his mind and only recalled them when context required. His memory is unlikely to have 'improved' with age, the context and facts would have been more accessible years ago. For example, Mr Odey was now able to explain to us why he had deliberately not wanted to state to S&S when interviewed in 2020 that he recalled one incident so as to guard against the discretion of a complainant. That was a matter of choice in 2020 and not lack of memory. He would have had a better memory back then.

1028. At paragraphs 17 and 18 of his witness statement, which we return to below, Mr Odey sought to minimise the conduct he had accepted at the time and his concession that he made women feel uncomfortable (and he resiled from the concession of making women uncomfortable in cross-examination). He sought to underplay the 5 allegations the first ExCo had found proved at the 1DH in reliance on the 1S&S and suggested that all his conduct was either consensual or entirely innocent. That was not true for the reasons set out below.

1029. At paragraph 21 of his statement, he stated that the terms of the FWW were unreasonable but he was just pleased the firm had decided not to dismiss him so he gave no thought to appealing the outcome and was absorbed by the criminal trial he faced. This also demonstrates that, whatever appeal route might have been available against the first ExCo's findings and FWW, he had it in mind as a matter of regret when he wrote his witness statement. At paragraph 22, he stated he should have sought to enter into a dialogue about the necessity of the onerous measures. We find that he never suggested at the time that the measures were unnecessary because he knew they were not – it was not his reason for removing the ExCos.

1030. Mr Odey's case in part pleads that his justification for removing the first ExCo is that its response to the 1S&S was unreasonable and the conditions the FWW imposed were disproportionate. This case cannot be evaluated without an objective assessment of the evidence summarised in the 1S&S and the seriousness of the concerns the first ExCo expressed as a result in the findings and conditions in the FWW. Further, Mr Odey did not only challenge the duration and scope or proportionality of the measures but the basis for the imposition of the FWW. He accepted the FWW at the time but sought to resile in part from that earlier concession in these proceedings. Mr Odey made challenges both to the necessity of the FWW and underlying conduct found by the 1DH, which had relied on the 1S&S, in his witness statement in these proceedings.

1031. Fourth, his counsel dispute the Authority's argument that it is impossible to assess the seriousness of Mr Odey's conduct, as now pleaded by the Authority, without assessing the seriousness of the underlying conduct. They submit that this is misconceived. The decision of the first ExCo to deal with these matters by way of the issuing of a FWW is not challenged by Mr Odey: the gravity of those matters is not at issue. What is relevant to the Authority's pleaded case is the seriousness of the alleged conduct underlying the second disciplinary process as this goes directly to the issue of why Mr Odey took the actions he did.

1032. We reject this argument. As above, Mr Odey has challenged the gravity of the matters underpinning the findings on the 5 allegations which provide the basis for the FWW – i.e. the 1S&S. These findings would have been relevant to the breach proceedings to be considered at the 2DH and both he and the first ExCo knew that dismissal had been a serious option at the 1DH so made it more likely to be imposed if the breaches were established at the 2DH.

1033. Fifth, Mr Odey's counsel deprecate the Authority's attempt to argue that consideration of the allegations forming the basis of the 1S&S is essential to the Third Allegation: the issue of whether Mr Odey's conduct risked entrenching a particular culture within the firm. They submit that this is an argument totally without merit. Only matters within the Relevant Period, as determined by the Authority, may form the basis of findings by the Tribunal. The matters within the 1S&S significantly pre-date this period and cannot inform any consideration of culture at the firm during the Relevant Period. There is no evidence that, during the Relevant Period, there was any normalisation of inappropriate behaviour towards female employees.

1034. We reject this argument. The 1S&S provides the evidence to explain the first ExCo's findings, as set out above, on allegations 4 and 5 - the normalisation of Mr Odey's misconduct and existence of a non-complaint culture. The 1S&S provides the evidence that explains the findings that allegations 4 and 5 were proved. The report is thus directly relevant to the Third Allegation of lack of integrity in these proceedings. While these allegations and findings did not take place during the Relevant Period, the 1S&S was the material that explained the culture that had arisen in the firm which Mr Odey's removal of the ExCos then entrenched and exacerbated. It is evidence relevant to the Third Allegation – that Mr Odey's conduct in removing the first and second ExCos which were due to hear the 2DH regarding breaches of the FWW during the Relevant Period risked entrenching a culture that existed of Mr Odey being unaccountable for complaints of his misconduct: that culture had first arisen as evidenced in the 1S&S.

1035. There is no need to address any of the other arguments surrounding the 1S&S, save to address the suggestion that there was any unfairness in Mr Odey being asked to answer questions about the 1S&S and his conduct during cross-examination.

1036. Mr Odey was put on notice of the relevance of the 1S&S prior to trial: the 1S&S was in the evidence bundle for the hearing and pleaded in the Authority's SoC. He had responded to it in his witness statement. Once the trial had begun, he was aware that the Tribunal had ruled it admissible on 12 March 2026, on the third day of the hearing. As well as being on notice, Mr Odey was demonstrably well able to answer all the questions on the topic of the 1S&S and the female complainants involved. Remarkably, he seemed to have a far better memory of the events in question than he had had when interviewed by Ms Holdsworth and S&S about them in 2020, just as he had remembered the incidents when asked about them in 2022 by the Authority in interview.

1037. Mr Odey was primarily asked about the events about which he had already given answers before, the evidence he had seen since September 2020 and the 1S&S he received in January 2021. He was asked about concessions he had either made in interview with S&S in 2020 or with the Authority in 2022. He had put this evidence in issue when suggesting his conduct was of a different nature as he did in paragraphs 17 and 18 of his witness statement.

1038. There was no unfairness to him in being asked about this evidence and if he had wanted to call evidence from any complainants, other former staff members, or any other independent evidence regarding these incidents, he could have done so. He was aware of their identities throughout. Indeed, he accepted in cross-examination that he had contacted one complainant after the Authority first opened its investigation into him. There was no unfairness caused to Mr Odey by cross-examination on the 1S&S and the length of the cross-examination was proportionate to the issues to which it was relevant. Further, he was only cross-examined on matters he had either admitted in accepting the findings at the 1DH and in the FWW or accepted in interview by the Authority in 2022. He was not cross-examined on the 1S&S allegations that he had consistently denied. There was no attempt to establish NFM allegations contained in the 1S&S as a separate ground on which he lacked integrity.

1039. Having found it to be admissible, we now turn to address the evidence from the 1S&S when assessing Mr Odey's purported justifications for removing the ExCos. It provides the background context, part of his motive to remove the ExCos which were due to hold the 2DH for breaches of the FWW. We have explained the many ways in which the evidence was relevant and admissible. We now address it as relevant to Mr Odey's challenge to the necessary basis for imposing the FWW and his credibility in seeking to minimise the findings on the 5 allegations following the 1DH or minimise the importance of the subsequent breaches of the FWW.

3.The reasonableness of the 1DH findings on the 5 allegations and necessary basis for imposing the FWW

1040. There was a necessary basis for imposing the FWW and the conditions therein were not unreasonable nor disproportionate as Mr Odey suggests. The FWW and conditions were justified by the 1S&S, 1DH and findings on the 5 allegations.

1041. The first ExCo had found that Mr Odey had committed misconduct as set out in the FWW dated 4 February 2021. The sections of the Staff Handbook defining gross misconduct, harassment and bullying are set out above. The following conduct was found proved in the FWW as accepted by Mr Odey and as accepted in his interviews with the Authority in 2022 or 2023 and accepted in cross-examination. We accept the Authority's submission that the first ExCo was right to find that this amounted to misconduct, harassment and bullying of female staff.

Allegation 1 – inappropriate physical contact

1042. In relation to allegation 1 of the 5 allegations - inappropriate physical contact - the first ExCo made a finding that Mr Odey had in November 2005 while working on OAM's premises grabbed the breasts of his then PA – see 1S&S and page 2 of the FWW letter. ExCo's findings were set out in the FWW in relation to allegation 1, as above: "For completeness, we also reference the historic incident dating from November 2005. Whilst you did not recall the incident when interviewed, the contemporaneous file note and interview evidence relating to the incident lead us to reach the view that you did make inappropriate physical contact with the member of staff in question."

1043. Mr Odey has said a number of inconsistent things about this incident over a number of years.

1044. The first ExCo made a finding without any evidence from Mr Odey. As stated above, when interviewed by S&S in 2020, Mr Odey claimed not to remember the incident. However, he did in fact recall it and gave the Authority an account of his version in interview in 2022. In his enforcement interview with the Authority in 2022, Mr Odey spoke about the result of the incident. He said: "Hey look...the fact was that I did touch her breasts…it happened after I'd had two and half hours…of root canal treatment….I don't know whether if I had general or whatever it was but …I had been knocked out by the thing…and hey look I am very sorry about this thing, this was out of character…I am deeply embarrassed about it and I apologise…she accepted the apology...she felt that the relationship with me became more distant…I didn't want this to ever happen again and so really essentially the relationship became more distant."

1045. Mr Odey also told the Tribunal in his evidence that he did recall the incident and gave his account regarding the visit to the dentist and returning to the office which he had also given to the Authority in 2022 and had given to a witness back in 2005. In relation to the November 2005 incident, when asked in cross-examination "is it really your evidence that when you groped [Individual C's] breasts on 7 November 2005, what you did was to make her feel uncomfortable?" his initial response was: "You have to look at the reason why that happened."

1046. Mr Odey accepted in cross-examination that the 2005 incident where he grabbed his then PA's (Individual C) breasts without her consent was not entirely innocent but he said it was entirely understandable. He stated in oral evidence that he was acting under the influence of a sedative having been to the dentist. That was not something he had said to S&S in interview in 2020 – he claimed not to remember the incident. In cross-examination he accepted that he was deeply embarrassed by the incident but he said that it was completely out of character and the former PA accepted this and carried on working for the firm for another eight years.

1047. The first ExCo only had before it in January 2021, the 1S&S which relied on: the interview with Mr Odey in which he said he could not recall the incident; the HR file note from 2005; the complainant's account; Mr Fletcher's account; and the account of another witness who was also interviewed. The file note from 2005 is recorded as stating that Mr Odey apologised the next morning saying he was a bit drugged up after a long session at the dentist and this behaviour was out of character. The other witness in interview with S&S described the relationship between Mr Odey and the woman in question as "flirtatious". According to Mr Odey in cross-examination, that evidence as to flirtatiousness was not correct.

1048. The other witness to the 2005 incident is recorded as having said that Mr Odey had mentioned to her that he had gone to the dentist that day and had had a lot of medication, explaining why he was acting 'out of character'. This witness also clarified that after the incident, it seemed that the complainant was happy to carry on working at OAM but had told her that her relationship with Mr Odey had changed and she felt out of favour because she had raised it. The first ExCo did not have the benefit of Mr Odey's answer to this in January 2021, because Mr Odey had simply said he did not recall the incident.

1049. The first ExCo did not have an opportunity to consider any of this context or Mr Odey's state of mind, because Mr Odey had wrongly claimed in interview with S&S that he could not recall the incident and did not recall speaking to David Fletcher about it. He clearly could recall it as he answered questions about it to the Authority in 2022 and to the Tribunal in 2026. Understandably, the first ExCo in February 2021 made no finding as to whether the incident had been consensual or not, simply concluding that it had been "inappropriate contact".

1050. We repeat that we make no finding as to whether there was any sexual assault in the legal sense. We make no findings as to Mr Odey's state of mind and make no finding that the incident constitutes the criminal offence or civil tort of sexual assault. Nonetheless, the point is that Mr Odey admitted in cross-examination that the complainant had not consented to the handling of her breasts at the time. As Mr Odey accepts, it was not appropriate and it was non-consensual touching of a woman's breasts. That undermines paragraph 18 of his witness statement where he suggested all his conduct had been consensual.

1051. The FWW also found that Mr Odey would also put his hands on other staff members' shoulders and would massage them. The shoulder massages were set out in more detail in the 1S&S and accepted by him in cross-examination. He would not ask for their permission first but do it if they "looked tense" as he admitted to S&S and accepted in oral evidence. He stated in cross-examination that he did engage in shoulder massages of female staff: "You know, did I try and massage her back twice, three times, whatever it is? I mean, the answer is I may have done that. It wasn't everybody who basically had a back massage, and they weren't a back massage, they were a shoulder massage which is very different." He denied bullying or harassment in this regard, denied indulging an appetite to touch young women and stated that it took place in the reception which was a very public place.

1052. On Mr Odey's account, massages of receptionist's shoulders occurred if the women in question felt tense. Mr Odey accepted that the receptionists for OAM tended to be young women in their twenties. He did not accept in cross-examination that they might look tense because of his physical size, importance in the firm, and his reputation among receptionists. He only tentatively suggested he would ask for permission in advance and then changed tack and continued, "hey, look, in hindsight, as I say, you know, I realise that my behaviour was inappropriate, for which I got a final written warning. I mean, the answer is I behaved inappropriately." Yet he did not accept that when he asked a different receptionist to try on a skirt for his daughter that this was inappropriate – it was "very appropriate".

1053. In relation to allegation 1, Mr Odey also accepted in cross-examination that in relation to Individual B, she would sit on his lap near reception and he would give her massages at reception.

1054. The 1S&S and finding in the FWW make clear that Mr Odey wanted to touch a number of the young women at reception without good reason and without permission. He initially claimed in evidence that he would ask or try to ask for permission but did then admit his behaviour was inappropriate but said that it did not happen that often.

Allegation 2 – inappropriate comments

1055. In relation to allegation 2, inappropriate comments, Mr Odey and Individual B had engaged in very flirtatious exchanges on his own account. He had sent her text messages that indicated he would like to spend the afternoon in bed with her. The first ExCo found that contact to have been inappropriate. She had lodged a complaint of sexual harassment with the firm. Another member of staff had also complained about Mr Odey's flirtatious behaviour towards the individual in question and lodged her own grievance.

1056. In his oral evidence Mr Odey did state that with Individual B, "we flirted. The fact was we agreed very early on that it was going to go nowhere, but to the extent that other people felt this was inappropriate, I don't think she found it inappropriate. The fact was she was very consensual." He denied making Individual B feel uncomfortable. He also stated: "there were a lot of people at Odey who actually were jealous of the relationship she had with me". He suggested that "she showed no unwillingness at the time". Yet there was a failure by Mr Odey to appreciate that Individual B had a different experience and had been uncomfortable. She had stated to S&S that at a lunch with Mr Odey in January 2020 he invited her to a shooting weekend, "I had terrible anxiety. I knew what he wanted and what I was expected to do.", She did not attend the shoot. Mr Odey commented upon this in cross-examination: "I'm afraid I don't understand the last bit of that, about terrible anxiety. She was not – there was nothing for her to worry about." He did not accept the effect of his conduct.

1057. Mr Odey simply failed to accept in oral evidence that his conduct was inappropriate or made her feel uncomfortable. After a lunch with Individual B, he sent a series of messages which included: "Wish it was all afternoon and in bed." When she said: "All okay for next week too", he responded: "Yes! I can't wait to have you! You are so delicious. Wonderful to be with…" He did not accept in cross-examination that he was suggesting he wanted to go to bed with this woman. He also denied that it was a misuse of his power and said, "I classify them as flirtatious engagement" and that Individual B was "a willing participant in all of that".

1058. Mr Odey stated in cross-examination that Individual B's employment was ended – she was "fired because it was felt she was very flirtatious with me". He stated the context of her complaint was "She was…trying to get some money out of [OAM]… and that she had been basically fired without a bonus…". Nonetheless he stated that he felt "she had been badly treated", she had rung him and his reaction was to try to offer her money personally. He stated in oral evidence that he had said that he could "give her cash" but he invited her up to London in order to do so. She did not come and the next thing that happened was that OAM heard from her lawyer. Mr Odey did not see that the basis of her dismissal and the settlement of her financial position following her termination was a matter for OAM, not him personally. Further, despite the fact that he had offered Individual B money because he felt she had been unfairly treated, he suggested in his oral evidence that her lawyer asking for money amounted to acceding to "blackmail". He stated, "The fact is that I was only too keen to give her some money…And then, next minute there is a shake-up artist [the lawyer] asking for money". This was despite the fact he had asked her to come up to London to give her cash.

1059. Even after Individual B had got a lawyer involved, Mr Odey tried calling her directly, intending to tell her that she was going about this in the wrong way. He admitted in cross-examination that he had concealed his number by dialling 151 so that she would receive his call. However, it did not work because as soon as she heard his voice, she said she could not speak to him. In interview with the Authority in 2022, he stated that he would not think "of doing this ever again", in relation to his 'enjoyable cordial warm relationship' with Individual B, not because it was inappropriate, but "Primarily because as you can see that it opens you up to blackmail. And that was precisely in the end what has tried to be done here." He gave oral evidence to the same effect: "the primary reason why I wouldn't, you know, involve myself in the way that I did with [her] was look at what happened at the end of it. The fact is that I was only too keen to give her some money and that was nothing more than feeling that she had been really hard done by."

1060. At the end of cross-examination on the topic he stated that he still maintained that all he had got wrong in his conduct towards Individual B was to make other people feel uncomfortable i.e. not her. This evidence was not credible, not simply in light of her reaction but in light of the findings in respect of allegations 1 and 3 of the FWW, which he had accepted, that his conduct towards her, including physical contact, was inappropriate and he made members of female staff feel uncomfortable.

1061. The first ExCo's finding in the FWW on allegation 2 was that Mr Odey had made "inappropriate and/or unprofessional comments to members of staff" but it noted that in some cases there was "a lack of corroborating evidence in relation to specific allegations of inappropriate comments…and we note your specific denials of a number of the alleged comments. Despite your lack of recollection in some cases…". One such comment he claimed not to recall was Individual B's complaint that when she had first met Mr Odey, he had said: "Oh, you are the one shagging X's friend." The 1S&S, 1DH and first ExCo were not given the full picture by Mr Odey. In interview with S&S in 2020, in preparation for the 1S&S, Mr Odey could not recall this language. However, in his cross-examination Mr Odey accepted that he had used these words and that she was shocked.

Allegation 3 – making staff uncomfortable

1062. In relation to allegation 3, making staff uncomfortable, Mr Odey admitted in his subsequent interview with the Authority in 2022 that he had demonstrated "bullying" behaviour towards Individual A, another employee, on an almost daily basis for three months, to try to get her to wear what he considered to be better clothes. As set out in complaints in the 1S&S, he would buy expensive gifts for certain staff members such as expensive perfume. He accepted in cross-examination that he did not buy gifts for Individual A because they did not have a flirtatious relationship.

1063. In 2022 Mr Odey admitted in interview with the Authority that what he had done to Individual A was "bullying" her "to try and get her to wear better clothes". He volunteered this description back in 2022 and again in cross-examination when he said "I put [these words] in my mouth again today. He admitted that he "may be I'm just a dinosaur but I really can't see how" his conduct towards her "can be sexual harassment". However, he did admit that in 2018 it was true that he would, ask Individual A to "stand up so that he could 'get a good look' at what [she] was wearing that day. [She] would often be asked to turn around so that he could see front and back".

1064. Mr Odey accepted he wanted her to be less "frumpy", which was the word he used in interview with the Authority and in cross-examination when he stated, "It's not great for our image that [she] had no dress sense…continues to wear what I would call frumpy dresses." He admitted this might have meant wearing "a dress rather than trousers". Mr Odey also said in interview that what he meant by "frumpy" was that "she wasn't a beauty at all so the answer was she was large and the clothes sort of sagged off her I mean it's a difficult one, it's not easy you can you know you can do things."

1065. Mr Odey could not see that this was a demeaning way to speak about an employee. In interview he said she "was a very dull girl who basically had sort of a long face and that was what you got". He later stated in interview: "she kind of had a sort of boot face and she wore frumpy clothes you know and, in a way, would I have hired her, no I would not have hired her." These answers summed up Mr Odey's attitude to some junior female employees at OAM as confirmed by the FWW. He was interested in them to the extent they were attractive to him. This explains his conduct: harassing Individual B whom he found attractive and bullying towards Individual A, whom he did not. He could not see that there was discrimination between female employees - he flirted with Individual B and she flirted back but Individual A received less favourable treatment.

1066. As also set out in the 1S&S, there was an occasion in February 2020 when Mr Odey had asked a junior female member of staff, a different receptionist, to try on a skirt he had bought for his daughter. He suggested that she try it on in one of the meeting rooms, which did not have a locking door. Mr Odey accepted in cross-examination that this might have made her feel vulnerable. It was not an isolated incident with this individual who had kept a diary including five different incidents. She recorded prior misconduct towards her such as a time when Mr Odey returned after a boozy lunch and said, "I could attack you now."

1067. It is clear that this different female receptionist kept a diary. She made complaints regarding various types of misconduct from Mr Odey. This included the "attack you" comment and receipt of shoulder massages and other inappropriate comments from Mr Odey.

1068. However, in cross-examination, Mr Odey said that he could not recall or remember using these words but he did not deny it. He described her as an "attractive girl" and said, "I defer to a diary entry." The first ExCo found allegation 3 proved in relation to Mr Odey making female staff feel uncomfortable and Mr Odey accepted in his statement for these proceedings that his conduct had had that effect. They did not go on to find whether this conduct amounted to bullying and harassment within the Staff Handbook definitions of misconduct – Mr Odey misused his power and seniority as owner of the business.

1069. Mr Odey also told S&S in 2020 that he could not recall her or any of the alleged events described by her as set out in the 1S&S: "he didn't recall any of these things happening and didn't remember who [she] was". Regarding the skirt incident he told S&S that although he remembered asking a receptionist to try on a skirt he could not remember what she looked like and confirmed he still did not remember the previous alleged incidents.

1070. However, again, it was clear that he could remember this woman in his evidence. He was able to describe what she looked like in his oral evidence, describing her in cross-examination as "an attractive girl" and "the relationship I had with her was this one". He again, appears to have had no memory when speaking to S&S but later accepted that he did have a recollection. The claim as to a lack of memory was likely made in order to underplay the reality of the situation.

1071. Likewise, in relation to another complainant, who made the allegations regarding invitations to lunch at incident 39 of the 1S&S referred to above, Mr Odey told S&S he could not recall any incident with her. However, in his interview with the Authority, he was able to recall and admitted that he had repeatedly asked her out for lunch, denying any harassment. When this "fresh memory" was raised in cross-examination, he told the Tribunal that she was a very shy person and a "very old friend of mine", he had been "guarding against her own discretion. [She] never made an allegation, official allegation."

This appears to be a concession that he deliberately did not tell S&S the full truth, whatever his motivation.

Impact on credibility – resiling from contrition earlier expressed

1072. The first ExCo only had before it the 1S&S setting out the 46 incidents complained of and Mr Odey's explanations given during the internal investigation. It decided not to dismiss Mr Odey following the 1DH and on the basis of the findings of misconduct it made. However, it is worth noting that the first ExCo did not have Mr Odey's further answers given to the Authority in the enforcement interview in June 2022 and in oral evidence in cross-examination that we have now received.

1073. In light of Mr Odey's subsequent evidence, we consider that he, at times, resiled from the contrition that he gave to the first ExCo and remains unable to judge what is or is not appropriate behaviour towards female staff.

1074. In his witness statement Mr Odey stated:

> 17. "I thought about this in a very straightforward manner. Some of the allegations against me were fabrications. Unfortunately, the reduction in the Firm's numbers from 130 to 57 over just three years, together with my criminal case, presented opportunities for those made redundant to seek more favourable terms.
>
> 18. Other allegations were true, in the sense that I accept that I had engaged in the activities alleged. However, in my view these activities were either mutually consensual or, for my part, had been entirely innocent in nature. Nevertheless, it had become clear through the disciplinary process that they had made some staff members uncomfortable. This was never my intention, but I accepted that it had been the effect of certain of my actions."

1075. As we have already found when considering Mr Odey's credibility, the second sentence of paragraph 18 was objectively not true and Mr Odey was also careless as to whether his evidence was true or not.

Other complaints

1076. The 46 incidents contained in the 1S&S occurred over 17 years, from 2003 to 2020. While over half involved Individuals A and B, there were numerous other complainants. Some of these incidents Mr Odey denied completely and S&S and the first ExCo made no adverse findings against him at the 1DH or in the FWW in relation to these. Some of the other incidents Mr Odey did admit. In any event the first ExCo made all of the findings at allegations 1-3 above within the FWW and additionally those at allegations 4 and 5, about a "don't speak up" culture.

1077. Mr Odey's failure to recall when asked by S&S in 2020 what he later was well able to remember was an attempt to downplay the seriousness of the allegations. One reason why Mr Odey may have been more open in his interviews with the Authority in June 2022 might be that, as we have found, that he believed, on advice, that NFM could not lead to a finding of breaches of the Authority's rules, or being found unfit for the purposes of F&P. However, we do not need to find a reason or motive why Mr Odey made some admissions to the Authority that he was not prepared to make to S&S in 2020. In any event, it does not become evidence in support of his case that he does not lack candour in the way the Authority alleges.

1078. Further, unlike at the 1DH, Mr Odey displayed no contrition or understanding of his power at work, his position of authority and physical size, and his abuse of power in his sexualised and inappropriate behaviour. He did not accept there was any power difference when he was talking to a receptionist. He stated he was not in charge of choosing them as employees. He even stated he was not "in charge of anybody… I happened to own the business but I was really an employee". This was despite owning the firm and being able to dismiss its ExCo: indeed, until November 2020 Mr Odey was also the co-CEO and part of ExCo. OAM was his firm and yet he appeared in cross-examination not to be aware of his power. This was unrealistic. When it was suggested in cross-examination that he did have the power to coerce people, he did go as far as to concede, "It's how they felt, not how I felt. I obviously, again, the point was there was no – I did this in a friendly way". We consider that he was not out of touch with reality: in fact, he was aware he held power and at times he exercised it with junior female staff for personal gratification.

Conclusion and relevance to credibility and reasonableness / proportionality of the FWW

1079. We find that to the extent Mr Odey appeared contrite at the time of the FWW in February 2021 and willing to mend his ways, it was a momentary expression and expedient position in order to reduce the prospect of dismissal. It was not reflected in his subsequent conduct in breaching the FWW nor in his expression of beliefs to us. Mr Odey was not contrite about his behaviour in his evidence before us. S&S and the first ExCo at the 1DH were not given a full account of Mr Odey's actions in relation to many complaints, rather he suggested that he could not recall many relevant incidents, unlike the explanations he gave in the enforcement interview and to the Tribunal in evidence.

1080. We do not need to find, despite the Authority's invitation, whether the S&S and the first ExCo may have come to different conclusions at the 1DH if they had the benefit of hearing Mr Odey's fuller accounts. It is not necessary nor relevant for us to decide whether Mr Odey's evidence, as now given to the Tribunal, might have led to the first ExCo making a finding of gross misconduct and directing his dismissal at the 1DH rather than imposing the FWW. It is not for us to decide whether, even on the material before the first ExCo, a differently constituted ExCo would have made findings of gross misconduct and dismissal even if such conclusions would have been reasonably open to it. We make no criticism of the first ExCo who were only able to act on the information put before them at the 1DH and against whom, and the firm generally, the Authority discontinued its enforcement investigation in 2023.

1081. The most important point is that we consider that the FWW conditions, in light of the findings made, were not draconian nor disproportionate - if anything, the imposition of the FWW was a generous decision, accepted at the time to be close to the line, in light of the seriousness of Mr Odey's conduct as found. The conditions in the FWW were directly linked to the findings of repeated misconduct towards female staff. Mr Odey gave unwanted massages regularly to female employees and made inappropriate sexualised comments to numerous members of staff. He has accepted in evidence bullying Individual A. He had made Individual B more than uncomfortable – he had made her feel ashamed, anxious and dread going to work. He had grabbed the breasts of his former PA in November 2005 and she recalled screaming.

1082. In conclusion, even without dismissing him, given the various and multiple findings the first ExCo made about Mr Odey's inappropriate behaviour towards women over a number of years on the basis of the 1S&S and 1DH, there was a reasonable and rational basis for the conditions they imposed in the FWW. The basis for imposing the FWW conditions was connected to the conduct found and properly justified, they were in no sense disproportionate or unreasonably restrictive. Thus, the nature of the conditions cannot reasonably be relied upon in an attempt to minimise the allegations of their breach. The terms of the FWW, and the subsequent allegations of breach, could not form any reasonable justification for removing either of the ExCos.

Conclusion on justifications for removing both ExCos and denial of First Allegation

1083. We have rejected each of Mr Odey's asserted justifications for removing both ExCos as all being unreasonable. We have found that many of these did not motivate his actions at the time, indeed many of the beliefs he did not even hold at the time. Nor was there any reasonable basis for Mr Odey's beliefs or motivations that he did hold at the time. There was no reasonable basis on which he could have decided to remove both ExCos and substitute himself as the only member of the final governing structure for the firm. He removed himself from any accountability which he believed he did not owe to the firm because he owned it. He did not want to answer the alleged breaches of the FWW through the 2DH which the ExCos were due to hold because he feared they would not find in his favour and he could not accept any prospect that he might be dismissed from the firm.

Objection to new suggestions of misconduct

Submissions on behalf of Mr Odey

1084. Mr Williamson KC and Mr Mansell raise an objection that the Authority has introduced new allegations of misconduct at the hearing that fall outside the scope of the pleadings, particularly the Five Allegations, and the reference: such as a) the sexualised misconduct and inappropriate behaviour (NFM) allegations from the 1DH and 1S&S that fall outside the Relevant Period.

1085. They also submit that the Authority also used the cross-examination of Mr Odey to put to him for the first time a further series of new and specific suggestions (the "**New Suggestions**"). They argue that these New Suggestions include: threats; bullying; deliberate misrepresentation of events to his colleagues; falsification of minutes; and pressure being placed on a potential complainant into not co-operating with the Authority's investigation. None of these New Suggestions were specifically pleaded as allegations of misconduct; a number were not even mentioned in the Authority's SoC in the relevant background section.

1086. Counsel contend that the Authority has therefore acted unfairly and inappropriately in raising these issues for the first time in opening or in the cross-examination of Mr Odey. Mr Odey was entitled to know fully the case he had to meet before he gave his evidence. Advance notice of these matters may have, in turn, influenced the presentation of his reference and the evidence that he wished to place before the Tribunal. To the extent any of the New Suggestions were in fact being relied on by the Authority to demonstrate a lack of candour and/or fitness and propriety, such issues should have been specifically pleaded and their alleged relevance to the issues in the reference set out and explained in the SoC. Absent such pleading and explanation, their mere inclusion in witness statements does not advance the Authority's case.

1087. They argue that the effect has been to transform, in the public perception at least, a reference which should have been reported as being about the appropriateness of Mr Odey's actions as majority shareholder in removing the first and second ExCos into one which has at every turn sought to attack Mr Odey's character in an unfair and gratuitous way. Having discontinued its NFM case, the Authority has deliberately and cynically adopted an approach that has, in effect, put Mr Odey on public trial for the very allegations it had decided to previously discontinue and in respect of which it had actively decided to take no action.

1088. Counsel argue that it is regrettable in the context of Mr Odey's case and the approach is not surprising. The manner in which the Authority has litigated its case is consistent with the Authority's position, as demonstrated by its internal communications, that it will through any means seek his exclusion from the regulated sector.

1089. They submit it has not been necessary to focus on Mr Odey's evidence to the Tribunal in respect of the unpleaded case in respect of which the Authority's cross-examination was so focused. The only purpose of the Authority's scatter gun approach was to seek to discredit Mr Odey's evidence and credibility by reference to various unpleaded matters from outside and within the Relevant Period.

1090. In any event, they argue that the Authority's unpleaded attacks were generally without merit. Mr Odey did not attempt to intimidate a witness in relation to the NFM allegation. Mr Odey did not seek to exclude Mr Pearey from the firm to prevent the second ExCo making proper inquiry of the matters in the 1S&S: on the contrary, the second ExCo had unfettered access to it and the firm's legal advice, as it should. Further, it was Mr Pearey who initially tried to give the impression that his note of the August 2021 meeting with Mr Odey was contemporaneous when it clearly was not - as was accepted by Mr Pearey under cross-examination.

1091. Counsel contend that other suggestions raised in witness statements - for example an alleged offer of a payment to Mr Satt to remain at OAM - were not even put to Mr Odey in cross-examination.

1092. They submit that allegations of threats, bullying and intimidation whether to the ExCos or to the Authority must also be viewed in the appropriate context. Mr Odey was fighting for the firm he had founded 30 years previously. He cared passionately for the firm, its people and its clients. If Mr Odey was vocal and forceful in the context of inappropriate pressure from the Authority, whether exerted directly by the Authority or indirectly by OAM's lawyers, a forceful reaction is not surprising. Where Mr Odey went too far, he recognised it and sought to remedy the position, as his apology to Mr Kelton shows.

1093. Counsel suggest that, to the extent the Tribunal is troubled by Mr Odey's reaction to what he viewed as the Authority's inappropriate pressure and the risk of ExCo members succumbing to it, it must be recognised that these actions do not in fact evidence a lack of candour such that his evidence in respect of the pleaded case is not capable of belief.

1094. For these reasons the New Suggestions do not advance the Authority's case.

Conclusion and Decision

1095. We reject these submissions.

1096. We have addressed the NFM allegations above when considering the admissibility and relevance of the 1S&S and cross-examination thereupon.

1097. We reject the argument that there have been New Suggestions pursued for the first time at trial of Mr Odey's threats, bullying and deliberate misrepresentation of events to his colleagues, falsification of minutes and pressure being placed by Mr Odey on a potential complainant. They fall within the subject matter of the reference – see *Bluecrest*. With the exception of the 1S&S, no objection was taken to the admission of these suggestions and cross-examination thereupon at any point before or during the hearing, in particular before or during Mr Odey's cross-examination. The objection is taken after the event.

1098. We address these in turn.

1099. In relation to the suggestion of threats made by Mr Odey to his colleagues or the Authority, numerous threats were pleaded in the Authority's SoC at paragraphs 21, 26, 99.5, 107.3, 107.4, 124.5, 149.2 and 161.2. The suggestions were not new and were properly pleaded with Mr Odey having good notice and an opportunity to address them in evidence. We have found that Mr Odey did make numerous threats, many of which he admitted, and this conduct was highly relevant to demonstrate his self-interested motivation in removing both the ExCos.

1100. In relation to the suggestion of Mr Odey bullying the ExCos – while the word does not appear in the Authority's SoC, we accept the Authority's submissions that it was apparent in the evidence – the word was used by Mr Kelton in his witness statement in relation to Mr Odey's conduct towards him and paragraph 115.3 of the SoC records the swear words Mr Odey used towards Mr Richards. We have made findings upon these suggestions and there was little dispute of fact. Again, the findings were relevant to Mr Odey's self-interested motivations in his conduct towards the ExCos.

1101. In relation to Mr Odey making deliberate misrepresentations of events to his colleagues, this was pleaded at paragraph 24 of the SoC ("After his dismissal of [the first] ExCo, Mr Odey's communications with OAM, its clients and investors about…lacked candour…") and we have made relevant findings.

1102. The deliberate falsification of the minutes of 6 January 2022 is not a New Suggestion raised for the first time at the hearing and the Authority was entitled to rely on it as relevant and admissible. There were two misstatements in the document. The first is a set of lies about the number and seriousness of the incidents uncovered in the 1S&S. Paragraph 63 of the Authority's SoC set outs the true number of incidents – 46 allegations. The other set of lies was about who attended and what happened at the meeting.

1103. We have made our findings above regarding these minutes – Mr Odey made a number of inaccurate and misleading statements in them. It is fair to say that the allegation that the minutes were false was not included in the Authority's SoC dated 2 April 2025. However, we accept the Authority's explanation that this was for the good reason that it was not aware of the factual premise in the allegation until after the SoC was filed. This occurred when Mr Satt first saw the minutes of the 6 January 2022 meeting recorded him as present during it. He was sent the minutes as part of the witness pack given to him to prepare his statement. We accept Mr Satt's evidence in re-examination that he was surprised and frankly shocked when he saw the minutes as they contained a significant misstatement. Mr Satt made it explicit in his witness statement dated 31 October 2025 that the minutes were inaccurate in this regard at [68]-[69]. Therefore, the Authority was only aware after the SoC had been filed that the minutes contained material inaccuracies.

1104. As a result, three months before the hearing began, in a letter dated 10 December 2025, the Authority expressly notified Kingsley Napley, Mr Odey's solicitors, that it did not admit the authenticity of the 6 January 2022 minutes. The letter stated: "Factual witness evidence served by the Authority provides that the minutes are inaccurate both in the persons listed as attending the meeting the minutes purport to record and the comments the minutes attribute to a person who was not in fact present at any such meeting. This throws doubt upon the circumstance in which the minutes were created and therefore their authenticity."

1105. This was good and reasonable notice and no objection to the allegation was taken by Mr Odey at that stage or prior to the closing submissions – not even during cross-examination. Further we do not accept that the allegation needed to be included in the SoC, as an amendment to the pleading, where it was not relied on as free-standing allegation of lack of integrity. It was only relied upon as a matter going to Mr Odey's credibility with the evidence and allegation having been notified in a reasonable time after it was identified. The Authority's opening skeleton argument for trial dated 27 February 2026 also asserted at [74] that the minutes were inaccurate in both ways asserted. Mr Odey's counsel made no objection to him being cross examined on this allegation at the hearing. We are satisfied it was just and fair for this allegation to be addressed in evidence and where reasonable notice had been given to him in evidence, correspondence and written opening, it went to his credibility rather than a free-standing allegation of lack of integrity and Mr Odey was able to give or call evidence in reply.

1106. Finally, we have not relied upon a text message Mr Odey sent to Individual C, the women whose breasts he handled, against him in this decision nor in our reasoning. Nonetheless we do not accept that the Authority was not entitled to cross-examine upon it. It was a text message contained in the evidence served that was put to him in cross-examination in order to test the credibility of his own case. The Authority sought to undermine Mr Odey's credibility in asserting he cared deeply about the fairness of the 2DH process and wanted to protect the interests of the firm and its clients. The Authority alleges that this text message reveals Mr Odey telling the former employee, and recipient of his non-consensual touching, that she was being used by the Authority in pursuit of a vendetta and to encourage her to downplay it. We have made no findings regarding this.

First ExCo - Mr Odey's deliberate frustration of the second disciplinary process was motivated by self-interest rather than the interests of OAM or its clients

1107. Mr Odey accepts he removed the first ExCo on 24 December 2021 to prevent the 2DH from happening despite the ExCo deciding it should take place on 6 January 2022. Mr Odey accepts that he did so because of the risk he would be found to be in breach of the FWW at the 2DH and the first ExCo's conclusion would result in his dismissal. This was a risk that Mr Odey decided to eliminate.

1108. We have found that Mr Odey's motives and reasons for removing the first ExCo were driven by self-interest to avoid being held to account for breaches of the FWW. His actions were deliberately designed to frustrate OAM's ongoing disciplinary process in relation to his conduct, to limit his personal accountability. His conduct was motivated by his prioritising his own personal interest over the interests of OAM, its clients or investors, members and staff, and OAM's compliance with regulatory rules and internal policies.

1109. Mr Odey was clear in his evidence that he was not prepared to accept the risk that the first ExCo would dismiss him from OAM. He was very aware of the risk and stated in oral evidence, "The decision, all I was thinking about was "the decision, the disciplinary hearing and essentially what I could guess was going to happen, which was I was going to get dismissed". Mr Odey's evidence was that he was willing to be dismissed but not when he believed the disciplinary proceedings were unfair.

1110. We have rejected this evidence for the reasons set out above. In effect, we have found that there was no process Mr Odey thought could be fair when he simply disagreed with the potential outcome. He believed it could only be a fair process to which he would submit, if it resulted in him not being dismissed. He believed that he should not be dismissed for what he believed were technical or inconsequential breaches of the FWW and he was not prepared to accept this possibility. In any event, it does not detract from the fact that he removed the first ExCo as he was not willing to be dismissed from OAM.

1111. Mr Odey clearly knew that his dismissal was a possible or likely outcome of the 2DH. He had had discussions with Mr Pearey and Lord Roborough before 24 December 2021 which made this apparent.

1112. Mr Pearey gave evidence in his statement that he discussed with Mr Odey what would happen in the event of Mr Odey being dismissed in terms of contingency planning for OAM. Mr Pearey stated in his statement at [121]-[122]: "In those discussions, I made clear to Mr Odey that I was not prejudging the outcome of the hearing, but indicated that we would need to discuss what should be done in the event of his dismissal…Those discussions become more frequent, and increasingly heated…I said to Mr Odey that we needed to consider the scenario of his dismissal, and what we might do in that situation. In response Mr Odey said, 'Well, if you do that, I'll sue you for unfair dismissal', or 'I'm just going to shut down the business.'"

1113. Lord Roborough gave evidence in his statement that Mr Odey was not happy with the decision to require the disciplinary hearing. Mr Odey felt very strongly that it would lead to him being pushed out of the business and being ruled not fit and proper. Mr Odey's "unhappiness with the process manifested itself in frequent contact with the members of ExCo, trying to persuade us that we should not dismiss him…he feared that the outcome of the hearing was pre-determined despite our reassurances that it was not". Mr Odey also sent Lord Roborough text messages, such as that on 19 December 2021 addressed above in which he threatened to close the business down in response.

1114. The FWW itself was clear that any failure by Mr Odey to comply with the conditions in the FWW was likely to lead to his removal from the LLP and the letter dated 30 November 2021 giving notice of the 2DH to Mr Odey also highlighted that removal as a member of the LLP was an option.

1115. Mr Odey was only motivated by self-interest and did not have any real concern as to the interests of OAM and its clients, or at the least he prioritised his self-interest above that of others. As Mr Pearey put it, Mr Odey dismissed the first ExCo as a potential way out for himself. Lord Roborough expanded upon this in his statement: "The reason for Crispin's dismissal of ExCo was the disciplinary process…he didn't want to go through that process because he feared the outcome, and came to the view that the only way to prevent that without destroying the business was to dismiss ExCo….He believed that ExCo were going to make a decision that he disagreed with, and he therefore got rid of ExCo to prevent that decision being taken and to give himself time, as he saw it, to fight the FCA. Keeping himself in the business was central to his decision-making."

1116. Mr Odey also knew that his status as an employee at OAM (rather than his position as ultimate controller) was a matter for the first ExCo to adjudicate upon. In removing the ExCo he sought to bypass the firm's policies and procedures and governance structure by misusing his controller and owner status. The first ExCo was highly experienced across a range of disciplines. The three senior figures were respected and well regarded. They were given the power, by virtue of the governance structure, to decide upon the 2DH and the full range of governance matters. Removing the ExCo was to remove a functioning and fundamental part of the governance of OAM.

1117. Mr Odey could not reasonably have considered removing the ExCo to be in the firm's or clients' best interests. Even just removing Mr Pearey from ExCo would have been significantly damaging for OAM. Mr Odey should reasonably have been aware that removing the first ExCo would lead to Mr Pearey's resignation from the firm as Mr Pearey told Mr Odey so. Mr Satt described Mr Pearey as "a big leader and a big part of the firm". Mr Hanbury stated that Mr Pearey's departure was "not very good for the culture of the firm. Tim was well-liked, and was good at walking the floor, talking to people…"

1118. We find that Mr Odey's actions were, objectively, not in the interests of OAM, its staff or members, or its clients. It was not in the interests of OAM's compliance with its regulatory obligations or policies and procedures. Mr Odey knew as much at the time but prioritised his own self-interest. He knew and accepted his actions in removing the first ExCo would cause OAM to be in breach of various regulatory obligations. This is addressed in more detail below in relation to the Second Allegation. His failure to have any contingency plan on removing the first ExCo as to how to immediately satisfy the regulatory obligations was not, objectively, in the firm's or its clients or its staff's best interests.

1119. For the reasons set out above when rejecting his case, we are satisfied that Mr Odey's actions in removing the first ExCo were not in the interests of OAM, its staff or its clients nor did he believe them to be at the time – or if he did, such belief was not reasonable.

1120. Mr Odey's real motivation in removing the first, like the second, ExCo was that he did not think he should be accountable to ExCo for breaches of the FWW through a disciplinary process at all, let alone the 2DH. He, arrogantly and wrongly, took the view that the allegations were trivial and it was not for the firm he owned to be investigating or disciplining him for such matters. This view was manifestly unreasonable. In any event, it could not reasonably have justified his removal of the first ExCo. He demonstrated a lack of integrity.

The second ExCo

1121. In removing ExCo for a second time, Mr Odey was again prioritising his own self-interest above the interests of OAM or its members, staff or clients or compliance with the firm's regulatory obligations and its policies and procedures. He was attempting to frustrate, delay or avoid OAM's ongoing disciplinary process in relation to his conduct. He was not prepared to accept Mr Richards and Mr Kelton continuing the 2DH before the Authority concluded its investigation into his fitness and propriety. He was also not willing to accept the safeguarding proposals.

1122. As set out above, none of Mr Odey's purported justifications for his conduct provide any justification for removing the second ExCo. His actions were driven by self-interest above that of the firm. Mr Odey removed the second ExCo out of his desire for self-preservation and self-protection.

1123. In terms of self-preservation, he was not prepared to allow the second ExCo, Mr Richards and Mr Kelton, to advance or progress the disciplinary process or hold the 2DH. In particular, he would not permit the 2DH being held before the Authority concluded its enforcement investigation into his F&P, the issue of alignment or sequencing. He sought tactical advantage and disruption as a means of avoiding accountability.

1124. He was not willing to adopt any of the safeguarding proposals around him working at OAM, including working at home or in a separate part of the office. He saw the proposals as an affront to his dignity, beneath his status as owner of the OAM and was blind to the obvious risk that he presented of behaving improperly to female employees.

1125. The safeguarding proposals were not intolerable, disproportionate nor any of the adverse adjectives that Mr Odey attempts to paint them as. In any event, it was not reasonable for Mr Odey to decide whether safeguarding measures were required – it was for ExCo. The proposals provided no rational basis for removing the second ExCo. His resistance in accepting ExCo's decision demonstrates that he did not accept the independent governance of the firm which would not bend to his will. In so far as ExCo would not agree with him, he was prepared to usurp its functions.

1126. Mr Odey's removal of the second ExCo was objectively unreasonable and, though not necessary, we find that he knew so. He had no real or rational basis to consider it to be in the interests of OAM, its staff, members and investors – all the more so, having already heard the Authority make clear its concerns about his removal of the first ExCo.

1127. The second removal of ExCo within a period of three months only aggravates his conduct.

1128. The Authority have established the First Allegation – Mr Odey lacked integrity in removing both ExCos in the way described.

THE SECOND ALLEGATION

<u>In removing the ExCos Mr Odey demonstrated a reckless disregard for OAM's governance and compliance with regulatory rules and obligations ("**the Second Allegation**")</u>

Second Allegation - Actual and potential breaches of regulatory obligations in removing ExCos

<u>Submissions and evidence relied upon on behalf of Mr Odey</u>

The breaches relied upon by the Authority

1129. Mr Williamson KC and Mr Mansell submit that the harms identified by the Authority amount to three alleged breaches of the Authority's Rules. They rely on the observations made by Mr Odey in respect of each of the Rule breaches. They argue that the evidence has demonstrated that the consequences of the actions Mr Odey took amounted, at most to, technical breaches of the Rules without actual detrimental consequence. Mr Cornwell accepted that "…we haven't identified that there was crystallised harm. We had identified obviously what we considered to be rule breaches."

1130. There are three specific rule breaches now alleged: sections 63E and 63F FSMA (the requirement that SMCR firms assess the fitness and propriety of certification staff at least every 12 months), SYSC 4.2.2R (the requirement that a full scope UK AIFM ensures that its management is undertaken by at least two persons) and FUND 3.7.2R UK (the requirement that a full scope UK AIFM ensures segregation of risk management and portfolio management). As Mr Satt recognises, "the FCA source book is full of rules that in and of themselves are not harms, but are there in place to prevent harm."

1131. Counsel addressed each alleged breach in turn.

Certification

1132. The Authority's allegation is that OAM was unable to assess whether Mr Odey was fit and proper while he was exercising certification functions (i.e. acting as a fund manager) due to the delay in holding the disciplinary hearing. In March 2022, when the firm was required under FSMA to certify the fitness and propriety of Mr Odey, he was under regulatory investigation by the Authority. At that time, OAM was aware that the Authority considered Mr Odey was not fit to be a controller of BAM, a firm applying for authorisation.

1133. Counsel submit that Mr Satt continued to maintain that Mr Odey's actions in removing the first and second ExCo's were a reason he could not certify Mr Odey. However, under cross-examination, Mr Satt accepted it was not the only reason for his failure to certify.

1134. Mr Odey was during this period subject to a regulatory investigation by the Authority's Enforcement team. While the investigation continued and the outcome unknown, it would have been difficult or even impossible for the firm to assess Mr Odey as fit and proper. When asked "would you have certified a person who was under regulatory investigation as fit and proper?" Mr Satt replied "no". This demonstrates that regardless of the actions of Mr Odey in removing the ExCos, the firm could not in any event have certified him as fit and proper: these actions would have at most added further justification. However, the actions were not themselves the reason for the firm's inability to certify Mr Odey.

1135. Further, as the following exchange shows, there were steps Mr Satt could have taken to ameliorate or mitigate the firm's breach which he did not take: "…it would have been perfectly possible for you to have suggested to the FCA that they give you a dispensation because of those circumstances for doing your annual certification. That would have been an option open to you, wouldn't it? JS: It could have been an option. It's not one that I considered."

1136. Counsel argue that in this context, it was always open to Mr Satt or the second or third ExCo to seek a regulatory dispensation from the Authority in respect of any rule breach or otherwise to engage in constructive dialogue with the regulator as to the impact of its investigation into Mr Odey on the certification process. Mr Odey could not reasonably certify himself when acting as ExCo and the fact the second and third ExCo did not seek dispensation or other guidance cannot be attributed to him.

SYSC 4.2.2 R

1137. It is accepted on his behalf that, for the periods during which Mr Odey was the sole member of ExCo, his actions placed the firm in breach of Rule 4.2.2R. However, the purpose of the Rule is to address the harm which could be caused by a rogue director acting unchecked. In this instance, the harm the rule seeks to address did not occur.

1138. Mr Satt agreed in oral evidence that while Mr Odey was sitting as the sole ExCo, "the reality is he didn't make a single decision which you thought: hang on a minute, he shouldn't be making - - apart from the decision to appoint himself in the first place - - he shouldn't be making that decision because of X, Y and Z; is that fair ? JS: As far as fund management activities are concerned, yes, I would agree with that."

1139. Further Mr Satt agreed that Mr Odey did not want the firm to be in a state of non-compliance and that "Mr Odey, certainly in my conversations with him, was - - repeated on multiple occasions he was very keen to bring the firm back into compliance." He accepted when questioned that Mr Odey had "a good dialogue with him about the issues": "And he was receptive to your views as to the issues ... of non-compliance?"…"And was he receptive to your views as to the solutions?"

FUND 3.7.2R

1140. Counsel argue that the alleged FUND breach was not identified by the Supervision Division or the firm at the time it is now said to have occurred. To the extent there was a Rule breach, it was not reported by the firm to the Authority as such, no interviewee was asked about it by the Authority in interview, and it does not appear to have been identified until after the current proceedings were commenced. To the extent this represented harm, it was clearly not obvious to the Authority or the firm at the time.

1141. Further, there is no evidence of Mr Odey overruling the decisions of the risk committee of OAM. In substance there was a de facto separation between the actions of Mr Odey as a fund manager from the decisions of the risk committee upon which Mr Odey did not sit. Mr Satt recognised the separation in the context of the BAM application, as the following exchange in cross-examination shows, "JM: So you would have the middle, you'd have the bottom, you'd have the fund managers - - just putting it as a flowchart, you would have the fund managers at Odey, you would have the fund managers at Brook, who would then report up to the committee structures? JS: Yes. JM: That would be a joint committee structures: Yes… JM: Then it would diverge again to the independent ExCos of both? JS: Correct."

1142. They submit that significantly, there is no evidence of any such breach resulting in the type of harms envisaged by the creation of the Rule. In substance there was a de facto complete separation between the actions of Mr Odey as a fund manager from the decisions of the risk committee upon which Mr Odey did not sit. Mr Odey did not over-rule the decisions of the risk committee while he was sole member of ExCo. If there were a breach of FUND, which is denied, any such breach was technical in nature and had no material consequence.

Minimal consequences of technical breaches

1143. Mr Williamson KC and Mr Mansell submit that the only possible harm caused by Mr Odey's actions were, at most, a breach of SYSC 4.2.2R and, on one view, FUND 3.7.2R. However, that neither of these had any material consequence in that neither led to identifiable harm beyond the fact of the rule breach identified.

1144. They argue that in considering the seriousness of any certification breach, it is significant that at no stage was the firm's failure to annually certify Mr Odey raised as a contemporaneous concern by Supervision. Given the extent of Supervisory engagement with the firm during this period, this is indicative of the lack of any real risk and / or harm presented by this technical breach.

1145. Counsel contend that when considering any breach of SYSC 4.2.2R Mr Odey accepts that for two relatively brief periods within the Relevant Period, between December 2021 to 11 January 2022 and 31 March 2022 to 14 June 2022, OAM was technically in breach of this rule. However, at all times during these periods, Mr Satt remained an approved Senior Manager, and the firm's sub-committee structure continued to operate normally, providing effective oversight and continuity of governance. This absence of actual risk or any detriment is reflected in the lack of supervisory action undertaken by the Authority during these two short periods.

1146. They submit that when considering any FUND breach, it is clear that a firm can demonstrate its compliance with this requirement through having effective corporate governance structures beneath its senior decision-making body, in this case the Firm's ExCo. It is for the Authority to establish a breach and there has been no investigation by the Authority as to the operation and effectiveness of the broader corporate governance structures in place at OAM. In the absence of any such investigation it is inappropriate for the Authority to either assume or allege a breach of this rule. Further, as with the certification requirement discussed above, it is perhaps significant that the firm's alleged breach of FUND was not raised as a contemporaneous supervisory concern by Mr Cornwell and the Authority did not feel the need to take any supervisory action to mitigate any perceived risks arising from this at the time. There is no detriment alleged and no detriment was caused to any investors.

1147. Counsel note that the Authority does not allege that the Threshold Conditions were breached by Mr Odey's actions: simply that there was a risk of breach. All actions bring risk; the challenge is simply to identify and manage risk. In reality, the lack of crystalised harm was one of the principal factors that led the Authority to decide against exercising its statutory powers to intervene.

1148. Counsel rely on the Authority's internal communications which reveal their thinking that no harm had been demonstrated and their reasoning as to why the Authority should not intervene in the firm.

1149. On 4 February 2022 the Authority's Threshold Condition case was closed due to "lack of evidence." On 1 April 2022 Mr Low reported to Mr Cornwell that "CO appears positively pre-disposed to resolving Governance structures - even if the detail has yet to be formalised or finalised." By 8 April 2022, Mr Cornwell was reporting that "If CO comes up with a credible plan on Wednesday (which I think is a likely outcome) we would need to consider the timescales to achieve it and the potential for harm in the interim." By 19 April 2022, the Authority was satisfied that firm should be given until the end of June 2022 to regularise its management position. Mr Cornwell also confirmed that at OAM "Investment management personnel remain in place and we believe processes do too."

1150. By 17 May 2022, Mr Cornwell stated that "…we believe the firm wants to get its governance structure resolved and in place, making it hard to take clear action. I also believe that our action could lead to a similar outcome to Odey pulling the plug, namely an orderly wind down but one that is not necessarily in the best interests of investors." On 19 May 2022, Ms Trost conceded that: "We had a conversation about whether that is causing actual proven harm at the moment, eg are we seeing this lead to obvious issues in the portfolio management. We have not seen direct evidence of that." Similarly, on 23 May

2022, Mr Cornwell stated: “I am not sure we have enough to show investor harm.”

1151. On 7 June 2022, Mr Cornwell acknowledged: “that the investment function of the firm remains intact and the fund performance year to date is generally good”. He went on to say, “a narrative from the firm that any action we took was harmful to investors would also be harmful reputationally. By 21 July 2022, with the new management in place but not approved, Mr Low stated that “there appear to be insufficient grounds to apply an Oireq (or apply a contested intervention via Tribunal).” When Mr Low was asked in cross-examination whether he would agree that "terms of statutory intervention to strip a firm of being able to carry on regulated activity is a forward-looking supervisory tool designed to prevent ongoing risk to consumers and harm", he answered, "Yes, I would agree with that.”

1152. The lack of harm was acknowledged by each member of the ExCos and by Mr Satt when they were interviewed by the Authority in 2023.

1153. Mr Satt when interviewed said that, “[Mr Odey] wanted to put the firm back into compliance with the rules.” Mr Satt said that the firm’s underlying governance “framework underneath it remained the same” and he agreed with the firm's view that “the underlying committee structure and the individuals and the components thereof, were still functioning, were still quorate, still in place, with the firm’s risk officer was still operating, the risk committee still operated, the prudential committee was still operating and functioning, day-to-day processes continued to be, operate normally and were unaffected during this time. So on a day-to-day basis to enable to have that as things would normally operate the firm continued as per normal."

1154. Mr Satt also said that there was “no direct impact [from Mr Odey’s actions], apart from where members of the Executive Committee were also members of those subcommittees. Then you’ve got their continued membership of those. But, otherwise, those positions, they were able to operate independently.” He went on to say, “there was already sufficient people in there that the committees remain quorate and, in the weeks that followed, additional members were put into those committees to be able to bolster those covers.” He said that Mr Odey “had previously performed SMF27; and he has a lot of experience operating within the industry; and he has experience in running a business.”

1155. Similarly, Mr Hanbury told the Authority in interview that “it became pretty evident quite quickly that all the other sub-committees were working as normal, [unclear-reliberation?] was working as normal,” and that “nothing had really changed from a kind of- day-to-day perspective.” He further said “I think the operations and performance continued to be very good in [20]22. And yes- there was no, kind of- there wasn’t a kind of- unusual level of churn or anything. So yes, there would be nothing to kind of point to from the business point of view”. He added that: “the operations were running fine. I’m not aware of any kind of slipups, you know, from the operations side or compliance side.”

1156. In his interview, Mr Richards told the Authority that, between 24 December 2021 and 12 January 2022, Mr Odey “had the competencies and the structures and committees there to ensure the ongoing running of the business” and “deficiencies in ExCo's ability to act certainly weren't highlighted during the timeframe, to my recollection.” He said that Mr Odey “was very familiar with the business from the investment side and the non-investment side. I think he had the competencies and the skills to manage the business. I think he didn't have perhaps the depth of knowledge on all subject matters. But that doesn't stop you from managing a business effectively, given that he still had the resources and people in place, like an experienced Compliance Officer; like myself as COO, who was very familiar with businesses."

1157. Mr Kelton also confirmed in interview that, following his dismissal from ExCo, there was no negative impact on the corporate governance in place at the firm, stating that "there was no red flags on whether it was on a compliance basis or whether it was a treating clients fairly basis or whether it was a research basis or a risk basis. Any of these variables, there was no sense that there was anything being done differently with Mr Odey in charge. It was being run as the firm had been, other than as you rightly point out, with one person in charge, with potential conflicts of interest and potential other risks. But there was no sense that he was executing on those risks." He went on to say, "I saw no red flags at all in either of those periods when he was managing the firm…compliance was normal; he was trying to find new compliance the whole time; all of the risk committees were normal; all of the appropriate – obviously I was not ExCo but on the second time or the first time – but it looked for me that all of the appropriate measures were in place and were not being attacked or being sidelined or pushed around or whatever."

Lack of harm caused

1158. Mr Odey's case is that by acting as he did to remove the ExCos, he secured the due process to which he was entitled and prevented the harms that would have resulted to OAM and its clients by his dismissal through an unfair process. Any harms caused by Mr Odey's protective actions were theoretical and outweighed by the harm that would have been caused had he not taken the action he did.

1159. Mr Williamson KC and Mr Mansell submit that in determining reasonableness, it is necessary for the Tribunal to weigh up both sets of risks or harms and consider whether Mr Odey, who conducted the same balancing exercise, lacked integrity in making the decision he did. Central to this assessment is the lack of actual harm he caused.

1160. Counsel argue that the Authority does not allege that in removing the first and second ExCos, actual detriment was caused. Mr Satt in his oral evidence recognised that the reaction of the firm's clients was limited, stating, "there weren't really a great run of redemptions or anything like that that happened as a result of Mr Odey's actions? JS: No, assets around this time, as far as I can recall, remained relatively stable. JM: That's because the firm's performance had been pretty stellar, hadn't it, really , Mr Satt? JS: It was - - the firm was returning back to a period of good performance."

1161. They rely on Mr Satt's evidence in which he explained that despite the changes made at ExCo level, the firm's governance beneath remained intact. The following exchange confirms the same:-

> "JM [Mr Mansell]: You told the Authority in interview, and you still maintain that the underlying framework underneath remain the same, despite (inaudible)?
> JS: Yes, I do.
> JM: So the committee structure and the individual components of all of those committees were still functioning, they were still quorate, they were still in place?
> JS: Yes, absolutely. We ensured that the firm continued to operate properly at that level throughout.
> JM: The risk committee was operating normally?
> JS: Yes.

JM: The prudential committee was operating normally.
JS: Yes.
JM: Day-to-day processes of the firm continued to operate entirely normally?
JS: One - - sorry, apologies, one comment on the committee point. Obviously, given some of the departures, there would have been some reorganisation and replacement of the individuals.
JM: That's fair…
JS: Yes. There was obviously some considerable institutional knowledge that would have been lost with some of the departures, but equally those who did replace brought with them their own experience and knowledge, and had been with the firm for a long time."

1162. Counsel also suggest that other witnesses gave corroborating evidence. Mr Pearey also spoke highly of the firm's internal systems and controls as the following exchange shows: "... part of the operational infrastructure, was the creation of a very good compliance structure within the firm? TP: Yes. AWKC: There was a good team on the operational side? TP: Yes." Mr Satt also confirmed that there was "no interference from Mr Odey, operating as top ExCo, in interfering that you're aware of in the way in which those committees were continuing to operate? JS: No." Mr Hanbury agreed that any concerns he had in respect of Mr Odey's actions did not materialise.

1163. They submit that the fact that OAM was able, notwithstanding Mr Odey's interventions as majority shareholder, to continue its business as usual, explains why Ms Trost accepted in her email to Mr Cornwell that: "We had a conversation about whether that is causing actual proven harm at the moment, e.g. are we seeing this lead to obvious issues in the portfolio management. We have not seen direct evidence of that." It also explains why Mr Cornwell in his email of 23 May 2022 recognised, "while there is no doubt there is a TC [Threshold Condition] breach I am not sure we have enough to show investor harm" and an internal email of his dated 7 June 2022 provided "you are aware that the investment function of the firm remains intact and the fund performance year to date is generally good. There is reputational risk on either side of this issue - inaction with investor harm would be damaging, a narrative from the firm that any action we took was harmful to investors would also be harmful reputationally."

1164. Counsel also point out that whether or not there was an actual breach of the Threshold Conditions, the Authority makes no allegation of breach in the case pleaded. Indeed, if there were a breach of which the Authority were aware at the time, it had at all times statutory powers of intervention through the use of an Own Initiative Requirement ("**OIREQ**") to vary the firm's regulatory permission pursuant to section 55L FSMA that it could have exercised. No such power was deployed.

1165. Mr Cornwell summarised the position in his case summary email of 17 June 2023 when he said that there: "was also concern that any OIREQ would be challenged and there were concerns as to whether the issues reached that bar, with no crystallised harm and the firm taking some voluntary steps to protect investor interests." As Mr Satt accepted in oral evidence, "it was the absence of actual harm, actual harm, that in your view probably prevented the FCA from using their intervention powers? JS: Yes."

1166. In summary, counsel argue that in making the assessment not to intervene in the firm, the Authority would have been acutely aware that any such intervention had to be proportionate. It is quite clear from the internal Authority communications that the absence of actual harm was the determining factor as to why the Authority did not exercise its statutory powers to intervene in OAM. Quite simply, there was no actual harm caused by

Mr Odey's actions. This absence of actual harm is a key factor the Tribunal is asked to take into account in determining whether Mr Odey's actions were, in all the circumstances, reasonable. Had actual harm been caused, the Authority would rightly have relied on such harm to support its case; the absence of such harm must equally be taken into account.

Preventing greater harm

1167. Counsel further submit that the Authority has power under FSMA to intervene without any notice to the firm at all. It is highly significant and indicative of the lack of actual harm that the Authority chose not to do so. They contend that Mr Odey had to balance the risks of action against the risks of inaction. Inaction posed an existential risk to the firm, in that the firm could not survive and certainly could not prosper without him. Inaction would lead to Mr Odey's inevitable exit from the firm through an unfair process and its inevitable demise. Action would, through Mr Odey exercising powers as majority shareholder, ensure a fair process and give the Firm a chance to survive. In deciding to act, Mr Odey had to balance the existential threat to the firm he had founded 30 years previously, against short term temporary rule breaches which produced no crystallised harm. Mr Odey recognised, even if the ExCos and the Authority did not, that his fate and that of the firm were intertwined. In those circumstances, Mr Odey's actions were intended to and did prevent a greater harm.

1168. In relation to their argument that while Mr Odey's actions were plainly in his own interests, those actions were aligned with the interests of the firm and the firm's clients, counsel quote Lord Roborough when he told the Tribunal: "I think he was protecting all stakeholders, investors, employees, shareholders." The Authority's core allegation is that Mr Odey's purpose was to place his personal interests above the interests of OAM, the interests of OAM's clients, OAM's compliance with the regulatory obligations to which it was subject, and / or OAM's compliance with its own policies and procedure. For the reasons set out, that allegation must fail.

Lack of recklessness

1169. Counsel submit that the evidence that Mr Odey was aware of, and concerned by, the regulatory consequences of his actions is clear. He knew the business inside out and considered that there were sufficient mitigants in place. Mr Satt was an approved senior manager and he remained in post. At no time did Mr Odey seek to interfere in Mr Satt's discharge of his role or in his ongoing dialogue with the Authority, as the following exchange in cross-examination shows:- "You quite often had separate calls with the FCA where you would update them on things that were going on?" JS: "Yes." JM: "It's important in your mind that you did have that free and unfettered access to the Authority, that's right, isn't it?" JS: "Indeed, yes." JM: "Yes. And at no time did Mr Odey ever comment or try to stop you doing that, did he?" JS: "No." Mr Satt also accepted, "there were no large inflows, you weren't actively looking for subscriptions, even if there was not a ban on prescriptions as the FCA mooted, and indeed, additional risk warnings were later put into the prospectus?" JS: "Yes." JM: "To reflect the potential volatility of the situation which the firm found itself in?" JS: "Yes."

1170. It is argued that Mr Odey's desire was to bring the firm into a state of compliance as quickly as possible. Mr Low considered Mr Odey's stated wish to do so genuine and sincere. Mr Odey spoke to Mr Low on 1 April 2022 and as the latter's note confirms: "CO appears positively pre-disposed to resolving governance structures - even if the detail has yet to be formalised or finalised… CO appears to be offering an open door and frank series of discussions". As he further said, "this situation requires experienced management. Inexperienced managers tend to offload the responsibility to solicitors (or FCA). [EXCO] cannot simply off-load decisions to a 3rd party."

1171. In summary, Mr Odey denies that his actions were either reckless or indicative of a lack of moral compass. It is clear that neither he nor the Authority perceived there to be any actual harms arising from his conduct. Even when OAM was briefly in technical breach of specific regulatory rules, potential risks were fully mitigated by the strong overarching governance structures in place at OAM, all of which continued to operate normally. Moreover, it is also clear that throughout the Relevant Period, Mr Odey's primary motivation was to protect the firm's investors rather than to advance his own interests. As Lord Roborough stated in interview with the Authority: "given his [Mr Odey's] view that the firm would cease to exist if he was fired, then, you know, I think he was considering investors and staff."

Conclusions and findings

1172. Despite the variety of submissions and reliance upon the evidence cited, we are able to reject Mr Odey's case in shorter order. We rely on our earlier findings that Mr Odey's motivation in removing the ExCos was not to prevent greater harm but to further his own self-interest. It was not reasonable for him to remove the ExCos in order to avoid a 2DH which may result in a potential outcome with which he disagreed or even if he thought it may be unfair.

1173. We are satisfied that Mr Odey caused OAM to breach three of its regulatory obligations by removing ExCo in December 2021 and risked putting OAM in breach of the Threshold Conditions. His removal of the second ExCo in March 2022 had similar consequences but for a far longer period. We accept the Authority's submission that in acting each time, knowing the consequent rule breaches, Mr Odey acted recklessly. The risk of harm was obvious. The fact that no obvious harm transpired during the period of non-compliance does not detract from the fact that Mr Odey deliberately caused the firm to accept this risk.

Certification

1174. The first breach Mr Odey caused by removing the ExCo and preventing the 2DH taking place as scheduled in January 2022 was that it left no one who could carry out the annual OAM certification process to certify Mr Odey as fit and proper. This was contrary to sections 63E and 63F of FSMA which require individuals holding SMF27 approval to conduct annual assessments of the fitness and propriety of certification employees including fund managers. Authorised firms are required by FSMA to take reasonable care to ensure that no employee performs a specified function in relation to the carrying on by the firm of a regulated activity, unless the employee has a valid fit and proper certificate.

1175. As a result of the removal of the first ExCo Mr Satt was the firm's SMF16/17 and only SMF approved employee. He was left holding a responsibility he could not perform. Further, there could be no decision-making process and assessment of Mr Odey's fitness and propriety, because Mr Odey had "indefinitely postponed" the 2DH and there was no SMF27 in place.

1176. This breach is not denied. Mr Odey's Reply argues that the "Second Disciplinary Hearing could not reasonably conclude until after the Senior Managers appointed to the

Third ExCo had been approved by the Authority". However, this ignores the reality that the first ExCo could and should have carried out the second disciplinary process, but for their improper removal by Mr Odey, and they were properly approved. At the time he acted to remove the ExCos, he had no plan to bring the firm back into compliance with the rules that were breached, he did so without notice to its compliance officer and the Authority and without any fixed date on which the firm would return to compliance.

SYSC 4.2

1177. The second breach Mr Odey caused was creating the position in which he was the sole person in charge of the ExCo and firm (between 24 December 2021 and 12 January 2022 after removing the first ExCo and between 31 March and 4 July 2022 after removing the second ExCo). This caused OAM to breach the requirements of SYSC 4.2. This rule requires a full scope UK AIFM, a firm such as OAM, to ensure that its management is undertaken by at least two persons meeting the requirements of SYSC 4.1.1R: "The senior personnel of….a full-scope UK AIFM…must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm." Such individuals must hold the SMF27 function. SYSC 4.2.4G adds that if there are "just two", the Authority will pay attention to the role they play in governance of the firm and that they must both be "effectively directing the business".

1178. Mr Odey did not dispute that he caused OAM to be in breach of this rule and there is no real disagreement. He also came close to accepting that this was not simply a "technical" requirement. In his own enforcement interview with the Authority, he conceded that two was "rightly, the minimum you could possibly have on ExCo"; he thought "3 or 4 is really advisable". He admitted in cross-examination that the 12-week rule does not assist with a breach of the requirement to have management undertaken by two persons meeting the requirements of SYSC 4.1.1R. The 12-week rule only enables temporary cover to be provided for persons performing senior management functions in specified circumstances, such as where the absence of the formally-approved SMF manager is "reasonably unforeseen".

FUND

1179. The third breach Mr Odey caused OAM to suffer was a breach of the stipulations of FUND 3.7.2R. As set out above, FUND 3.7.2R, requires the functional and hierarchical separation of the functions of risk management from the functions of portfolio management. This mandates both that that those responsible for risk management are not supervised by portfolio managers nor engaged in portfolio management.

1180. In appointing himself as sole ExCo member Mr Odey was also a fund manager responsible for approximately one-third of the firm's AUM. As a result, there was at the relevant times no functional and hierarchical separation of the functions of risk management from portfolio management, in breach of the rule. Mr Odey, the major portfolio manager, was both supervising the Risk Committee and the person ultimately responsible for risk management. Mr Odey accepted in oral evidence again that the 12-week rule did not assist.

1181. In so far it was submitted that the breach was merely technical because it was the risk committee that supervised risk management, not ExCo, we reject this. Looking at the matter de jure, as the Authority argues, ExCo was the body which had ultimate power, authority and oversight in relation to risk. ExCo was described in its regulatory documents as having full power and authority to bind the firm in relation to all relevant matters.

Equally, when considering the matter de facto, the risk committee's independence was clearly compromised in circumstances when Mr Odey had the untrammelled power to remove Risk Committee members and was known to have caused the removal of an ExCo whose decisions Mr Odey disagreed with.

1182. Mr Odey accepted in cross-examination that there was no functional and hierarchical separation of the supervision of risk management and portfolio management by him as the sole member of ExCo. Therefore, there was no real dispute that there was a breach of FUND 3.7.2R. Mr Odey's evidence in cross-examination was that he had "never, ever contradicted anything that they [the risk committee] came out with in terms of adjustment of my portfolio for any risk". Nonetheless he was a fund manager ultimately with the sole power to override the risk committee and there was no opportunity to test the lack of functional and hierarchical separation during the period Mr Odey was the sole member of ExCo.

1183. The requirements for functional and hierarchical separation of risk in an AIFM are necessary checks and balances. The fact was that Mr Odey was at liberty to ignore a recommendation from the risk committee. This diminished the safeguards put in place to protect clients, members and investors. Clause 8.1 of the partnership agreement gave ExCo "exclusive responsibility for the management and control" of the firm's business. Both the risk committee and the prudential committee ultimately reported up to ExCo. Mr Odey accepted in cross-examination that ExCo was the only organ of OAM that had authority from the partnership to override an individual fund manager and to impose a compulsory reduction of risk.

Threshold Conditions – risk of breach

1184. Finally, Mr Odey's removal of the ExCos put OAM at risk of not meeting the Threshold Conditions which are set out in Schedule 6 of FSMA. They include that: the firm must be capable of being effectively supervised by the Authority; the firm's resources must be appropriate in relation to the regulated activities that it carries on or seeks to carry on; and the firm must be a fit and proper person having regard to all the circumstances (including in relation to the management of the firm) – see paragraphs 2C-E set out above.

1185. Mr Odey's removal of ExCos put OAM at risk of not meeting these Threshold Conditions. In Mr Odey being appointed sole member of ExCo, there was a lack of sufficient suitable senior management for a firm of its type. Mr Satt stated in his statement that he was surprised the Authority was only considering an intervention in the firm rather than having taken action and he considered that OAM was in breach of the Threshold Conditions. The Authority informed OAM during its supervisory visit on 13 April 2022 that it considered OAM to be in breach of the Threshold Conditions.

Risk of harm rather than actual harm

1186. In relation to each of the actual breaches Mr Odey has contended that they were technical breaches, as no actual harm was caused, or it was remedied quickly. We reject this and accept the Authority's argument that these were important rules, there for a reason and the breaches were not merely technical. As we have explained above, the breach of the relevant rules exposed the firm and its investors, members and staff to a real risk of harm – even if none actually eventuated.

1187. The lack of actual harm is as much a function of luck or circumstance or the relatively moderate timescales for which the breaches persisted – the risk of harm that the breaches created means that the breaches were not technical. Likewise, the relatively moderate timescales in which the breaches subsisted or Mr Odey's intention to remedy the breaches are mitigation at best. We have already found that Mr Odey was not motivated in removing the ExCos to protect the firm and investors from greater harm but to protect his own self-interest. When appointing himself as the sole member of the ExCo he could not know how long the breaches would last, as the time taken to convene a third ExCo demonstrates.

1188. Importantly when considering the significance of the breaches, the Authority rightly relies on the fact that Mr Odey had no plan for how to remedy the breaches when he put the firm in breach in December 2021 and March 2022, so the remedying thereafter by creation of the second or third ExCo, would not assist him in relation to his reckless disregard at the time of removing the ExCos.

1189. Further, he appointed the second ExCo on 12 January 2022, but then subsequently removed it again by 31 March 2022 before they could be approved by the Authority. In removing the second ExCo he put the firm back in breach this time, for around three months until 4 July 2022. We reject the argument that Mr Odey quickly remedied these breaches – these were moderate lengths of time and the uncertainty and repetition aggravates them.

Recklessness

1190. In terms of recklessness, in removing the ExCos Mr Odey demonstrated a reckless disregard for the firm's governance and compliance with its regulatory obligations. In his oral evidence he accepted: "I realised that I was putting the company in breach…". It was not reasonable for Mr Odey to run the risk of the breaches materialising. It was not reasonable for Mr Odey to remove the first ExCo purely to avoid running the risk of an outcome in disciplinary proceedings with which he disagreed.

1191. Even on Mr Odey's own explanation of his conduct, which we have rejected, it was not reasonable for Mr Odey to place the firm in breach of its regulatory obligations. Even if he was removing the ExCos to avoid what he believed would be an unjust outcome in his own disciplinary process, this would not have been reasonable. Removing the ExCos to avoid the risk of the very disruptive actions that he threatened to take, of closing down the firm in a disorderly way, if he were dismissed, would not have been reasonable.

1192. In establishing his recklessness, we are satisfied Mr Odey was aware of each of these rules and unreasonably took the risk of removing the first ExCo knowing that in doing so he would place OAM in breach of them or at risk of breaching them. Furthermore, Mr Odey's unwillingness to recognise the importance of the regulatory requirements over his own self-interest supports his lack of integrity. Mr Odey also submits that the breaches were justified because they prevented a greater harm to investors. We have rejected this argument above in considering Mr Odey's motives for the removal of the first ExCo.

1193. In relation to the removal of the second ExCo, this brought about precisely the same regulatory consequences as his removal of the first ExCo except that the breaches of the rules lasted for a much longer period, from 31 March 2022 to 4 July 2022 when the third ExCo was appointed.

1194. The Authority have established the Second Allegation – Mr Odey lacked integrity in the way described.

THE THIRD ALLEGATION

Mr Odey's conduct risked entrenching a culture at OAM which had normalised inappropriate behaviour by him towards female employees and had made employees reticent to raise concerns – there was a belief amongst some employees at least, that allegations of misconduct against him would not be properly scrutinised or challenged and/or that such behaviour would be tolerated ("**the Third Allegation**")

The Third Allegation

Submissions and evidence relied upon on behalf of Mr Odey

Specifying the conduct in the Relevant Period

1195. Mr Williamson KC and Mr Mansell submit that the conduct to which the Third Allegation relates can only be Mr Odey's alleged pleaded misconduct. That misconduct is the pleaded conduct which occurred during the Relevant Period.

1196. They argue that the Authority's suggestion to the Tribunal, in response to Mr Odey's oral application to curtail the use of the 1S&S, that the conduct referred to in this Third Allegation includes the alleged misconduct referred to in the 1S&S, cannot be right.

1197. This is because it is clear that any "culture" allegation that is based on the subject matter of the 1S&S is defeated by the parameters and time period of the case which the Authority itself defined in the SoC. The conduct to which the Allegation relates can only be conduct forming part of the pleaded case and within the Relevant Period - 24 December 2021 to 17 November 2022. The matters in the 1S&S Report significantly pre-date the Relevant Period, being 2003 to 2020.

1198. Counsel contend that to the extent that the Authority, in its Third Allegation, is seeking to criticise Mr Odey's alleged failings at a "corporate" level in respect of the subject matter of the 1S&S there is a further reason why it cannot reasonably do so. This is because the allegations set out in the original Notice of Investigation issued to Mr Odey in 2021 in respect of the NFM, which was discontinued in the notice of change of scope in February 2023, included an allegation that Mr Odey had "failed to ensure that OAM was set up with adequate systems and controls to prevent a culture where sexual harassment was accepted, and where staff felt deterred from speaking up".

1199. There appears to be little difference to an allegation of culture based on the 1S&S with the earlier allegation which was discontinued by the Authority. It would be therefore abusive for the Authority to seek to litigate in these proceedings allegations in respect of which the Authority had previously informed Mr Odey he was no longer under investigation.

1200. For these reasons, it is argued that the "conduct" alleged by the Third Allegation can only be the misconduct pleaded by the Authority in the SoC: that is, the conduct set out in the First, Second, Fourth or Fifth Allegations.

1201. It is argued further that, as the Fourth and Fifth Allegations relate to candour, that only leaves the conduct alleged in the First and Second Allegations. This must mean that the Third Allegation amounts to an allegation that: "Mr Odey's conduct in removing the two ExCos risked entrenching a culture where inappropriate behaviour towards female employees had been normalised", although it is unfortunate the Authority chose not to make this clear in the Statement of Case.

Substantive reply

1202. Therefore, counsel argue, the Authority's allegation appears to be that Mr Odey's actions in removing the two ExCos temporarily delayed the disciplinary process in respect of the breach of the FWW, and, by extension, that risked entrenching a culture where inappropriate conduct towards female staff was normalised.

1203. They submit that there is no evidence that during the Relevant Period there was an on-going culture within OAM where inappropriate behaviour towards female employees had been normalised or was accepted. The firm had prior to the Relevant Period taken significant steps to address any issues of culture. In respect of the matters detailed in the 1S&S, Mr Odey was the subject of a proper disciplinary process at the 1DH, which concluded in OAM making findings and imposing sanctions. The instruction of an independent law firm to conduct a detailed investigation is indicative of a firm committed to taking such allegations seriously.

1204. In this context, it is contended to be significant that no criticism is made by the Authority of OAM's decision to impose the FWW and that the Authority has chosen not to pursue any allegations of NFM against Mr Odey.

1205. Counsel contend that even if – which is denied – there were an entrenchment of such a culture, following the removal of the first and second ExCo Mr Odey did in fact go through a formal disciplinary process, the 2DH in December 2022, in relation to the alleged breach of the FWW, as a result of which findings were made and sanctions imposed on him. Again, no complaint had been made by the Authority as to the adequacy of that disciplinary process, or of the sanctions that were ultimately imposed.

1206. It is argued further that Mr Odey did not seek to prevent the 2DH from ultimately taking place. On the contrary, all the evidence is clear that Mr Odey was only seeking to temporarily postpone it until an effective ExCo was in place who could run the process fairly. In his interview with the Authority Mr Odey confirmed that "I wasn't trying to discontinue the disciplinary, I was just trying to postpone it to a point in time when we could - it could be, as it was, properly looked at, and properly resolved" and "while I was the only person in charge we couldn't have it."

1207. They submit that other senior individuals at OAM shared the view that Mr Odey did in fact intend to have a disciplinary meeting once an ExCo was in place and approved. Mr Hanbury in interview with the Authority stated that "consistent with what my understanding was at the time, and also what happened was he was postponing it until there was – he felt there was an executive committee in place who could carry out the disciplinary hearing in a fair manner." He went on: "so I think in practice, it was postponed rather than stopped" and "he would have the disciplinary hearing when there was the right executive committee". Mr Hanbury also confirmed in interview that Mr Odey "didn't, kind of- [roll] anything back, and then Crispin- you know- he didn't kind of- say 'we're removing the culture services, we're removing the anonymous hotline'."

1208. Counsel argue that it cannot be an entrenchment of culture to postpone a disciplinary hearing, for the hearing to be held, to make findings and for sanctions to be issued as result of those findings. The allegation is misconceived in both form and substance. Moreover, matters of culture were in fact not for Mr Odey as a certified person; it was ultimately for the firm's decision maker, namely its ExCo, to set the culture at the firm.

Conclusion and findings

1209. There is no ambiguity that the Third Allegation relates to the consequences of Mr Odey's actions on the culture of the firm in removing the ExCos during the Relevant Period.

1210. Further, there is no abuse of process in the Authority relying upon this specified allegation of lack of integrity having discontinued the original NFM investigation into Mr Odey and changed its scope to the current one. They are different investigations and no principle of abuse of process, nor issue of estoppel nor res judicata arises. The Third Allegation is focused on the consequences of Mr Odey's removal of the ExCos in December 2021 and March 2022 and its impact upon the culture of the firm, during the Relevant Period of December 2021 to November 2022 in the terms set out above.

1211. In contrast, the original investigation into Mr Odey's NFM, including its impact upon the culture of the firm, was opened by the Authority in May 2021 and notified in October 2021. It was focused on the 1S&S, 1DH and FWW and its scope was between 1 June 2003 and 31 January 2021, so the time period and substance were different. The notice of investigation stated it concerned Mr Odey's: "possible disregard for policies and controls in place around harassment and/or speaking up, or failure to ensure that OAM had in place adequate systems and controls to prevent a culture where sexual harassment was accepted, and where staff felt deterred from speaking up about it." Further, the latter investigation did not conclude with a decision that there was insufficient evidence or that it was outside the Authority jurisdiction, simply the investigation changed when the circumstances changed.

1212. We are satisfied that Mr Odey's conduct in removing the first ExCo risked reinforcing a culture in which his inappropriate behaviour towards female colleagues had been normalised, and where at least some members of staff believed allegations of misconduct against Mr Odey would not be properly scrutinised or challenged, or that such behaviour was tolerated.

1213. There are a number of findings that support this conclusion.

1214. The findings of the first ExCo following the 1DH in support of the FWW, of which Mr Odey was aware, included that some employees had stated that concerns about Mr Odey's behaviour were not escalated, "because of a desire not to "ruffle feathers" or because of concerns that nothing would be done". We rely upon, and repeat, the unchallenged extracts of the first ExCo's findings in the FWW on allegations 4 and 5 which in turn were based on the 1S&S:

> "Allegation 4: Your conduct has resulted in inappropriate or unprofessional conduct towards female members of staff being normalised
>
> There does not seem to be any suggestion by the complainants that your conduct has resulted in others behaving in a similar way. Rather, the allegation is that members of staff accepted your behaviour or conduct - for example your touching of their shoulders or invitations on shopping trips - because of it happening fairly consistently over a long period of time, as well as because of who you were. It came to be seen as "normal" behaviour by you which was tolerated and not challenged.
>
> Given your senior role within the firm and your employment predating the rest of staff, we think that your conduct over a period of years has resulted in certain inappropriate conduct towards female members of staff becoming perceived as normal or acceptable by some staff members.

Allegation 5: Given your role within the firm, and the apparent normalisation of the alleged inappropriate or unprofessional conduct by you towards female members of staff, staff are reluctant to raise their concerns, fearing either that no action would be taken or fearing retaliation

We note the suggestion by some that concerns about your behaviour or conduct were not escalated because of a desire not to "ruffle feathers" or because of concerns that nothing would be done, and that employees would rather say nothing or even resign instead of lodging a complaint. We find this very concerning, but consider it likely to have been true for some employees - you are were at the top of the organisation and it would have been hard for individuals (in particular at more junior levels) to be confident to come forward with complaints.

This is may be illustrated by the fact that it seems not everyone has been comfortable to fully participate in this investigation which has limited the breadth of the evidence available to us in reaching a decision."

1215. Members of the first ExCo discovered that the first disciplinary investigation, the 1S&S and 1DH, made them aware of the lack of a functioning "speak up" culture within the firm. Lord Roborough stated in his statement, "The Simmons & Simmons report came as a shock that some staff members felt they could not speak up". Mr Hanbury stated in his statement, "One of the worrying things for me as a member of ExCo was that I had never seen evidence of shoulder massages, or the other things that the process revealed, and which the disciplinary process suggested in some cases had become normalised. So if we as ExCo were not seeing it, we couldn't police it."

1216. Following the FWW being issued in February 2021 and before the first ExCo was removed in December 2021, the firm as led by Mr Pearey, took significant steps to seek to improve the "speak-up" culture. This included the introduction of a whistleblowing hotline.

1217. We accept the Authority's submission that Mr Odey's removal of the first ExCo, who had originally investigated and disciplined Mr Odey, and were tasked with doing so again, would have reinforced a culture of silence for those employees who had found it difficult to speak up previously about Mr Odey's conduct. It was especially problematic given Mr Odey had removed the body that was due to scrutinise his further actions. A similar point arises in relation to the second ExCo, even though they did not impose the FWW – there would have been an even greater deterrent to "speak up" as Mr Odey had now demonstrated he was repeatedly prepared to remove the body due to hold him to account.

1218. Further, following Mr Odey's removal of both the first and second ExCos, the whistleblowing ultimately fed up to him: thus entrenching a lack of accountability.

1219. We are satisfied, therefore, Mr Odey's actions in preventing the 2DH from going ahead in front of the first or second ExCo and appointing himself as the sole member of the firm's governing body increased the risk of his inappropriate behaviour towards female colleagues being normalised, and of beliefs developing that such behaviour was tolerated and would not be properly scrutinised. Mr Odey's actions, as demonstrated by the 1S&S and consequent findings in the FWW, reveal that he did not understand what constituted appropriate behaviour in the workplace, nor the seriousness of his conduct. We also take into account the views expressed by Mr Odey in the witness box in relation to his conduct towards some female members of staff, as referred to above.

1220. Our conclusion relates to Mr Odey's actions during the Relevant Period but it is informed and explained by the history of the 1S&S, 1DH and FWW. We have explained above how the 1S&S is relevant, admissible and probative when considering the Third Allegation.

1221. In relation to Mr Odey's removal of the second ExCo, this ran the same risks in respect of culture as the removal of the first ExCo. The only difference was that by doing it a second time approximately three months later, the risks in respect of culture were greater – whether or not Mr Odey intended to, he sent out a clear message that he was effectively untouchable in regards to complaints made to OAM against him by female employees.

1222. We have already rejected the submissions and evidence relied upon to argue that Mr Odey in removing the ExCos only intended a temporary postponement of the 2DH or that he was acting out of concern for a fair process or that his actions were justified by the fact that the third ExCo held the 2DH in November 2022 and thereafter did not dismiss him.

1223. The Third Allegation is established. Mr Odey lacked integrity in the way alleged.

CONCLUSION ON THE PRINCIPAL ALLEGATIONS

1224. We are satisfied that the Authority's First, Second and Third Allegations are established in relation to Mr Odey's removal of the first ExCo on 24 December 2021 and second ExCo on 31 March 2022. This is for the reasons that the Authority relied upon in its Decision Notice, SoC and submissions.

1225. We find and conclude as follows.

1226. Mr Odey's actions were deliberately designed to frustrate OAM's ongoing disciplinary process in relation to his conduct. Mr Odey's removal of the first ExCo was not in the interests of OAM or its clients; it was undertaken to advance Mr Odey's personal self-interest, without regard to the interests of OAM or its clients, or compliance with its regulatory obligations and its policies and procedures.

1227. In removing ExCo in December 2021 and March 2022, Mr Odey's conduct caused OAM to breach three regulatory obligations, and risked OAM being unable to meet the Authority's Threshold Conditions. He knew the consequences of his actions and it was unreasonable for him to take the risks he did. Through his conduct, Mr Odey demonstrated a reckless disregard for OAM's governance and compliance with regulatory rules and requirements.

1228. Mr Odey's conduct also risked entrenching an existing culture within OAM, where inappropriate behaviour by him towards female employees had been normalised, and where there was a belief amongst some employees (at least) that allegations of misconduct against Mr Odey would not be properly scrutinised or challenged and/or that such behaviour would be tolerated.

1229. We are satisfied that none of Mr Odey's purported justifications for his conduct provide any reasonable justification for it.

1230. Mr Odey has acted without integrity in each of the three ways the Authority relies upon.

1231. When removing the second ExCo on 31 March 2022, his conduct was aggravated by being repeated and he placed himself in sole charge of ExCo for a more significant period of time.

THE FOURTH ALLEGATION

Mr Odey's dealings with OAM, its clients and investors and the Authority about these matters lacked candour, further demonstrating his lack of integrity ("**the Fourth Allegation**")

The Fourth Allegation

Submissions on behalf of Mr Odey

24 December 2021 communication

1232. Counsel identify that, regarding Mr Odey's communication to OAM members on 24 December 2021, the relevant passages are:

> "I believe that there exists a singular threat to the business and that is the overreaching action of the Financial Conduct Authority into matters which are unrelated to the financial conduct of the Partnership...
>
> I consider that the Executive Committee of OAM LLP has been subject to undue pressure from the FCA in their deliberations on a number of matters, unrelated to the financial conduct of the partnership, and in the absence of clear and reliable guidance from the FCA they will be compelled into certain actions which would likely precipitate the winding down of the business unless I take a number of important and necessary action [sic], which I am able to do in my capacity as the 74.9% majority owner of the Odey Group...
>
> In taking these actions I am then able to launch a judicial review against the FCA which I believe is in the best interests of the Odey Group and its wider stakeholders."

1233. Mr Odey's case is that he considers this to be a genuine statement of his belief at the time. Mr Satt confirmed in evidence that the statement did, in his view, reflect Mr Odey's genuine belief: "So he's outlined the actions he took, he also says he's in the process of launching a judicial review, he states a belief that that's in the best interests of the Odey Group and its wider stakeholders, and he's circulated a resolution to vote on the two proposals. I'm not asking you to agree with Mr Odey, but bearing in mind the way in which you've answered your questions, that just reflects this belief, doesn't it? JS: Yes. This reflects Mr Odey's belief".

12 January 2022 communication

1234. With respect to the external communications of 12 January 2022, it is alleged that OAM's Statement entitled "Evolution of Strategy and Management Team at Odey Asset Management" created the inaccurate (and incomplete) impression that the First ExCo had voluntarily stepped down as part of a wider and pre-existing commercial strategy.

1235. Counsel contend that, significantly, these allegations formed no part of the Decision Notice and were only raised by the Authority for the first time in the SoC. They argue that, in terms of Mr Odey's personal culpability for this communication, it had in fact been through a detailed drafting process involving a number of senior stakeholders including Mr Pearey, Mr Richards, Mr Kelton and Mr Satt, in his capacity as Head of Compliance. The process culminated in Mr Satt responding to the intended use of the communications with: "Perfect, thanks!". Fifteen minutes later Mr Satt emailed copies of the final versions of the communications to Mr Cornwell at the Authority. Mr Cornwell was fully apprised of the governance issues facing the firm at that time yet appears to have made no comment on the communications at all. At no time did he or anyone else within Supervision allege they were at all inappropriate or misleading.

1236. Counsel submit that the reality is that these communications were reviewed, edited and approved by the second ExCo and Head of Compliance, all of whom were fully sighted on events within the firm, and none raised any concerns. No allegation of lack of integrity is made by the Authority against Mr Satt, Mr Kelton or Mr Richards. On the contrary, the Authority calls each of these individuals as witnesses of truth in these proceedings. While the ultimate use of the communication is unclear, there is no evidence that it was ever sent to clients or investors. The fact that the Authority did not raise any concerns suggests that, at the time at least, it appeared to recognise them for what they were: external client communications prepared at a time of internal difficulty for the firm which attempt to strike the right balance between achieving transparency and minimising the risk of causing unnecessary concern and potential detriment to investors.

1237. Therefore, they contend that the 12 January 2022 communication had in fact been through a detailed drafting process involving a number of senior stakeholders including Mr Pearey, Mr Richards, Mr Kelton and Mr Satt. The evidence shows that the 12 January 2022 communication, while seen and contributed to by Mr Odey, was not one over which he had editorial control and its final form was a matter for the Second ExCo. No member of the second ExCo, nor Mr Satt, appeared to have any concerns at the time as to the content of the communication. Yet no allegation has been made by the Authority against the second ExCo or Mr Satt in respect of the communication and nor could it be, for such an attack would impeach the character of each of the witnesses called by the Authority from the firm as witnesses of truth.

1238. Independent of Mr Odey's evidence on this issue, Mr Satt accepted that it was not sent to anybody: "JM: Yes, but they weren't sent to anybody? JS: They were not sent." Mr Satt also made it clear that it was a communication issued by the firm, as opposed to by Mr Odey. Significantly, it had been sent by the firm to the Authority. Mr Satt told the Tribunal that "we sent it to the FCA so they were aware of what the firm's communication would be." Further, the Authority was sighted on the communication before it was used by the firm (to the extent it was at all) and no objection by the Authority was raised. Mr Satt accepted that Mr Cornwell "does say to you he will come back to you if there are any further questions or comments? JS: Yes. JM: And he didn't? JS: No."

1239. Counsel submit that, given all of the above, the fact that this allegation has been made at all against Mr Odey is surprising. It was the firm's communication issued at the direction of the second ExCo. As Mr Odey explained in evidence, the communication is at worst "puff" or "corporate spin" to ameliorate a development which might otherwise pose risk. The Authority did not object to its content and had the Authority done so it is simply not realistic to suggest that the communication would not have been changed.

1240. They contend that for the Authority to stay silent at the time and then, years later, to allege a breach of ICR1 is more a reflection of the Authority's animus towards Mr Odey than the credible allegation of misconduct which it now purports to be. On any view, the firm's communication of 12 January 2022 is an insufficient basis upon which to find Mr Odey liable for a breach of ICR1 or to base a finding of a lack of fitness and propriety, particularly in circumstances where a number of the Authority's own witnesses were involved in its creation and / or approval and do not face any sanction. For these reasons the Fourth Allegation must fail.

<u>Conclusion and findings</u>

1241. We have already made findings that Mr Odey made misrepresentations to OAM, its clients and investors and the Authority, and that his dealing and communications lacked candour. We are satisfied that in doing so, Mr Odey demonstrated a lack of integrity.

The letter to OAM's members from Mr Odey dated 24 December 2021

1242. As we found above, on 24 December 2021 Mr Odey wrote to the members of OAM LLP. The letter explained his decision to remove the first ExCo. Mr Odey's explanations to OAM for the removal of the first ExCo lacked candour and deliberately misrepresented his true motivations.

1243. We rely on the findings above and summarise them. In particular, the letter failed to mention that the primary reason for removing the first ExCo was to delay or prevent the disciplinary (the 2DH) from taking place. Instead, Mr Odey blamed the Authority for his actions. He stated that the Authority was a "singular threat to the business", and that ExCo had been "subject to undue pressure from the FCA". There was no 'singular threat' to the business from the Authority – the only singular threat was Mr Odey's actions in threatening to close it. As we have found, the only reason the business would be wound down was if Mr Odey decided to close it. He had threatened the first ExCo he would do it if they did not agree to his demands regarding the 2DH. Mr Odey did not explain any of this in the letter. Mr Odey had no reasonable grounds for believing the Authority was such a threat. There was no reasonable basis for the assertion that the Authority had subjected ExCo to "undue pressure". Mr Odey stated that the Authority's actions would compel ExCo into "certain actions which would likely precipitate the winding down of the business". None of this was fair nor accurate. There was no reasonable basis for it.

1244. Further, we have addressed his allegation of undue pressure by the Authority in more detail above but it includes an assertion that the Authority's opening enforcement investigations into him and the firm placed pressure on the ExCos to dismiss him at the 2DH. For example, in his letter to the OAM partners on 24 December 2021 regarding the removal of the first ExCo he stated: "In taking these actions I am then able to launch a judicial review against the FCA". Yet in his oral evidence in cross-examination he accepted he did not remove the first ExCo in order to launch the JR.

1245. The proposed JR related to the Authority's enforcement investigation into Mr Odey, including the F&P jurisdiction over NFM, whereas the 2DH related to whether he had committed gross misconduct in accordance with the Staff Handbook and breached his FWW such that he should be dismissed, and whether the firm could certify him F&P. The two sets of proceedings were independent. In any event the JR could not objectively justify the removal of the first ExCo – there was no need for Mr Odey to prevent the 2DH from proceeding in order to launch his JR. Mr Pearey had taken advice from S&S as to whether the JR would be prejudiced by the outcome of the 2DH and the advice was that it would not.

1246. As we found above, Mr Odey knew that the Authority was due to respond to his letter before claim on 24 December 2021. At his request, the 2DH was delayed until 6 January 2022. There was time for Mr Odey to receive the Authority's response and decide whether to pursue the JR prior to the 2DH – and he had decided not to pursue it before 30 December 2021 when his lawyers informed the Authority of this. The JR is not capable of forming a reasonable basis on which Mr Odey sought to prevent the 2DH from proceeding. In any event, it would still not explain why Mr Odey chose to remove the first ExCo as he did rather than wait for all the information before making a decision. He removed the first ExCo on the same day he received the Authority's reply to his proposed JR.

1247. Another example of differing and newly raised justifications is that Mr Odey suggested several times in his oral evidence that he had removed the first ExCo and put himself solely in charge of ExCo so that he could speak directly to the Authority. This disguised his true motivation and sense of entitlement. He wished to usurp OAM's central governance structure because he knew it would hold him to account at a properly conducted 2DH. He replaced the independent ExCo with himself, in breach of regulatory obligations, in order to prevent this happening.

1248. In his letter of 24 December 2021, Mr Odey described the Authority's 'overreaching action' as a 'singular threat to the business' but by 6 January 2022 this evolved into a 'vendetta' against him. He had no proper basis for these allegations at the time in December 2021, knowing only what he had been told by Mr Pearey or the first ExCo about contact with the Authority and having had no direct interactions on behalf of OAM with the Authority at or before this time.

1249. He was also inconsistent: he accepted in his interview with the Authority in September 2023 that it was very unfair of him to think the Authority was driving the 2DH. He had relied on a narrative to the outside world in his letter of 24 December 2021 that he would not repeat when asked by the Authority to explain himself. Nonetheless, he revived his 'persecuted victim' account in his Reply, pleading that the Authority's "NFM agenda…manifested itself in an inappropriate loss of objectivity when dealing with the Firm". He stated in his statement that the Authority "viewed me as a test case through which they might explore the parameters of their jurisdiction over non-financial misconduct". As alluded to above, he called himself a "poster boy for the Authority's agenda".

1250. We have found that the communication sent contained a number of misrepresentations, Mr Odey knew that it did so and lacked candour and integrity in writing to the members of OAM LLP in such terms.

OAM's letter to clients and statement dated 12 January 2022

1251. On 12 January 2022, Mr Odey signed a letter to clients and prepared a statement which were each titled "EVOLUTION OF STRATEGY AND MANAGEMENT TEAM AT ODEY ASSET MANAGEMENT".

1252. As we have found above, the letter and statement hid the truth and did not reveal anything about the fact of or reasons for Mr Odey's removal of the first ExCo. The documents obscured Mr Odey's desire to intervene in the progress of the disciplinary process and avoid being dismissed at a 2DH following allegations of breaching a FWW. In addition, the letter included a further misrepresentation, namely that Lord Roborough and Mr Hanbury's leaving the ExCo was related only to Mr Pearey's resignation.

1253. Mr Odey's case, that other OAM employees aside from him were involved in the production of these communications, is no answer. Mr Odey was responsible for their content, authorised their distribution and signed the documents. He was central to the events that were being misrepresented. The suggestion that they were mere "puff" betrays Mr Odey's lack of sense of probity or responsibility for his duties and actions. The Authority was entitled to rely on this allegation of lack of candour which was properly pleaded in the SoC and was closely related to the events and allegations contained in the

Authority's Decision Notice – indeed there was no application to exclude it as not forming the subject matter of the reference. It was part of the subject matter of the reference as explained in *Bluecrest*.

1254. The Fourth Allegation is established and Mr Odey lacks integrity in the way alleged.

THE FIFTH ALLEGATION

<u>Mr Odey made a false assertion of fact to the FCA in an attempt to secure its endorsement of an indefinite deferral of the ongoing Second Disciplinary Hearing ("the Fifth Allegation")</u>

The Fifth Allegation

<u>Submissions and evidence relied upon on behalf of Mr Odey</u>

1255. Mr Williamson KC and Mr Mansell argue that the Fifth Allegation should be limited to Mr Odey's assertion on 11 February 2022 to Mr Low that, following his conversation with Ms Trost on 10 January 2022, he understood there to be an agreement as to alignment of OAM's disciplinary process with the Authority's investigation.

1256. For the reasons set out above, they submit that Mr Odey's belief that there was such an understanding as to alignment was a reasonable one in all the circumstances. Whether it was a correctly held view or not is irrelevant: if it was a genuine view, reasonably held in good faith, it cannot evidence a lack of integrity. The reasonableness is supported by the fact that it was an understanding shared with Mr Richards and Mr Kelton. Since the Authority does not and cannot impeach its own witnesses, the Authority's case must be that Mr Richards and Mr Kelton's understanding of such alignment does not show a lack of integrity whereas Mr Odey's does. Given the matters outlined, they submit that it is not a credible position for the Authority to take. For these reasons the Fifth Allegation must also fail.

1257. Counsel submit that the starting position must be that Mr Odey as a man of honesty and candour would not have lied as alleged. Second, it was obvious that any inaccuracy in Mr Odey's assertions would have been very quickly revealed as Supervision considered its next steps. Any false assertion of the Authority's position would have been easily uncovered. There was therefore no conceivable motive for Mr Odey to li.e.

1258. Further, they contend that the Authority's internal communications suggest that the Authority had not initially challenged the firm's request, which at the very least might have conveyed an impression of acceptance of ExCo's proposal of deferral. They rely on the written evidence in the Authority's witnesses' statements.

1259. Ms Trost states that during the call with Mr Odey on 10 January 2022 she "did not reach an agreement or understanding with Mr Odey during this call that OAM did not need to proceed with its own disciplinary process pending the outcome of the Enforcement investigation."

1260. Mr Low, in his witness statement, says of the call on 11 February 2022 that Mr Odey "was very agitated and said that there had been an agreement between himself and Nike Trost as to the timing of the OAM disciplinary process. This was not something I was aware of and I told him this. I asked him to send me a copy of the agreement and he told me it was a verbal agreement. I do not recall discussing this point for very long with Mr Odey and the conversation moved on."

1261. However, counsel submit that Mr Low's note appears at odds with his own internal communication dated 26 May 2022 referring to a meeting he and possibly Ms Trost had with Mr Richards and Mr Kelton on 10 January 2022 which seems to confirm that there was at the least an understanding between OAM and the Authority as to the deferment of the disciplinary meeting. In this email, Mr Low states: "I do think the interim response that they would not conduct a disciplinary until after the conclusion of the FCA investigation has some relevance here — notably as we did not object to this at the time."

1262. They contend that the fact that there was an understanding between the Authority and the firm on the sequencing of the disciplinary meeting in the broader context of the Enforcement investigation is confirmed in an email to HSF from Mr Richards where he says of his call with the FCA on 10 January 2022: "it was discussed and agreed with the FCA that the new ExCo would carry out an independent review process at the same time as the FCA enforcement process. Therefore Oliver/Tom concluded they would be allowed to use the conclusions of both to inform their judgement."

1263. Counsel argue that this understanding was alluded to by Mr Richards in his interview with the Authority in 2023 when he said, "When Oliver and I first agreed to join the ExCo in our opening meeting, a call with Warren Low in a room with myself, Oliver and Crispin where we set out our proposed approach being get our feet under the desk, familiarise ourselves with the process, determine the status of the disciplinary hearing…We had specifically talked about the timeline within which there was an expectation to hold the disciplinary hearing, and the timeline of the enforcement action into Crispin Odey…and how it could be useful in having the outcome of that investigation/enforcement action to hand when making a determination around the disciplinary hearing … And we understood that in aligning them, or potentially aligning them, it would also mitigate the risk of Crispin acting in a way, like removing another executive committee while he ran the firm if the disciplinary hearing preceded the FCA enforcement action…. in arriving at that right decision, we felt we would like to have available to us as much information as possible in order to inform that decision-making. And it might be that we concluded that aligning those processes would allow us to do that."

1264. They submit, therefore, that there does seem to be a common understanding between Mr Odey, Mr Kelton and Mr Richards that the Enforcement investigation would precede the disciplinary. Consequently, when - during a meeting on 7 February 2022 – the Authority inquired about the disciplinary hearing Mr Kelton stated that: "I felt as though the Authority had moved the goalposts on that point." He also stated that: "I felt that we were under significant pressure to be pushing on with this disciplinary hearing only a couple of weeks after we'd taken over."

1265. Therefore, counsel contend that when Mr Odey was speaking to Mr Low on 11 February 2022, the evidence does support the contention that he had a genuine belief that there was an understanding between OAM and the Authority as to the sequencing of the disciplinary meeting. Whether this originated from a call with Ms Trost on 10 January 2022 or a call with Mr Low, as stated by Mr Richards and Mr Kelton, is not material to the allegation of integrity he faces. Any allegation that Mr Odey has either invented the existence of an agreement, particularly in circumstances where senior members of the

Supervision team do not appear to have clarity on their own positions, is plainly unsustainable.

The Meeting of 13 April 2022

1266. Counsel point out that the Authority referred to but did not allege in the Allegation section of the Statement of Case, that Mr Odey misled the Authority at a meeting on 13 April 2022 in respect of his reasons for removing the second ExCo.

1267. Counsel submit that, while not an allegation in the list of pleaded reasons why Mr Odey lacks integrity, paragraph 150.4 of the Authority's SoC alleges that, at a meeting at OAM's offices on 13 April 2022, Mr Odey provided justifications for the dismissal of the Second ExCo which were inaccurate, not credible and which lacked candour.

1268. The Authority alleges at paragraph 123.1 that Mr Odey stated that the removal of ExCo was "not a good thing" and that it was "unfortunate that both the ExCos [sic] have fallen on how to progress within the disciplinary hearing." The Authority alleges that Mr Odey sought to justify the removal of the Second ExCo on the basis that in his view "[t]hey took too much time and he wanted to see people making decisions."

1269. Counsel argue that the Authority has only partially summarised the note of the meeting and, in doing so, has not reflected fairly the summary Mr Odey is recorded as giving. This is an unfair and prejudicial presentation of the evidence. In fact, the Authority's note of this meeting also states that Mr Odey explained that "he felt that the disciplinary process would have been an unfair judgement confusing HR with the Regulatory situation. CO said that by December 2021, they had a whole lot of executives who had been told that they have asked the wrong questions. They were concerned what the FCA will do to them. The magic circle was saying that they will not be able to work in the City again. The key is one must understand the law, which is the core of the integrity of the process."

1270. They contend that Mr Odey also gave further context as to the reasons he dismissed the second ExCo in his second interview with the Authority.

1271. Counsel submit that when the Authority's note of the meeting is put into the broader context of the answers given in interview by Mr Odey, it is clear that the Authority's allegation does not stand up to scrutiny. In addition, it is important to recognise that Mr Odey was never asked to confirm the accuracy or completeness of the note, and it was never shared with the firm by Supervision. Further, no Authority witness alleges that they were misled at the meeting. In all the circumstances, they argue that it is a woefully inadequate evidential basis upon which to frame an allegation of lack of integrity.

1272. Further, by April 2022 Mr Odey had pivoted away from alignment as the only way forward to the appointment of an experienced and independent Chairman to lead the disciplinary process. The statement alleged to be misleading therefore reflects his genuinely held belief.

1273. Finally, to the extent this is an allegation at all, Mr Satt agreed in oral evidence that he did not feel that Mr Odey was lying or had been misleading the Authority. He told the Tribunal that he "was taking what Mr Odey was saying at face value at that time." He also accepted that Mr Odey was not shown the meeting note and was not asked to comment on its accuracy. He said: "As far as I'm aware, no". In this regard Mr Low also accepted when asked, "it's not the practice of the Authority, is it, to share their notes with the person that has been interviewed or spoken to at these sorts of meetings, these are the Authority's notes? WL: Correct, yes. JM: So it's not the Authority's practice to seek confirmations as to the accuracy of the note at the (inaudible)? WL: That's correct yes." Mr Low also confirmed, as the only Authority's only witness called to attest to the meeting that "You make an allegation there that at the meeting of 13 April Mr Odey sought to mislead you? WL: I make no allegation."

1274. Counsel argue that any allegation regarding the 13 April 2022 meeting is therefore unsupported by any witness and is based upon the contents of a note of which neither the firm nor Mr Odey was ever asked to confirm the accuracy. Again, this is simply not a credible position upon which the Authority should base an allegation, and, in closing, it is unclear whether the Authority is in fact doing so.

Conclusion and findings

Mr Odey's false representation to Mr Low about a verbal agreement with Ms Trost - 11 February 2022 misrepresentations

1275. We have made detailed findings above that Mr Odey had no written or verbal agreement with Ms Trost, or any other member of the Authority, on 10 January 2022 or subsequently, about alignment or sequencing. He had no reason to believe there was such an agreement. He made false representations on 11 February 2022 about this, during a call with Mr Low of the Authority. As Mr Low set out in his statement: "On this call, Mr Odey was very agitated and said that there had been an agreement between himself and Nike Trost as to the timing of the OAM disciplinary process. This was not something I was aware of and I told him this. I asked him to send me a copy of the agreement and he told me it was a verbal agreement…"

1276. In particular, we have found that amongst his misrepresentations on that call, Mr Odey deliberately and falsely stated to Mr Low that he had a verbal agreement with Ms Trost that the disciplinary hearing could be deferred until after the conclusion of the Authority's investigation. The reasons why the statement was false have been set out above.

1277. Mr Odey's motivation to make a false statement was to support his stance on alignment and the timing of OAM's disciplinary process. He was intending to give a false impression to Mr Low and it was not an honest or reasonable mistake. He was not simply misremembering, misunderstanding or miscommunicating what had been said between him and Ms Trost or others on 10 January 2022. He was making repeated efforts to try to postpone OAM's 2DH until after the conclusion of the Authority's enforcement investigation of him. This was an attempt, which failed, to secure the Authority's endorsement of an indefinite deferral of the ongoing 2DH.

Mr Odey's misrepresentations to the Authority at the meeting on 13 April 2022

1278. As we have found above, during the first meeting with the Authority on 13 April 2022, Mr Odey made misrepresentations. He sought to justify his removal of the second ExCo on the basis that "[t]hey took too much time and he wanted to see people make decisions". He stated that he considered the disciplinary proceedings to be unfair because they were based on the FWW with which he disagreed.

1279. Mr Odey's statements lacked candour, as he failed to mention the true reasons why he had removed the second ExCo. This was first because of a dispute about whether safeguarding measures should be required, and secondly because he wished to discontinue the disciplinary proceeding, or defer the 2DH until after the Authority's investigation had concluded. This was directly contradicted by his representation to the Authority that he had dismissed ExCo because they "took too much time". The only sense in which they were taking too much time was that they were taking too much to absolve him of any breach of the FWW or misconduct that would otherwise result in his dismissal. He must have known that his statement was a misrepresentation and lacked candour.

1280. This Allegation was fully pleaded in the Authority's SoC and is part of the subject matter of the reference.

1281. The Fifth Allegation is established. Mr Odey lacked integrity as alleged.

CONCLUSION ON LACK OF INTEGRITY

1282. Having heard all the evidence, we have made findings establishing the Authority's decision that Mr Odey lacked integrity during the Relevant Period for the reasons set out in the Decision Notice and as argued in the Authority's pleadings in this reference. In summary, the following findings, taken individually or cumulatively, demonstrate that Mr Odey's conduct lacked integrity.

1283. Mr Odey removed OAM's ExCo on two occasions and this was deliberately designed to frustrate OAM's ongoing disciplinary process in relation to his conduct, and thereby to limit his personal accountability. In acting in the way he did, Mr Odey was motivated by, and placed, his own personal interests above (a) the interests of OAM, (b) the interests of OAM's clients, (c) OAM's compliance with the regulatory obligations to which it was subject, and (d) OAM's compliance with its own policies and procedures.

1284. His conduct caused OAM to breach three regulatory obligations and risked OAM being unable to meet the Authority's Threshold Conditions. Mr Odey's intentional conduct demonstrated a reckless disregard for OAM's governance and compliance with regulatory rules and obligations.

1285. He risked entrenching an existing culture within OAM, where inappropriate behaviour by him towards female employees had been normalised, and where there was a belief amongst some employees at least, that allegations of misconduct against Mr Odey would not be properly scrutinised or challenged and/or that such behaviour would be tolerated.

1286. In authoring, endorsing or making misleading communications, Mr Odey's dealings with OAM, its clients and investors and with the Authority lacked candour.

THE DISCIPLINARY REFERENCE - THE PENALTY

1287. As set out above, in addition to the prohibition order imposed under s.56 FSMA, the Decision Notice has imposed a fine on Mr Odey of £1,835,200, pursuant to s.66 FSMA. Mr Odey disputed there has been a breach of ICR1 and accordingly his position is that no penalty should be imposed. We have rejected that position for the reasons set out above.

1288. Two points remain in dispute as to the imposition of the penalty:

i) First, Mr Odey contests the Authority's jurisdiction to impose a penalty at all in relation to his conduct because he says he took the impugned actions of removing the ExCos in his role as controller rather than certification employee of OAM.

ii) Second, The Authority's penalty calculation was made in accordance with Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"). There are certain elements of the 5-step process identified in Chapter 6 of DEPP with which Mr Odey takes issue.

Jurisdiction to impose any penalty

1289. Mr Odey had two roles throughout the Relevant Period. First, as the ultimate majority owner of OAM he was a person with a 20% or above ownership of a regulated entity and thus a "controller" of the firm under the Authority's Rules. The legal framework of the Authority's controller regime is found in Part 12 FSMA and Chapter 11 of the Authority's Handbook ("**SUP 11**"). Part 12 FSMA provides for a regime covering changes of control, required notices, assessment procedure and enforcement procedures for controllers. The Authority does not rely upon any of the enforcement provisions contained therein against Mr Odey and they do not include the power to impose a financial penalty.

1290. Second, Mr Odey was a fund manager, a role which required him to be certified by the firm as F&P, a certification employee. In performing this particular role, Mr Odey was subject to the ICRs. The Authority's disciplinary powers in respect of certified persons are set out in Part 5 FSMA. The ICRs, which are imposed under section 64A FSMA, apply only to the specific categories of person defined at paragraph 1.1.2R of COCON of the Authority's Handbook and only to the extent that they are performing certain specified activities. The Authority's power to take disciplinary action against such persons for a breach of the ICRs, including the imposition of financial penalties, is set out in section 66 FSMA as considered below.

Outline of Mr Odey's position on jurisdiction

1291. Mr Odey invited the Tribunal to consider the Authority's jurisdiction to impose the financial penalty upon him by focusing on the source of his ability to engage in the alleged misconduct, particularly the dismissal of the ExCos in the manner he did. He submitted that this arises from his status as a controller of OAM rather than his additional status as a certified person (and employee for the purposes of FSMA) of OAM. In brief he argued that COCON does not apply to his alleged misconduct, because "controllers are not subject to section 66 and 66A FSMA".

The legislation

1292. Part 5 of FSMA, governs the performance of Regulated Activities. Sections 64A to 70 FSMA address the conduct of approved persons (individuals approved by the Authority to perform specific functions) and others including employees and directors of authorised persons (employees of firms such as OAM). There is no dispute that at the relevant times, in addition to being a controller, Mr Odey was also a certified employee of OAM for the purposes of s.64A(6) FSMA in his role as fund manager. The subsection provides an expansive definition of 'employee' including a person who is under an obligation personally to provide services to a firm.

1293. Pursuant to s.66(1) of FSMA, the Authority is empowered to take disciplinary action against a person if (a) it appears to the Authority that the person is "guilty of misconduct", and (b) the Authority is "satisfied that it is appropriate in all the circumstances" to do so. Pursuant to s.66(1A)(a) of FSMA, "misconduct" (in the case of action taken by the Authority) is defined by reference to s.66A. Section 66A FSMA provides three sets of conditions, fulfilment of any one of which gives rise to misconduct actionable by the Authority. Condition A is defined by s.66A(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
> (iii) A director of an authorised person."

1294. By virtue of s. 64A(1) FSMA the Authority may make rules about the conduct of: a) approved persons, b) persons who are employees of authorised persons and c) persons who are directors of authorised persons. Mr Odey therefore falls within s.64A(1)(b) as a person in respect of whose conduct rules may be made. Throughout the Relevant Period, as well as being the ultimate majority shareholder and controller of OAM, Mr Odey was also an employee of an authorised person, namely OAM.

1295. Pursuant to s.64A(4) FSMA, "rules made by the FCA under section 64A" must relate to the conduct of persons in relation to the performance by them of "qualifying functions". Section 64A(5) is the key provision. It defines a "qualifying function" as follows:

> "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 –
>
> ... (b) in any other case, the person's employer."

1296. As such, the Authority was empowered to make rules governing Mr Odey's conduct in relation to the performance by him of any "function relating to the carrying on of activities (whether or not regulated activities) by" his employer, OAM.

1297. The rules made by the Authority under s.64A of FSMA are contained in COCON. COCON 1.1.1A R provides that COCON applies to the persons set out in the table in COCON 1.1.2 R.

1298. Throughout the Relevant Period, Mr Odey fell within COCON 1.1.2 R by reason of his position as a "certification employee of an SMCR firm". Notably, COCON 1.1.2R(6) excludes from the scope of COCON employees of SMCR firms who only perform functions falling within a defined list (receptionists, switchboard operators etc.). There is no exclusion for employees who also happen to be controllers as well as certification employees.

1299. In the case of an employee of an authorised person – such as Mr Odey – the scope of the conduct governed by the Authority's rules is defined by COCON 1.1.7(1) R, the wording of which reflects the terms of s.64A(4) and (5) of FSMA:

> "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)."

1300. However, because OAM was an SMCR firm (and not an SMCR banking firm), there are further restrictions on the application of COCON to Mr Odey's conduct. These further restrictions are contained within COCON 1.1.7A(1) and (2) R, which provides:

> " (1)Where Firm A in COCON 1.1.6R to COCON 1.1.7R is an SMCR firm other than an SMCR banking firm, the application of COCON is further restricted by this rule.
>
> (2) COCON only applies to conduct that forms part of, or is for the purpose of, any of the following:
> (a) the SMCR financial activities of Firm A; or
> …."

1301. "SMCR financial activities" are defined by COCON's Glossary Terms as:

> "any of the following:
> (a) regulated activities;
> (b) <u>an activity carried on in connection with a regulated activity</u> (whether current, past or contemplated);
> (c) an activity held out as being for the purposes of a regulated activity (whether current, past or contemplated);
> ..."

1302. The effect of COCON 1.1.7A R is to narrow the application of the Authority's conduct rules, in the case of employees of non-banking SMCR firms, from the wider definition contained in s.64A(5) of FSMA and COCON 1.1.7 R, to the narrower definition of "conduct that forms part of, or is for the purpose of" (among other things) "an activity carried on in connection with a regulated activity" of the firm.

1303. Bringing together COCON 1.17(1) R, 1.1.7A(2) R and its glossary, the rules apply to Mr Odey as a person P (not being an approved person but being an employee) in respect of OAM as Firm A:

> "COCON applies to the conduct of P that forms part of or is for the purpose of an activity carried on in connection with a regulated activity by P's employer (Firm A)."

1304. In summary, by virtue of section 64A(4) and (5) FSMA, COCON, and hence ICR1, applies to the conduct of Mr Odey in relation to the performance by him of functions relating to the carrying on of activities (whether or not regulated activities) by OAM. However, this is further restricted by 1.17A(2) in that COCON only applies to the conduct of Mr Odey that forms part of or is for the purpose of an activity carried on in connection with a regulated activity by OAM.

<u>Submissions on behalf of Mr Odey</u>

1305. Mr Mansell submits that the Authority has sought inappropriately to extend the application of COCON, including ICR1, to controllers of regulated firms and its interpretation is wholly inconsistent with the statutory scheme. It had no power to impose a financial penalty on Mr Odey.

1306. He contends that Mr Odey's power to dismiss the ExCos of OAM was derived from his majority ownership of the voting rights in OAM (via his majority ownership in its parent entity Odey Holdings Ltd) and ability to approve the appropriate written resolution in accordance with the terms of OAM's partnership agreement. This status is entirely unconnected to his certified role. In his capacity as a certified person, Mr Odey had no power to remove OAM's ExCo.

1307. Mr Mansell accepts that Mr Odey's actions in removing the two ExCos could, if the Authority proves its case, provide a potential basis for the imposition of a prohibition order under section 56 FSMA. However, he argued that Mr Odey's actions as the majority owner of OAM are not within the scope of the Authority's disciplinary powers under section 66 FSMA.

1308. He noted the statutory basis for the ICRs, including ICR1, found in section 64A FSMA and specifically referenced at COCON 1.1.1G. Further, by section 64A(4) FSMA, rules made under this section must relate to the conduct of persons in relation to the performance by them of "qualifying functions." He noted that in subsection 64A(5) FSMA "qualifying function", is defined as a function relating to the carrying on of activities (whether or not regulated activities) by the three identified persons including employees. As such, the statutory wording explicitly provides that any rules made under section 64A FSMA must be limited to conduct relating to the "performance of qualifying functions." Exercising one's rights as a majority owner (or as the majority owner of a majority owner) is not a qualifying function.

1309. Mr Mansell submits that the scope of the ICRs is therefore clearly defined by statute and reflects the intentions of Parliament. Section 64A FSMA was inserted into FSMA by section 30 of the Financial Services (Banking Reform) Act 2013 c.33, the Explanatory Notes to which explain 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" [emphasis added]. In this context, the phrase "while working for the authorised person" cannot, by definition, include acts which are carried on outside of the course of an individual's employment by the authorised person.

1310. He contends that, by way of analogy, an individual does not breach the ICRs if, while employed by a regulated firm, (s)he goes shoplifting during office hours. Although such activity may well be relevant to an assessment of their fitness and propriety under sections 60A and 63F FSMA and FIT, it cannot constitute a breach of the ICRs because the act of shoplifting is wholly outside the scope of their employment. Similarly, while Mr Odey's actions as a majority owner of OAM may be relevant to an assessment of his fitness and propriety, they cannot constitute a breach of ICR1. ICR1 can only apply to Mr Odey's actions in his capacity as an employee of OAM (i.e. a certified fund manager), insofar as these relate to the performance of qualifying functions.

1311. Mr Mansell argues that the Authority adopted Mr Odey's interpretation in another case, as recently as September 2025. In its written opening submissions in the case of *Rangecourt SA (formerly Banque Havilland SA), Rowland, Bolelyy v The Financial Conduct Authority* [2026] UKUT 00047 (TCC) ("***Rangecourt***"*)*, the Authority argued that, in assessing whether a particular act was conducted in the "course of employment":

"What falls to be assessed is the level of connection between the employee's authorised activities and their wrongful conduct…It may be helpful in this regard to ask what "functions" or "field of activities" the employee has been authorised to carry out by the employer, a matter which is to be addressed broadly, and then to consider whether there was sufficient connection between the position in which he was employed and his wrongful conduct."

1312. Mr Mansell contends that, applying the Authority's own analysis in *Banque Havilland* to the facts of the current case, there was not "sufficient connection" between "the position in which he [Mr Odey] was employed and his wrongful conduct". The position for which Mr Odey was employed by OAM was to manage funds for his clients; the alleged misconduct is his removal, in his capacity as majority owner of the firm, of two ExCos for an improper purpose. It is evident that, on the basis of Authority's previous arguments before the Tribunal, there is simply no connection between Mr Odey's certified status as a fund manager and his actions as a controller. As such, there is no basis on which ICR1 could be said to apply to Mr Odey's actions as the controller of OAM.

1313. Further, Mr Mansell relied upon the Authority's own Rules whereby a controller who is not also a certified person or a senior manager at a firm does not fall within the ICRs. At COCON 1.1.2R the Authority expressly lists which persons in a regulated firm will be subject to the ICRs to the extent they are "carrying on activities (whether or not regulated activities) by the firm" (COCON 1.1.6R). This lists seven different categories of person, from senior managers to certified employers to those sitting on the board of directors, as being within scope. Controllers do not feature on this list. Had the Authority intended for controllers to be within the scope of the ICRs, it is inconceivable that they would have been omitted from the detailed list provided in its own Handbook.

1314. He suggested that the Authority's case seems to be that Mr Odey's certified status brings him – as majority owner of OAM – within the ICRs regardless of the nature of the acts he then undertakes and the capacity in which he is acting when he does so. However, it is clear from the above analysis that this is not consistent with the statutory scheme.

1315. In summary, Mr Mansell contends that for COCON and ICR1 to be applicable to Mr Odey, any alleged misconduct must take place (i) in the course of employment and (ii) whilst acting in the capacity as a certified person. Acts taken by a controller satisfy neither criterion. The fact that Mr Odey also happens to be an employee of OAM does not bring his actions as a controller within the scope of the ICRs.

1316. This is best illustrated by the fact that a specific set of enforcement procedures in respect of controllers is available to the Authority under Part 12 FSMA. These powers, entirely separate from the Authority's disciplinary powers under section 66 FSMA, are the tools available to it should it have concerns as to the conduct of a controller, or a proposed controller. These include the power to object to a controller, the power to impose restrictions and the power to seek an order requiring the sale of shares. There is no provision within the statutory controller regime for the imposition of a financial penalty.

1317. Mr Mansell submits that the Authority's interpretation of the word "employee" in this context is overly simplistic. A more purposive interpretation is necessary in order to arrive at a position which reflects the fundamental aim of the SMCR. Mr Odey's interpretation is consistent with the essential purpose of the SMCR which is ultimately to provide a disciplinary regime for employees and senior managers for issues arising in the course of their employment.

1318. He relies on the fact that the Authority has itself confirmed that this is its understanding of the purpose and scope of the SMCR in a policy statement in July 2018:

> "All of the Individual Conduct Rules apply to both regulated and unregulated activities that individuals working for these authorised firms undertake in the course of their employment"

1319. Mr Mansell contends that the Authority's expansive interpretation of the word "employee" for the purposes of Mr Odey's proceedings is fundamentally at odds with its own previously publicly stated objectives in respect of SMCR, in that it now seeks to reject the requirement for any connection between the conduct and the course of the individual's employment. Further, the Authority's new position fails to recognise the fundamentally distinct status of controllers under FSMA being, first, excluded from the list of persons specifically within the scope of COCON 1.1.2 and, second, subject to their own dedicated and entirely separate enforcement regime in Part 12 FSMA. His argument, based on a purposive interpretation, is that s.64A(5) FSMA and COCON are trying to capture acts done by the certification employee in the course of their employment as such. However, he submits that none of the acts undertaken by Mr Odey complained of were undertaken in the course of his duties as a certification employee (which were essentially limited to fund management).

Discussion and Analysis

Interpreting the law

1320. There is no doubt that Mr Odey was subject to the Authority's disciplinary jurisdiction during the Relevant Period by reason of his position as a certification employee of OAM, an authorised person/SMCR firm (FSMA, s.64A(1)(b), COCON 1.1.2 R).

1321. Nonetheless, Mr Mansell contends for a purposive interpretation of s.64A FSMA and COCON 1.17A R. He argues that that COCON, and hence ICR1, only applies to the performance of acts or functions carried out by Mr Odey, a) in the course of employment, and b) while acting in the capacity as a certified employee. In effect he submits that the words 'acting in the course of employment in the capacity of an employee' must be implied into the text of s.64A(5) FSMA and COCON 1.17A R in order that they could apply to Mr Odey.

1322. We do not accept such a construction. The plain and natural reading of s.64A(5) FSMA, COCON 1.17(1)R and 1.17A(2)R is that COCON applies to the conduct of Mr Odey, he being a certified employee, in relation to the performance by him of functions relating to the carrying on of any activities of OAM so long as Mr Odey's conduct also forms part of or is for the purpose of an activity carried on in connection with a regulated activity by OAM.

1323. We agree with the Authority that its jurisdiction to fine Mr Odey is not restricted only to misconduct in the capacity as an employee in performance of his role as a certification employee of OAM, as this is contrary to the clear words of s.64A of FSMA and COCON. The requirements for Mr Odey to be 'in the course of his employment and acting in the capacity of an employee', sought to be implied into the rules, are not present in s.64A(5) FSMA nor 1.1.7A COCON. A purposive construction does not require them to be so.

1324. The statutory provisions are aimed at addressing conduct by a defined person (approved person or employee or director of a firm) relating to the types of the functions of the firm rather than conduct carried out by a person acting in a specific capacity. While COCON applies to a person within one of the qualifying roles of approved person or director or employee of an authorised person (OAM), it does not apply only to conduct carried out in that role – rather it applies to conduct carried out relating to the firm's functions or in connection with regulated activity. It is the function to which the conduct relates that defines and limits the applicability of the COCON rules rather than the capacity in which the conduct was carried out.

1325. We agree with the Authority's submission that the argument is also contradicted by the history of the relevant statutory provisions. The legislative history supports the inference that it was a deliberate decision by Parliament that the Authority's jurisdiction to make and enforce conduct rules should not be limited to the performance of any prescribed, approved or certified role within the firm; instead the jurisdiction depends upon the connection between the conduct and the firm's qualifying functions or regulated activity.

1326. Section 64 FSMA as originally enacted, and brought into force in 2001, provided for the then rules which were set out in the Approved Persons Regime ("**APER**") part of the Authority's Handbook. Under the original APER regime, the rules applied to the conduct of individuals in the performance of the functions for which they had approval. It followed that, under the original APER regime, the Authority's power to impose a fine upon a person for misconduct (s.66(2)(a) FSMA) was likewise restricted to misconduct in the performance of their controlled function. However, in 2013, Parliament expanded the Authority's misconduct jurisdiction pursuant to the Financial Services Act 2012. The Authority was now empowered to make rules governing the conduct of an approved person in the performance of their controlled functions <u>or</u> in the performance by them "of any other function in relation to the carrying on by authorised persons of regulated activities". In 2014, the Financial Services (Banking Reform) Act 2013 (Part 4) repealed s.64 of FSMA and replaced it with s.64A, which has since been amended several times, the current version having been in place since 2020.

1327. Section 64A FSMA empowers the Authority to make conduct rules which relate to a much broader category of individuals than approved persons – including employees of authorised persons. This reflects changes in the wider regulatory framework, which allowed certification employees to perform certain functions that were previously reserved to approved persons. The concept of a "qualifying function" – introduced in s.64A(4) and (5) FSMA, set out above – empowered the Authority to make rules governing the conduct of a wide range of persons in respect of the performance by them of any function relating to the carrying on of activities (whether or not regulated activities) by their employer.

1328. As a result of amendments to FSMA made by Parliament since 2013, the scheme of the legislation and the provisions of the conduct rules no longer confine the application of COCON to approved persons, and to the controlled functions of such persons. Consideration of whether the person's conduct falls within their certified function is therefore not determinative of the application of COCON. Instead, the application of the rules is defined by the functions of the firm to which the conduct related (regardless of whether that conduct fell within the scope of the individual's contract of employment).

1329. We accept the Authority's submission that the very nature of misconduct may take an individual outside the parameters of the role assigned to them by their employer, or for which they have been certified under the Authority's Senior Managers and Certification Regime. Thus, we agree that tying the COCON jurisdiction over misconduct to the capacity in which the misconduct was committed would not address the mischief that it seeks to remedy: it is the function to which the conduct relates that is sought to be regulated.

1330. Thus, the asserted distinction between Mr Odey's acts or omissions "as a" controller and those "as an" employee is irrelevant. As a matter of law, the application of ss.66 and 66A of FSMA does not depend upon the capacity (in relation to OAM) in which Mr Odey was acting; nor is the scope of these provisions confined to Mr Odey's performance of his role as a certification employee. The language relied upon in Mr Odey's Reply, the language of capacity, is not relevant.

1331. The term "as an employee" effectively sought to be implied into FSMA or COCON is not contained in the statute nor rules, appearing nowhere within either FSMA or COCON. That a person is either an employee or director of an authorised person is merely a necessary pre-condition to the application to them of COCON, it does not define the parameters of the type of conduct to be regulated. Rather, the terms of the relevant legislation and rules are express that the application of COCON depends upon the function or activity of the firm to which Mr Odey's conduct related. For COCON to apply, Mr Odey's conduct must have both:

i. related to the performance by him of a "qualifying function" of OAM (FSMA, s.64A(5), COCON 1.1.7(1) R) i.e. a function relating to the carrying on of activities (whether or not regulated activities) by OAM; and

ii. formed part of, or been for the purpose of an "SMCR financial activity" of OAM (COCON 1.1.7A R) i.e. an activity carried on in connection with a regulated activity of OAM.

1332. We also agree that the words "in connection with" have been the subject of judicial consideration in various contexts. They are "widely regarded as being as wide a connecting link as one can commonly come across": *Campbell v Conoco (UK) Ltd* [2003] 1 All ER (Comm) 35 at [19], *per* Rix LJ. They have been construed not as requiring any causal connection; rather, "the question is one of factual connection": *Celestial Aviation Services Ltd v UniCredit Bank AG* [2025] 1 WLR 196 at [55] (*per* Falk LJ).

1333. Accordingly, conduct that forms part of or is for the purpose of an activity with some factual link to the regulated activity of the firm will be sufficient to bring it within the remit of COCON and hence ICR1. This restriction provides the limit for the COCON jurisdiction – hence the conduct of a certified employee of a regulated firm going shoplifting within office hours would be very unlikely to fall within COCON (although such activity may well be relevant to an assessment of their fitness and propriety under sections 60A and 63F FSMA and FIT). It could not give rise to a breach of the ICRs, not because the act of shoplifting is wholly outside the scope of their employment as Mr Mansell submits but, because the conduct does not relate to the firm's activities nor is it conduct that forms part of or is for the purpose of activities connected to the firm's regulated activity.

1334. The test under COCON 1.1.7A (as set out above) is different from the test contained in the provisions of COCON ultimately considered in *Rangecourt*. The facts of that reference and this are also different. The issue was addressed in *Banque Havilland SA & Ors v Financial Conduct Authority* [2024] UKUT 155 (TCC) ("***Banque Havilland*"*)*. The issue with which the Tribunal was concerned was whether the impugned conduct was "part of the Bank's business" and was attributable to the Bank, for the purposes of Principle 1: see *Banque Havilland*, [6] and [129]. Those were different questions, involving different considerations, about the circumstances in which it was appropriate for the bank to be liable for an individual employee's conduct. In the context of Mr Odey's reference the principles of vicarious liability are inapposite and not illuminating. Vicarious liability is concerned with the circumstances in which it is just to make an employer liable for the employee's conduct. That is a different question to the responsibility of a certification employee for their own conduct, particularly so where they are also an owner / controller.

Applying our interpretation of the law to the facts

1335. We also accept the Authority's submissions on the application of the law to the facts of this case. COCON applied to Mr Odey's actions such as twice removing ExCo because his conduct related to (or formed part of and/or was for the purpose of) two activities which fall within both the statutory definition of a "qualifying function" and COCON's definition of an "SMCR financial activity". These two functions/activities were:

i. determination of the membership of ExCo;

ii. management of the internal disciplinary proceedings concerning Mr Odey's conduct at OAM.

1336. Mr Mansell did not address whether he accepted that these two functions were qualifying ones.

1337. Mr Odey's conduct in removing both ExCos (and the other conduct impugned such as the misleading statements made internally or to investors): related to the performance by him of a function relating to the carrying on of activities (whether or not regulated activities) by OAM; and formed part of or were for the purpose of an activity carried on in connection with a regulated activity of OAM.

1338. First, the determination of ExCo's membership was (for the purposes of s.64A(5) FSMA) a function relating to the carrying on of an activity by OAM. Determination of ExCo's membership was also (for the purpose of COCON's definition of the financial activities of an SMCR firm) an activity carried on in connection with the firm's regulated activities:

i. ExCo was OAM's ultimate governing body. It oversaw and controlled all of OAM's regulated activities. ExCo was responsible for the monitoring of OAM's financial and business matters, compliance, risk control, and HR issues, as well as the promotion and development of OAM's business.

ii. The composition of ExCo had direct implications for OAM's compliance with its regulatory requirements, in particular, SYSC 4.2.1R and 4.2.2R and FUND 3.7.2R.

1339. As the Authority submits, the determination of ExCo's membership was a function which should in the ordinary course of events have been performed by ExCo itself subject to ratification by the members of the partnership. Paragraph 8.5 of the partnership agreement made specific provision for this.

1340. Second, the management of internal disciplinary proceedings was (for the purpose of s.64A(5) FSMA) a function relating to the carrying on of an activity by OAM. Management of internal disciplinary proceedings was also (for the purpose of COCON's definition of the financial activities of an SMCR firm) an activity carried on in connection with the firm's regulated activities.

i. The disciplinary proceedings involved consideration of Mr Odey's continued employment at OAM, where he carried out regulated activities on the firm's behalf. Management of these proceedings was, therefore, clearly an activity carried on in connection with OAM's regulated activities.

ii. The disciplinary proceedings, from January 2021 to November 2022 against Mr Odey, as well as including an assessment of his misconduct by reference to the Staff Handbook included an application of FIT and an assessment of Mr Odey's suitability to carry out a certified function within the firm. Management of the proceedings was clearly an activity carried on in connection with OAM's regulated activities.

1341. Again, as the Authority submits, management of disciplinary proceedings was a function which would in the ordinary course of events be performed by ExCo itself. It would be perverse to hold the mere fact that Mr Odey usurped ExCo to perform a function which would ordinarily have been performed by it, to have the effect of taking that function (management of disciplinary proceedings) outside the s.64A(5) definition of a qualifying function, and/or outside COCON's definition of an "activity carried on in connection with" the regulated activities of an SMCR firm.

1342. Mr Mansell submits that a majority shareholder exercising his rights to remove the board is not carrying on the activity as an employee and the activities of the majority shareholder are carried out as an individual rather than carried out by the firm. However, the Authority does not contend that removing a board is itself a qualifying function of the firm. The Authority contends, and we accept, that determination of the membership of ExCo and management of internal disciplinary proceedings are qualifying functions carried out by the firm which relate to – which are in connection with - the firm's regulated activities.

1343. Further, the attempt to apportion or separate each of Mr Odey's acts, omissions and statements in the Relevant Period as between his different roles at OAM is not an analysis that finds any support in FSMA or COCON and is factually impossible in any event. The Tribunal does not accept that any of Mr Odey's conduct in the Relevant Period <u>was</u> carried out by him only "as a" controller and not also "as an" employee of the firm. In particular, while the source of his power twice to remove ExCo derived from his status as controller, his motivation and purpose in so acting was in part to frustrate this disciplinary process to which he was subject as an employee, thereby placing his interests as an employee above those of OAM and all its clients. Even on Mr Odey's case, which we have rejected, it was "to secure a fair process for [himself] as an employee".

1344. Furthermore, Mr Odey's ability and desire to remove both ExCos could not be put into effect based on his being a controller alone.

1345. Whilst Mr Mansell argued that Mr Odey was acting only as controller and not as an employee when he acted on behalf of the majority voting member to bring resolutions to remove the ExCos, that argument falls down at the point when he in his capacity as a member of the LLP made up the quorum to permit the resolution to be put. When acting in his individual capacity as a member we consider that he was acting within the extended definition of employee in section 64A(6) - as a member he is a person who is under an obligation personally to provide services to the firm, and in voting member's meetings he was acting as a member.

1346. When Mr Odey removed both ExCos he signed the resolutions removing their members and appointing himself as the sole member of ExCo. He signed both resolutions twice, both in his capacity on behalf of Odey Management Group Limited which held the majority vote and in his personal capacity as a member of OAM. Under clause 9.1 of the OAM partnership agreement "Partnership meetings", a meeting of members is not quorate under 9.1 unless two members are present. Odey Asset Management Group Limited had the casting votes at all times because votes are apportioned in accordance with the percentage share of each member in the ownership of the partnership itself. Nonetheless, while the exercise of his personal vote either way was academic to the outcome in view of what he resolved on behalf of the group limited company, Mr Odey's presence at that meeting or signing of the resolution was not academic.

Had he not attended or signed in his personal capacity as a member, the function of determining the ExCo membership could not have been carried or resolved by a quorate meeting.

1347. This then provides an alternative and additional reason to find that Mr Odey was subject to the COCON conduct rules and ICR1 by casting his personal vote, irrespective of Mr Mansell's argument that these provisions do not bite on employees when undertaking acts merely as a controller. With an LLP it is a matter of individual choice for the members as to what decisions they say should be made by a board or executive committee and what decisions would be made by the partners as a whole.

1348. Likewise, based upon our findings made above, the context in which Mr Odey's conduct in making the misleading statements alleged in the Fourth and Fifth Allegations was acting as much as an employee as a controller of OAM. Further, his motivation and purpose was as much to justify and protect his role and continued "employee" status as a fund manager for the firm.

1349. In conclusion, the Authority had the power to impose the Financial Penalty upon Mr Odey that it did.

The amount of the penalty

1350. The Tribunal's jurisdiction in the disciplinary reference under section 133(5) FSMA is to determine the appropriate action for the Authority to take, i.e. it determines first whether a financial penalty or censure should be imposed for the contravention established and second the quantum of that penalty.

1351. As Judge Herrington made clear in *Arian Financial LLP v FCA* [2024] UKUT 00352 at [16]: "A reference of a decision to impose a financial penalty is a 'disciplinary reference' and accordingly, the Tribunal has the power to determine at its discretion what (if any) is the appropriate action for the Authority to take, including a determination as to whether or not to impose a financial penalty and, if so, the amount of such penalty."

1352. In seeking to impose a financial penalty of £1,835,200 on Mr Odey, the Authority seeks to justify the quantum by reference to its five-stage formula by reference to its policy entitled "The Five Steps for Penalties Imposed on Firms" as set out at DEPP 6.5A of the Authority's Handbook. It is appropriate that the Tribunal should follow the same approach.

1353. By virtue of Rule 2(1) of the Tribunal Rules, we are required by the overriding objective to impose a penalty which is fair and just. The penalty should therefore be one which adequately reflects the seriousness of the found misconduct, and which is proportionate. In determining whether a penalty is fair and just, the Tribunal is not bound to follow the Authority's policy, as set out in the Authority's Handbook, as to how penalties should be calculated but nonetheless the starting point should be for it to consider the relevant DEPP penalty framework that was in existence at the time.

Step 1: disgorgement

1354. The parties agree that Mr Odey derived no direct financial benefit from the alleged misconduct. It is agreed that the step 1 figure is £0.

Step 2: seriousness of breach

1355. The Authority's policy is that a figure reflecting the seriousness of the breach is calculated by taking a percentage of the individual's relevant income, based on five fixed levels from level 1 to level 5, giving rise to percentages between 0 to 40% (DEPP 6.5B.2). In assessing the relevant income of Mr Odey for this purpose, the Authority based its calculation on his income for the 12-month period preceding the end of the alleged breach. It is agreed that, in accordance with the Authority's policy, the correct period for this purpose is 24 December 2021 to 17 November 2022.

1356. The Authority has assessed the level of seriousness of the alleged breach at level 4. Mr Odey takes issue with the Authority's assessment of the seriousness of the breach at level 4 and its consequent calculation of 30% of Mr Odey's "*relevant income*". We have found the breaches of ICR1 to be on the basis of being both deliberate/intended (primarily in relation to the First Allegation) and reckless (at a minimum in relation to all the Five Allegations). We reject Mr Odey's case that a proper assessment of the factors set out in the Authority's policy leads to the conclusion that the alleged breach is no more than level 3 in seriousness. We find it to be at level 4.

Impact of alleged breach

1357. Mr Odey's evidence and case is that the firm operated normally during the Relevant Period. While the firm was in technical breach of specific regulatory rules, this was for a brief period during which potential risks were mitigated. The Supervision Division were fully apprised of developments on a close to real-time basis yet did not utilise any of their formal powers to intervene: had they considered there to be a genuine "risk of loss" to investors at the time, they would undoubtedly have done so. He contests the Authority's assessment of the impact of his breaches on the basis that "No actual loss occurred" and that "had the Authority determined the applications for approval submitted by the Third ExCo sooner, the time period of any alleged issues regarding the Firm's corporate and governance control structure would have been shorter".

1358. We reject Mr Odey's case on impact. As the Authority rightly submits, DEPP 6.5B.2G(8)(b) does not require actual loss; the risk of loss is sufficient, and those are the terms in which the Authority's case is pleaded. Further: (i) the reason why the firm was left with issues as to its corporate governance was the fault of Mr Odey; (ii) the 112-day period the Authority has relied on in its assessment of impact consists of the two periods in which Mr Odey was sole member of ExCo; it does not reflect the period (July to October 2022) in which OAM's application for approval of the third ExCo by the Authority was pending; and (iii) the period of time taken by the Authority was reasonable in circumstances where the Authority interviewed both Mr Martin and Mr Ede (itself a reasonable decision given that Mr Odey had removed two separate ExCos in the previous 12 months).

1359. Mr Odey's conduct created a risk of loss to investors as: (a) Mr Odey's two removals of ExCo created failings in OAM's corporate and governance control structure for a total of 112 days; (b) during that period, Mr Odey was in a conflicted position of assuming ultimate responsibility for investment risk while continuing to operate as a fund manager; (c) this led to OAM self-reporting breaches of regulatory requirements intended to guard against the risk of loss to customers (in particular, SYSC 4.2.1R and 4.2.2R and FUND 3.7.2R).

1360. We have rejected the evidence that the actions taken by Mr Odey were primarily intended to avoid losses to OAM clients or that the values of their investments would have suffered had he been dismissed from his role. For the reasons set out above we have concluded that Mr Odey's actions were not justified in all the circumstances and his motivations in acting as he did were ones of self-interest placing his own self-preservation above the needs of the firm, its staff and investors.

Nature of alleged breach

1361. Any lack of integrity is by its nature serious. We accept that there is no suggestion that Mr Odey has sought to misuse his powers as majority shareholder at any other point in what has been a long and successful career. We also accept that Mr Odey's firm represented his life's work. We have also recognised some other mitigating factors below.

1362. Nonetheless, for the reasons set out above, we do not accept Mr Odey was responding to an unprecedented crisis which could have resulted in the closure of a firm as well as significant client detriment. DEPP 6.5B.2G(9) lists factors relevant to assessing the impact of the breach. Of these, we, like the Authority, accept the following to be relevant:

(i) Mr Odey has committed a breach of ICR1: DEPP 6.5B.2G(9)(a) and (e).

(ii) Mr Odey's primary conduct in removing ExCo occurred on two occasions, further, this was accompanied by the threats made by Mr Odey to ExCo over a longer period (i.e. at times between December 2021 and March 2022), as well as Mr Odey's lack of candour in his communications with OAM, its members and the Authority in December 2021, January, February and April 2022: DEPP 6.5B.2G(9)(b).

(iii) Mr Odey held a prominent position in the industry: DEPP 6.5B.2G(9)(i).

(iv) Mr Odey is an experienced industry professional: DEPP 6.5B.2G(9)(j).

(v) Mr Odey misused his position as majority ultimate owner, and appointed himself sole member of ExCo, thereby placing himself in a position wholly responsible for the area of business affected by the breach, and without any check on his authority: DEPP 6.5B.2G(9)(k) (the individual's level of seniority within the firm) and (l) (the extent of responsibility of the individual for the product or business area affected by the breach, and the particular matter affected by the breach).

(vi) Although Mr Odey put in place the second ExCo, he then removed the second ExCo, without (again) having arranged for replacements. Ultimately, Mr Odey appointed a third ExCo and attended his disciplinary hearing, nearly one year after it was first scheduled: DEPP 6.5B.2G(9)(n) - whether any steps were taken to comply with the Authority's rules and the adequacy of those steps.

1363. Mr Odey's primary position was that he did not breach ICR1 and does not lack integrity. However, if not accepted by the Tribunal, his secondary position was that the nature of any breach should properly be characterised as reckless rather than deliberate. He relies on the Authority's policy which sets out that a factor tending to show a breach as reckless is one in which the individual appreciated that there was a risk that his actions or inaction could result in a breach and failed adequately to mitigate that risk. In his submission, Mr Odey's actions, even if found to be unjustified, fall more comfortably into this category than that of a deliberate breach. It is not the case that Mr Odey foresaw that a breach would arise from his actions but did not care or sought to conceal such a breach. Indeed, the reverse is the case. He took immediate steps to mitigate the impact of his action. He contacted the Authority's Supervision Division and worked closely and directly with them during the periods during which he was the sole acting member of ExCo.

1364. We have rejected both Mr Odey's primary and secondary cases in our factual findings set out above.

1365. DEPP 6.5B.2G(10) and (11) list factors relevant to whether the breach was deliberate or reckless. The Tribunal considers that Mr Odey's breaches were deliberate in that:

a) the removals of ExCo were intentional: DEPP 6.5B.2G(10)(a).

b) Mr Odey's actions were repeated: DEPP 6.5B.2G(10)(h).

1366. The actions were also reckless in that due to his seniority, considerable experience and prior knowledge of OAM, Mr Odey must have appreciated that there was a risk that his actions could result in a breach of regulatory requirements, and he failed adequately to mitigate that risk: DEPP 6.5B.2G(11)(a).

'Level 4 / 5 factors' vs 'Level 1 / 2 / 3 factors'

1367. The Authority's policy groups factors tending to suggest seriousness at levels 4 or 5 in contrast with those tending to suggest seriousness at levels 1, 2 or 3. Counsel for Mr Odey submit that any consideration of the competing factors in good faith results in an assessment that any misconduct found sits within the lower bracket. They rely on the following factors listed in 6.5B2G(13) as factors which are likely to be considered level 1-3 factors as being of particular relevance:

i) The alleged breach did not cause any loss to investors (6.5B.2G(13)(b)). As set out above, it was intended to avoid loss to investors;

ii) No financial crime was facilitated or occasioned (6.5B.2G(12)(b); and

iii) There was no impact on the orderliness or confidence in the market (6.5B.2G(13)(c)).

1368. In summary Mr Odey's case is that the appropriate level of seriousness is level 3, such that the step 2 figure is 20% of £2,548,957 namely £509,791.

1369. We reject Mr Odey's case and find level 4 to apply.

1370. DEPP 6.5B.2G(12) lists factors likely to be considered "level 4 or 5 factors". Of these, we, like the Authority, consider the following factors to be relevant:

i) Mr Odey caused failings in OAM's governance and control structure, which lasted a total of 112 days, that caused a significant risk of loss to investors: DEPP 6.5B.2G(12)(a).

ii) Mr Odey failed to act with integrity: DEPP 6.5B.2G(12)(d).

iii) Mr Odey held a prominent position within the industry: DEPP 6.5B.2G(12)(f).

iv) The breach of ICR1 was committed deliberately. Mr Odey was reckless as to the consequences of that breach, including the failings in OAM's governance and control structure and the attendant risks arising: see DEPP 6.5B.2(12)(g).

1371. DEPP 6.5B.2G(13) lists factors likely to be considered "level 1, 2 or 3 factors". Of these, we consider only the following factor to be relevant in his favour: little, or no, profits were made or losses avoided as a result of Mr Odey's breaches, either directly or indirectly: DEPP 6.5B.2G(13)(a). There was some risk of loss to investors so 6.5B.2G(13)(b) (no or little risk) does not apply.

1372. Overall, we, like the Authority, consider the seriousness of the breach to be level 4. Therefore, the Step 2 figure is 30% of Mr Odey's relevant income of £2,548,957, namely £764,687.

Step 3: mitigating and aggravating factors

1373. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

1374. Mr Odey's case is that there should be no increase or decrease to the Step 2 figure (which he says should be £509,791) on account of aggravating or mitigating factors and that an increase of 20% is inappropriate.

1375. He relies on a number of mitigating factors set out at DEPP 6.5B.3G(2)(a), (b), (c) and (d) – bringing the breach to the Authority's attention; degree of cooperation with the Authority during investigation; steps taken to stop the breach; and remedial steps taken since the breach was identified.

1376. Mr Odey disputes the allegations of motivation and justification but argues that there can be no challenge to the fact that he, directly or indirectly via Mr Satt, brought the facts of his decisions to remove both ExCos to the attention of the Authority and sought to liaise directly with the regulator to mitigate the regulatory impact of his actions. It is submitted that Mr Odey acted quickly to put in place the second ExCo, such that the period during which he was in sole charge of ExCo was only nine working days.

1377. Mr Odey's counsel also submit that Mr Odey acted as quickly as he could to put in place the third ExCo but faced significant difficulties in identifying appropriate candidates given the challenges posed by the role. The period would have been significantly reduced, first: had the Authority been amenable to the alignment of the enforcement investigation and the second disciplinary process which would have alleviated the immediate pressures upon any person considering putting himself forward for the role; and, second: had the Authority not taken four months to approve the senior manager applications of the eventual members, Mr Ede and Mr Martin (between June and October 2022).

1378. Mr Odey relies on his co-operation with the regulator during this period which he says should properly off-set the fact that he was aware of its concerns following the removal of the first ExCo such that no uplift should apply at Step 3.

1379. Further, he points out that he had no regulatory findings against him prior to the events forming the subject matter of this reference (6.5B.3G(2)(i)).

1380. Turning to possible aggravating factors, the Authority submits that, independently of, and in addition to, the factors considered above supporting level 4 seriousness, DEPP 6.5B.3G(2)(f) specifically requires consideration, as an aggravating factor, of whether the individual had previously been told about the Authority's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence.

1381. For the reasons we have found above, following the removal of the first ExCo, the Authority communicated its concerns to OAM (which concerns must have been conveyed to Mr Odey) and/or to Mr Odey himself about the regulatory implications of his conduct. Nonetheless, Mr Odey carried out the removal of the second ExCo.

1382. We have not accepted all the mitigating factors Mr Odey has identified in this case because we have found that Mr Odey made misrepresentations to members of the Authority and threatened them. Therefore, we are not prepared to reduce the Step 2 figure at Step 3. Nonetheless, we do accept there was a degree of cooperation by Mr Odey with the Authority following removal of the two ExCos in bringing the breaches to the Authority's attention, and remediation in constituting new ExCos that offsets the identified aggravating factor. We also seek to avoid any double counting of factors which increased the seriousness of the breach and the allocation to level 4.

1383. Therefore, unlike the Authority, we do not consider it appropriate to increase the penalty by 20% or at all, such that the Step 3 figure remains at £764,687.

Step 4: adjustment for deterrence

1384. Mr Odey's counsel dispute the assertion that the facts in his case and the nature of the alleged breach are so unusual that an enhanced penalty is required to deter others in the market from acting in the same way. They submit that the finding of a lack of integrity – the most serious finding that can be made – would in itself constitute a significant deterrent. His counsel contend that the Authority seeks to apply a multiplier of 2 at Step 4 for no reason other than an assertion that the penalty figure is otherwise "too small in relation to the breach". They argue that the Authority does not provide any basis for this assertion, nor explain why it considers that deterrence is a material issue in this instance. They contend that the penalty derived from the earlier steps amounts to adequate deterrence.

1385. We reject Mr Odey's case on this point.

1386. As to Step 4 (adjustment for deterrence), pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

1387. The Authority has imposed a multiple of 2 on the basis that its figure from Step 3 (£917,624) does not, in its view, meet the objective of credible deterrence.

1388. We agree that the Authority properly took into account factors set out in 6.5B.4G(1): (i) Mr Odey having caused OAM to breach fundamental regulatory requirements in relation to OAM's governance, which by their nature presented risks to the entirety of OAM's AUM which had an average value of approximately £2.925bn during the Relevant Period; (ii) the fact that the Step 3 figure would be less than 0.03% of this value; (iii) the fact that Mr Odey's conduct gave rise to particular risks in relation to the funds where Mr Odey was the fund manager (in breach of FUND 3.7.2R), and the fact that those funds went up to £1.351bn during the Relevant Period; (iv) Mr Odey's overall assets - that he held investments worth approximately £304m in OAM funds - and the fact that his relevant income during the Relevant Period was over £2.5m; and (v) the need to deter similar conduct in the future. We agree that a multiple of 2 is appropriate.

1389. We therefore conclude that the figure of £764,687 does not meet the objective of credible deterrence because it is too small in relation to the breaches. We have taken into account all the circumstances of the breaches, including the average assets under management at OAM during the period of the breach, £2.925bn, and the need to deter Mr Odey and others, from behaving in a similar way.

1390. We agree that it was appropriate, just and fair for the Authority to increase the Step 3 figure by a multiple of 2 at Step 4 for the purposes of credible deterrence, such that the Step 4 figure is £1,529,374.

Step 5: settlement discount

1391. It is accepted that no settlement discount applies.

Conclusion on penalty

1392. We have stepped back from the Authority's five stage calculation of the penalty to consider whether it was proportionate in all the circumstances. We are satisfied that £1,529,374 is the just and fair figure to arrive at and should be imposed. We determine for the purposes of s.133(5) FSMA that this penalty is the appropriate action for the Authority to take in relation to the matter.

THE NON-DISCIPLINARY REFERENCE – THE PROHIBITION ORDER

1393. The Tribunal does not determine whether a prohibition order should be imposed but makes a decision as to whether the original decision to impose a prohibition order should be remitted back to the Authority to re-assess in view of the findings of fact made by the Tribunal.

1394. The applicable principles in relation to the Authority's power and jurisdiction in considering a challenge to the Authority making a prohibition order in respect of individuals under s.56 of FSMA are set out above. We should only remit the decision as to the prohibition order back to the Authority if we consider, in light of our findings, that the Authority's decision to prohibit was not one reasonably open to the Authority and that the Authority would come to a different view were the matter remitted to it. In making such a finding, we should take into account all the evidence available to it. It may include upholding the prohibition order on further or different grounds where the evidence before the Tribunal has demonstrated a lack of integrity on the part of the applicant: see *Hussein*.

1395. We have decided that the prohibition order was reasonably imposed, and further that it was appropriate in the circumstances. We have found that Mr Odey lacked integrity for the reasons explained above. As we have accepted the Authority's case, it follows that Mr Odey is not a fit and proper person and it is reasonable for the Authority to have concluded that a prohibition order is appropriate. In a footnote to the written closing submissions "Mr Odey reserve[d] his position on the question of whether 133(6) of FSMA asks if the prohibition order was reasonably open to the Authority or is objectively appropriate." There is no doubt as to the extent of the Tribunal's jurisdiction under s.133(6) as being the former – supervisory. The point was not pursued in oral argument. Nonetheless, even if our jurisdiction were not supervisory but full merits, we would have decided that the prohibition order was objectively appropriate.

1396. Mr Odey has not raised any argument about proportionality in this reference; it turns on whether or not he lacked integrity. Having found that Mr Odey lacked integrity, Mr Odey would appear to accept that the prohibition order imposed by the Authority would be reasonable and proportionate.

1397. The Authority also made a written submission that "any person carrying out functions in relation to regulated activities, irrespective of position, should be a person of integrity that consumers, the market and the Authority are able to trust will conduct themselves in accordance with the requirements and standards of the regulatory system above all other considerations. This includes abiding by (i) internal policies and procedures within a regulated entity, and (ii) structures and rules of the regulated system, that are designed to ensure that the entity is able to operate with appropriate internal controls within the regulated sector. It requires a willingness to submit to these governance structures and a commitment to abide by these rules." Mr Williamson KC submits that this is a circular definition and blind obedience to rules, particularly if reasonably believed to be unfair or disproportionate, is not the essence of integrity as previously interpreted by the courts and tribunals. We do not need to resolve this argument and have applied the test of integrity as explained in *Seiler*.

1398. We do not go so far as to suggest that there will never be exceptional circumstances or occasions when a person does not submit or deliberately acts outside of the rules, requirements or standards of the regulatory system but nonetheless does not lack integrity for some very good reason. Not all deliberate rule breaches will necessarily lead to a finding of lack of integrity. Ms Sibson KC gave some examples in closing, such as a threat to consumers from market abuse, misappropriation of funds or major fraud being perpetrated by an ExCo, which might exceptionally justify the sudden removal of a governing board without notice.

1399. However, Mr Odey's removal of both ExCos was a long way from that type of case. We agree that Mr Odey's conduct during the Relevant Period failed to abide by, or even accept the significance of, these basic requirements. He demonstrated a disregard for standards and requirements that he was reasonably expected to meet based upon the circumstances in question.

1400. We agree with the way Ms Sibson KC put this case in closing:

> "Imagine…an employee of such an AIFM had, without warning to the regulator, without consultation with the firm's head of compliance or HR manager, and without any conception of a plan for how to recruit replacements or effect a handover to them, could unilaterally use his power as a controlling shareholder of the firm to dismiss its governing body, knowing that this would put the firm immediately in breach of the basic regulatory requirements imposed upon it by the FCA through an indefinite length of time. This Tribunal might think that knowing no more than this much, the independent person, who I have asked you to imagine would reasonably think to themselves, this employee will have to point to some extreme threat of harm to consumers posed by the governing body he dismissed in order to justify that action and rebut my immediate thought that he appears to have been, at the very least, reckless…
>
> I now ask the Tribunal to envisage adding to the information this imaginary independent person has the fact that the same employee shareholder of the same AIFM, 3 months after that first dismissal, for a second time, without warning to the regulator, without consultation with the head of compliance or HR manager, and again without any conception of a plan for how to recruit replacements or effect a handover to them, used his power for a second time unilaterally to dismiss its governing body…
>
> Finally, I invite the Tribunal to picture what the imaginary independent person's reaction would be when informed that the circumstances upon which the employee shareholder is in fact reliant to justify the action he took on both occasions centred around his disagreement with the existing governing body's processes or decisions or proposals regarding its management of extant disciplinary proceedings, convened in

respect of a breach of the terms of a final written warning previously imposed upon him for proven prior misconduct within the firm…

…it is not merely that the motive or reason or purpose for which Mr Odey acted is not good enough to justify the extreme action he took in twice dismissing ExCo. Rather, and a great deal worse, his motive and reasons and purpose were in and of themselves ethically wrong."

1401. In essence, Mr Odey deliberately frustrated a disciplinary process designed to scrutinise his conduct and uphold OAM's internal policies and procedures relevant to the performance of regulated activities. He was unwilling to submit himself to the jurisdiction of the proper governance of the firm through ExCo, for so long as he believed it would take decisions with which he, personally, disagreed and were not in his interests. He caused OAM to be put in breach and risk of breach of rules and requirements put in place for the protection of consumers, which he considered subordinate to his own interests and priorities. He misused his power as controller to remove the ExCos as a means to protect his own interests and attempt to achieve his objectives.

1402. In these circumstances, it was reasonable for the Authority to have no confidence that, if Mr Odey were able to carry out any function in relation to regulated activities, he would abide by internal policies and procedures relevant to the performance of those functions, if they did not suit his interests.

1403. Mr Odey has been willing either recklessly or deliberately to disregard regulations and structures put in place for the protection of consumers, when he considers it in his interests to do so. He has been unable to appreciate the impact or potential impact of his conduct on others when it contrasts with his self-interest. He has repeatedly prioritised his own interests at the expense of risk of detriment to OAM, its staff, members and investors.

1404. Mr Odey's behaviour towards OAM and the Authority, and at times in his evidence in these proceedings, also lacked candour. He sought to justify his conduct by reliance on various beliefs or grounds which were either not held or were not reasonable. The reasons he relied upon in his removal of both ExCos, and his conduct in his dealing with the Authority, also support the finding that he is not fit and proper.

1405. Furthermore, Mr Odey's evidence in these proceedings has demonstrated that there remains a lack of insight into why his conduct, in particular, in twice removing ExCo, lacks integrity. He has expressed no contrition for it. He sees nothing wrong with his approach, and indeed he wrongly sees himself as the victim of both OAM's actions and the Authority's. As he put it in his evidence, he considers that he "was the victim in all this".

1406. It was reasonable for the Authority to consider that, in order to advance its integrity and consumer protection objectives, and given the risk posed to those objectives by Mr Odey, it was appropriate and proportionate in all the circumstances to prohibit Mr Odey from performing any function in relation to any regulated activities carried on by an authorised person, an exempt person, or exempt professional firm pursuant to s. 56 of FSMA.

1407. We determine for the purposes of s.133(6) FSMA that we should dismiss the non-disciplinary part of the reference challenging the prohibition order and refuse to remit the matter for reconsideration by the Authority.

CONCLUSION AND DISPOSITION

1408. We determine that the appropriate action for the Authority to take is to impose upon Mr Odey a penalty in the sum of £1,529,374. We dismiss his reference in relation to the prohibition order.

UPPER TRIBUNAL:

MR JUSTICE THOMPSELL

JUDGE RUPERT JONES

MEMBER CATHERINE FARQUHARSON

Release Date: 14 September 2026