UT Neutral citation number: **[2025] UKUT 00203 (TCC)**

UT (Tax & Chancery) Case Number: UT-2023-000064

Upper Tribunal
(Tax and Chancery Chamber)

Hearing venue: The Rolls Building, London

Heard on 3-7,10-14 March and 2 & 3 April 2025
Judgment date: 26 June 2025

FINANCIAL SERVICES – whether Chief Executive Officer acted without integrity or failed to be open and cooperative with the Authority in failing to correct inaccurate statements in a letter sent by his employer to the Authority regarding his relationship with Jeffrey Epstein - whether Chief Executive fit and proper to perform senior management or significant influence function - s 56 FSMA- ICR 1 & 3 Individual Conduct Rules - SMCR 4 Senior Manager Conduct Rules

Financial penalty- whether financial penalty correctly calculated - whether appropriate aggravating and mitigating factors applied- s66 FSMA- DEPP Chapter 6

Before

JUDGE TIMOTHY HERRINGTON
(Sitting in Retirement)
MEMBER CATHERINE FARQUHARSON
MEMBER MARTIN FRAENKEL

Between

JAMES EDWARD STALEY

Applicant

-and-

THE FINANCIAL CONDUCT AUTHORITY

Respondent

Representation:

For the Applicant: Robert Smith KC and Nichola Higgins, Counsel, instructed by Arnold & Porter LLP

For the Respondent: Leigh-Ann Mulcahy KC, Eleanor Davison, Lara Hassell-Hart and Henry Reid, Counsel, instructed by the Financial Conduct Authority

DECISION

INTRODUCTION

1. On 30 May 2023 the Financial Conduct Authority ("the Authority") through its Regulatory Decisions Committee issued a decision notice (the "Decision Notice") to the Applicant ("Mr Staley").

2. In the Decision Notice the Authority decided that Mr Staley was in breach of three provisions of the Authority's Handbook, namely ICR 1 (the requirement to act with integrity), ICR 3 (the requirement to be open and cooperative with regulators) and SMCR 4 (the requirement to disclose appropriately any information of which the Authority would reasonably expect notice). The Authority decided to impose upon Mr Staley a penalty of £1,812,800 and to make an order prohibiting him from performing any senior management or significant influence function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm pursuant to s 56 of the Financial Services and Markets Act 2000 ("FSMA").

3. In brief, the Authority considered that Mr Staley had recklessly and with a lack of integrity approved a letter being sent to the Authority on 8 October 2019 (the "Letter") that contained misleading statements, (i) as to the nature of his relationship with Mr Jeffrey Epstein ("Mr Epstein") and (ii) as to the time that they were last in contact. The Letter said that the relationship was not close and that the last contact was well before the Applicant joined Barclays Bank plc ("Barclays") as its Chief Executive Officer in December 2015. The Authority contends that both these statements were inaccurate and misleading.

4. On 26 June 2023 Mr Staley referred the Authority's decision to the Tribunal. He denies that the Letter contained misleading statements.

BACKGROUND TO THE REFERENCE

5. Between December 2015 and October 2021, Mr Staley was the Chief Executive Officer ("CEO") of Barclays Bank Plc ("Barclays"). Before he became the CEO of Barclays, Mr Staley was for most of his career employed by JP Morgan Chase ("JPM"), from 1979 to January 2013. Mr Staley met Mr Jeffrey Epstein in 1999 or 2000, while the Applicant was the Head of JPM's Private Bank, of which Mr Epstein was a client. The Applicant became the CEO of the Investment Bank at JPM in around September 2009. The Applicant left JPM in January 2013. He became the Managing Partner of Blue Mountain Capital Management LLC in January 2013, remaining in that role until he joined Barclays as CEO in December 2015, an appointment that was announced in October 2015.

6. In July 2019, Mr Epstein was arrested on federal charges for sex trafficking minors in Florida and New York. Around this time, articles appeared in the press concerning connections between Mr Epstein and various prominent figures, including Mr Staley. Mr Epstein died in prison in August 2019. The press articles prompted the Authority to make an inquiry of Barclays that led to the Chairman of Barclays, Mr Nigel Higgins ("Mr Higgins"), sending the Letter (as approved by Mr Staley) on 8 October 2019.

7. The full text of the Letter is as follows:

> "I am writing to close the loop on your request for assurance that we have informed ourselves and are comfortable in regard to any association of Jes Staley or Barclays with Jeffrey Epstein. I can now report that Crawford Gillies, Bob Hoyt and I have had separate conversations with Jes where he has described his interactions with Mr. Epstein. Jes has confirmed to us that he did not have a close relationship with Mr. Epstein, and he is resolute that at no time did he see anything that

> would have suggested or revealed any aspect of the conduct that has been the subject of recent allegations. Jes' last contact with Mr. Epstein was well before he joined Barclays in 2015.
>
> Separately, Barclays' Financial Crime team has conducted a thorough review of our records, which did not reveal any client or customer relationship with Mr. Epstein.
>
> In sum, neither our discussions with Jes nor our review of the bank's records have revealed any cause to suspect that Barclays or Jes have played any role in the activities of Mr. Epstein that have been under investigation.
>
> I trust this addresses your questions."

8. In November 2019, JPM informed the Authority that, as a result of investigations by authorities in the US, it had identified various documents relating to the relationship between Mr Epstein and Mr Staley. The Authority exercised its powers to compel JPM to produce the emails it had identified between Mr Epstein and Mr Staley. The Authority opened an investigation into Mr Staley in December 2019, which led to the present proceedings.

9. On 29 October 2021, the Authority informed Mr Staley of its preliminary conclusions of its investigation, sending him a draft Annotated Warning Notice to open without prejudice settlement discussions in line with its standard practice. Those discussions did not result in agreement.

10. On 3 November 2022, the Authority issued a Warning Notice to Mr Staley who provided written and oral representations to the Authority, following which the Authority issued the Decision Notice on 30 May 2023.

11. Since service of its Statement of Case in July 2023, the Authority came into possession of material which it considers relevant to these proceedings. This material was provided following requests from the Authority to the US Securities and Exchange Commission in the United States ("SEC") and includes material obtained from Mr Epstein's Estate, and material arising from proceedings in the United States involving Mr Staley (the "US Proceedings"), including the deposition he gave under oath in those proceedings. Accordingly, in July and August 2024, the Authority served (i) amended Lists of Documents (on 9 July 2024) and (ii) draft amendments to its Statement of Case (on 2 August 2024). Following a case management hearing held in November 2024, the Authority was given permission to amend its Statement of Case and List of Documents and Mr Staley was given permission to file an Amended Reply to the Authority's Amended Statement of Case.

THE AUTHORITY'S CASE AND MR STALEY'S POSITION

12. The following summary of the Authority's case is taken from [10] to [19] of its Amended Statement of Case:

> "10. In August 2019, following various media reports, the Authority contacted a member of Barclays Board requesting a written assurance that the Board had informed itself and was comfortable regarding any association of Mr Staley or Barclays with Mr Epstein.
>
> 11. Barclays through its senior executives, engaged in discussions with Mr Staley regarding the response to be made. It was originally intended that Mr Staley would provide a letter which Barclays would send to the Authority, but it was decided, after discussion, including with Mr Staley's own legal adviser, that Barclays should send the response instead.
>
> 13. On 8 October 2019, in response to the enquiry by the Authority, Barclays sent a letter ("the Letter") which contained two inaccurate and misleading statements: firstly, about the nature of

Mr Staley's relationship with Mr Epstein (stating "[Mr Staley] has confirmed to us that he did not have a close relationship with Mr Epstein") and secondly, about the recency of the last contact between Mr Staley and Mr Epstein (stating that "[Mr Staley's] last contact with Mr Epstein was well before he joined Barclays in 2015."

13. Mr Staley reviewed a near final draft of the proposed Letter which contained those two statements. He was expressly asked to confirm that the language was fair and accurate. Mr Staley confirmed he was comfortable with the language and in doing so recklessly approved its content.

14. The two statements were material to the Authority's enquiry, which sought to ascertain whether, in light of media reports, Barclays had informed itself and was comfortable regarding any association of Mr Staley and Barclays with Mr Epstein. The enquiry made by the Authority necessarily involved consideration of the media reports and the relationship between Mr Staley and Mr Epstein. The enquiry was not limited to a concern about whether Mr Staley was involved in or witnessed the conduct which was the subject of the allegations against Mr Epstein set out in the media reports but extended to the association between Mr Staley and Mr Epstein more generally and what Barclays had done to satisfy itself in this regard. In any event, statements as to the nature of the relationship and recency of contact were themselves relevant to whether Mr Staley was involved in or witnessed the conduct alleged on the part of Mr Epstein.

15. Mr Staley must have appreciated because it was obvious (and the Authority contends, he did so appreciate) that the Authority would rely on the content of the Letter, in circumstances including that the Authority had made a specific enquiry of Barclays and required the provision of a written response, Mr Staley held a very important role as CEO of one of the UK's most significant financial institutions and the fact of his association with Mr Epstein inevitably raised questions about his conduct and judgment.

16. Further, Mr Staley must have been aware (and, the Authority contends, was so aware) that there was a risk that the Letter would mislead the Authority by inaccurately stating the nature of the relationship and the recency of the contact between them.

17.The conduct in allowing the misleading statements to be made to the Authority also constituted a failure to be open and transparent with the Authority and to make appropriate disclosure.

18.Such conduct was in breach of ICR 1, ICR 3 and/or SMCR 4.

19. The proposed financial penalty and prohibition order are appropriate sanctions and are proportionate to Mr Staley's failings, taking account of all relevant circumstances."

13.The Authority also pleaded that Mr Staley has not been candid with the Authority in his interviews to the extent that his answers are misleading, and that he has done so recklessly. The Authority's position is that certain answers in interview were misleading in the light of (i) the emails obtained from the Epstein Estate and (ii) the answers Mr Staley gave in his deposition, and in the light of those emails and answers that it is to be inferred Mr Staley was aware of the risk that his answers in interview would be misleading.

14. Mr Staley contends that the Authority's case is flawed in that it invites comparison of the email correspondence passing between Mr Staley and Mr Epstein, and upon which the Authority heavily relies, with the terms of the Letter. By this route the Authority invites the conclusion that the Letter contained factual inaccuracies of which Mr Staley must have been aware, whereas Mr Staley's case is that determination of the Reference should be informed by the factual context in which the Letter came to be drafted and approved. At that point, the factual context was such that the Letter was intended to achieve only one purpose, which was to inform the Authority that neither Mr Staley nor Barclays had had any knowledge of or involvement in Mr Epstein's unlawful conduct. It was not

intended to define the relationship between Mr Staley and Mr Epstein and the language employed was neither drafted nor approved for that purpose.

15. Mr Staley contends that his state of mind, in judging whether he was "reckless" when he approved the draft of the Letter, should be determined by a focus upon the context in which that approval took place and not through the prism of the email correspondence.

APPLICABLE LAW AND REGULATORY PROVISIONS

General

16. The Authority's regulatory objectives are set out in section 1B FSMA and include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

17. Section 1B(2) FSMA sets out the strategic objective of ensuring that the relevant markets function well. "Relevant markets" includes the financial markets and the markets for regulated financial services.

18. Section 1D FSMA sets out the objective of protecting and enhancing the integrity of the UK financial system.

Rules of conduct

19. It follows from those objectives that the Authority must ensure that senior managers of the firms that the Authority regulates are fit and proper to carry out their roles. As the Authority submitted, the provision of accurate, complete and frank information which relates to their regulated role by senior managers to the Authority is critical to its function in ensuring that individuals carrying out controlled functions are fit and proper persons.

20. The Authority has established the Senior Managers and Certification Regime ("SMCR") which is designed to charge those individuals at the apex of the financial services sector with personal responsibility for their actions and those of the entities they manage, and to enable the Authority to hold them accountable in this regard.

21. The SMCR is underpinned by the Authority's Individual Conduct Rules ("ICR") and Senior Manager Conduct Rules ("SMCR").

22. The Code of Conduct in the Authority's Handbook of Rules and Guidance ("COCON") sets out the rules that apply to the conduct of a person approved by the Authority to carry out senior management and other functions (an "approved person") in relation to the performance of functions relating to the carrying on of activities by the firm on whose application approval is given to that person.

23. Individual Conduct Rule 1 (ICR 1) states: You must act with integrity.

24. Relevant guidance as to the meaning of "integrity" is to be found in the authorities referred to below.

25. Individual Conduct Rule 3 (ICR 3) states: You must be open and cooperative with the [Authority], the PRA and other regulators.

26. Senior Manager Conduct Rule 4 (SMCR 4) states: You must disclose appropriately any information of which the [Authority] or the Prudential Regulation Authority ("PRA") would reasonably expect notice.

27. COCON gives specific guidance on the ICRs and in relation to ICR3 includes a non-exhaustive list of conduct which the Authority considers would breach the rule, including failing without good reason to inform a regulator of information of which the approved person was aware in response to questions from that regulator.

28. As this Tribunal has recognised, the Authority cannot carry out its responsibilities effectively without having an open and cooperative relationship with firms and approved individuals and being able to rely on regulated bodies and individuals bringing matters relating to their ability to comply with relevant rules and requirements to its attention: see *Eversure Financial Services Ltd & Frederick George Young v Financial Services Authority* (April 2006) at [58] ("*Eversure*") and *Frensham v Financial Conduct Authority* [2021] UKUT 0222 (TCC) at [69-70] ("*Frensham*").

29. SMCR 4 imposes a duty on a senior manager to disclose appropriately any information of which the appropriate regulator would reasonably expect notice, including making a disclosure in the absence of any request or enquiry from the appropriate regulator.

30. In determining whether a person's conduct complies with SMCR4, the standard is an objective one. COCON sets out the factors which the Authority would expect to take into account which include:

> (1) whether they exercised reasonable care when considering the information available to them (COCON 3.1.5(1) (G));
>
> (2) whether they reached a reasonable conclusion upon which to act (COCON 3.1.5(2) (G));
>
> (3) the nature, scale and complexity of the firm's business (COCON 3.1.5(3) (G));
>
> (4) their role and responsibility as determined by reference to the relevant statement of responsibility (COCON 3.1.5 (4) (G)); and
>
> (5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities (COCON 3.1.5(5)).

31. COCON 4.2.29 (G) provides that in determining whether or not a person's conduct complies with SMCR4, the factors the Authority would expect to take into account include: whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned; whether the information related to the individual themselves or to their firm; and whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

Prohibition

32. Section 56 FSMA confers upon the Authority the power to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity by an authorised person.

33. At the relevant time the Authority's Enforcement Guide ("EG") set out its guidance on the Authority's approach to prohibition orders. EG 9.1 stated that the Authority may exercise this power

where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform. It is therefore clear that the Authority may exercise this power where it considers it necessary to do so in order to further the consumer protection objective or the integrity objective, as described at [16] and [18] above.

34. EG 9.3.2 makes it clear that the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, certain identified factors. Those factors include:

> (1) The criteria for assessing fitness and propriety, that is honesty, integrity and reputation; competence and capability; and financial soundness.
>
> (2) To what extent the person has failed to comply with rules applicable to him, or has been knowingly concerned in contravention by the relevant firm of a requirement imposed on the firm under FSMA.
>
> (3)The nature of the particular controlled function which the person is (or was) performing, the nature and activities of the firm concerned, and the markets in which the person operates.
>
> (4)The severity of the risk which the person poses to consumers and confidence in the financial system.
>
> (5)The person's previous disciplinary record and general compliance history.

Fitness and propriety

35. The section of the Authority's Handbook entitled FIT sets out the fit and proper test for approved persons. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.

36. In these references, because of the way in which the Authority presents its case, the relevant consideration is Mr Staley's integrity.

Law relating to integrity

37. The legal approach to the concept of integrity in the financial regulatory context has most recently been set out by the Upper Tribunal in *Seiler, Whitestone and Raitzin v The Financial Conduct Authority ("Seiler")* [2023] UKUT 00133 (TCC) (at [42]) as follows:

> "(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 a 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 circumstances 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;
>
> (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."

38. As indicated in *Seiler* reckless behaviour may be found to connote a lack of integrity. As Ms Mulcahy observed, in *Batra v Financial Conduct Authority* [2014] UKUT 0214 (TCC) at [15], the Tribunal gave the following example of recklessness in relation to the making of statements:

> "One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements."

39. Accordingly, as Ms Mulcahy submitted, recklessness as to the truth of statements made to others who will or may rely on them and/or wilful disregard of information contradicting the truth of such statements can constitute lack of integrity.

40. In *Seiler* the Upper Tribunal determined that recklessness includes both subjective and objective elements, and that, in relation to the former, there is therefore a need to prove the state of knowledge of the individual as to the risk, but not that the individual appreciated that that their action was morally wrong. The Tribunal said this at [46] and [47]:

> "46…. The subjective element focuses on the state of knowledge of the individual concerned as to the risks concerned. The objective element focuses on the question as to whether it was reasonable for the person concerned to have ignored the risk. Clearly, in considering a person's state of awareness in relation to a risk, it is appropriate to have regard to what would reasonably have been appreciated or understood by persons in the same position as the individual in question, as the passage in *Ford and Owen* set out above clearly states. As Mr Jaffey submitted, the fact that the first element of the test of recklessness is subjective does not mean that the Tribunal cannot have regard to the inherent probabilities and, in particular, how a reasonable professional would respond in the relevant situation. By having regard to those factors, the Tribunal may conclude that the risks concerned would have been obvious to the person concerned and therefore can draw the inference that he or she was aware of the risks in question.
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> 47.In our view, in his closing submissions Mr Strong illustrated the application of the relevant principles correctly with the following examples:
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> > (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.
> >
> > (2) On the other hand, a person who does not appreciate that there is a risk of action being taken which would objectively be considered wrong is not reckless and does not lack integrity. They are not aware of a risk that the action in question may happen. Their ethical compass is not defective. That is the case whether or not someone else might have identified a risk of the relevant action occurring. That, as Ms Clarke submitted, could arise because of a lack of experience, competence or training on the part of the individual concerned….."

41. Therefore, following the approach set out at [50] of *Seiler*, what needs to be determined in relation to the allegation of recklessness made against Mr Staley in this case is (i) what facts in relation to the

matters on which the Authority relies Mr Staley was aware of and, in particular, whether he knew, when he approved the Letter, that its contents were factually inaccurate; (ii) whether in light of those facts Mr Staley was aware that if he approved the statements in the Letter then the risk that the Authority would be misled by the statements in question would occur and; (iii) whether it was unreasonable in light of the circumstances as Mr Staley knew or believed them to be to take the risk in question.

42. We did not take Mr Smith to disagree with that formulation. He also accepts that if Mr Staley was aware of the risk that the Authority would be misled by the statements in the Letter then it would have been unreasonable for him to take that risk.

43. As Ms Mulcahy submitted, in this case the Tribunal needs to make a finding as to the state of knowledge of Mr Staley as to the risk, albeit the Tribunal is entitled to have regard to inherent probabilities and how a reasonable professional would respond in the relevant situation and enabling the Tribunal to conclude, if appropriate, that the risks concerned would have been obvious to Mr Staley, such that an inference can be drawn as to such awareness.

Financial Penalty

44. Under section 66(3) FSMA the Authority may impose a financial penalty on an individual holding a Senior Management Function if it is satisfied that he has committed misconduct while holding such a position.

45. The Authority's policy on imposing a financial penalty is set out in that part of the Authority's Handbook known as DEPP.

46. DEPP 6.1.2 states that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

47. DEPP 6.2.4 states that disciplinary action against senior managers of firms and other individuals is one of the Authority's key tools in deterring firms and individuals from committing breaches.

48. As set out in DEPP 6.5B the Authority applies a five-step framework to determine the appropriate level of financial penalty. In cases such as this the five-step framework operates as follows:

Step 1: *Disgorgement*

The Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practical to quantify this.

Step 2: *The seriousness of the breach*

The Authority will determine a figure that reflects the seriousness of the breach which is based on the percentage of the individual's relevant revenue from the employment connected to the breach, being the relevant income earned by the individual in the twelve months preceding the end of the breach. The percentage to be applied depends on the seriousness of the breach which will be assessed on a scale of 1 (least serious) to 5 (most serious) depending on the impact and nature of the breach and whether it was committed deliberately or recklessly.

Step 3: *Mitigating and aggravating factors*

The Authority may increase or decrease the amount of financial penalty arrived at after step 2, to take into account factors which aggravate or mitigate the breach. Any such adjustment will be made by the making of a percentage adjustment to the figure defined at step 2.

Step 4: *Adjustment for deterrence*

If the Authority considers that 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 through the application of a multiplier to the figure arrived at after step 3.

Step 5: *Settlement Discount*

49. This step is not relevant in this case as the matter has not been settled by agreement with the Authority.

50. As this Tribunal indicated in *Tariq Carrimjee v FCA* [2015] UKUT 0079 (TCC) the Tribunal is not bound by the Authority's policy when making an assessment of a financial penalty on a reference, but it pays the policy due regard when carrying out its overriding objective of doing justice between the parties. In so doing the Tribunal looks at all the circumstances of the case.

51. This approach was followed by the High Court in *FCA v Da Vinci Invest Limited and others* [2015] EWHC 2401 where Snowden J said in the context of the imposition of a penalty for market abuse at [201]:

> "It was the FCA's submission, and I accept, that in determining any penalty under section 129, the starting point for the court should be to consider the relevant DEPP penalty framework that was in existence at the time of commission of the market abuse in question. To do otherwise would risk introducing an inequality of treatment of defendants depending upon whether the proceedings were taken against them under the regulatory route or the court route and depending upon how long the proceedings had taken to come to a conclusion. By the same token, however, in common with the Upper Tribunal, the court is not bound by that framework, or by the FCA's view of how it should be applied. But if the court intends to depart from the framework in a particular case, it should explain why it considers it appropriate to do so. It occurred to me that in this regard there is some analogy with the approach of the criminal courts to the application of the sentencing guidelines produced by the Sentencing Council."

ISSUES TO BE DETERMINED AND THE ROLE OF THE TRIBUNAL

Role of the Tribunal

52. Section 133(4) FSMA 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. This is not an appeal against the Authority's decision on each of the references but a complete rehearing of the issues which gave rise to the decision. Section 133(5) to (7) FSMA provides as follows:

> "(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter, and on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination. (6) In any other case, the Tribunal must determine the reference or appeal by either-
>
> (a) dismissing it; or

(b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with findings of the Tribunal.

(6A) The findings mentioned in subsection (6)(b) are limited to findings as to-

(a) issues of fact or law;

(b) the matters to be, or not to be, taken into account in making the decision; and

(c) the procedural or other steps to be taken in connection with the making of the decision.

(7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal."

53. The "decision-maker" in relation to these references is the Authority.

54. It can be seen that there is a distinction between the powers of the Tribunal on what is described as a "disciplinary reference" and other references. Pursuant to s 133(7A) FSMA "disciplinary reference" includes a decision to take action under s 66 FSMA, that is to impose a financial penalty on a person. The term does not include a reference to impose a prohibition order under s 56. Thus, this reference is effectively sub-divided.

55. Mr Staley's reference of the decision to impose a financial penalty is a "disciplinary reference" and accordingly the Tribunal has power to determine at its discretion what (if any) is the appropriate action for the Authority to take. In relation to Mr Staley's reference of the Authority's decision to impose a prohibition order, which we shall refer to as the "non-disciplinary reference", the powers of the Tribunal as set out in s 133(6) are more limited. The jurisdiction may be characterised as a supervisory rather than a full jurisdiction. That means that, unless the Tribunal believes the reference to have no merit and therefore dismisses it, its powers are limited to remitting the matter to the Authority with a direction to reconsider their decision in accordance with the findings of the Tribunal.

56. The Tribunal explained the extent of its powers on a non-disciplinary reference in *Carrimjee v FCA* [2016] UKUT 0447 (TCC) at [39] and [40] as follows:

"39. If, having reviewed all the evidence and the factors taken into account by the Authority in making its decision, and having made findings of fact in relation to that evidence and such other findings of law that are relevant, the Tribunal concludes that the decision to prohibit is one that is reasonably open to the Authority then the correct course is to dismiss the reference.

40. Alternatively, if the Tribunal is not satisfied that in the light of its findings that the decision is one that in all the circumstances is within the range of reasonable decisions open to the Authority, the correct course is to remit the matter with a direction to reconsider the decision in the light of those findings. For example, that course would also be necessary were the Tribunal to make findings of fact that were clearly at variance with the findings made by the Authority, and which formed the basis of its decision. That course would also be necessary had there been a change of circumstance regarding the applicant which indicated that the original findings made on which the decision was based, for example as to his competence to undertake particular activities, had been overtaken by further developments, such as new evidence which clearly demonstrated the applicant's proficiency in relation to the relevant matters. Such a course would not usurp the Authority's role in making the overall assessment as to fitness and propriety but would ensure that it reconsidered its decision on a fully informed basis. In our view such a course is consistent with the policy referred to at [31] and [32] above as it leaves it to the Authority to make a judgment as to whether a prohibition order is appropriate."

57. Even in the case where the Tribunal has not accepted all of the factors that led the Authority to conclude that a prohibition order was appropriate and it might therefore be said that the Authority has taken into account irrelevant considerations in deciding whether to impose a prohibition order, it would not be appropriate to remit the decision to the Authority for further consideration where the seriousness of the matters which the Tribunal has found would lead inevitably to the Authority reaching the same decision were that course to be followed : see *Charles Palmer v FCA* [2017] UKUT 0358 (TCC) at [270].

Issues to be determined

58. In her skeleton argument, Ms Mulcahy helpfully summarised the issues which arise out of the Authority's Amended Statement of Case which the Tribunal will need to resolve to determine this reference. We gratefully adopt the substance of that summary as follows:

> ***The Scope of the Authority's Initial Enquiry in August 2019***
>
> Was the enquiry made by the Authority to Barclays limited to establishing whether Mr Staley was involved in or witnessed the conduct which formed the basis for the allegations against Mr Epstein for which he was arrested in 2019 or was it broader and went to Mr Staley's fitness and propriety and the association of the two men more generally?
>
> ***Materiality of the statements in the Letter***
>
> Were the statements in the Letter that (i) Mr Staley did not have a close relationship with Mr Epstein ("Statement 1") and (ii) that Mr Staley's last contact with Mr Epstein was well before he joined Barclays in 2015 ("Statement 2") [1]material statements of fact so far as the Authority was concerned, i.e. was it self-evident that it was important that those statements should be accurate because the Authority would be likely to rely on them?
>
> ***Accuracy of the Statements***
>
> Were the Statements inaccurate and misleading when considered against the evidence as to the relationship between the two men and the recency of their last contact?
>
> ***Recklessness of approving the Statements***
>
> Was Mr Staley aware of a risk that the Authority might be misled by the Statements, it having been conceded that if Mr Staley is proven to have been aware of the risk, it was unreasonable for him to take it?
>
> ***Whether the approval of the Statements amounted to a breach of the Authority's Rules***
>
> Did Mr Staley's conduct in approving the Letter demonstrate a lack of integrity and contravention of the provisions of ICR 1 and/or ICR 3 and/or SMCR 4?
>
> In that regard, we do not accept Mr Smith's submission to the effect that the allegations of breach of these rules stand or fall together. In our view, even if we were to find that Mr Staley did not fail to act with integrity in approving the Statements, for example because we find that he was not aware of the risk that the Authority would be misled by the Statements, then it would still be open to us to find that he failed to be open and cooperative with the Authority or failed to disclose appropriately any information of which the

[1] We refer in this decision to Statement 1 and Statement 2 collectively as "the Statements".

Authority would reasonably expect notice. That is because a breach of either of ICR 3 or SMCR 4 could be founded on the basis of a lesser degree of culpability, such as a failure to take reasonable care in approving the Statements.

Sanctions

Are the sanctions imposed by the Decision Notice appropriate and proportionate and/or premised on a correct calculation?

Context

59. We accept, as Mr Smith submitted, that in considering the issues which arise on this reference, it is necessary to focus upon the context in which Mr Staley's approval of the Statements took place. Accordingly, in considering the issues we will take into account the following matters, as relied on by Mr Smith:

(1) The terms of the enquiry which the Authority made of Mr Higgins, the Group Chairman of Barclays, during the telephone conversation of the 15 August 2019.

(2) The terms of the enquiry which Mr Higgins, Mr Hoyt, the General Counsel of Barclays, and Mr Staley believed was made of Mr Higgins during the telephone call of the 15 August 2019.

(3) The extent to which Barclays' understanding of the terms of the Authority's enquiry operated to shape the draft of Barclays' response.

(4) The extent to which Mr Staley's understanding of the terms of the Authority's enquiry of the 15 August and his belief as to the purpose of Barclays' response to the enquiry, influenced his decision to approve the draft.

60. Mr Smith submits that the Tribunal's findings of fact in respect of these four issues will answer the central point in these proceedings, namely, whether the Authority has proved that, in approving the draft, Mr Staley was aware that the facts stated therein were inaccurate and that they were capable of misleading the Authority.

What is not in issue in this reference

61. As the Authority made absolutely clear, the focus in this reference is on what was communicated to it in its capacity as Mr Staley's and Barclays' regulator and the conduct required of those who hold senior positions in the financial services sector.

62. It should be emphasised that it is no part of the Authority's case that Mr Staley was either involved in any of the serious acts of sexual misconduct attributed to Mr Epstein or that he committed similar acts himself. Nor does the Authority allege that Mr Staley was aware of such misconduct on the part of Mr Epstein. As is clear from the summary of the Authority's case, as set out at [10] to [20] of its Statement of Case, as set out at [12] above, the Authority's case relates purely to what it says were misleading statements made in the Letter with Mr Staley's approval regarding the closeness of Mr Staley's relationship with Mr Epstein, and the recency of his contact with him.

63. Accordingly, we will not make any findings in relation to any matters which fall outside the scope of this reference.

Standard and burden of proof

64. As is well established in references of this kind, the burden of proving that Mr Staley failed to comply with his regulatory obligations to the required standard rests with the Authority judged to the ordinary civil standard: see *Tariq Carrimjee v Financial Conduct Authority* [2015] UKUT 79 (TCC), 20 at [47]. In *Ford and Owen v FCA* [2018] UKUT 0358 (TCC) 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."

65. We are asked to make findings of fact as to events which took place many years ago, some of which are not well documented. The documentary evidence that we have seen largely takes the form of email correspondence. We cannot know what actually happened in relation to all the events concerned. The burden is on the Authority to satisfy us as to what was more likely than not to have happened on the basis of the evidence before us.

EVIDENCE

The Authority's witnesses

66. The Authority served witness statements from the following individuals:

(1) ***Mr Jonathan Davidson*** – Between September 2015 and December 2020, Mr Davidson was the Director of the Retail Supervision and Authorisations Division at the Authority. As Director of that Division, he was responsible for the supervision of some of the UK's largest retail financial institutions, including Barclays. Mr Davidson's evidence covers the call between the Authority and Mr Nigel Higgins, the Group Chairman of Barclays, which took place on 15 August 2019. Mr Davidson's evidence is that during that call he asked Mr Higgins what Barclays had done to satisfy itself that there was no impropriety in any relationship between Mr Staley and Mr Epstein that would cast doubt on Mr Staley's fit and proper status. His evidence also covers (i) a further call on 4 October 2019 following which the Letter was issued and (ii) his involvement in the process that led to the decision (which he approved) to open the investigation into Mr Staley's conduct in relation to the Letter on 10 December 2019.

We are critical later in this decision of the failure of the Authority to have made adequate records of the conversations that Mr Davidson had with Mr Higgins in August and October 2019 which has made our task more difficult in determining the scope of the enquiry made of Barclays through Mr Davidson. Inevitably, therefore Mr Davidson's evidence was somewhat defensive on this issue. It was also the case that Mr Davidson was unable to assist the Tribunal as much as we would have hoped as regards whether it was he who asked for the "no close relationship" language to be added to the Letter after the draft was read to him over the telephone by Mr Higgins. Nevertheless, we accept that Mr Davidson did his best to assist the Tribunal despite his lack of recall of some of the key events.

(2) ***Mr Andrew Bailey*** – Mr Bailey is currently the Governor of the Bank of England. Between 1 July 2016 and 15 March 2020 Mr Bailey was CEO of the Authority. Mr Bailey's evidence covers the importance of the fit and proper regime in the regulatory framework and his conversation with Mr Davidson, in light of press coverage about the relationship between Mr Staley and Mr Epstein, regarding the need to obtain assurance

from Barclays as to the steps it had taken to assess Mr Staley's fitness and propriety. Mr Bailey also deals with the Authority's reliance on the Letter which led it to decide that no further action was required at that time in relation to Mr Staley's relationship with Mr Epstein, the subsequent contact from JPM, the decision to compel the provision of material by JPM given its relevance to the Authority's enquiry to Barclays regarding Mr Staley's relationship with Mr Epstein and discussions with Mr Higgins which took place after the Authority's investigation commenced in December 2019.

Mr Bailey was a straightforward witness who did his best to answer the questions put to him and assist the Tribunal.

(3) ***Mr Stephen Doherty*** – Mr Doherty at the relevant time was Group Head of Corporate Relations at Barclays. His evidence deals with communications he had with the press regarding Mr Staley's relationship with Mr Epstein and his discussions with Mr Staley on that subject in October 2015 prior to Mr Staley becoming the CEO of Barclays. His evidence also covers events in July 2019 when there was further press interest in relation to the same issue, including the information Mr Staley provided to him regarding his relationship with Mr Epstein to enable Mr Doherty to respond to those enquiries. In addition, Mr Doherty's evidence covered the help that he provided to Mr Staley and others in September 2019 in Mr Staley's response to enquiries made by his alma mater Bowdoin College, where he was a Trustee, as to his relationship with Mr Epstein. In that regard, Mr Doherty was involved in the drafting of what were known as the Bowdoin College Talking Points.

Mr Doherty was an impressive and straightforward witness with a clear memory of the relevant events on which he was cross examined. We have therefore accepted his evidence in full.

(4) ***Mr Nigel Higgins*** – Mr Higgins is the Group Chairman of the Barclays Group, having joined the Board in March 2019. He became Group Chairman in May 2019. His evidence covers (i) his discussions with Mr Staley about the latter's relationship with Mr Epstein (ii) his discussions with the Authority and others on that matter between August and October 2019 which led to the issue of the Letter including his understanding of the scope of Mr Davidson's enquiry (iii) his interactions with Mr Hoyt during preparation of the response to the Authority's enquiry and (iv) the discussions with the Authority which led to the opening of the investigation into Mr Staley's conduct in December 2019.

In common with Mr Davidson, Mr Higgins did not have a clear recollection of the details of the conversations that took place between the two of them in August and October 2019 and in the absence of adequate documentary records of those conversations the discrepancies in their respective accounts have been difficult to resolve. However, we found Mr Higgins to be a straightforward witness who did his best to assist the Tribunal with his answers, and we have preferred his evidence on the two conversations over the evidence of Mr Davidson as being more plausible in the light of our overall assessment of the circumstances in which the calls took place. There are also discrepancies between the evidence of Mr Higgins, Mr Hoyt and Ms Wiggins as regards some of the matters that we need to resolve, but we reiterate that Mr Higgins was doing his best to assist the Tribunal with his answers.

(5) ***Mr Mark Steward*** – From October 2015 until April 2023, Mr Steward was the Executive Director of the Enforcement and Market Oversight Division of the Authority. His evidence covers his own involvement in the Authority's request for information from Barclays in August 2019, the subsequent decision to open the investigation into Mr

Staley's conduct in December 2019 and his interactions with Mr Higgins, Mr Hoyt and Barclays' external lawyers after the investigation had been opened.

We found Mr Steward to be a straightforward witness doing his best to assist the Tribunal with his answers during a very brief cross-examination.

(6) ***Ms Sasha Wiggins*** – Ms Wiggins is the CEO of Barclays Private Bank and Wealth Management. She was Group Chief of Staff to Mr Staley from 2018 until his resignation in November 2021. Her evidence covers her knowledge regarding the relationship between Mr Staley and Mr Epstein. In particular, she gave evidence as to her role in discussing the 2019 press enquiries as well as assisting Mr Staley in the preparation of the Bowdoin College Talking Points with Mr Staley, Mr Doherty, Mr Hoyt and Mr Farmer (Mr Staley's personal lawyer) and amending them as requested by Mr Staley. Ms Wiggins attended a meeting with the Bowdoin College's Board of Trustees with Mr Staley in September 2019 and gave evidence as to how Mr Staley described his relationship with Mr Epstein during the meeting, the questions posed by the Trustees to Mr Staley and Mr Staley's answers. Ms Wiggins also gave evidence as to her understanding of the enquiry made by the Authority, when she became aware of it and the initial intention to use the Bowdoin College Talking Points as a basis for Mr Staley to write to Mr Higgins setting out the nature of the relationship.

Ms Wiggins was a straightforward witness who was clear and firm in her succinct answers to questions which were delivered with confidence. There was one matter in respect of which it was necessary to recall Ms Wiggins. This was because the original of a document on which Ms Wiggins, based on a copy of that document, had previously given evidence was, just before he was due to give evidence, produced by Mr Hoyt. It was apparent that the evidence given by Ms Wiggins on the basis of a copy of that document may have been incorrect. Ms Wiggins corrected her evidence as a result of seeing the original document after her recall. Originally, Ms Wiggins was clear in her evidence that she could not have deleted a particular sentence from the document as she considered it to be correct but when recalled she accepted that she must have done so. Although she could not explain why she deleted the sentence in question, we do not consider that she sought to mislead the Tribunal and we consider that she did her best to assist the Tribunal in her evidence.

(7) ***Mr Robert Hoyt*** – Mr Hoyt was at the relevant time Group General Counsel at Barclays. His evidence covered (i) his conversations with Mr Staley regarding his relationship with Mr Epstein and his last date of contact with Mr Epstein (ii) the assistance he provided with Barclays' response to enquiries made by the media and others about Mr Staley's relationship with Mr Epstein (iii) his understanding of the scope of the August 2019 enquiry from the Authority (iv) his involvement in the drafting of the Bowdoin College Talking Points (v) the preparation, content and amendment of the Letter and (vi) the assistance he provided to Barclays in relation to the preparation of the Letter.

We found Mr Hoyt to be a straightforward witness doing his best to assist the Tribunal with his answers. As we have mentioned, there are discrepancies between the evidence of Mr Higgins, Mr Hoyt and Ms Wiggins as regards some of the matters that we need to resolve, which is perhaps inevitable in the absence of documentary evidence relating to the matters in respect of which discrepancies arose. We reiterate, however, that Mr Hoyt was doing his best to assist the Tribunal with his answers. Mr Hoyt also quite properly drew to the attention of the parties and the Tribunal that he had in his possession the original of the document which may have led Ms Wiggins to give an inaccurate answer in her cross-examination to a question based on a copy of that document. Mr Hoyt cooperated with the parties and the Tribunal in preparing a short supplemental witness statement

explaining the circumstances in which the original document still remained in his possession. It was perhaps surprising that Mr Hoyt still had the original document in his possession, some years after he had left Barclays.

Mr Staley's evidence

67. Mr Staley filed two witness statements on which he was cross-examined at length by Ms Mulcahy. In addition he provided a character statement from Ms Idara Otu which was not challenged.

68. Although we do not consider that Mr Staley sought deliberately to mislead the Tribunal we have found that some of his evidence lacked credibility. There were occasions on which he did not do his best to assist the Tribunal in his answers.

69. Some of the difficulties with Mr Staley's evidence derived from the fact that significant parts of Mr Staley's two witness statements contained evidence that was not reliable. This may have derived from the fact that he did not prepare much of it himself and did not adequately review what was being said on his behalf but, in her submissions Ms Mulcahy identified some very significant points where there was a conflict between what Mr Staley had said in his witness statements and what he said in cross-examination. For example:

(1) In his first witness statement Mr Staley stated "my relationship with [Mr Epstein] was never a personal one nor one that could be described as "close" but he admitted in cross-examination that he "misspoke" when he said he did not have a close relationship with Mr Epstein. Although generally in his witness statement he said that he had a "professional, fairly close relationship" at times during cross-examination, he described their relationship as being "very close" and at one point that Mr Epstein was his "friend".

(2) In his first witness statement, Mr Staley claimed that no one ever told him about the issues which arose at JPM concerning Mr Epstein's cash withdrawals. There is clear evidence to the contrary and Mr Staley accepted in cross-examination that this part of his witness statement was wrong.

(3) In his first witness statement, Mr Staley had stated that he was "shocked and surprised" by Mr Epstein's arrest on 6 July 2019 and that it had been his belief that Mr Epstein's conviction in 2008 "had been an isolated transgression of an entirely different nature to that which was now being reported". This was not supported by the documentary evidence and in his deposition in the US Proceedings (the "Deposition"), Mr Staley had said that he "wasn't that surprised" because he had known that federal investigations were continuing; and in cross-examination in these proceedings, he admitted that he knew before 2015 (indeed by 2010) that Mr Epstein had lied to him in 2006 about the ages of the complainants. He accepted in cross-examination that the relevant statement in his witness statement was in hindsight not right.

70. Mr Staley could be inconsistent in his answers when he felt that it would suit his case. As Ms Mulcahy submitted, an example of this was how Mr Staley understood the meaning of "contact". He did accept over the course of his oral evidence that contact could include, inter alia, emails and text messages but because his case was that in the Letter the term "contact" was used as a synonym for physical meeting he asserted in his oral evidence that he believed "contact" means only "meeting".

71. It was also a feature of Mr Staley's evidence that he frequently claimed he could not recall matters. Of course, due regard has to be given to the fact that all the witnesses in this case had difficulty in remembering the detail of events following the passage of time, it was often the case that his memory was clear on matters which were helpful to his case, but not so in relation to matters that called for an explanation, particularly in regard to communications with Mr Epstein which on the face appeared to relate only to personal matters unconnected with any business purpose. As Ms Mulcahy submitted, there were occasions where it was only when Mr Staley was presented with his previous evidence or clearly irrefutable evidence that he tended to accept difficult points rather than rely on his non-recollection.

72. Accordingly, we have found it necessary to treat some of Mr Staley's evidence with caution, only seeking to rely on it where it is reasonable to draw inferences from what he said when considered alongside other evidence.

Documentary evidence

73. In addition to the witness evidence, we had a large bundle of documents provided by the parties in electronic form, much of it derived from the Authority's investigation, including a large number of emails relating to the relationship between Mr Staley and Mr Epstein which was provided by JPM and a number of emails obtained from Mr Epstein's estate.

FINDINGS OF FACT

Introduction

74. There are four broad areas in which we need to make findings of fact before assessing the key issue arising on this reference, which is whether Mr Staley failed to act with integrity in approving the Letter. Those areas are as follows:

> (1) Whether each or both of the Statements were inaccurate and misleading when considered against the factual evidence as to the relationship between Mr Epstein and Mr Staley and the recency of their last contact.
>
> (2) What Mr Staley told Barclays about the nature and extent of the relationship between him and Mr Epstein between 2015 and 2019. Findings on this issue are relevant to the question of Mr Staley's knowledge as to the accuracy of the Statements.
>
> (3) The scope of the Authority's initial enquiry in August 2019. Findings on this issue are relevant to the question of Mr Staley's knowledge as to the accuracy of the Statements and whether the Authority might be misled by the Statements.
>
> (4) The preparation of the Letter and Mr Staley's approval of it.

75. As far as the first area is concerned, we need to determine objectively whether as a matter of fact it can be said that Mr Staley did not have a close relationship with Mr Epstein and that his most recent contact with Mr Epstein was well before he joined Barclays in December 2015. We regard this as a purely objective exercise, the answer to which is to be found by examining the Statements against the evidence that was before us. Although Mr Smith contends that whether the Statements were correct or not has a subjective element, in our view whether or not Mr Staley believed that he had a close relationship with Mr Epstein or that his last contact with Mr Epstein was well before he joined Barclays, is only relevant when considering the question as to whether he knew that the Statements were inaccurate. Were we to find that the Statements were inaccurate, it would then be necessary to

make findings as to whether Mr Staley knew that those statements were inaccurate, as part of our assessment as to whether Mr Staley acted recklessly in approving the Statements.

76. As far as the second area is concerned, this question is relevant when considering why Mr Hoyt and Mr Higgins considered at the time that the Statements in the Letter were accurate because, as their evidence demonstrates, their understanding of the nature of the relationship between Mr Staley and Mr Epstein was based on what he told them and other colleagues in Barclays. As far as the third area is concerned, again this question is relevant when considering the extent to which Mr Staley believed that the Statements were inaccurate or were likely to mislead the Authority. In that context, as Mr Smith submitted, what Mr Higgins, Mr Hoyt and Mr Staley believed were the terms of the enquiry and how that influenced Mr Staley's decision to approve the draft of the Letter are also relevant in that regard.

77. Mr Smith also drew our attention to the achievements of Mr Staley both as Chief Executive of Barclays and before that time and asked us to consider those achievements when considering whether it was likely that Mr Staley would have taken the risk of misleading the Authority when approving the terms of the Letter.

78. Mr Staley is now 68 years of age. He has had a long and successful career in banking and commerce which extends to more than 40 years. Although he was disciplined by the Authority in May 2018 for a breach of ICR 2, which is the duty imposed on a senior manager to act with due skill care and diligence, as a result of Mr Staley having breached Barclays "whistleblowing" policy he has not previously been found to have acted without integrity in his professional career.

79. Mr Higgins paid tribute to Mr Staley's achievements in his comments which were included in Barclays Annual Report for 2021. These remarks were written after Mr Staley's resignation on 30 October 2021, when he stood down following the Authority's decision to institute regulatory proceedings against Mr Staley after it concluded its investigation into the matter which is the subject of these proceedings. In referring to the Group's performance, Mr Higgins' statement in the Annual Recall included the following:

> "This performance was in no small way a credit to Jes Staley, who left Barclays as Chief Executive towards the end of the year, and the team he assembled. It is obviously not appropriate for me to comment at the moment, further than has been done already, on the circumstances of Jes's departure. It is important to let the regulatory and related processes take their course and, at the time of writing this letter, they have not completed. It is appropriate, however, to recognise that under the leadership of Jes, Barclays established a clear strategy, built up a secure capital base, improved its operational resilience and developed its business - leading franchises. We are therefore grateful for the hard work that he put in for the Company."

80. Against that background, we now turn to our findings of fact in relation to the four areas identified above.

The accuracy of the Statements in the Letter

The nature and extent of the relationship between Mr Staley and Mr Epstein

The period before Mr Epstein's conviction in 2008

81. From 1999 until 2001 Mr Staley was head of JPM's Private Bank. During this time, Jeffrey Epstein was a client of the Private Bank and was introduced to Mr Staley. In 2001 Mr Staley became CEO of JP Morgan Asset and Wealth Management which he ran until 2009. He reported to Mr Jamie Dimon, the CEO of JPM. Ms Mary Erdoes, who then ran the Private Bank, reported to Mr Staley.

82. Although Mr Staley, in common with many other influential and respected individuals who came to be associated with Mr Epstein, now regrets that he was associated with Mr Epstein because of the clear evidence that he was a serial sex offender, the association began because Mr Staley regarded Mr Epstein as a highly successful and skilful financier with unique insights into world and United States economics. Mr Staley liked Mr Epstein and respected his views on a wide range of subjects. Mr Staley regarded Mr Epstein as an individual with remarkable connections and a willingness to assist with networking and introductions. He capitalised upon the access he was able to gain to many prominent and influential individuals which led to his cultivation of a substantial network of people in politics, economics, philanthropy, popular culture and science.

83. The Chief Executive at JPM recommended that Mr Staley should become acquainted with Mr Epstein because he was an exceptionally well-connected man who could help Mr Staley, in his capacity as a senior executive at JPM, to form business relationships with influential and other well-connected individuals with whom he might not otherwise have met or with whom it would have taken much longer to establish a relationship.

84. Mr Staley explained why he developed and maintained a professional relationship with Jeffrey Epstein as follows:

(1) He considered that Mr Epstein was an important client to JPM and particularly the private bank.

(2) Given his connections, he also had access to a good deal of valuable information. He could facilitate access to potential clients, world leaders and people of influence in politics and economics.

(3) Mr Staley turned to Mr Epstein for advice relating to business and to his own career. Mr Epstein provided such advice because he sought to assist, build and enhance his network of which Mr Staley was a part, which in turn enhanced him.

Mr Staley confirmed that Mr Epstein continued to be part of his network when he left JPM's Private Bank to run JPM's Investment Bank.

85. An example of how Mr Epstein was able to assist Mr Staley in elevating his standing within JPM is the fact that in 2004 Mr Epstein was said by Mr Staley to have been instrumental in relation to JPM's acquisition of Highbridge Capital, a significant hedge fund. Mr Staley's evidence was that this was the largest ever acquisition of a hedge fund and was considered to be a success and a significant strategic alliance in the hedge fund industry. Mr Epstein was involved in the negotiations for the acquisition as an adviser to another party.

86. During the period prior to Mr Epstein's conviction in 2008, Mr Staley met Mr Epstein on a regular basis, during the day, in Mr Epstein's office in Manhattan and they developed a relationship which Mr Staley described as being "professionally fairly close", being a professional relationship which was predicated upon business.

87. However, there were interactions in this period between Mr Staley and Mr Epstein which took place outside a business context. For example, at some point in 2005 or 2006, Mr Staley recalls visiting Mr Epstein's island with his wife and an overnight stay there. That visit appears to have included a flight on Mr Epstein's private plane with Mr Epstein.

88. In June 2006 it was announced in the press that Mr Epstein had been indicted in respect of sexual offences involving minors. At this stage, Mr Epstein was denying all the charges made against him and shortly after Mr Epstein's arrest, Mr Staley visited him personally. He reported to Ms Erdoes as follows:

> "I went and saw him last night. I've never seen him so shaken. He also adamantly denies the ages."

89. On 30 June 2008, Mr Epstein pleaded guilty in the Florida State Court to soliciting a prostitute and procurement of a minor for the purposes of prostitution. He was sentenced to 18 months' imprisonment followed by 12 months of house arrest.

The period after Mr Epstein's conviction until Mr Staley left JPM at the end of 2012

90. Mr Staley remained in contact with Mr Epstein via email whilst Mr Epstein was in prison. Some of the correspondence related to financial and business matters but it is clear that Mr Staley gave Mr Epstein a significant number of messages of support during this time. For example:

(1) On 11 July 2008, Mr Staley wrote: "I miss you, the world is in a tough place. Hang in there."

(2) On 12 July 2008, Mr Staley told Mr Epstein that he had been to see his new boat which would not "be there without your encouragement", and noted: "18 months until she is anchored in front of St Jeff" (Mr Epstein's island). He added: "I hope we can talk this week."

(3) On 16 July 2008, Mr Staley wrote: "I hope you're managing. I miss our calls. Its boring without you around? Do you have any books yet?"

(4) On 31 July 2008, Mr Staley wrote to Mr Epstein: "I hope you are hangin in there. Just think of the island and my boat anchored in front. I do." In his Deposition in the US Proceedings, Mr Staley accepted that this showed that Mr Epstein was a friend, and he was thinking about him whilst the latter was in jail.

(5) On 3 August 2008, Mr Staley wrote: "Just thinking about you."

(6) On 4 August 2008, having sent Mr Epstein some pictures of his boat, added: "Hang in there. Keep thinking of the Island."

(7) On 15 August 2008, Mr Staley wrote to Mr Epstein: "I hope you are hanging in there ... We all miss you."

(8) On 11 September 2008 Mr Staley wrote: "Thinking of you there, with what I see, it is so unfair. Hang in there please.".

91. Mr Staley indicated on a number of occasions during this period that he was keen to see Mr Epstein. On 18 July 2008, he said: "I just remembered, I'm in Miami three time [sic] in January. Can I come visit?" And on 19 July he said: "I will work with leslie to see you in January, although I may try to get there earlier."

92. Mr Epstein was granted work release in October 2008. Mr Staley made plans to visit Mr Epstein in Miami which he accepted was a show of support for Mr Epstein. The visit took place on 15 January 2009, at premises Mr Epstein was using as his office while he was on work release.

93. On 22 July 2009, Mr Epstein was released from prison to serve a year of probation under house arrest. Mr Staley was one of four people Mr Epstein emailed on his release stating simply "free and home". Mr Staley responded "I toast your courage!!!!!". Mr Staley explained in his evidence that this response indicated that he was loyal to Mr Epstein and had recognised that spending time in prison was a "tough thing". Mr Staley's evidence was that Mr Epstein was somebody that JPM had had a long business relationship with and who he had come to know reasonably well. Mr Staley, as one of a few select people who had been informed of Mr Epstein's release, was showing a clear demonstration of support, consistent with the support he had shown Mr Epstein during his incarceration.

94. After Mr Epstein's indictment in 2006, as Mr Staley was aware, JPM decided to have a "banking only" relationship with Mr Epstein which continued on that basis until he was asked to leave the bank in 2013.

95. Mr Staley continued to have a relationship with Mr Epstein. He maintained that the basis for that relationship continued to be grounded in business, because Mr Epstein continued to be influential in business and his network remained as important as ever both to him and a wide range of people. In Mr Staley's view Mr Epstein was still capable of bringing value to commercial relationships as a result of his contacts.

96. Mr Staley confided in Mr Epstein and sought Mr Epstein's counsel on a number of sensitive business matters in the period after Mr Epstein's release. The first example occurs in July 2008, whilst Mr Epstein was in prison, when Mr Staley sought Mr Epstein's advice on negotiating his salary with Mr Dimon at JPM.

97. Mr Staley emailed Mr Epstein on 17 July 2008 saying: "Jamie wants me to tell him how much I should make this year, given the expected bank results and my results.To put it in context, my business will be down around 15% this year. What do you think?"

98. In his response Mr Epstein advised Mr Staley to say to Mr Dimon "Tell him a one million dollar increase to 25 million...". He also offered personal encouragement of Mr Staley not to accept any reduction in salary.

99. In his cross-examination, Mr Staley accepted that the information shared was on a "personal professional issue" and conceded that the information would not have been public knowledge. We accept the Authority's submission that Mr Staley would not share this information with Mr Epstein were there not a high degree of trust between them.

100. Mr Staley also shared information with Mr Epstein concerning transactions JPM was involved with, again demonstrating a high degree of trust between them as these potential acquisitions were not public knowledge.

101. On 23 August 2008 Mr Staley emailed Mr Epstein regarding two potential transactions in which Mr Staley was involved in his capacity as CEO of JPM's asset management business, namely the potential purchase of a company called Dimensional and the potential sale of another company, namely American Century. He stated:

> "I'm trying to do two deals at the same time: buy dimensional and sell american century. It's going to be an interesting fall. I will miss stopping by your office for advice."

102. This email indicates that it was Mr Staley's practice to seek Mr Epstein's advice on deals which were commercially sensitive and that he would do so in person at his office.

103. In June 2009, Mr Staley thanked Mr Epstein for his advice in relation to American Century.

104. On 27 September 2008 Mr Staley emailed Mr Epstein disclosing information regarding inflows of cash into JPM's Private Bank. He said: "I'm spending a lot of time with Treasury. The Private Bank has brought in $44 billion dollars in the last two weeks. Unreal." In the same email Mr Staley told Mr Epstein he was exiting a named individual who was a client of JPM from the Bank. With regard to the latter, Mr Staley accepted in cross-examination that he had shared information subject to client confidentiality with Mr Epstein without the permission of either the client or JPM. As regards the information concerning the inflows into the Private Bank, Mr Staley said that he did not know whether or not the information was known outside JPM at the time he told Mr Epstein but he accepted that it was information that would have to be used with discretion. We infer from that statement that Mr Staley regarded Mr Epstein as somebody he could trust with this information.

105. In October 2008, Mr Staley also sent Mr Epstein confidential information relating to a further project in which JPM was involved. He emailed Mr Epstein on 10 October as follows:

> "I am dealing with the Fed on an idea to solve things. I need a smart friend to help me think through this stuff.
>
> Can I get you out for a weekend to help me (are they listening?)."

106. On 11 October 2008, Mr Staley followed up with a term sheet for "Micawber" which was the codename given to a proposal between JPM and the Federal Deposit Insurance Corporation, that JPM would create a special purpose vehicle (SPV) that would borrow funds from the Federal Reserve, in order to purchase short-term obligations of banks and holding companies.

107. Mr Staley explained that there were concerns at the time that the money market fund industry was growing larger than the deposit base in the United States and there was no government security around the money market fund industry. As JPM had one of the larger money market funds Mr Staley was engaged in a discussion with the US Treasury, and the Federal Reserve and others to discuss about how they might secure the money market fund industry and he sought advice from a number of people, one of them being Mr Epstein, who he accepted was the "smart friend" referred to in the email quoted at [105] above.

108. Mr Staley accepted under cross-examination that he had shared the proposal with Mr Epstein, asked for his advice on the proposal when he was serving his sentence, and sent him the term sheet and proposed SPV structure.

109. Mr Epstein appeared to be the only person who received details of the proposals who was not involved in the transaction. Mr Staley's position in cross-examination was that bankers often seek counsel with people that they trust and confide in all the time. The inference to be drawn from that

comment is that Mr Staley considered that Mr Epstein fell into that category. Although it would usually be the case that transactions of this kind are kept confidential to those who are directly involved in the transaction or need to know about it, we make no findings as to whether in fact that Mr Staley breached any duty of confidentiality in providing information to Mr Epstein, but we find that the information was provided to Mr Epstein on the basis that it would be treated with discretion on the basis that Mr Epstein was someone he trusted and habitually confided in. Mr Staley accepted that the information concerned was "non-public information" which could, as was the case here, include commercially sensitive information which regardless of whether there was a strict legal duty of confidentiality in relation to it, could be expected to be shared only with those who were trusted, despite this taking place after Mr Epstein had been convicted and was still serving his sentence.

110. Following Mr Epstein's release from prison, contact between Mr Staley and Mr Epstein continued on a frequent and regular basis, even after Mr Staley moved to lead JPM's Investment Bank in 2009. In the period between 2008 and 2012 Mr Epstein and Mr Staley exchanged over 1,200 emails. In addition, it is likely that they had numerous telephone conversations. Mr Staley confirmed in his evidence that Mr Epstein was someone who preferred to speak on the telephone.

111. Mr Staley accepted in his evidence that during 2009 to 2011, he became aware of numerous civil complaints filed against Mr Epstein in 2008, 2009, and 2010 that were brought by multiple women and minors. He also stated that by 2010 he knew that Mr Epstein had lied to him in 2006 about the ages of the complainants when Mr Staley had spoken to him. Accordingly, by that point he knew that the statement he made to Ms Erdoes in the email quoted at [88] above was incorrect.

112. Indeed, Mr Epstein himself kept Mr Staley apprised of some of what was being alleged against him. For example, in August 2011, without explanation, Mr Epstein forwarded to Mr Staley an article that appeared in Vanity Fair which referred to the fact that various women had come forward with allegations that Mr Epstein had molested them when they were under age.

113. We therefore cannot accept Mr Staley's evidence in his witness statement that when Mr Epstein had been arrested he was shocked and surprised. What he told the Authority in interview, which was that he had no idea of the conduct being alleged, was also untrue.

114. Mr Staley accepted that during 2011 he was approached to have discussions with senior personnel at JPM who were concerned about the Bank's continued association with Mr Epstein in light of the human trafficking allegations against Mr Epstein and atypical cash withdrawals from his account. He also accepted, when presented with evidence of the underlying email correspondence showing as such, that he discussed these with Mr Epstein. Accordingly, Mr Staley accepted that the assertion in his witness statement that no one had told him about the cash withdrawals was incorrect because he knew about the cash withdrawals (and discussed them with Mr Epstein) in 2011.

115. The evidence that was obtained in the US Proceedings indicates strongly that the balance of view within those asked to consider the matter was that Mr Epstein should not be retained as a client. It is recorded in that evidence that the view of Mr Stephen Cutler, the General Counsel of JPM, was that Mr Epstein would have been exited as a client of JPM had not Mr Staley vouched for him.

116. There is an email exchange amongst JPM executives considering the matter which records that JPM's decision not to cease its relationship with Mr Epstein was all "due to Jes's personal relationship."

117. In his oral evidence, Mr Staley said that Mr Cutler, as General Counsel, was in a very powerful position and if he wanted to let Mr Epstein go as a client he had full latitude to do that and Mr Staley said he would not have stepped in his way.

118. We accept that the decision to retain Mr Epstein as a client at that time was not Mr Staley's to take and that had Mr Cutler wished to do so he could have insisted that Mr Epstein be exited as a client. However, it is clear from the evidence that Mr Staley did speak in favour of retaining Mr Epstein as a client at this time and it is more likely than not that for that reason the decision was taken that Mr Epstein should be retained as a client.

119. Mr Staley became CEO of JPM's Investment Bank in September 2009 so that he was now working in an area of the Bank which did not have a client relationship with Mr Epstein. However, it is clear that Mr Staley still valued the relationship and in particular, the benefits that could accrue to the Investment Bank as a result of Mr Epstein's wide network of contacts with influential people.

120. After his release from prison and return to New York, meetings between Mr Staley and Mr Epstein invariably took place at Mr Epstein's house on 71st Street as a place for business meetings and in common with other high-profile and wealthy individuals Mr Staley visited Mr Epstein at the townhouse, often in the company of such individuals.

121. In his witness statement, Mr Staley sought to underplay the number of times that he met Mr Epstein at the townhouse. He said that after he became CEO of the Investment Bank until he left JPM at the beginning of 2013, he met Mr Epstein "several times a year" at his house. However, in his Deposition in the US Proceedings he accepted that between July 2009 and the end of 2012 he visited the house approximately 40 times. Mr Staley did not contradict that evidence in his oral evidence in these proceedings, which would indicate that he visited Mr Epstein's house on average once a month during this period. Mr Staley admitted in cross-examination that not all of these meetings were for business purposes, stating that whilst most of the contact was related to business "like in any business relationship there was a friends side to it as well, but I think it was founded on the business relationship… he became a friend."

122. As well as visits to the townhouse, there were visits to other properties owned by Mr Epstein.

123. In November 2009 Mr Staley visited Mr Epstein's ranch near Santa Fe. Mr Staley said that the opportunity arose because he was on his way to Albuquerque for business purposes and that Mr Epstein had recommended that he should take the opportunity to visit the ranch.

124. The original plan appears to have been that Mr Staley would visit the ranch over the weekend and stay overnight with his wife, although in the event it was just Mr Staley (and he did not stay overnight). Mr Epstein was not present when Mr Staley visited, although Mr Staley accepted that he wanted to be there with Mr Epstein.

125. Mr Staley sent this email to Mr Epstein after he arrived at the ranch:

> "So when all hell breaks lose [sic], and the world is crumbling, I will come here, and be at peace.
>
> Presently, I'm in the hot tub with a glass of white wine.
>
> This is an amazing place. Truly amazing.
>
> Next time, we're here together.

I owe you much. And I deeply appreciate our friendship. I have few so profound."

Best

Jes"

126. In his cross-examination, Mr Staley explained why he expressed himself in these terms. He said that Mr Epstein had a very deep impact on his career and so he was acknowledging that impact and saying it was profound. Although he acknowledged that the language was friendly, he said that he had few close personal friends and that Mr Epstein was not one of them. He did, however, acknowledge that Mr Epstein was a "profound professional friend", which is consistent with what he said in his Deposition in the US Proceedings, where he said Mr Epstein was "a close professional relationship and I would describe that at times as a friend".

127. In January 2011, Mr Staley made a second visit to Mr Epstein's island in the US Virgin Islands. We have already referred to the first visit at [87] above.

128. On the second visit, Mr Staley was sailing in the region on his boat. On that occasion, Mr Staley emailed Mr Epstein: "Anchored in Christmas cove. Heaven is being on Bequia. Safe travels to Paris. And, as always, thanks for the friendship." Mr Epstein responded by offering the use of jet skis, snorkels and boats on his island. Although Mr Epstein does not appear to have been present, he nonetheless arranged a tour for Mr Staley, emailing the person who ran the island for Mr Epstein: "I know the time is crazy however Jes staley [sic] is my closest friend please call and host." Mr Staley emailed Mr Epstein afterwards stating: "Terrific. Lots of workers. What a paradise. When I retire, I'm going to put a mooring in front of your dock for my boat"

129. In addition to the above, there appears to have been an earlier visit in January 2010. On 15 January 2010, Mr Staley emailed Mr Epstein: "Arrived at your harbor. Someday, we have to do this together." Later that day, Mr Staley followed up: "That was cool." Mr Epstein responded: "yup,, [sic] great seeing you." Mr Staley accepted in cross-examination that it appeared he had met Mr Epstein on the island and then continued sailing on to Norman Island.

130. In June 2012, Mr Staley had intended to visit the island with his wife, including by flying there together with Mr Epstein on his plane, although in fact the trip (which had been planned in April 2012) was cancelled last minute. This visit was a suggestion that had come from Mr Staley.

131. Despite Mr Staley having asserted that he did not socialise with Mr Epstein and only ever attended a social occasion with him once, it is clear, as he admitted in his cross-examination, that there were a number of purely social events that he attended with Mr Epstein.

132. For example, in January 2010, Mr Staley appears to have attended a birthday dinner for Mr Epstein in Florida. Mr Epstein offered to provide Mr Staley with transport for the occasion. Afterwards Mr Epstein described it as "a perfect birthday dinner". Mr Staley accepted that he had been to Mr Epstein's birthday celebration and that it was not a business occasion.

133. Mr Staley also appears to have attended a dinner on a Saturday night with Mr Epstein in September 2010. Mr Epstein wrote the next day: "Thanks for last night" Mr Staley responded: "It was fun. And great to see you with so many friends. Tuesday should be interesting." As the Authority submitted, whilst bankers do attend networking dinners, the fact that this was at the weekend, that Mr Epstein was thanking Mr Staley (rather than the other way around) and that Mr Staley makes reference to "so many friends" of Mr Epstein would appear to lead to the inference that this was more akin to a social gathering than a business one. Mr Staley accepted that it "[c]ould have been business, could

not have been business". We accept, as submitted by the Authority, that this evidence demonstrates that it was not wholly unusual for Mr Staley to attend dinners with Mr Epstein that were not business-related.

134. During this period, Mr Staley shared with Mr Epstein non-public information about his own potential career moves.

135. In particular, in July 2012, Mr Staley shared with Mr Epstein a draft announcement regarding him stepping down as CEO of JPM's investment bank. He sought Mr Epstein's comments on the document and Mr Epstein sent amendments. Mr Staley accepted that he had sent that document to Mr Epstein because he trusted his advice and trusted him to be discreet.

136. In the summer of 2012, as he accepted in interview, Mr Staley discussed his application to be Barclays CEO in 2012 with Mr Epstein and stated that he "trusted him to be discreet and that was it". When asked why discretion would be necessary in his view, and it was put to him that it was because the information should not have been passed on, he replied: "No, that's not right. I have the ability to pass that information on to individuals that I choose but the information "should be handled with discretion."

137. As was the case with previous instances of Mr Staley sharing non-public or confidential information with Mr Epstein, as referred to at [104] and [109] above, this information was provided to Mr Epstein on the basis that it would be treated with discretion on the basis that Mr Epstein was someone Mr Staley trusted and habitually confided in.

138. Such trust and confidence is indicative of a close relationship and it was reciprocated by Mr Epstein at the time arguing for Mr Staley's appointment as CEO of Barclays, and his credentials for that position, with a journalist at the New York Times.

139. It is also clear from email exchanges between Mr Epstein and Mr Staley in October 2012 that Mr Staley confided to Mr Epstein about whether or not to join Blue Mountain, which he did in January 2013.

140. We have referred to the fact that Mr Staley and Mr Epstein exchanged numerous emails between 2009 and 2012. The vast majority of this email traffic was conducted with Mr Staley using his JPM work email account. However, Mr Staley did on occasion use his own personal email address and, despite initially denying that this was the case, in answer to a question from the Tribunal, Mr Staley did give his private email address to Mr Epstein. Nevertheless, the two men continued to communicate most of the time through Mr Staley's work account.

141. We accept the Authority's submission that the correspondence between Mr Staley and Mr Epstein during this period indicates a personal closeness and warmth between the two men. In addition to the email that Mr Staley sent Mr Epstein after his release from prison in July 2009 referred to at [93] above, and the email Mr Staley sent from Mr Epstein's ranch in November 2009 referred to at [125] above, the Authority brought to our attention to the following examples:

> (1) In December 2009, shortly after Mr Epstein was released from house arrest and returned to New York, Mr Staley sent the following email: "I realize the danger in sending this email. But is was [sic] was great to be able, today, to give you, in New York City, a long heartfelt, [sic] hug. To my friend." Mr Epstein responded: "We are going to have fun"

(2) In February 2010, Mr Staley emailed Mr Epstein stating: "You are a great friend." Mr Epstein appears to have regarded the sentiment as mutual, responding: "ditto".

(3) In December 2010, Mr Staley sent Mr Epstein a message on New Year's Eve, which he also did in a number of other years. In it he stated: "Happy new year. It nice [sic] to have u [sic] free. Much to come. Please know that I am an [sic] friend forever. You are very special. Knowing u [sic], I will toast to the two of us, tomorrow night. Best Jes".

When asked in cross-examination what he meant by "very special", Mr Staley said Mr Epstein was a "unique person". In re-examination, Mr Staley clarified that it was meant to reference Mr Epstein's personal qualities, saying that "he was very smart…he was curious. I think his range of interests intellectually was very broad, you know, starting with his investment and connections with major universities and departments of science…"

However, it is likely that Mr Staley was also referring to the nature of the relationship between the two of them. In January 2011, in the email referred to at [128] above, Mr Staley said "as always, thanks for the friendship." When cross-examined on this email Mr Staley admitted "He was a friend. He was a very close professional friend but he was not in what I would consider my inner circle of personal friends."

(4) Despite Mr Staley asserting that Mr Epstein did not form part of an "inner circle", there are references to each of them referring to the other as "family". On 3 March 2011, Mr Epstein emailed Mr Staley stating simply: "Told you --- family". Mr Staley admitted in cross-examination that this was a reference to him (Mr Staley). Mr Staley responded: "family". Mr Staley did not dispute that he was calling Mr Epstein "family", but sought to rely upon this as an example of him using "the sort of language" he generally used with business colleagues. However, when Mr Staley was examined on this email in the course of his deposition in the US Proceedings, he stated that when he wrote "family", he meant that Mr Epstein was a "friend", and agreed that he called "a select few friends" family.

(5) In the same vein, on 5 March 2011, Mr Staley sent Mr Epstein the following email, it would appear unprompted:

> "Deby and I were talking tonight about what you have meant to me and to Alexa.
>
> You have paid a price for what has been accused
>
> But we know what u [sic] have done for us. And we count you as one of our deepest friends. And most honest of people.
>
> Thanks
>
> Jes"

Mr Epstein simply responded "family".

When this exchange was put to Mr Staley in cross-examination, he suggested that the language of "one of our deepest friends" could not be read literally because his wife did not count Mr Epstein as a friend of hers. We find that explanation unconvincing; regardless of whether or not Mr Staley's wife (Deby) shared Mr Staley's sentiments, this message appears to be a clear expression of Mr Staley's own feelings towards Mr Epstein at this time.

(6) In September 2011, Mr Epstein again referred to Mr Staley as "family" at a time when it appeared that Mr Staley was the subject of adverse press comment as a result of his association with Mr Epstein. Mr Epstein and Mr Staley appear both to have been in the Hamptons at the same time. Mr Epstein emailed Mr Staley: "see you tonight.."[sic] will be home by 4. family meeeting [sic] required". Mr Staley indicated he would be on a boat and suggested Mr Epstein "fly your helicopter over!!!!!!!". Although Mr Staley said he cannot recall a meeting taking place, it would appear that the purpose of the "family meeting" referred to by Mr Epstein was to discuss the impact that Mr Staley's continued support for Mr Epstein was having; over the same weekend Mr Epstein emailed:

> "I will be at leons , but wilil [sic] keep an eye out for it on landing,, 2. I was unaware of the full heat that you have taken as a result of our friendship. im sorry. 3. Tina Brown /newsweek/daily beast , is the one left standing, not the post , or the newss [sic] or times will bother me, however Wayne Barrett, an abusive reporter , has been getting help from some , to try to make trouble. (Glenn? ,) , I think your response should be , all of the incidents that they raise , happened a decade ago.. I paid my debt and like everyone else should be given another chance. , | have been engaged in philanthropy , and doing good."

Mr Staley admitted when cross examined on this email that it would have been easier not to be Mr Epstein's friend.

(7) In August 2012, Mr Staley realised that he would not be in the succession list to become CEO of JPM. Mr Epstein appears to have been a significant support to Mr Staley at this time. On 23 August 2012, Mr Staley emailed Mr Epstein:

> "I can't tell you how much your friendship has meant to me. Thank you deeply for the last few weeks. All will be fine, and we have a physicist in the family. To my most cherished friend, Jes"

Mr Staley sought to suggest in cross-examination that this was about expressing gratitude for Mr Epstein's assistance to his daughter, a matter to which we return later, but this email was sent at a time when Mr Staley was for the first time being considered for the Barclays CEO role and was considering his future at JPM, having come to the conclusion that he would not be in the running for the role of chief executive of JPM. We therefore infer that Mr Staley was expressing gratitude for recent support that Mr Epstein had given him personally; it is another example of Mr Staley seeking to minimise Mr Epstein's ongoing support for him personally. Mr Epstein responded to this email: "i appreciate you and your thoughts", thus demonstrating that the warmth of feeling between the two men was mutual.

142. Further evidence that Mr Staley's relationship with Mr Epstein at this time went beyond a purely professional relationship derives from the considerable assistance Mr Epstein gave to Mr Staley's daughter, Alexa. We should emphasise, as the Authority did in its own submissions, and Mr Staley stated in his evidence, that we do not seek to detract from Ms Staley's own personal achievements in her academic career in setting out the facts in this regard.

143. Mr Epstein's connection to influential scientists was of particular interest to Mr Staley's daughter, Alexa, who was an aspiring physicist. When Mr Epstein discovered this, he introduced her to a Professor at Columbia University who was of considerable assistance in supporting Mr Staley's daughter's study of Physics at Columbia University. Mr Staley was deeply appreciative of Mr

Epstein's assistance in supporting his daughter's educational achievements which, as we shall see, led to Mr Staley describing Mr Epstein in his communications with him in endearing terms.

144. As the Authority observed, over the course of 2009, Mr Epstein (i) sent Mr Staley a list of contacts in the science sector with whom Ms Staley could "meet have dinner lunch a weekend" (an email Mr Staley forwarded to his daughter with the covering email: "This is from uncle Jeffrey."); (ii) commented on Ms Staley's draft thesis, sent to him by Mr Staley; (iii) arranged for a space for Mr Staley's daughter at a Physics conference and arranged for a professor at Harvard University to call Ms Staley and "meet up". When asked about the connection, Mr Epstein replied: "HER FATHER IS A CLOSE FRIEND BANKER JPM." As the Authority submitted, Mr Epstein was disposed to provide considerable assistance to Mr Staley's daughter in the light of the closeness of his relationship with Mr Staley.

145. Over the course of 2010, Mr Epstein (i) arranged for Mr Staley's daughter to meet academics he knew; and (ii) seems to have given advice and offered to use his connections in order to assist Mr Staley's daughter with her university applications. Mr Staley kept Mr Epstein closely apprised of his daughter's progress with her applications. Later, when Ms Staley graduated in 2015, Mr Staley described the assistance given by Mr Epstein as "a great gift of friendship".

146. Finally, in this period there were in evidence a significant number of emails which it is difficult to characterise as anything other than of a personal rather than a purely professional nature. These emails related to subject matter and were of a tone such that they could only reasonably be expected to be sent between two people who know each other well and have a close personal relationship. As the Authority submitted, these emails show that Mr Staley and Mr Epstein were used to speaking freely about personal matters and trusted one another.

147. When cross examined on these emails, Mr Staley's answers were either evasive or defensive. As indicated below, it was often the case that Mr Staley said he could not recall the emails or the context in which they were sent. We therefore have to let the material speak for itself and draw inferences accordingly.

148.When Mr Staley was on a trip to London, there was an email exchange in which on 27 August 2009 Mr Epstein asked Mr Staley: "how long london? do you need anything there?"; and in response Mr Staley wrote simply: "Yep." On being asked whether he understood the nature of Mr Epstein's request, he responded that he did not recall. There was then a subsequent email from Mr Epstein to a woman which stated: "jes staley is staying at the berkeley hotel in London tonight" Mr Staley emailed Mr Epstein the next day: "I should have taken your offer" Mr Staley accepted this indicated he and Mr Epstein had spoken about it. When asked whether he stood by his explanation given at interview that the emails might have related to an offer from Mr Epstein to connect him to people in the British Government, Mr Staley said he could not specifically recall, but noted that Mr Epstein had connected him with the Royal Family and people in the British Government. This clearly is an email which relates purely to Mr Staley's private life rather than representing an effort to make connections of a professional or business nature.

149. In December 2009, Mr Epstein sent Mr Staley a photograph of a woman with the covering email: "you were with larry , and i had to put up with…". As the Authority submitted, although not indecent, this was not the kind of photograph sent between two individuals whose relationship is strictly professional in nature, even though it was not unknown at this time for emails of this nature to be sent between financial services professionals using their employer's systems. Mr Staley did not seek to admonish Mr Epstein for sending such material nor did he ignore it. He responded: "Don't

tell me a French wine." He was not able to tell the Tribunal what this meant in context and said that he did not recall the exchange. Mr Epstein responded: "always thoughts of alcohol"

150. In June 2010, whilst in London, Mr Staley emailed Mr Epstein: "Andrew just sat next to me at dinner…Any word on M? This is fun." The next day, Mr Staley emailed Mr Epstein asking: "Is she free tonight?" Mr Epstein asked Mr Staley to call, and Mr Staley declined, explaining: "I'm w A." As to who "she" was, Mr Staley could not assist. Mr Staley said he could not recall, but that "M" might have been Lord Mandelson.

151. In July 2010, Mr Staley emailed Mr Epstein: "Maybe they're tracking u [sic]?? That was fun. Say hi to Snow White". Mr Epstein asked: "what character would you like next" On Mr Staley responding, "Beauty and the Beast", Mr Epstein replied: "well one side is available [sic]." Mr Staley has not explained this correspondence, maintaining in cross-examination that he could not recollect this exchange. In the absence of any explanation, the only inference to be drawn is that this email, in common with the others referred to above is not consistent with a purely professional relationship and was clearly personal in nature and tone.

152. In November 2010, Mr Staley emailed Mr Epstein from a debutante ball, stating: "I'm here at some ball with Vera. She says u [sic] slept with her!!". It was followed by Mr Staley sending a separate email to Mr Epstein saying "At a debutante [sic] ball at the Plaza. Nuts. Sick". Mr Staley implausibly denied in cross-examination that he was commenting on Mr Epstein's sex life and the email is clearly personal in tone and nature.

153. In July 2011, Mr Epstein sent Mr Staley an email in respect of a scandal that had emerged in respect of Dominique Strauss-Kahn, the former Managing Director of the International Monetary Fund who resigned due to a sex scandal with a maid in a hotel room, stating: "the maids deal was have sex,,,,leave the money in the room,, he had sex. she left to go clean the other room, when she returned she didn;t [sic] find the money,, went beserk,, (my new explanation.)" Mr Staley said in his cross-examination that he did not know whether "my new explanation" was a reference to the fact that Mr Epstein had previously provided a different hypothesis, and that they had previously discussed the matter. However, that is the obvious inference to draw. Mr Staley, implausibly in our view, did not accept that the email was not consistent with a purely professional relationship.

154. Also in July 2011, Mr Epstein forwarded, without comment in the email, a hyperlink to a press article that related to a woman being accused of cutting off her husband's penis using a 10-inch kitchen knife. Mr Staley again did not recall the email and would not speculate on Mr Epstein's reasons for sending it. While he accepted that it was "a very odd email" for Mr Epstein to send, Mr Staley would not be drawn on whether the terms were consistent with a purely professional relationship. In our view it is obviously the case that they were not. Mr Staley's approach in relation to such emails was to ignore them and not respond, rather than suggest that they were inappropriate communications in a purely professional relationship, which is the response that we would expect to have been made were the relationship a purely professional one.

The period after Mr Staley left JPM at the end of 2012 until he joined Barclays in 2015

155. The evidence shows that Mr Staley was keen to continue their relationship after Mr Staley had left JPM and continued to pursue business opportunities together. The Authority provided numerous examples of this in their closing submissions, as detailed at [156] to [188] below.

156. On New Year's Eve 2012, Mr Staley sent Mr Epstein the following email:

"I've tried calling a few times, even though the service in Bahia is pretty spotty.

thanks for all the friendship this year. You were enormously kind and supportive.

All looks good for next year. More freedom, more deals, more building, more things we can do together.

Say hi to everyone.

Happy New Year

Jes"

157. The two men appear to have remained in close contact throughout 2013 as described at [158] to [162] below.

158. When Mr Staley started at Blue Mountain in January 2013, he sent Mr Epstein his new email address as soon as his new role commenced. Mr Epstein wished him luck on his first day.

159. In mid-January 2013, he suggested to Mr Epstein that the latter might like to meet and fly Mr Staley back to New York. He emailed: "Why not stay one more day in PB. Then fly Tues morning to Fort Mayers and fly me back Tuesday morning with you." A few days later, Mr Staley and Mr Epstein appear to have arranged to have dinner together. They remained in close contact throughout January, Mr Staley at one point emailing: "This waiting is agony", and a few days later asking Mr Epstein: "U [sic]free for a visit around 5?" On 14 February 2013, Mr Staley seems to have again visited Mr Epstein's house. He was separately invited to dinner (although it appears he was unable to make it).

160. In February and March 2013, Mr Staley made efforts to onboard Mr Epstein as a client of Blue Mountain. He sent Mr Epstein the subscription documents and added: "You're my first client!!" Mr Epstein responded: "Privledhed" (presumably "Privileged"). Although Mr Epstein does not appear to have ended up completing the subscription, Mr Staley chased this a number of times.

161. At some point around this time, Mr Epstein also sought for Mr Staley to become a trustee of his estate. Although Mr Staley declined, he accepted that this was a position of extreme trust and confidence.

162. Support for Ms Staley from Mr Epstein also continued. In late March 2013, Mr Staley sent a lengthy email to Mr Epstein proudly describing his daughter's achievements to Mr Epstein. It concluded: "But more importantly, I write this because Alexa and I know what you did to allow her to follow her dreams. Thanks J. Best, Jes."

163. Ms Staley started to be in direct contact with Mr Epstein and sought his advice. She invited him to her MA convocation in May 2013 (although Mr Epstein was not able to attend). Mr Epstein seems to have stayed abreast of Ms Staley's progress during her PhD, advising Mr Staley at one point that he should go to a fundraising event for her university, and that Mr Staley should "make a real donation as her advisor has done well for her", suggesting a sum of $100,000 per year for 5 years. In March 2014, Mr Epstein also helped to make arrangements for Ms Staley for a trip to Vancouver, where a science event was taking place. Mr Staley afterwards thanked Mr Epstein for his help. In November 2014, Ms Staley sent Mr Epstein a paper she had written and said: "You've already seen the draft, but it's nice to finally see it online. Thanks for getting me here."

164. Likewise, Mr Staley told Mr Epstein in respect of a further achievement in her academic career in December 2014: "Would not have happened without you." In a further email in March 2015, Mr Staley told Mr Epstein that his daughter wanted to sit down with Mr Epstein to talk about her future. He then invited Mr Epstein to his daughter's graduation (due to happen in July 2015), adding: "please [save] the date. You need to be there." It does not appear that Mr Staley invited anyone else to his daughter's graduation other than his own brothers, which is a further indication of the personal relationship between the two men even though Mr Epstein did not attend. Mr Staley also sent Mr Epstein news of his daughter's successful defence of her dissertation and added:

> "Alexa and I know you [sic] [how] much of a role you had in arriving at this very big day. The counsel you have given Alexa over the years has been a gift of great friendship.
>
> Thanks my friend."

165. In April 2013, Mr Staley again seems to have had dinner with Mr Epstein. He again visited Mr Epstein's house in May; Mr Epstein's assistant emailed Mr Epstein stating: "Jes Staley is asking if you are in NY tonight and if he could come and see you…please advise".

166. Following another meeting in June 2013, Mr Epstein appears also to have offered Mr Staley the use of his car in Paris. Mr Staley accepted in cross-examination that it seemed they were still on terms where Mr Epstein was offering him the use of his car, and Mr Staley was taking him up on it.

167. Mr Epstein continued to be Mr Staley's confidant in relation to business related issues, as Mr Staley admitted in cross-examination. In July 2013, there was an exchange between the two of them about RBS. Mr Epstein emailed on 5 July: "i plan on being in florida for the 12 th want to visit for the day?" Mr Staley then replied that he needed to fly that evening to Washington State, but added: "I am wrestling with Deb about RBS, so it might be a good break to figure out what I want to do." Mr Staley was not certain in cross-examination of what this related to but noted "at this time I was sought out by banks". The next day, Mr Epstein said: "Lets talk tomorrow about RBS." Mr Epstein, accordingly, appears still to have been offering his counsel to Mr Staley.

168. In October 2013, Mr Staley made a transatlantic sailing trip. He had an email group of friends and family which he used to send updates of his travels, which included Mr Epstein. Mr Epstein appears to have followed Mr Staley's progress. As soon as the trip was completed Mr Staley asked Mr Epstein for a lift back from the Caribbean. Mr Epstein therefore appears to have been one of the first people Mr Staley contacted after two weeks at sea.

169. The same month (November), Mr Staley wished Mr Epstein a Happy Thanksgiving and arranged to meet Mr Epstein later that week.

170. Contact also continued throughout 2014.

171. In January 2014, Mr Staley – who was on his boat in the Caribbean – suggested to Mr Epstein that they might have dinner that evening. Mr Epstein responded that he could not do it because of the short notice but he then asked: "what was jamies reaction.?" This, as Mr Staley explained, was in relation to Mr Dimon's reaction to Mr Staley joining the board of UBS. This seems to have been something Mr Staley and Mr Epstein had already talked about, given Mr Epstein's question. Mr Staley accepted that he was still keeping Mr Epstein closely involved in what he was doing in his professional life. Also in January 2014, Mr Staley appeared on a guest list with others for a dinner in Ristorante Morini organised by Mr Epstein.

172.Mr Staley and Mr Epstein continued to be regularly in one another's company. A few weeks later, at the start of February 2014, they arranged to go for a walk; days after that, Mr Staley asked Mr Epstein: "U [sic] free for dinner tomorrow night in NY?" It appears on that occasion Mr Epstein was in Paris, but Mr Epstein invited Mr Staley for dinner at his house in March.

173.March 2014 was when Ms Staley travelled to Vancouver with Mr Epstein. In May 2014, Mr Epstein arranged a film screening for Mr Staley's family. At the end of May, Mr Staley again appears to have gone to Mr Epstein's house for a dinner party.

174.Mr Staley accepted that they were still in regular contact in 2014. Mr Epstein tended to keep Mr Staley's favourite wine on hand. An exchange between the respective assistants in September 2014 had Mr Epstein's assistant stating: "Hi Rosa…we have ran [sic] out of the wine Jes likes and unfortunately it is out of stock everywhere (even called the Stephen Vincent winery)…is there perhaps another sauvignon blanc that we could keep on hand for Jes?" In October 2014, Mr Staley and Mr Epstein appeared to have had dinner together again, just the two of them. In November 2014, Mr Staley was in contact with Mr Epstein asking for assistance with finding dock space in Mr Epstein's harbour, and suggesting that he and his wife visit Mr Epstein's island in January 2015.

175.On 31 January 2015, there was another email exchange which indicates the strength of the relationship between Mr Staley and Mr Epstein and its personal nature.

176.It began with Mr Staley asking: "Are u on the island?" and Mr Epstein responding that he was in Palm Beach, with a phone number. It is to be inferred that the two subsequently spoke, because sometime later Mr Staley sent a follow up email:

> "The strength of a Greek army was that its core held shoulder to shoulder, and would not flee or break, no matter the threat. That is us."

177.As the Authority submitted, what this email appears to show is Mr Staley stating in strong terms that he would stand by Mr Epstein's side whatever the circumstances – a clear sign of a close personal relationship.

178.Mr Epstein and Mr Staley appear to have remained in close contact in the following months. There is evidence of a number of calls in February and March. In March 2015, as set out above, Mr Staley invited Mr Epstein to his daughter's graduation, stating: "You need to be there".

179. In April 2015, Mr Staley and his family travelled on Mr Epstein's plane to the Caribbean and thereafter sailed to Mr Epstein's island, stopping there for lunch. Afterwards Mr Staley sent Mr Epstein an email which said:

> "Thanks for the flight and thanks for the lunch. Your place is crazy, and special. It has a warmth and silliness that makes it yours.
>
> I count u as a deep friend. The girls seemed to enjoy the sail.
>
> All the best.
>
> Jes"

180.As with 2014, Mr Staley accepted in cross-examination that he was regularly in contact with Mr Epstein throughout 2015 to October 2015.

181.Mr Epstein and Mr Staley were in close contact during Barclays' recruitment process in 2015 which ultimately led to Mr Staley's appointment as CEO.

182.On 11 July 2015, Mr Staley emailed Mr Epstein with the subject "B", stating: "A member of the board just reached out." Mr Epstein sent a telephone number in response. On 21 July 2015, in another email with subject "B" Mr Staley told Mr Epstein: "The CEO wants to meet." In another email on 23 July 2015, again entitled "B", Mr Staley wrote to Mr Epstein: "SS got hired tonight. It begins." SS were Spencer Stewart, the recruitment consultants used by Barclays. In an email the next day, Mr Epstein advised Mr Staley: "better if you not email me . phone only".

183.Mr Staley stated in cross-examination that he did not know why Mr Epstein made that suggestion. However, it is clear to us that Mr Epstein was suggesting they moved to phone rather than email because of the confidential nature of the subject under discussion.

184.We also infer that Mr Staley was aware that the information was confidential. That is apparent from an email Mr Staley sent on 18 September 2015 to John McFarlane (the then Chairman of Barclays):

> *"*First, I truly enjoyed our meeting the other day. I liked the nature of the exchange and appreciate your willingness to share your thoughts about Barclay's [sic] next steps.
>
> Second, I spoke with Axel Weber and told him that you and I had a first meeting. He is comfortable that I still attend the UBS board meeting next week in Hong Kong, and he fully appreciates the need to keep all this very confidential. He went so far as to offer to speak with you at the right time. He was a gentleman through and through.*"*

185.Mr Staley accepted that Mr Weber was aware of the need to keep the information confidential. When it was put to him in cross-examination that this was because it was confidential information Mr Staley replied: "It was not in the public [domain], that's correct". He did appear belatedly, however, to accept that it was indeed confidential, accepting also that the information was "reasonably market sensitive".

186.This conclusion is reinforced by the fact that by 10 October 2015, discussions were underway to restrict Blue Mountain from trading in Barclays shares. Mr Staley accepted that news that he was about to join Barclays was commercially sensitive information, such that it would be inappropriate for Blue Mountain (and indeed Barclays) to trade based on it before any announcement had been made, because, in his words: "it would give the impression that Barclays – that Blue Mountain was trying to make money on the back of my potential [sic] joining Barclays".

187. Nevertheless, the extent to which Mr Staley confided in and trusted Mr Epstein is demonstrated by the fact that Mr Staley had already shared the news with Mr Epstein in an email chain that began on 3 October 2015. In that email chain, Mr Staley stated: "You never wavered in our friendship these last three years. That means a lot too [sic] me. Thanks Jeffery. Cross your toes!!!" When Mr Epstein enquired about the "schedule", Mr Staley replied: "Nominating com approved. Friday, full board votes. I should have the contract by the weekend. We're very close".

188.As the Authority submitted, the reference to the "last three years" is to the time since Mr Staley had left JPM. The clear implication was that their relationship had remained strong over all that time. Mr Epstein's response was: "more than 10 years". Mr Staley accepted in cross-examination that Mr Epstein's response reflected that they had, in fact, been there for one another for more than a decade. He accepted that they had had a close relationship over all that time. As the Authority submitted, the fact that Mr Staley was keeping Mr Epstein abreast of developments at all is, by itself, informative.

He conveyed to Mr Epstein information of a commercially and market sensitive nature which demonstrates that he trusted Mr Epstein implicitly and he was one of his trusted confidants. Mr Staley accepted that he wanted Mr Epstein's counsel, and he shared it because they had a "professionally" close relationship. The fact that Mr Staley was confiding in Mr Epstein regarding a matter as significant and confidential as his imminent appointment to Barclays in October 2015 demonstrates that their relationship remained close at that time. Mr Staley himself said in his witness statement that Mr Epstein was aware of the application that he had made to Barclays and, to some extent, of the progress of the application because he had seen fit to inform him in the event that he had information or advice to offer.

Evaluation of the relationship

189. Mr Staley's position is that his relationship with Mr Epstein is correctly described as being "professionally fairly close", it being a professional relationship predicated upon business. In his witness statement, he said that they were not personal friends, nor were they personally close. He also said in his witness statement that there has never been an instance in which any social contact with Mr Epstein was not in some way related to business.

190. Mr Staley's evidence was that there were only two or three people in his life who he would describe as personal friends, and Mr Epstein was not one of them. That evidence is supported by Ms Wiggins and it may therefore be the case that Mr Staley made a distinction between people he was close to in a purely non-business setting and those who he became close to in a business context, Mr Epstein falling into the latter category. He maintained that he would commonly refer to those in the latter category as "friends" and this was consistent with the way he often referred to his business associates. There is evidence from Ms Wiggins and Mr Higgins to support this evidence.

191. In particular, Mr Higgins gave evidence to the effect that Mr Staley would typically use effusive or warm language in business correspondence. In his interview, Mr Higgins said that he was not surprised at the effusive nature of some of Mr Staley's emails to Mr Epstein. He said:

> "He writes, what to an Englishman, are extraordinarily affectionate emails to lots of people. I've had things like this and I got one over Christmas. You could, I'm sure go through his emails, you would find this sort of intimate and affectionate style, as I say bit odd to an Englishman or woman but that's the way he writes."

192. Mr Higgins was asked about the email where Mr Staley, in referring to his friendship with Mr Epstein said that "I have few so profound", referred to at [125] above. He replied that this phrase would not raise any questions as to the nature of the relationship between Mr Epstein and Mr Staley and his understanding of it at the time. He went on to say:

> "I think you just asked me the same question, and I think the answer's the same, that Jes writes these sorts of incredibly affectionate emails, and as I think I had mentioned in our previous discussions, Jes had made no secret of the fact that he was, you know, felt indebted if that's the right word, perhaps it isn't, to Epstein for a number of things to do with his career and, you know, his daughter getting into university. So, I, you know, there's nothing in these words which would be inconsistent, or trigger any feeling of inconsistency in, in my mind, bearing in mind what I know about that and the way Jes writes."

193. Ms Wiggins agreed in her evidence that Mr Staley "could be quite friendly in his communication style" and effusive "from time to time" and part of that was because he was a very open and friendly person.

194.There were a number of emails in evidence which do contain examples of Mr Staley's use of warm language. In relation to the emails that we saw, such examples are usually at the end of a business email where Mr Staley signs off with statements such as "thanks my friend" ; "You are a soul mate", ; "you are a true friend. From the very bigwnning [sic]"; "Well done my friend" "If you ever find your [sic] in London, please let me buy you a drink. You are a great friend" "Thanks my dear friend. You above all have been at my side."

195.However, we have seen nothing in the emails that Mr Staley produced which matches the degree of warmth and closeness shown between Mr Epstein and Mr Staley in emails exchanged between those two men, for instance the emails quoted at [125], [164], [176] and [179] above. These emails are of a highly different character to those described at [194] above.

196.Mr Smith observed that the vast majority of email correspondence between Mr Staley and Mr Epstein is business related. The correspondence embraces commentary on world events, such as the financial crisis in 2008, subsequent attempts to regulate the banking industry, political events, gossip relating to the financial industry and advice relating to Mr Staley's own career.

197.Within this, Mr Smith submitted, there is the occasional expressions of mutual appreciation. However he submits, these are very much a part of, and should not be seen separately to, the primary context for the correspondence and the fact that this was a valuable relationship to Mr Staley.

198.We accept, as Mr Smith submitted, that Mr Epstein traded in influence and relied on his network for his legitimacy. He used his vast and varied network of relationships in order to further his own aims and intentions and may well have manipulated this network, controlling what information he might divulge to others in the network. That manipulation may work to the benefit of others, but always primarily be for his own ends.

199.Mr Smith submits that it is difficult to place the correspondence between Mr Epstein and Mr Staley in its proper context in the absence of any ability to see the email correspondence between Mr Epstein and the wide range of other influential persons who formed part of Mr Epstein's network. Mr Smith submits that the nature of the relationship between Mr Epstein and these other influential figures is material to the issues to be determined. That is because, Mr Smith submits, if other individuals have been engaged with Mr Epstein in similar ways it would support the conclusion that Mr Staley was no exception, thereby casting doubt on the proposition that the relationship was a "close" relationship. This description might therefore be said to apply to a wide range of people who might protest if it was said that they had a close relationship with Mr Epstein and might wish to qualify the relationship as a professional one, on the basis that the relationship was in fact only professionally close. Mr Smith submits that the Tribunal has no "benchmark" or comparators by which to judge whether the relationship between Mr Staley and Mr Epstein was exceptional or unexceptional in the context of that financial environment. The point is that Mr Staley was not unique as regards the nature of his relationship with Mr Staley and there is no evidence to show that his involvement with Mr Epstein was anything other than one grounded in business.

200.The essence of Mr Smith's submissions is that it was not inaccurate to state in the Letter that the relationship between Mr Epstein and Mr Staley was not close, because it was merely a professional relationship and because Mr Epstein was not a close personal friend, a status which Mr Staley said in his case applied to no more than two or three persons where the relationship was grounded outside a business context.

201.As the Authority submitted, that distinction between a relationship which is professionally close because it is grounded in business and a relationship which can be described as close because it is a

purely personal relationship is fallacious. Both situations can, and should, be accurately described as giving rise to a close relationship.

202.Based on the evidence that we have seen, including Mr Staley's own evidence given during the course of his cross-examination, which is referred to below, our evaluation of the relationship is that it is accurately to be described as a relationship which originated in the objective of both men to further their own business and career interests but in the course of which they became both professionally and personally close.

203.As the Authority submitted, the Letter did not say that Mr Staley did not have a close personal relationship with Mr Epstein or that they were not friends. The statement was that they did not have a close relationship. Mr Staley admitted that he did have a close relationship with Mr Staley, although it was couched in professional terms.

204.It is quite possible, and indeed in the Tribunal's experience, quite common, for a relationship which originates in a professional setting to develop into a relationship where the two people concerned become personally close, even though most of the interaction concerned takes place in a professional context. The fact that Mr Staley's motive in developing his relationship with Mr Epstein was to exploit Mr Epstein's network does not detract from that position. Obviously, it is easier to exploit that network if the two men become personally close and grow to trust and confide in each other.

205.In our view, the fact that Mr Staley chose to confide in Mr Epstein on highly sensitive matters which related to his personal advancement, in the course of which he divulged non-public and arguably highly confidential information, is on any view the most obvious manifestation of a close relationship. The essence of a close relationship is to be found in one where the other person is trusted to deal with sensitive information with absolute discretion. As Mr Staley admitted in his cross-examination, the information that he did share with Mr Epstein would not be divulged by him to someone whom he did not trust absolutely to deal with the information with discretion. In this regard, see in particular the examples described at [97] to [109] and [135] to [139] above. This trust and confidence continued throughout the period Mr Staley and Mr Epstein remained in contact, right up to the position where Mr Staley was being considered for the position of CEO at Barclays in 2015, as described at [182] to [187] above.

206.There are numerous examples referred to above which are key pointers to the relationship between Mr Staley and Mr Epstein being correctly characterised as a close relationship. In particular:

(1) The support that Mr Staley gave to Mr Epstein whilst he was in prison and immediately after his release. This may have been on the basis that notwithstanding the conviction Mr Staley still saw the benefits in exploiting Mr Epstein's network, but in our view it is highly unlikely that Mr Staley would gone to the lengths he did in seeking to visit and support Mr Epstein if he had not become close to him personally.

(2) The efforts Mr Staley made at JPM to keep Mr Epstein as a client of the bank: see [114] to [118] above.

(3) The use by Mr Epstein of the term "family" to describe the nature of the relationship and the other evidence of close personal relations recited at [142] to [145] above.

(4) The involvement in each other's private life: see [148] to [154] above.

207.There is also no doubt that the relationship remained close after Mr Staley left JPM at the end of 2012, even though contact between the two men was less frequent. This is most starkly illustrated by the email that Mr Staley sent Mr Epstein in January 2015, as set out at [176] above.

208.Mr Staley himself has changed his position on the nature of the relationship with Mr Epstein a number of times since he was first interviewed by the Authority. He has been inconsistent in his statements as to whether there was a personal friendship aspect to the relationship which went beyond the purely professional relationship.

209. The Letter states baldly that Mr Epstein and Mr Staley did not have a close relationship. However, in July 2019 when press enquiries started to be made about the relationship between the two men Mr Staley told the New York Times that in the course of approximately 7 to 8 years Mr Staley and Mr Epstein were professionally close, saying "it was a relationship predicated on business but they were on good personal terms".

210.In his interviews with the Authority, the general line that Mr Staley took was that he had a "fairly" or "pretty" close business or professional relationship with Mr Epstein, implying at one point that it was one that only existed while he worked at JPM. He said at one point during interview that "the relationship with Jeffrey, on a personal level, was very distant".

211.This was also the line that Mr Staley took in his witness statement. In particular, he said that he did not have a close personal friendship with Mr Epstein and that he was not personally close to him. However, in his Deposition in the US Proceedings, Mr Staley appeared to accept that there was a degree of friendship involved in the relationship.

212. Pressed on the meaning of the various emails in which he had described Mr Epstein as "one of our deepest friends" or a "cherished friend" Mr Staley said at various points during his deposition:

(1) "We were business friends";

(2) "He was a friend. He was not my most cherished friend";

(3) "We counted him as a friend"; and

(4) "he was a close professional friend".

213. Likewise, during his cross-examination, Mr Staley accepted that he "misspoke" when he said that he did not have a close relationship with Mr Epstein. Although he said he did not consider Mr Epstein to be "within my close personal friends" he said that "I've always maintained I had a close relationship with Mr Epstein". He described Mr Epstein at various points as "a close professional friend", a "profound professional friend", a "very close professional friend" and that they had "a close professional relationship and I would describe that at times as a friend."

214. As we have said, we regard the distinction between a close relationship which arises out of personal friendship and one that arises out of a professional relationship as being fallacious. Mr Staley may have himself made a distinction between a professional friend and a personal friend but it is clear from his various statements in cross-examination that he accepted that there was a degree of friendship between the two of them and this became a close one, even though it originated, and in his mind remained grounded in, a professional relationship. It is also clear that he accepted that the statement in the Letter that there was not a close relationship between them was inaccurate. As we have said, we shall deal later with the question as to whether he knew or believed the statement to be inaccurate in the context in which it appeared in the Letter.

215.We reject Mr Smith's submission that it is not possible to come to an accurate conclusion as to whether the relationship between Mr Staley and Mr Epstein was close, without considering whether if other individuals had been engaged with Mr Epstein in similar ways it would support the conclusion that Mr Staley was no exception thereby casting doubt on the proposition that the relationship was a close one.

216. If we had evidence as to the nature of these other relationships, which we do not, then it may of course be possible to say whether or not those relationships were close ones, either professionally or personally or both. In our view, the evidence that Mr Staley had a close relationship with Mr Epstein is overwhelming and there was no evidence before us to suggest that many others had a relationship which was similar in nature to that we have found existed between Mr Staley and Mr Epstein. In those circumstances it is not relevant what type of relationship others had with Mr Epstein.

217.We therefore conclude that Statement 1, that is that Mr Staley did not have a close relationship with Mr Epstein, was inaccurate.

The recency of the last contact between Mr Staley and Mr Epstein at the time the Letter was written

218. In summary, the Authority's case on this issue is:

> (1) Mr Staley and Mr Epstein were in contact until late October 2015, up until Mr Staley's appointment as CEO of Barclays was announced, and only around 4 weeks before Mr Staley formally commenced his role on 1 December 2015. On any view, the Authority submits, this is not "well before" he joined Barclays.
>
> (2) The statement gave the misleading impression of temporal distance in the relationship. This was not a fair characterisation given the nature of Mr Staley and Mr Epstein's relationship in 2015, and in particular the significance of the matters being discussed between the two men in October 2015 (including Mr Staley's potential appointment as CEO of Barclays and press enquiries in connection with his likely appointment and his relationship with Mr Epstein).
>
> (3) In the event, Mr Staley remained in communication with Mr Epstein via his daughter until at least February 2017, so Statement 2 was also inaccurate in that contact between the two men had not ceased before he joined Barclays in 2015. The Authority's position is that the communications, albeit indirect, constituted contact between Mr Staley and Mr Epstein.

219. In summary, Mr Staley's position on this issue is as follows:

> (1) He contends that Statement 2 was intended to refer to in-person meetings and was therefore accurate.
>
> (2) He contends that his last meeting with Mr Epstein was in April 2015, although he accepts the possibility that they may in fact have met in July 2015. He contends therefore that Statement 2 was accurate.
>
> (3) He accepts that he was in "contact" with Mr Epstein by email up to and including 25 October 2015, and finally by telephone on or immediately after 29 October 2015". He does not agree that the communications via Ms Staley constitute contact because it was not personal or direct.

220. The question as to whether Statement 2 was intended to refer only to in-person meetings is a matter that we need to assess when considering Mr Staley's knowledge as to whether Statement 2

was inaccurate or not. At this stage, we are only making findings as to whether, viewed objectively, Statement 2 was inaccurate, based on the evidence before us. In that context, we will need to consider the question as to whether as a matter of ordinary language "contact" can embrace contact other than by physical meetings, and whether the contact in this case that took place through Ms Staley can also be regarded as contact between Mr Staley and Mr Epstein.

221. As described in [179] above, it is not disputed that Mr Staley and his family met Mr Epstein on Mr Epstein's island for lunch on 12 April 2015.

222. It is not clear that that was in fact the last time that Mr Staley and Mr Epstein met in person. Email correspondence before the Tribunal indicates that a meeting was arranged to take place between Mr Epstein and Mr Staley, probably at Mr Epstein's Manhattan house, on 9 July 2015. There is no evidence demonstrating that this meeting actually took place. Mr Staley says that he has no independent recollection of this whatsoever and is unable to say whether he attended the appointment or not. In our view, the evidence is insufficient to say that it is more likely than not that this meeting took place and, even if it did, we accept that it is quite likely that Mr Staley is right when he says he cannot recollect the meeting in the absence of any documentary evidence to support it. Accordingly, our finding is that the last physical meeting between Mr Epstein and Mr Staley took place in April 2015 and we would accept that it could be said that meeting took place "well before" Mr Staley joined Barclays.

223. As we found at [180] above, as with 2014, Mr Staley was regularly in contact with Mr Epstein throughout 2015 to October 2015, by email and by telephone. Mr Staley was giving Mr Epstein a commentary on his discussions with Barclays and their last email on the subject was on or around 12 October 2015. On 24 July 2015, Mr Epstein cautioned that the discussions should move to "phone only" and accordingly it is likely that there were telephone discussions on the subject as well during this period.

224. The last direct email between Mr Staley and Mr Epstein which was in evidence before us is dated 25 October 2015. In the period between 13 and 25 October Mr Staley and Mr Epstein had been communicating regarding press comment on Mr Staley's likely appointment to Barclays, the matter having been leaked. We refer to these communications in further detail when considering what Mr Staley told Barclays about his relationship with Mr Epstein in October 2015, as set out below.

225. As we refer to later, during the course of dealing with these press enquiries, Mr Doherty advised Mr Staley to have no further contact with Mr Epstein. Mr Staley's evidence was his last conversation with Mr Epstein was a telephone call on or around 29 October 2015.

226. Unrealistically, Mr Staley, both in interview with the Authority and during his cross-examination sought to maintain that this belief was that "contact" meant meeting somebody personally. However, when pressed on this point by Ms Mulcahy he finally acknowledged that "contact" meant something broader than simply seeing somebody. He said:

> "Contact – direct contact is me being in contact with Epstein by email, phone, text et cetera, yes."

227. As we have said, this point is different from the point as to whether "contact" was understood by Mr Staley to refer only to physical meetings. It is unarguable that the meaning of the ordinary English word "contact" is broader than being a synonym for "meeting" and Mr Staley had in the end to accept that was the case.

228.Accordingly, it is clear to us that Mr Staley and Mr Epstein were in contact until at least 29 October 2015. Again, on the basis of the ordinary meaning of the English language, that date was not "well before" Mr Staley joined Barclays in December 2015. Accordingly, on that basis Statement 2 was inaccurate.

229.The Authority also relied on its contention that Mr Staley was in contact with Mr Epstein through the intermediation of his daughter between March 2016 and February 2017 as further proof that Mr Staley's last contact with Mr Epstein was not "well before" he joined Barclays. The following is a summary of the communications that took place:

> (1) Over 14-15 March 2016, Mr Epstein emailed Ms Staley asking what she had decided to do professionally and asking: "how's dad doing?" She replied indicating that Mr Staley had been "doing well overall, but it's been very busy."
>
> (2) On 10 September 2016, Mr Epstein emailed Ms Staley saying "tell dad it's the 15th anniversary [sic] of 9/11 and the second anniversary of his leaving." Ms Staley replied: "[Mr Staley] says he hopes you are well and that after a year with b he wants to visit." Mr Staley accepted in cross-examination that "b" in this context meant Barclays.
>
> (3) On 27 November 2016, Mr Epstein emailed Ms Staley at two addresses asking: "could you ask your dad if he would like be considered for treasury." Ms Staley replied: "Will do. He's on a plane to London right now but I'll reach him after. Hope all is well." Later on the same day Ms Staley emailed again stating: "Spoke with him. He said not yet, but thanks.".
>
> (4) On 6 February 2017, Mr Epstein emailed Ms Staley asking: "can you ask your [sic] father his opinion of véronique Weill? She wants to join Rothschild" to which Ms Staley replied: "Will do. I will speak with him today and get back to you." Ms Staley emailed the following day stating: "[Mr Staley] thinks she is great and is a big fan of hers. Good recommendation for Rothschild."
>
> (5) On 23 February 2017, Mr Epstein again contacted Ms Staley asking: "Sultan dilemmas would like to see dad can you ask if this weekend works" to which Ms Staley replied: "Just called him. They've been connected and have a meeting. Thanks!"

230.Mr Staley denied in cross-examination that the second of the emails referred to above demonstrates that there was a prospect of renewing his relationship with Mr Epstein after he had been Barclays for a while. He said that the fact that he did not meet him shows that he did not want to meet him. However, if that were the case it is not clear why he volunteered the suggestion of a meeting through his daughter. Mr Staley's evidence on this point is therefore not credible.

231.Mr Staley says that he has no recollection of the third and fourth of the emails referred to above. At least as far as the third email is concerned, we think that is unlikely bearing in mind the significance of the opportunity that was being described. That is not a matter that is easily forgotten.

232.Mr Staley appears to deny that this correspondence amounts to "contact" between himself and Mr Epstein because it was initiated by Mr Epstein, not Mr Staley's daughter. We would accept that to be the case had Mr Staley either ignored the correspondence or simply told his daughter that it was inappropriate for him to reply bearing in mind his undertaking to Barclays not to have any further contact with Mr Epstein. He did not do that but appears to have given his daughter information necessary to reply to Mr Epstein. Mr Staley's evidence was that he could not recall conversations with his daughter about these emails and his daughter did not appear as a witness. In those circumstances, it is clear to us that these communications, albeit through Ms Staley as a third party,

amount to Mr Staley being in contact with Mr Epstein, according to the usual ordinary broad meaning of that term. If Mr Staley had been asked in 2017 whether he had been in contact with Mr Epstein, the right answer to that question would have been "not directly but I did respond to some enquiries he made with me via my daughter." It would have been inaccurate to say that he had had no contact with Mr Epstein at all after October 2015.

233. Accordingly, we conclude that Statement 2 was inaccurate.

What Mr Staley told Barclays about his relationship with Mr Epstein

October 2015 and The Mail on Sunday enquiry

234.On 13 October 2015, news of Mr Staley's likely appointment had leaked in the Financial Times. On 16 October 2015, Mr Epstein was contacted by Mr Watkins of the Mail on Sunday about that appointment. At that time, Mr Staley's appointment to Barclays had been leaked as likely, but it was not yet confirmed. He did not have his approvals from the Authority or the PRA at this time. A public announcement had not yet been made by Barclays.

235.Mr Epstein forwarded Mr Watkins's email to Mr Staley who in turn forwarded it to Mr Steven Rubenstein, a public relations adviser. Mr Staley and Mr Epstein exchanged emails discussing how to respond to Mr Watkins' enquiry about the relationship between Mr Staley and Mr Epstein. On 17 October, Mr Staley emailed Mr Epstein as follows:

> *"*Ok. I'm going to play is *[sic]* simple. I've known you as a client. I will tell B tomorrow. Steven is fine. Let me know if they say something else. But stay away from them. I'm fine.*"*

236.It is clear from this email that Mr Staley was adopting a strategy of downplaying the nature of his relationship with Mr Epstein, both in his dealings with the press and with Barclays, by taking the line that relationship was purely a client/banker relationship, which would imply that it only existed whilst Mr Staley was working at JPM. Although Mr Staley suggested in his cross-examination that the reference to "B" could have been a reference to Blue Mountain rather than Barclays, it is clear from other emails that Mr Staley sent at this time, that he used the letter "B" to refer to Barclays, and we so find.

237.In fact, Mr Staley did not speak to Barclays about his relationship with Mr Epstein until the Mail on Sunday contacted Barclays directly on Saturday, 24 October 2015. When that happened, the matter was passed to Mr Doherty to deal with.

238.As we have said, we regard Mr Doherty as an honest and reliable witness and we accept his evidence to the effect that he would not tell the press anything in relation to Mr Staley's relationship with Mr Epstein that he did not believe to be true. Furthermore, as Mr Doherty said in his evidence, Mr Doherty's source of any facts relating to this relationship would be Mr Staley himself.

239.Around lunchtime UK time Mr Doherty rang Mr Staley (who was then in New York) to discuss the enquiry. This was their first conversation about Mr Epstein. Mr Doherty does not recall exactly what he asked Mr Staley during that telephone call, but recalled that (i) Mr Staley had volunteered that he had known Mr Epstein quite well for a long time "as part of a professional relationship which had begun when Mr Staley became head of JPM's Private Bank at a time when Mr Epstein was a client of that bank"; and (ii) Mr Staley left him with "the clear impression that he [Mr Staley] had not discussed this candidacy with Mr Epstein and he was not aware of any interest Mr Epstein might have had in this process".

240.Barclays instructed a law firm, Simkins LLP ("Simkins") to assist it with its response to Mr Watkins. Simkins prepared a draft letter dealing with the queries. Mr Doherty sent this draft letter to Mr Staley.

241. The draft letter contained the following statement:

> "We can further confirm, that Mr Staley has informed our client [i.e. Barclays] that he is at best an acquaintance of Mr Epstein. They are certainly not close friends as your allegations might imply…"

242.Mr Doherty was clear in his evidence that the source of what he wrote, or instructed Simkins LLP to write, would be based on what he was told by Mr Staley. We therefore find that this statement reflects the impression that Mr Staley would have given Mr Doherty about the nature of his relationship with Mr Epstein in their earlier discussion.

243.Mr Staley did not himself seek to correct this impression. It was Mr Rubenstein, an adviser to Mr Staley, who suggested that the wording might be changed. He emailed Mr Staley as follows:

> "I was thinking of changing one thing:
>
> As Drafted:
>
> We can further confirm, that Mr Staley has informed our client that he is at best an acquaintance of Mr Epstein.
>
> They are certainly not close friends as your allegations might imply, nor has Mr Staley asked for Mr Epstein's support, or for him (Mr Epstein) to make representations on his behalf
>
> With edits:
>
> We can further confirm, that Mr Staley has informed our client that while he knows Mr. Epstein from his time at JP Morgan, they are certainly not close friends as your allegations might imply. Nor has Mr Staley asked for Mr Epstein's support, or for him (Mr Epstein) to make representations on his behalf."

244.Mr Staley copied and pasted this to Mr Doherty, without pointing out that the term "acquaintance" was inaccurate. As it happened, however, in the interim the letter had been sent out to the Mail on Sunday because of the impending print deadline, so that it was too late for any amendments. Mr Doherty apologised to Mr Staley for this, and forwarded the letter as sent. That email contained a further instruction that had come from Mr Doherty to Simkins about the letter, in which Mr Doherty had stated:

> "There has been no contact between Jes Staley or Jeffrey Epstein, or discussion of this matter this year. We need that in the letter or via email from you if that will suffice."

245. Mr Doherty accepted in cross-examination that he could not be sure that Mr Staley had "affirmatively said that" to him over the phone, but said that it was the "impression, misapprehension that I was under" and which he believed to be the case at the time. This statement made its way into the final letter.

246.It is clear that Mr Staley had noticed the extra statement about contact that year, because he forwarded Mr Doherty's email to Mr Rubenstein, telling him: "Read down below. Don't know if you saw this." He did not take the matter up with Mr Doherty at that time.

247.The impression of Mr Staley and Mr Epstein's relationship that Mr Doherty (and indeed Mr Lawrence Dickinson, Barclays' Company Secretary, to whom Mr Staley also spoke) was under is also clear from two further emails sent on 25 and 26 October 2015:

> (1) Mr Doherty's email on 25 October to Mr Bowen (a member of his team) and Mr Benaim (the lawyer at Simkins), in which he stated: "If asked why Epstein would have had Jes's number/known him we should simply confirm – on background – that Epstein was a client of JPM's private bank which Jes ran at one point. They are not friends."
>
> (2) Mr Doherty's draft email to the board of directors of Barclays on 26 October, which stated, inter alia: "Mr Epstein was a significant client of JPM's private bank when Jes Staley was CEO of that business and that is how he made his acquaintance. Jes is clear that any relationship with Mr Epstein is not close, and he is unaware of the alleged attempt by Mr Epstein to support his candidacy for CEO in the 2012 process." Mr Dickinson edited the note, but those sentences were not amended.

248. Subsequent to the publication of the article on 25 October 2015, there was a face-to-face meeting between Mr Staley and Mr Doherty at the office of Spencer Stewart (a recruitment firm) in London. Mr Doherty recalls this as being on Monday 26 or Tuesday 27 October 2015, but in any event ahead of the public announcement of Mr Staley's appointment on Wednesday 28 October 2015.

249. In the course of this conversation, Mr Staley gave Mr Doherty more details of his relationship with Mr Epstein than he had given over the prior weekend, disclosing to Mr Doherty some specific examples of interactions he had with Mr Epstein, and gave a general description of their relationship.

250. For example, Mr Staley told Mr Doherty that, whilst he had attended dinners at Mr Epstein's house in Manhattan, Mr Epstein had never been to dinner at Mr Staley's house. Mr Staley described being on reasonably friendly terms with Mr Epstein and that they had a drink together from time to time. Mr Doherty's evidence included the following:

> (1) Details of Mr Staley's visit to see Mr Epstein while he was on a work release programme as part of his prison sentence.
>
> (2) That Mr Staley and his wife had once visited Mr Epstein's island.
>
> (3) That in 2011 or 2012, Mr Staley, his wife and his daughters had flown in Mr Epstein's plane.

251. However, it would appear that Mr Staley did not at this stage disclose the fact of his most recent visit to the island in April 2015.

252. Mr Staley described to Mr Doherty the relationship with Mr Epstein in "two blocks": one prior to 2012, when Mr Staley was still at JPM; and one after Mr Staley left JPM.

253.As far as the first block was concerned, Mr Staley told Mr Doherty that he and Mr Epstein had had fairly regular contact which was largely predicated on a business relationship and they had got on well, Mr Staley referring to the fact they would occasionally socialise together.

254.As far as the second block is concerned, Mr Staley told Mr Doherty that he and Mr Epstein remained in contact, but that contact had become less frequent as there was no client relationship

between them after Mr Staley joined Blue Mountain in 2013. Mr Doherty's understanding was that Mr Staley's relationship with Mr Epstein during the period 2009-2012 had been (at least in part) based on a client relationship as "Mr Staley felt that he still semi-covered Mr Epstein as a client of JPM". Mr Doherty said that Mr Staley gave him the impression that whilst contact still existed between them, the relationship had petered out somewhat since he had moved to Blue Mountain.

255.As our findings of fact on the nature of the relationship between Mr Epstein and Mr Staley demonstrated, frequent contact did in fact continue during the period 2009-2012 and did not "peter out" after Mr Staley joined Blue Mountain, as demonstrated by the fact that the two men remained close enough that Mr Epstein was one of the few people with whom Mr Staley had shared details of the Barclays recruitment process. As we have found, as already referred to, Mr Staley and Mr Epstein had a close relationship throughout the period 2013-2015 up until October 2015.

256.Mr Staley did not at this meeting specify to Mr Doherty exactly when he had last been in contact with Mr Epstein, although he was clear that contact between the two men continued until their last interaction at some point in 2015, reasonably recently before these discussions. Mr Doherty said that this was new information for him and not the impression that he been left with on Saturday 24 October, at which time he understood that Mr Staley had not been in material (or any) contact with Mr Epstein in 2015. Mr Staley did not disclose to Mr Doherty that he was in fact still in frequent contact with Mr Epstein and that he had coterminously been discussing both the Barclays role and the Mail on Sunday approach with Mr Epstein. Mr Doherty in fact only learned about that from the Authority's Decision Notice and considered that it would "obviously have been relevant" for him to have known at the time.

257.Mr Doherty's advice to Mr Staley in the course of that meeting was to cease contact with Mr Epstein.

258. On the afternoon of 29 October 2015 Mr Doherty sent an email to Mr Hoskin, Head of Group Media Relations at Barclays, about a response to a further enquiry from the Mail on Sunday. He stated in that email that he specifically wanted to "repeat the word 'acquainted'". In view of our assessment of Mr Doherty, we find that Mr Doherty had obtained a clear impression from Mr Staley that the use of the "acquaintance" language and portraying the relationship as a banker-client one was an accurate way of describing the nature of the relationship between the two men.

259.This email resulted in a draft letter produced by Simkins, which stated:

> "Mr Epstein was a client of JP Morgan's Private Bank – of which Mr Staley was CEO for a period – and they became acquainted in that business context. As we have set out in our earlier correspondence, it would be misleading to portray this as a close relationship.
>
> It is not appropriate for Mr Staley, or our client to comment further on confidential business interactions between Mr Staley and any client of JP Morgan, current or historical…"

260.This draft was sent to Mr Staley for his approval. Mr Doherty later reported that Mr Staley had approved it (and it is to be inferred from this that Mr Staley had done so).

261.In his cross-examination Mr Staley sought to distance himself from the wording used in this letter, saying that he did not draft it nor the earlier communications with the Mail on Sunday. He contended that Mr Doherty drafted it and that Mr Staley was always very clear that he had a close

professional relationship with Mr Epstein so that when Mr Doherty was saying that the relationship was not a close one Mr Staley had not expressed that to him.

262.We reject Mr Staley's evidence on this point. As we have said, we found Mr Doherty to be an honest and reliable witness and he had a very clear recollection of the impression that Mr Staley left with him during their various discussions in October 2015. The overall impression given was that the relationship was purely a banker/client relationship with a limited degree of social interaction and that an accurate way of describing the relationship was that the two men became acquainted with each other as a result of that banker/client relationship. That was clearly downplaying the relationship.

263.We come to that conclusion having taken account of the fact that in 2015 Mr Staley did not have access to the numerous emails that had been exchanged between him and Mr Epstein during his time at JPM. However, even in the absence of the material, whilst he might have been understandably vague on some of the detail of the various interactions, Mr Staley must have been aware that the relationship was a close one, and indeed was still continuing to be close in October 2015 when Mr Staley was discussing the Barclays opportunity with Mr Epstein. It is therefore clear that he chose not to disclose to Mr Doherty the essential facts that demonstrate that Mr Epstein and Mr Staley had been particularly close, both professionally and personally and, despite seeing the various communications before they were sent to the Mail on Sunday, did not seek to correct the errors in those communications either before or after they were sent. The die was cast when Mr Staley sent Mr Epstein the email referred to at [235] above where Mr Staley told Mr Epstein that he was going to "play it simple" and say that it was just a client relationship.

Period prior to Mr Epstein's arrest in July 2019

264. Between 1 December 2015, when Mr Staley became CEO of Barclays, and Mr Epstein's arrest in July 2019, it appears that Mr Staley did occasionally talk about his relationship with Mr Epstein to Mr Doherty and – in more detail – to Ms Wiggins. Mr Doherty describes what he learned in this period as "little bits of additional detail", and appears to have amounted to (i) some more details about the trip to the island but not the April 2015 date; (ii) that there was a second trip to the island; and (iii) that there had once been a stopover at Mr Epstein's ranch without Mr Epstein's presence. Ms Wiggins began working with Mr Staley in 2018 and thereafter learnt something about Mr Staley's relationship with Mr Epstein for the first time.

265.It is not necessary to refer to these disclosures in any detail as they are broadly reflected in the Bowdoin College Talking Points, as discussed below. It does not appear that either Mr Doherty or Ms Wiggins shared in any significant way any of the details that they obtained from Mr Staley with other people in Barclays.

Period following Mr Epstein's arrest on 6 July 2019

266.Mr Epstein's arrest on 6 July 2019 prompted significant press interest into a number of persons connected with Mr Epstein, including Mr Staley.

267.Mr Staley was approached by Ms Kate Kelly of the New York Times. Mr Doherty responded to Ms Kelly by email on 18 July 2019, having previously spoken to Mr Staley.

268. The response took the form of a number of bullet points the most significant of which are as follows:

> "He first met JE around the year 2000 when he (Jes) took over the Private Bank at JPM

> He was introduced to JE by the then CEO of JPM because JE was at the time a client of the Private Bank, and the CEO felt he was someone Jes should know and forge a strong client relationship with
>
> JE proved to be extremely well networked (which tallies with the picture of him in the media)
>
> JE liked Jes and began to introduce and recommend clients to JPM's Private Bank
>
> Over the course of circa 7-8 years Jes and JE were professionally close — particularly as JE had this propensity to regularly introduce business to JPM
>
> It was a relationship predicated on business, but they were on good personal terms
>
> Subsequent to JE's conviction and incarceration in 2008 such contact that took place between the two of them became infrequent and insubstantive, and then stopped
>
> JE was eventually asked to leave JPM's Private Bank as a client (that's when he took his business to DB) ——Jes was still in a senior role at JPM when that happened".

269. As the Authority observed, this appears to be the first occasion on which the term "professionally close" was used. However, it was used in a limited sense because it gave the impression that the relationship was only close during the 7 to 8 years when Mr Staley ran the JPM Private Bank and before Mr Epstein's conviction.

270. Consistently with that, the impression given was that after 2008 (when Mr Epstein was convicted), the relationship between he and Mr Staley cooled and that contact between them "became infrequent, insubstantive, and then stopped". As our findings of fact on the nature of the relationship shows, this was not an accurate impression.

271. Mr Staley contends that the statement referred to at [270] above was an error introduced by Mr Doherty. He said in cross-examination that the statement did not originate from anything he told Mr Doherty or Barclays. However, Mr Doherty was not cross-examined on this point and, bearing in mind our assessment of Mr Doherty and his approach to responding to journalists, we do not consider that this would have been something that he would have said on his own initiative and, as we have said, the response was sent to Ms Kelly after he had spoken to Mr Staley. Accordingly, we find that what Mr Doherty wrote is a result of the impression given to him by Mr Staley.

272. In cross-examination, as he did in October 2015, Mr Staley sought to distance himself from Mr Doherty's statement to the press by saying that these were Mr Doherty's words and that how he might deal with the journalist is different to how he would deal with the regulator. As we have said, we do not consider that Mr Doherty would seek to mislead a journalist and we therefore reject Mr Staley's evidence on this point.

273. Around the same time in July 2019, there was an enquiry from the Wall Street Journal. Again, this was dealt with by Mr Doherty, who discussed with Mr Staley a proposed response to questions posed by Jenny Strasburg of the newspaper. It appears that Mr Staley approved the terms of the response and, consistent with the approach taken by Mr Doherty in relation to the New York Times, the response was made on the basis of information given to him by Mr Staley, if not purely in Mr Staley's own words. As was his practice, Mr Doherty drafted a response based on the impression that Mr Staley had given him as to the nature of the relationship between him and Mr Epstein.

274. As the Authority submitted, this response gave an identical impression that any "close professional" relationship had been during the period 2000-2008, and that it had been based upon Mr

Epstein's propensity to introduce clients to Mr Staley and JPM. The following questions and answers from the email reflect this position:

> "How did Jes originally meet Epstein, and how?
>
> He first met JE around the year 2000 follow when he (Jes) was appointed Head of the Private Bank at JPM. He was introduced to JE by the then CEO of JPM because JE was at the time a client of the private bank, and the CEO felt he was someone Jes should know and forge a relationship with
>
> […]
>
> What was the nature and scope of Jes's relationship with Epstein, and how long did it extend? Did Jes ever spend time with or travel with him? What can he tell us about Epstein's private life, either as it overlapped with his professional life or otherwise?
>
> Over the course of circa 7-8 years Jes and JE were professionally close – particularly as JE had this propensity to regularly introduce business to JPM. It was a relationship predicated on business, but they were on good terms. Jes has not had any contact at all with JE for several years now, and nor does he intend to do so."

275.At first sight, and as was put to Mr Doherty in cross-examination, there appears to be an inconsistency in the way that the relationship between Mr Staley and Mr Epstein was described in the various responses to press enquiries between 2015 and 2019.

276.On 30 October 2015, Simkins had told the Mail on Sunday that, "it would be misleading to portray their 'relationship' as a close friendship"; on 26 October 2015, the Board of Barclays had been told that Mr Staley was clear that the relationship was "not close"; and then on 19 July 2019, the Wall Street Journal was told that Mr Staley and Mr Epstein had been "professionally close" (albeit over the period 2000-2008). However, as submitted by the Authority, these descriptions were not inconsistent because the first two were concerned with the relationship as it stood in 2015, whereas the third was describing the relationship in 2000-2008.

277.It was around this time in July 2019 that Mr Staley spoke to Mr Higgins about his relationship with Mr Epstein, seemingly for the first time. It appears that this was prompted by the fact that the New York Times was going to publish the fact that Mr Staley had met with Mr Epstein in 2009 when Mr Epstein was on work release from prison.

278. It is not clear specifically what Mr Higgins was told by Mr Staley at that stage. Mr Higgins's evidence was that he could not be sure when he was told about certain matters and he could not clearly distinguish between what Mr Staley told him at this time and what he had picked up himself from the various press articles that were published at that time. He could only say what he knew by the time of the Letter in October 2019 and his evidence is that the Bowdoin College Talking Points accurately reflected what he knew of the relationship between Mr Staley and Mr Epstein at the time the Letter was drafted. We accept that evidence; there was nothing before us to contradict it.

279.Mr Higgins believes that either during this conversation or subsequently, he asked Mr Staley whether he had witnessed any of the matters alleged against Mr Epstein. This appears to have been instigated by Mr Higgins, using words to the effect of: "Jes, I just have to ask you, because it is unfortunately my job, you just have to tell me, is there anything about you and these girls?" Mr Higgins stated that Mr Staley told him there was not.

Bowdoin College Talking Points

Introduction

280.We agree with the Authority that the Bowdoin College Talking Points are important because they represent what Mr Hoyt and Mr Higgins knew and understood about the relationship between Mr Staley and Mr Epstein, as they confirmed in their evidence. Mr Hoyt thought that the Bowdoin College Talking Points were a document that he could use as the basis for whatever work was needed to respond to Mr Davidson's request of Mr Higgins which was made in August 2019.

281.In particular, Mr Hoyt in his cross-examination confirmed that the Bowdoin College Talking Points were created after a series of discussions, including with Mr Staley, over the course of a few days, where he recounted, reviewed drafts, provided language and suggestions himself resulting in the talking points that were then, he presumed, used for the presentation Mr Staley made to Bowdoin College, as described below. Mr Hoyt also confirmed that the Bowdoin College Talking Points were used as the basis for drafting the proposed response to the Authority which ultimately led to the drafting of the Letter.

282.Mr Hoyt also confirmed that he understood from Mr Staley that the Bowdoin College Talking Points represented everything that Mr Staley had told him and Mr Higgins about the relationship and he understood those to be all of the relevant facts relating to the relationship.

283.Mr Staley's position was that the Bowdoin College Talking Points demonstrate that Barclays had an accurate picture of the relationship (and therefore sufficient information to assess whether the statements in the Letter could be fairly made). The Authority's position is that the Bowdoin College Talking Points demonstrate that Mr Staley was consistently misstating the position as to his relationship with Mr Epstein, in particular downplaying the closeness and extent of their connection.

The process of drafting of the Bowdoin College Talking Points

284.On or around 2 September 2019, Mr Staley became aware that Bowdoin College intended to write an article about Mr Epstein and trustees' links with him. Mr Doherty's recollection is that on Saturday 7 September 2019, Mr Staley called him and explained that as a result of the article, the President of the College and the Trustee Board had expressed concerns about Mr Staley's role as a trustee and wanted Mr Staley to provide them with an account of his relationship with Mr Epstein.

285.It was decided that Mr Staley would provide an account, which it was later decided would be delivered in person. Mr Staley's evidence in his witness statement, which was not challenged, was that he "wanted to ensure that Barclays were involved in the preparation of the response to the College since [he] believed that the information that was being assembled in order to answer the College's enquiry would also be required by Barclays in order to answer the FCA's enquiry". This accorded with Mr Hoyt's recollection in his cross-examination.

286.On 10 September 2019, Mr Doherty produced a first draft (with assistance from Mr Hoskin, a member of his team). There appears to have been a call that day at 14.15 between Mr Staley, Mr Doherty, Ms Wiggins, Mr Hoyt and Mr John Farmer (Mr Staley's personal lawyer) to discuss the draft which was then sent by Mr Doherty to Mr Hoyt and Mr Farmer, copying Ms Wiggins.

287.Later that evening, on 10 September 2019, Mr Doherty sent an updated draft which incorporated comments from Mr Hoyt, albeit not from Mr Farmer. This time Mr Doherty copied Mr Staley. Later

that evening, at around 20.45, Mr Staley had a call with Mr Higgins (which Ms Wiggins and Mr Hoyt joined), in which Mr Staley ran through what he proposed to say to the Bowdoin College Trustees.

288. On 11 September 2019, Ms Wiggins and Mr Staley flew to New York. That day, at 15:05 (London time), Ms Wiggins sent an updated draft to Mr Doherty, copying Mr Hoyt. She noted: "He wants to take out the emotion and make it much more factual." Mr Staley accepted in his witness statement that he had no reason to doubt that this was a comment made by him to Ms Wiggins although in cross-examination he said that it might have been Mr Farmer. Ms Wiggins had a clearer recollection, which was that: "Mr Staley was concerned that Mr Doherty would often write in an emotive fashion, but Mr Staley wanted the document to be super clear and stick to the facts." This, according to Ms Wiggins, was the second draft Mr Staley had seen. Mr Doherty responded with minor amendments, which appears to have been sent at 10.50 New York time – i.e. 15.50 London time). Ms Wiggins also sent her version onto Mr Staley and asked him to let her know if he wanted "any more changes".

289.On 12 September 2019, there was a meeting in Mr Staley's office in the New York Barclays office to discuss and finalise the Talking Points. Ms Wiggins, Mr Staley, Mr Hoyt, and Mr Farmer were all there in person with Mr Doherty on the telephone. The discussions went on late into the evening. Ms da Silva, Mr Staley's personal assistant was present in New York.

290.It is clear, as Mr Hoyt confirmed in his cross-examination, that whilst Mr Staley sought to distance himself from the drafting, he had close involvement, having seen two drafts already before 12 September. The purpose of the 12 September meeting was, as Mr Hoyt said in his evidence, to ensure that the document fairly reflected what Mr Staley wanted to say. Mr Hoyt said that Mr Staley was a very active participant in the discussion and was the main source of what was said in the document. He said that the Bowdoin College Talking Points were fashioned by Mr Staley walking through what had happened and trying to represent his recollection of his relationship with Mr Epstein. We have no reason to doubt that evidence.

Final version of the Bowdoin College Talking Points

291.At the hearing, a dispute arose for the first time during Mr Smith's opening submissions as to what was the final version of the Bowdoin College Talking Points.

292.Mr Smith contended that the final version was a document sent by Ms Da Silva at 16:41 New York time to Mr Doherty and was also sent by Ms Wiggins to Ms Da Silva for printing at 20:49 London time on the evening of 12 September, with a view to Mr Staley having one of the printed copies when he went to the College the following morning. Mr Smith submitted that it was that copy which Mr Staley took with him and from which he addressed the Trustees of the College.

293.The Authority contends that the final version was a later document which was sent by Ms Da Silva to Mr Doherty at 6:01 New York time on 13 September and which appears to have been printed at 5:58 on the same day. This version is identical to the version sent to Mr Hoyt at 6:57 New York time and which was described by Ms Da Silva in her covering email as "latest and greatest". The implication to be drawn from this is that Ms Da Silva printed a version at 5:58, immediately sent it to Mr Doherty and then later sent the same version to Mr Hoyt.

294.Ms Wiggins was clear that the version referred to at [293] above was definitively the final version and that Ms Da Silva had forwarded her that version and told her that it was the final version.

295.We agree with the Authority that it would make no sense for Ms Da Silva to have unilaterally decided to print and send to Mr Doherty and Mr Hoyt a new version which was not being used on 13 September.

296.Notwithstanding Mr Smith's submissions, Mr Staley himself in his cross-examination accepted that the version described at [293] above was the final version.

297.The question of which is the final version is of some significance because the version described at [293] contains a sentence which was not in the version which Mr Smith contended was in fact the final version. The sentence in question read: "That said, I had limited contact with him [Mr Epstein] post his conviction, which I will describe shortly." As our findings on the nature of the relationship between Mr Epstein and Mr Staley demonstrate, that statement was inaccurate. That this statement was in fact included in the version which Mr Staley took with him in hard copy form to the College is corroborated by Ms Wiggins' notes of the meeting at the College which recorded a question from one of the trustees specifically about "limited visits/dinner frequency post 2008".

298.We therefore conclude that Ms Wiggins was correct in her evidence that the version described at [293] above was the final version of the Bowdoin College Talking Points. Mr Staley had a hard copy of that document which he used as his speaking notes at the College and which contained the sentence referred to at [297] above.

Content of the final version of the Bowdoin College Talking Points

299. The full text of the final version read as follows:

> "
>
> - Thank you for this opportunity to speak to the Committee. I wanted to be here in person because I value so highly my association with Bowdoin, which spans forty-four years of my life, and my reputation, which I strongly believe should not be sullied by my association with JE.
>
> - Given my long relationship with JE, and particularly in light of the recent understanding of the enormity of his evil, I understand the questions you may have regarding that relationship, and am here to answer those questions.
>
> - Let me be clear from the outset: At no time was I aware of JE's inappropriate relationship with underage girls prior to the original charge in 2006 and I have never witnessed at any time the allegations made against him.
>
> - At no time was I interviewed or subpoenaed to testify as a witness in these investigations. At no time after his conviction in 2008 did I allow JE any connection with any aspect of my professional life. Indeed, I have never had any professional relationship with JE except for his relationship with JP Morgan's private bank, which began long before I ever met him. That said, I had limited contact with him post his conviction, which I will describe shortly.
>
> - At no time in our professional relationship did I arrange to compensate JE for professional introductions he made or for investment advice or for any other form of advice he may have rendered to JP Morgan; nor, to my knowledge, did JP Morgan ever compensate JE.

- At no time during my tenure at Blue Mountain capital did I conduct any business with JE.

- At no time during my tenure at Barclays have I or the bank conducted any business with JE.

- At no time have I involved JE in any aspect of my support for and dedication to Bowdoin College.

- Let me take you through the history of my connection to Jeffrey Epstein

- I first met him in late 1999 or early 2000 when I took over the Private Bank at JP Morgan

- I was introduced to him by the then CEO of JP Morgan because Epstein was at the time a client of the Private Bank, and the CEO felt he was someone I should know and steward as a client.

- Epstein proved to be extremely well networked – which tallies with the picture of him in the media – and he began to introduce and recommend clients to me, and in turn to JP Morgan.

- Over the next 7 to 8 years he and I became professionally fairly close – predicated on this propensity to introduce business to JP Morgan

- As I have mentioned, as far as I know, JE was not paid any fees by JP Morgan for any service ever – including for those introductions that he made.

- I never paid Jeffrey Epstein any fees for any service ever, either personally or professionally Subsequent to his conviction and incarceration, I did not personally, or professionally, transact any business with him at all. The business I was then running at JP Morgan – the Investment Bank – did not have Epstein as a client, and nor did he introduce business to the IB during my tenure. Also, I never conducted business with JE while at Blue Mountain Capital or at Barclays

- Over the years, I have had meetings with JE that varied in frequency. Pre his 2008 conviction, most of these meetings took place in his office in midtown Manhattan, which he maintained prior to his incarceration. Post his conviction, the meetings took place at the office which he maintained in his home in Manhattan. At no time during these meetings did he reveal or discuss any aspect of the conduct that was the subject of his recent indictment.

- After his conviction, I attended roughly 1 dinner per year hosted by Jeffrey – most often with multiple guests. And I have only ever been at a social gathering with him once.

- He has never visited my home as a guest.

- I have visited his island twice. Once I was with my wife and daughters in transit to a boat. The second time, I stopped off at his island with my wife for a couple of hours in April of 2015 when we were vacationing in the Caribbean and were passing his home. At no time during either visit did I or my family witness any of the conduct for which he was convicted in 2008 or indicted earlier this year.

- As has been reported, I visited Epstein during his incarceration on one occasion in 2008/09. That visit took place for under an hour in the office he was using for work release while serving his sentence. Our conversation centred on his experience in jail.

- My view at the time was that he had pleaded guilty to a crime and was rightly punished.

- He was someone I had known well and I felt it was right to offer him support.

- At that time, I had no way of knowing that his conviction in 2008 was not sufficient to encompass the extent of his crimes. To my knowledge, he had been investigated thoroughly, tried and convicted.

- In Dec 2015, I assumed my position at Barclays and moved to London. I have not had any contact with him since then.

- Of course, with the benefit of hindsight, I wish that I had never had a relationship with Jeffrey, let alone severed it earlier.

- In sum, I have thought long and hard about my relationship with JE. I abhor his conduct. I regret that I was unaware of it. But I have not behaved in any way which could be regarded as untoward or improper.

- Given the public attention surrounding the JE case, I understand why the Committee felt compelled to hear from me on this matter. I wanted you to hear the truth from me, in person, because I so value my association with this college and the reputation I have built here and during my career for integrity.

- I arrived in Brunswick in 1975 and in many ways I have never left. I have contributed countless hours to the college's welfare. I sent one of my daughters here, and have enthusiastically recommended Bowdoin to numerous friends through the years.

- I have served for 12 years now on its Board of Trustees. It has been my pleasure and privilege to do so.

- I understand what is at stake here, and let me be clear: To judge my merits to be a Bowdoin trustee based on a limited relationship with an individual completely removed from the college and completely removed from the person I believe myself to be, would be to take guilt by association to a frightening and unwarranted extreme.

- The college should judge those who make up its community based on who they are and the values they uphold. The Bowdoin community has known me for forty-four years; the values I have upheld have been the values inculcated in me by my family, my friends, and in no small measure, by my experiences here.

- Accordingly, I am gratified that since the articles have been published on my visits to JE, there have been virtually no calls, that I am aware of, for my separation from Bowdoin. There have been, instead, only understandable calls, from some, for me to explain the relationship I had with JE. Now that I have done that, I will take your questions and await your guidance. Thank you."

300. In our view, the document gave the same impression to the Bowdoin College Trustees as had been given to journalists in July and August 2019, namely that any close professional relationship Mr Staley had had with Mr Epstein was during the time that Mr Staley headed JPM's private bank, and

particularly during the period 2000-2008. The fifth bullet point in the document, as set out above, read:

> "At no time after his conviction in 2008 did I allow JE any connection with any aspect of my professional life. Indeed, I have never had any professional relationship with JE except for his relationship with JP Morgan's private bank, which began long before I ever met him. That said, I had limited contact with him post his conviction, which I will describe shortly."

301. As stated in the fourteenth bullet point in the document, it was stated that over the 7 or 8 years since the relationship commenced "he and I became professionally fairly close – predicated on this propensity to introduce business to JP Morgan."

302. The document did refer to specific points of contact with Mr Epstein after 2008, such as twice visiting his island or visiting him whilst on work release, but we agree with the Authority that the overall impression was still not a full picture, and did not rectify the wrong impression that any "close professional relationship" had pre-dated 2008. The disclosure of the April 2015 island visit was incomplete, as it failed to make clear that Mr Staley had travelled on Mr Epstein's plane in order to reach the Caribbean: instead, the impression given was that Mr Staley had happened to be in the area and decided to stop by the island.

303. Although it was said that Mr Staley "had meetings with JE that varied in frequency" after 2008, the only detail given was that Mr Staley "attended roughly 1 dinner per year hosted by Jeffrey – most often with multiple guests."

304. The document also stated that Mr Staley had "only ever been at a social gathering with him once" and that Mr Epstein had never visited his home as a guest.

305. Neither Mr Hoyt nor Mr Higgins in their evidence could point to much by way of significant information about the relationship between Mr Epstein and Mr Staley which was not reflected in the Bowdoin College Talking Points.

Presentation to Bowdoin College

306. Ms Wiggins was clear in her evidence that the document was read out at the meeting, which Mr Staley accepted was the case in part in his re-examination. Indeed, he also suggested that a hard copy was handed out to the Trustees at the meeting.

307. Mr Smith submitted that the Bowdoin College Talking Points cannot be regarded as a comprehensive account of the relationship between Mr Staley and Mr Epstein. He submitted that the Bowdoin College Talking Points were prepared for a limited purpose, which was to assure the Trustees of the College that the donations that Mr Staley had made to the College were not tainted by gains generated by Mr Epstein. He also submitted that the preparation of this document was not the sole purpose of Mr Staley's presence in New York on 12 September; he was engaged during the day on other Barclays business.

308. The document itself does not deal with the question of whether any donations to the College were tainted with gains generated by Mr Epstein. It is clear from the document itself that they had been prepared to address the question of Mr Staley's relationship with Mr Epstein more generally. This is apparent from the second bullet point in the document which reads as follows:

> "Given my long relationship with JE, and particularly in light of the recent understanding of the enormity of his evil, I understand the questions you may have regarding that relationship, and am here to answer those questions."

309. Mr Staley's evidence was that he believed going into the meeting that the main concern of the College was whether Mr Epstein's money had benefited the College. Ms Wiggins's recollection was different; she said that this concern arose in the course of the question and answer session that followed Mr Staley's presentation when it became clear that the Trustees' real concern was about whether Mr Epstein's money had benefited the college and that she had a specific discussion with Mr Staley about that point after the meeting. Mr Higgins in his cross-examination also thought that the original enquiry was broader "than money".

310. We prefer the evidence of Ms Wiggins and Mr Higgins on this point. It is also consistent with the whole tenor of the document which focuses on the relationship between Mr Epstein and Mr Staley and also the fact that the Bowdoin College article that had led to Mr Staley making his presentation to the trustees had been focused on the relationship between the two men, rather than donations.

311. The manuscript notes that Ms Wiggins prepared of the meeting with the Bowdoin College Trustees were in evidence. These notes were not passed on to anyone else at Barclays.

312. It appears from these notes that at the question and answer session Mr Staley told the Trustees that Mr Epstein "was a client + then personal friendship". Likewise, he appears to have said it was a "personal relationship" after Mr Epstein's conviction. Ms Wiggins told the Tribunal that this was the first time she had ever heard him put it that way; up until that point, Mr Staley had always described the relationship as a professional one to her.

313. As the Authority submitted, if Ms Wiggins had previously been told that the relationship was a purely professional one, it is likely, consistent with the content of the Bowdoin College Talking Points, that Mr Staley had told everyone else at Barclays, in particular Mr Higgins and Mr Hoyt, that the relationship was a purely professional one.

Conclusion on Barclays' knowledge of the relationship

314. We agree with Mr Smith that the Bowdoin College Talking Points cannot be regarded as a comprehensive account of the relationship between Mr Epstein and Mr Staley. There is no such document but it is clear that neither Mr Hoyt nor Mr Higgins had any account from Mr Staley of the depth of the relationship which adds to what was said in the Bowdoin College Talking Points. As we have mentioned above, Mr Hoyt understood that the Bowdoin College Talking Points reflected Mr Staley's description of his relationship with Mr Epstein and set out the facts of that relationship. Therefore, in so far as the account was incomplete, responsibility for that rests with Mr Staley. We cannot therefore accept his evidence that the document shows that Barclays had an accurate picture of the relationship.

315. Mr Higgins's evidence was that he was read all or part of the Bowdoin College Talking Points, although he did not at the time receive a hard copy. He said that when eventually he did read it none of the contents surprised him and that the final draft of the Bowdoin College Talking Points was consistent with what he had been told by Mr Staley about his relationship with Mr Epstein.

316. The Bowdoin College Talking Points state that over a period of between 7 and 8 years Mr Epstein and Mr Staley became professionally close. When read together with the earlier statement in the document, referred to at [300] above, that Mr Epstein had no connection with Mr Staley's professional life after his conviction, the clear impression was given that the relationship was a purely professional

one and only existed during the time that Mr Staley was running the JPM Private Bank. The document also did not give any flavour to the frequency of the meetings between the two men after Mr Epstein's release, or that they remained in contact right up to the end of October 2015. Neither did the document mention that Mr Staley had taken Mr Epstein into his confidence regarding highly sensitive matters involving his professional life right up to that time.

317. We therefore conclude that Barclays did not by the date of the Letter have a full and accurate picture of the nature of the relationship between Mr Staley and Mr Epstein. What Barclays was told was clearly at variance with our evaluation of the relationship, as summarised at [189] to [217] above.

The scope of the Authority's enquiry in August 2019

Introduction

318. Mr Staley's case is that that scope of the enquiry made by Mr Davidson on 15 August 2019 was focussed on the steps Barclays had taken to understand whether Mr Staley was aware of or had participated in the criminal misconduct alleged against Mr Epstein. The enquiry, and the response to it, is characterised by Mr Staley in Mr Smith's opening submissions as:

> "intended to achieve only one purpose, which was to inform the Authority that neither Mr Staley nor Barclays had had any knowledge of or involvement in Mr Epstein's unlawful conduct. It was not intended to define the relationship between Mr Staley and Mr Epstein…"

319. It is contended that the enquiry to which Barclays was responding was very narrow and restricted which defined the terms of its response.

320. The Authority's position is that the enquiry was broad in scope and was plainly seeking an assurance regarding the nature of the association between Mr Staley and Mr Epstein (and between Barclays and Mr Epstein) as well as an understanding as to how Barclays had satisfied itself there was no impropriety to the relationship. The enquiry was not ambiguous in the information sought, nor was it narrowly defined or limited to seeking information regarding knowledge of or involvement in unlawful conduct as suggested.

The origin of the Authority's enquiry

321. The enquiry by the Authority arose as a result of Mr Steward sending Mr Davidson two articles which appeared in the press in July and August 2019 under cover of an email dated 9 August 2019.

322. Those two articles, entitled "JPMorgan Kept Jeffrey Epstein as a Client Despite Internal Warnings" and "Jeffrey Epstein's Deep Ties to Top Wall Street Figures" included allegations which publicly called into question the relationship between Mr Staley and Mr Epstein.

323. Mr Davidson's evidence, which we accept, was that he did not believe that matters raised in the press are always facts, which is why he decided that the appropriate response was to see what Barclays had done to ensure that their chief executive was fit and proper, in the light of the fact that media interest in the relationship between Mr Staley and Mr Epstein appeared to have intensified. We agree with the Authority that the fact it may have had knowledge of press reporting and therefore perhaps some prior awareness of the concerns raised by journalists about the relationship between Mr Staley and Mr Epstein did not obviate the need for the Authority to make its own enquiry and to obtain factually accurate information directly from the regulated firm and individual.

324.Mr Bailey and Mr Davidson spoke prior to the enquiry being made. Mr Bailey was then Chief Executive Officer of the Authority. Mr Davidson confirmed that, as result of those discussions, a decision was made between him and Mr Bailey that in the first instance it would be appropriate for him to contact Mr Higgins by telephone.

325.Mr Bailey's evidence as to why the Authority decided to approach Mr Higgins was:

> "The reason that the original request in August went to Mr Higgins was because he is and was the chair of the board of Barclays. It was the responsibility of Barclays, in our view, to ensure that they had taken into consideration the implications of the information that was coming to light for Mr Staley's position as chief executive and his responsibilities under the senior managers regime, and that is a responsibility that sits with the firm in the first and foremost instance."

326.On 14 August 2019, Ms Collins-Firth, at the request of Mr Davidson on behalf of the Authority, contacted Barclays by telephone seeking to speak urgently to Mr Higgins. On 15 August 2019, Mr Higgins, who was on a walking holiday in Romania at the time and appreciated that the matter was urgent, returned Mr Davidson's call.

327.There is a conflict of evidence between what Mr Higgins says he understood to be the scope of the enquiry from the call and what Mr Davidson said he was asking Barclays to confirm. Our task in resolving that dispute has not been made easy due to a lack of a proper and adequate note of the conversation and the failure on the part of the Authority to follow up with a clear statement in writing of what it was expecting. We return to that issue later.

328.It is clear from the evidence that the call was a comparatively short one. The telephone records show that it lasted for 6 minutes and 53 seconds and some of that time would have been taken up by Mr Davidson being put through to Mr Higgins via the former's assistant, Ms Collins-Firth.

What was said on the call of 15 August 2019

329.Mr Davidson's evidence was that:

> (1) The enquiry was the first step in the process and that the purpose of that initial step was for the Authority to gain a proper understanding of the matter. Mr Davidson was clear that this might entail contacting a firm or individual to request further information or clarity on the matter, including in relation to any steps the firm had taken to understand potential harm and address the matter.
>
> (2) The purpose of the enquiry was to "understand the steps that Barclays had taken to understand the relationship between Mr Staley and Mr Epstein."
>
> (3) When asked whether that was the focus of the enquiry or whether it was directed to the question of whether in the light of press reporting there had been any impropriety in that relationship, Mr Davidson's firm evidence was the enquiry was directed at both. He said in cross-examination:
>
> > "I think it's -- well, not think, it was both. I was very conscious at the time that in order to understand whether any impropriety had taken place we would need to understand the nature of the relationship, and therefore we wanted to, as a first step -- the steps involved in understanding whether there was a high risk of that were potentially complex, potentially far-reaching and so we decided -- I decided that the first step would be to see what steps the employer had taken, Barclays."

(4) Mr Davidson was then asked whether at any time he made it clear to Mr Higgins that the Authority wanted to have an understanding of the relationship which had existed between Mr Staley and Mr Epstein, to which he replied:

> "The question that I asked was what steps they had taken as to understand …the relationship and the degree to which there was therefore any risk of impropriety in that relationship."

(5) When challenged directly that he had never asked Barclays what steps it had taken to understand the nature of the relationship, as opposed to the risk of impropriety, Mr Davidson's response rejecting the suggestion was:

> "Yes, I did….I asked what steps had he taken to ascertain whether there was any impropriety; in other words, to understand whether I considered, and this is a requirement under the senior managers regime, that reasonable steps had been taken. And reasonable steps, in my view, would have been to ascertain what the relationship was."

330.Mr Higgins's recollection differs from that of Mr Davidson. In his cross-examination he confirmed what he had said about the call in his interview with the Authority in December 2019.

331.Mr Higgins said that Mr Davidson told him that he had been talking to Mr Bailey and they wanted to know if the Board of Barclays had satisfied itself about the relationship between the two men given the stories that were coming out. Mr Higgins replied by explaining to Mr Davidson that Mr Staley had already come to him to give an explanation of the relationship. We assume that this is the conversation referred to having taken place in July 2019, as described at [277] above. Bearing in mind this was a short call, Mr Higgins confirmed that he would not have gone into any level of detail about the relationship between the two men. However, it was clear that the tenor of what Mr Higgins told Mr Davidson was that as a result of the discussion with Mr Staley, there was no concern on his part as to any impropriety in the relationship.

332.We consider that it is likely that in giving this confirmation to Mr Davidson, that Mr Higgins had in mind the answer to the question that he had asked Mr Staley in July 2019, as recorded at [279] above, that is whether Mr Staley had witnessed any of the matters alleged against Mr Epstein. Because at that time, it would appear that Mr Higgins had not had a detailed account of the extent of the relationship with Mr Staley, it is likely that his impression that there had been no impropriety in the relationship was based solely on what had been discussed with Mr Staley in July and therefore it stuck in Mr Higgins's mind that that was the issue that would be of most concern to the Authority when Mr Davidson made the enquiry in the way that he did.

333.That position is corroborated by what Mr Higgins told Mr Bailey in the call that took place between them on 15 December 2019, after the Authority's investigation had commenced. Mr Bailey's evidence, in commenting in cross-examination about a note Mr Higgins had made of the call in which he recorded that the investigation "was about the girls", was that Mr Higgins had put to the Authority that the question that would have been asked back in August was about "the girls". Mr Bailey had responded by saying that was not the case, the matter being all about the text of the Letter.

334.That position is supported by further statements that Mr Higgins made in his interview in January 2021. He said at that time that what he understood by the enquiry and relayed to Mr Staley was: "The question that was put to Jes is the same one that I keep repeating, namely that the FCA was interested to be sure that I was comfortable about the relationship between the two men, which I took to mean

is there any way that he could or should have been aware of what was going on with these girls." When asked in his re-examination "So to what extent were you seeking to establish the level of distance in the relationship so as to be satisfied that Mr Staley could not or should not have known of Mr Epstein's wrongdoing?", Mr Higgins confirmed in his evidence that "We were trying to assess in the round whether what we were told made it plausible or implausible that Mr Staley was then aware of or, worse, involved in what was going on."

335. We agree with the Authority's submission that this indicates that Mr Higgins was aware that even if the Authority's enquiry was limited to ascertaining whether Mr Staley was aware or should have been aware of Mr Epstein's misconduct, then it was necessary for Barclays to understand the extent of the relationship between the two men. In other words, to be able to answer that question it would be necessary to understand in further detail the nature of that relationship than had previously been disclosed by Mr Staley to Mr Higgins.

336. As to how the conversation concluded, Mr Davidson's evidence was that at the conclusion of this first phone call he requested that Mr Higgins put in writing the conversation they had had and that he expected that to cover the steps Barclays had taken to allow it to understand there was no particular or close relationship. He said:

> "I had said to him at the conclusion of this conversation -- he had asked me and I distinctly remember this, "Is there anything further you need from me?" So Mr Higgins at this first discussion felt that he had provided all the information necessary to answer my query about what steps they had already taken, and that I was satisfied with those steps. And when he called me it is no surprise to me that the question of close relationship came up, because I had requested at the conclusion of this first telephone call, when he asked me, "Is there anything further you want from me?", as in, "Am I free to go?", if you like, "Have you got what you need?", was, "Yes, but please could you put that in writing", which was -- and that in writing was the steps that they had taken to become comfortable; in other words, to summarise the conversation that we had. And I expected it to include what I had been taken to understand, that there was not a particular or close relationship."

337. Mr Higgins's evidence in his interview in January2021, which he confirmed in his cross-examination, was that he had had a question put to him over the phone "in a somewhat informal manner" and he had undertaken to come back in a form and a level of detail that was not specified by the Authority without any monumental urgency on a topic which Barclays did not feel uncomfortable about. Mr Higgins emphasised that although the request had been put in an informal manner, he understood the seriousness of the question and that it required a serious and proper response.

338. A note of the conversation does exist. It was created by Ms Collins-Firth on Mr Davidson's instructions on 16 August 2019, the day after the call. The text of the note reads:

> "JD spoke to NH who is currently away on holiday and back in the office next week. NH advised that when the press comments had first emerged JS came to speak with him and stated that there wasn't any particular relationship between him and JE. NH advised he felt satisfied by that. JD advised that the FCA's perception is that media reports had intensified around their relationship and asked NH to consider these. JD further asked NH to write to the FCA setting out how they had satisfied themselves there was no impropriety to the relationship."

339. This note is clearly inadequate, as Mr Davidson accepted. It did not meet the standards prescribed by the Authority for what is described as a "Note for the Record". Mr Davidson explained that a Note for the Record allows information to be shared amongst people inside the Authority and to record and

be able to understand later what happened in a meeting. It is clear that the note dictated by Mr Davidson does not meet that standard. For example, the note does not specify the level of detail that Mr Davidson expected the written response to cover. It simply asks how Barclays had satisfied themselves that there was no "impropriety to the relationship". The note does not indicate that the Authority was interested in whether or not Mr Staley and Mr Epstein had a close relationship and if so, the nature of that relationship, which Mr Davidson said in his evidence was implicit in his enquiry.

340. Mr Higgins, rightly, took issue with the statement in the note that there was "no particular relationship" between Mr Staley and Mr Epstein. It clearly lacks clarity and, if it means anything, can be interpreted as indicating that there was hardly any relationship at all between the two men.

341. Mr Higgins's response when cross-examined on the statement was: "I didn't say that. I don't know how I could have said that because there was and we knew it." We accept Mr Higgins's evidence on this point. Although detailed discussion with Mr Staley on the relationship had not taken place at this point, it was clear to Mr Higgins that there was at the very least a banker/client relationship and that there had been meetings between the two men outside a business context, for example to see Mr Epstein while he was on work release from prison and a visit to Mr Epstein's island.

342. There is no evidence, however, that at this stage Mr Davidson had asked Mr Higgins specifically whether the relationship was a close one. Bearing in mind Mr Higgins's perception was that the Authority was after confirmation that Mr Staley was not aware, or should have been aware, of Mr Epstein's criminal misconduct we think it is more likely that during the call Mr Higgins told Mr Davidson that there were no concerns from Barclays point of view in relation to that issue, without using the phrase "there was no close relationship". If Mr Higgins said that, we see no reason why Mr Davidson would not have ensured that it was included in the note of the call.

343. Mr Davidson sought to defend the lack of a Note for the Record on the basis that the onus was on Barclays to articulate the steps it had taken to satisfy the enquiry and in doing so there would be a record from the Chairman of Barclays himself.

344. We do not accept that a response from Barclays would be an adequate substitute for a proper note, particularly because, as Mr Higgins's evidence demonstrates, it was not clear to him what level of detail was expected in the response. It seems extraordinary that the Authority could consider that a letter from a regulated firm, however carefully drafted, would be an adequate substitute for a proper note prepared by the Authority itself.

345. We should point out that we do not criticise Mr Davidson for having started the enquiry with a telephone call. However, as Mr Higgins said, the enquiry was started in an informal manner and we consider that it would have been appropriate for the Authority to follow up with written confirmation of what they were expecting. For instance, had it been done simply by providing a copy of the note prepared by Ms Collins-Firth that would have given Mr Higgins the opportunity of indicating that the note did not reflect his understanding of the situation.

346. The Authority seeks to defend the lack of a written follow-up on the basis that this was a highly sensitive matter and the less there was in writing the less likely that there would be a leak. However, the Authority must be used to dealing with highly sensitive information and have appropriate systems in place to ensure that the information is kept behind a firewall. In any event, the Authority was expecting a written response from Barclays which, according to Mr Davidson's evidence, would set out the position for the record. This was a unique situation; a very serious concern about the fitness and propriety of the chief executive of one of the world's most important financial institutions and

there should have been no doubt as to what was expected of Barclays and their response. The fact that we have this dispute in the Tribunal as to what was expected indicates that the approach of the Authority was deficient in this regard.

347. Nevertheless, despite there being a difference between Mr Higgins and Mr Davidson as to the scope of the enquiry, it appears that those who did become involved in preparing the response to the Authority, including Mr Higgins himself, appreciated that what was necessary in order to give the Authority the comfort that it was seeking was to delve into the relationship between Mr Staley and Mr Epstein in further detail.

348. On 27 August 2019, a call took place between Mr Higgins and Mr Hoyt. Mr Higgins relayed Mr Davidson's request to Mr Hoyt. Mr Hoyt said that his understanding was that Mr Davidson had asked if the board had examined Mr Staley's connection with Mr Epstein and that Mr Higgins told him what he knew about the connection, that he had spoken to Mr Staley about it, had talked to him about the history and that Mr Davidson had requested some sort of a note or a letter coming back confirming that the board or Mr Higgins had done whatever they needed to do to satisfy themselves that they were aware of the facts.

349. In his evidence Mr Hoyt said:

> "My takeaway from the call was that I should work with Mr Staley to help him prepare a document that he would send to Mr Higgins and Mr Gillies[2] laying out the facts regarding his relationship with Mr Epstein."

350. This recollection is corroborated by a note Mr Hoyt made of that call on his iPad which records:

> "Jonathan Davidson rang to ask if bd [board] had examined CEOs connection to Epstein. Told him that JS raised with him; discussed history; could we have a note or letter setting out the issues.
>
> – Have Matt sit with Jes and get history; reduce note to Crawford."

351. We take from this evidence that Mr Davidson was expecting Barclays' response to confirm the nature of the connection between Mr Staley and Mr Epstein and that this was a broader issue than simply providing confirmation that Mr Staley was not aware, or should not have been aware of Mr Epstein's criminal misconduct. We also find from this evidence that both Mr Higgins and Mr Hoyt were aware of that.

352. In his first witness statement, Mr Hoyt noted that when he started drafting the letter he was not entirely sure what the Authority wanted. He clarified during cross-examination that:

> "we knew generally that he wanted something to be done such that Mr Higgins could affirm that Barclays had appropriately looked into the matter and were satisfied but how that was to be articulated, what was to be provided to the FCA was not clear and you could imagine, and we've seen in these documents, a number of ways in which that could be done."

353. We accept, as the Authority submitted, that this evidence demonstrates that whilst Mr Hoyt's task was to produce a draft response to the Authority which confirmed that Barclays had looked into the matter and were satisfied as to the nature of the relationship between Mr Staley and Mr Epstein, that required Mr Staley to work with Mr Hoyt and others to provide a full account of the relationship.

[2] Mr Crawford Gillies was the senior independent director of Barclays at the time .

The only live subject of discussion was the form that the response would take and not how the Authority's enquiry was to be answered.

354.Further support for the Authority's position that the scope of the enquiry was broader than that contended for by Mr Staley is to be found in an email exchange that Mr Higgins had with Mr Hoyt on 5 October 2019 when discussing the draft of the Letter.

355. Mr Higgins suggested to Mr Hoyt that the last paragraph be removed from the draft Letter with the rationale being:

> "If we want to shorten — do we need last para? I only mention because I'm not sure that this is quite the FCA's point; I think they are probably more worried about judgement than involvement in wrong-doing."

356.The last paragraph which Mr Higgins suggested be removed read:

> "In sum, neither our discussions with Jes nor our review of the bank's records have revealed any cause to suspect that Barclays or Jes have played any role in the activities of Mr. Epstein that are under investigation."

357.Mr Higgins explained in his first witness statement that his reference to the Authority being "more worried about judgement than wrongdoing" expressed the following concern with the draft last paragraph:

> "I wondered whether it clearly addressed the question of Mr Staley's awareness as well as involvement in unlawful conduct. This is what I meant when I said "I'm not sure this is quite the FCA's point. I think they are probably more worried about judgement than involvement in wrong-doing" "

358. In his oral evidence, Mr Higgins said by "judgement" he was referring to "Awareness, should he have been aware, would he have been aware of what was going on?"

359.Mr Hoyt said that he would leave the last paragraph in. He responded:

> "I understand this may not be what Jonathan is looking for, but it creates a nice record that you and Crawford have reasonably looked into this and, based on what you found, concluded that no further inquiry was warranted."

360.As the Authority submitted, this shows that Mr Hoyt considered that even if the last passage did not answer the enquiry made as Mr Higgins had understood it, it was of assistance in memorialising the steps Barclays had taken, which is consistent with Mr Davidson's evidence that the Letter was intended to ensure Barclays set out the steps it had already taken. Mr Hoyt confirmed this understanding in re-examination, noting that:

> "I thought that it was important for the record that Mr Higgins show that we had looked, and that we had asked, and that we were comfortable and that we had heard from Mr Staley that he was resolute that he had never seen anything, you know, in connection with – with the crimes that Mr Epstein was charged with."

361. As we shall see, prior to the draft of the Letter referred to above having been prepared, the initial approach taken by Mr Hoyt in preparing a response to the Authority's enquiry was to prepare a document setting out the history of the relationship between Mr Epstein and Mr Staley. This approach

is clearly consistent with an understanding on the part of Mr Hoyt and Mr Higgins that this was necessary in order to satisfy the Authority's request.

362.Mr Hoyt's evidence was that when he returned from New York where the Bowdoin College Talking Points were created, he:

> "turned back to the request from the FCA, which I thought would begin with a statement from Mr Staley to Mr Higgins. I took the substance of the Bowdoin talking points and went to transpose that into a draft of a note that would come from Mr Staley to Mr Higgins laying out essentially the same content as relevant to the FCA's enquiry."

363.The first draft of this document that Mr Hoyt prepared on 16 September 2019 opens with the words:

> "Dear Nigel, In light of recent press attention concerning Jeffrey Epstein, I am writing this note to document for you the history of my connection to Epstein."

364.Although, as we shall see, the form of the Letter took a different approach to that in the initial drafts, the final version of the Letter indicates that Barclays understood that Mr Davidson's enquiry required Barclays to confirm the steps that they had taken to satisfy themselves as to the nature of the relationship between Mr Staley and Mr Epstein. The Letter starts with the following statement:

> "I am writing to close the loop on your request for assurance that we have informed ourselves and are comfortable in regard to any association of Jes Staley or Barclays with Jeffrey Epstein."

Conclusion on the scope of the Authority's enquiry

365.Mr Staley's understanding of the scope of the enquiry was summarised by him in his first witness statement as follows:

> "I believed that the purpose of the letter was to respond to the oral enquiry made by the FCA, in August 2019, which was to obtain confirmation from Barclays that it was satisfied that I neither had knowledge of, nor had been involved in the criminal activities which had been alleged against Mr Epstein, following his arrest on 6 July 2019."
>
> "Our conversation [between Mr Staley and Mr Gillies] concerned the FCA's request which he was already aware of and which was, "did I participate in these alleged activities of Epstein and was Barclays aware?"
>
> "The letter had a single objective as far as I was concerned and that was to convey to the FCA that I was not aware, and Barclays was not aware, of what Mr Epstein was alleged to have been doing. I am entirely satisfied and believe that that single objective was shared by Mr Hoyt and by Mr Higgins."

366. It follows from our analysis of the position as set out at [329] to [364] above that we must reject Mr Staley's evidence on this point.

367.In full agreement with the Authority's submissions on this point, in order to be satisfied as to whether Mr Staley could have been aware or should have been aware of Mr Epstein's wrongdoing, Barclays needed to understand the nature of the relationship between the two men, which, as we shall see, is what it set out to achieve in its discussions with Mr Staley in order to respond to the Authority's enquiry.

368.The degree of closeness between the two men was an integral part of the consideration of whether Mr Staley could or should have been aware of wrongdoing. Awareness would not be limited only to direct awareness from physically being present when misconduct was going on, but could also have been gained, for example, from matters discussed, with Mr Epstein.

369.It is obvious that the greater the distance in the relationship, the less likely it was that Mr Staley could or should have been aware of Mr Epstein's wrongdoing. The smaller the distance, the more likely it was that Mr Staley could or should have been aware of it, and that questions could therefore be raised regarding his judgement in continuing to associate with Mr Epstein.

370.Therefore, although not as clearly expressed as it should have been in the call between Mr Davidson and Mr Higgins on 15 August 2019, we accept that Mr Davidson was expecting a response which explained what steps Barclays had taken to understand the relationship between Mr Staley and Mr Epstein and therefore whether or not there was any risk of impropriety in that relationship.

371.Although Mr Higgins's understanding was that the enquiry was limited to establishing whether Mr Staley was involved in or could or should have been aware of Mr Epstein's misconduct, Mr Hoyt and Mr Higgins both understood that in answering that question Barclays had to establish the facts as regards the nature of the relationship between the two men. Although Mr Davidson had not communicated to Mr Higgins during the call on 15 August 2019 that he was expecting specific confirmation that the relationship was not a close one, that position was made clear during the call on 4 October 2019, which we refer to below. Mr Higgins was able to respond by giving the confirmation requested on the basis of the information that Mr Staley had provided to Mr Hoyt and Mr Higgins during the course of preparing the response to the Authority's enquiry.

The preparation of the Letter and Mr Staley's approval of it

Early drafts: September 2019

372. As we have mentioned above, Mr Hoyt turned his mind to preparing a response to the Authority based on the material contained in the Bowdoin College Talking Points. This meant that the opportunity to prepare a more comprehensive document that set out in detail a record of all the relevant events in the relationship between Mr Staley and Mr Epstein was not taken.

373. At first, Mr Hoyt followed the approach of preparing a draft letter to be addressed from Mr Staley to Mr Higgins recording Mr Staley's account of the facts of his relationship with Mr Epstein on the basis that this was a letter that would be passed on to the Authority.

374. It is clear from the text of the drafts of this letter that the substance of the response was based on the content of the Bowdoin College Talking Points. As Mr Hoyt said in his cross-examination:

> "I took the substance of the Bowdoin talking points and went to transpose that into a draft of a note that would come from Mr Staley to Mr Higgins laying out essentially the same content as relevant to the FCA's enquiry."

375. Mr Hoyt prepared the first draft on 16 September 2019. He showed this to Ms Wiggins who made some amendments which are shown in blue ink on the draft. Mr Hoyt then produced a further draft on 18 September 2019 which took account of Ms Wiggins's changes and shared this draft with Mr Staley on or around 19 September 2019.

376.One particular point to note from changes made between the first and second drafts is that Ms Wiggins deleted the following sentence:

> "As a result of his introduction of business to JP Morgan, he and I became professionally fairly close over the course of 7 – 8 years."

377. Initially in her cross-examination Ms Wiggins doubted that she had deleted those words because it appeared from the copy of the document that she was shown that the deletion had been made in black ink, whereas she used blue ink. She also said she had no reason to delete it as it was a correct statement. However, after Mr Hoyt disclosed to the Tribunal that he had the original of the document which clearly showed the deletion had been made in blue ink, Ms Wiggins was recalled and confirmed that it must have been her who deleted the words in question.

378. Ms Wiggins cannot explain why she deleted it. Mr Hoyt, however, recalled discussing the Authority's request with Ms Wiggins at the time and said in evidence:

> "I believe her view that that sentence was not relevant to the Authority's enquiry had to do with her understanding which I shared, that the Authority was mainly focused on whether Mr Staley would have been aware of, in a position to be aware of or had participated in the unlawful activities that Mr Epstein had been charged with….And I believe that her view, which I thought was reasonable upon hearing it, was that that sentence about being fairly professionally close wasn't really as relevant to that enquiry."

379. As we have found, the Authority's enquiry was wider in scope than that, but Mr Hoyt's statement reflects what Mr Higgins believed to be the focus of the Authority's enquiry and the fact that he did not pick up from his conversation with Mr Davidson that the Authority wished to know whether the relationship was a close one. As we have indicated above, Mr Staley did not see this draft so he would have been unaware that the deleted words had been contained in it but did not feature in the second draft, which he did see.

380. Mr Hoyt recalls that Mr Staley read the draft carefully and confirmed that he was comfortable with it, subject to it being reviewed by others.

381. On or around 23 September, Mr Hoyt showed the same draft to Mr Higgins, noting in the process that both Mr Staley and Ms Wiggins had reviewed the draft and were comfortable with it.

382. Mr Higgins had two comments, which were to (i) re-order the substance chronologically; and (ii) to explain the reason for the work release visit in 2009.

383. A further version of this letter was produced on Thursday 26 September 2019. This draft took into account Mr Higgins's request that it be reordered chronologically.

384. It is important to note that this draft introduced the sentence: "I did occasionally meet with Epstein after his release." Mr Smith sought to suggest in the cross-examination of Mr Hoyt that he (Mr Hoyt) had inserted that sentence and that it was inconsistent with what he knew. Mr Hoyt could not recall who had instigated that insertion, but he believed that it was intended to reflect that there were occasional meetings with Mr Epstein after the point in time when he was released from prison.

385. We accept that evidence from Mr Hoyt; what he said is consistent with the information set out in the Bowdoin College Talking Points regarding the infrequency of Mr Staley's meetings with Mr Epstein after his incarceration, and the similar information provided to journalists by Mr Doherty with Mr Staley's agreement. We have no reason to believe that Mr Hoyt would have inserted something into the draft which he knew not to be correct.

386.On Monday 30 September 2019, there was a call between Mr Staley, Mr Higgins and Mr Hoyt to discuss the draft response. At some point before this, Mr Staley had asked Mr Hoyt whether he could forward a draft of the letter to his personal counsel, Mr Farmer. The subsequent advice (over which there has been a partial waiver of privilege) from Mr Staley's lawyers was that this letter should not be finalised but instead the response to the Authority should take the form of a shorter letter from Mr Higgins. The next draft of the response was dated 1 October 2019 and in that form, as discussed below.

387. It is not clear whether or not Mr Staley saw the draft of 26 September 2019 although Mr Staley's evidence in his first witness statement was that all the versions "contain an accurate description of my relationship with Mr Epstein".

October 2019: Drafting of the Letter

First draft: 1 October

388. On 1 October 2019, Mr Hoyt produced the first version of the draft Letter to come from Mr Higgins. This read as follows:

> "Dear Jonathan,
>
> I am writing to close the loop on your request for assurance that we have informed ourselves and are comfortable in regard to any association of Jes Staley or Barclays with Jeffrey Epstein. I can now report that Crawford Gillies, Bob Hoyt and I have had conversations with Jes where he has walked us through the history of his interactions with Mr. Epstein. Jes has assured us that since Mr. Epstein's release from prison, he had only occasional meetings with him. Jes is resolute that a no time did he see anything that would have suggested or revealed any aspect of the conduct that has been the subject of recent allegations. Jes' last contact with Mr. Epstein was in 2015. Jes has told us that he has not been interviewed or subpoenaed in any of the investigations or other legal matters involving Mr. Epstein.
>
> Separately, Barclays' Financial Crime team has conducted a thorough review of our records, which did not reveal any client or customer relationship with Mr. Epstein or his known affiliates.
>
> In sum, neither our discussions with Jes nor our review of the bank's records have revealed any cause to suspect that Barclays or Jes have played any role in the activities of Mr. Epstein that are under investigation.
>
> I trust this addresses your questions."

389.Whilst this draft of the letter refers to Mr Staley having had a conversation with Mr Gillies, that conversation had not happened yet. Mr Higgins explained in his evidence that he was going to have that conversation after there was a letter to show Mr Gillies. Mr Higgins's thinking was that he ought to ask a senior Non-Executive Director of Barclays to have a separate conversation with Mr Staley to give a separate perspective on the issue.

Second draft

390.Ms Wiggins had limited comments on the first draft. She suggested inserting that Mr Staley's last contact with Mr Epstein had been before he joined Barclays in 2015 (rather than just in 2015) and corrected a typographical error. These comments were fed into the next draft.

391.Of significance is that both drafts stated:

> "Jes has assured us that since Mr. Epstein's release from prison, he had only occasional meetings with him."

392.As the Authority observed, this statement reflected the Bowdoin College Talking Points, which had talked about "limited contact" after 2009. Mr Staley's evidence in his witness statement was that the statement that there had been occasional meetings with Mr Epstein after his release from prison was an accurate statement.

393.It appears that Mr Staley was shown one of these drafts, because on 6 October 2019, when Mr Hoyt sent Mr Staley the near-final version to review, he indicated that later draft was "only slightly revised from the draft I showed you last week". It does not appear that Mr Staley took issue with the statement in both of those drafts that they had only been occasional meetings between himself and Mr Epstein since Mr Epstein's release from prison.

Telephone calls with Mr Gillies: 2 and 4 October

394.On 2 October 2019, Mr Higgins telephoned Mr Gillies asking him to give an objective view on whether there was a need to inform the Board of Barclays of the matter. We note that in its original enquiry the Authority had asked that Mr Higgins confirm that the Board of Barclays had satisfied itself about the relationship between the two men given the stories that were coming out: see [331] above.

395.On 4 October 2019, Mr Staley spoke to Mr Gillies. We have seen a transcription of Mr Gillies's notes of that call, but they are not verbatim and it is difficult to discern exactly what was said. There was nothing to indicate from these notes that Mr Staley gave Mr Gillies a fuller or more accurate description of his relationship with Mr Epstein than that Mr Higgins and Mr Hoyt were aware of through the medium of the Bowdoin College Talking Points and the various drafts of the Letter.

396.Mr Gillies then spoke to Mr Higgins on the same day. On that call, Mr Gillies reported his view that the Board did not need to be briefed, on the basis that there had been "no relationship with Barclays, no contact since he joined Barclays" and that nothing he had heard "suggests a lack of integrity, skill, care and diligence". Accordingly, the Board of Barclays as a whole were not informed about the Authority's enquiry until the Authority opened its investigation in November 2019. Mr Gillies reported that from his point of view, the main criticism that could be levied at Mr Staley was "how could he have missed it", but that criticism could be applied to many others; the only additional fact was that Mr Staley had flown on Mr Epstein's jet.

The call between Mr Higgins and Mr Davidson on 4 October

397.Mr Higgins spoke to Mr Hoyt at 3.30 pm, and again at 5.22 pm on 4 October. Mr Hoyt was concerned the draft letter was so short and lacking in detail that it may not satisfy the Authority so he suggested that Mr Higgins read the draft letter to Mr Davidson over the phone and ask Mr Davidson to confirm that it would be sufficient.

398.At 5.38 pm, Mr Higgins rang Mr Davidson. It was a short phone call at the end of the day on a Friday, lasting only 6 minutes. It was not pre-arranged. Neither Mr Higgins nor Mr Davidson have a very clear recollection of what was said. Mr Hoyt has a clearer recollection based on what Mr Higgins told him when Mr Higgins phoned him immediately after the call with Mr Davidson.

399.Again, there is a conflict of evidence between Mr Higgins and Mr Davidson as to what was said on the call. It is most unfortunate, as Mr Davidson accepted in his evidence, that neither Mr Higgins nor Mr Davidson made a note of the call which clearly would have assisted us in dealing with this conflict of evidence.

400. Mr Davidson's evidence was that:

> (1) Mr Higgins wished to establish whether the proposed response would appropriately address the question that he had asked about the steps that Barclays had taken to satisfy itself that there was no impropriety in the relationship between Mr Staley and Mr Epstein.
>
> (2) He could not recall whether the Letter was read to him.
>
> (3) He could not recall if the language "no close relationship" was put forward by Mr Higgins or whether he asked for it to be added to the Letter, but he reiterated the question that was put to Barclays which was: how did it satisfy itself there was no impropriety in the relationship between Mr Staley and Mr Epstein? The explanation was that Mr Staley had had occasional interactions with Mr Epstein and if he did ask for confirmation of "no close relationship" to be included, this would only have been on the basis of his understanding of what he was being told about the relationship, and Barclays' decision to include it should only have been in the context of it being true.

401.Mr Higgins's evidence as to the content of the call was that:

> (1) Mr Davidson asked him if he thought that the two men were not close and when Mr Higgins said that he did not think they were close Mr Davidson asked him to put words to that effect in the Letter.
>
> (2) There was no debate about anything else in the draft so he did not detect that Mr Davidson was unhappy with the text of the draft that he had read out.

402.In re-examination Mr Higgins accepted that he had no independent memory of the call but rather his memory was prompted by Mr Hoyt subsequently.

403.Mr Hoyt, who spoke to Mr Higgins immediately after the call, said that his understanding was that Mr Higgins had read the version of the Letter to Mr Davidson on the call. Mr Hoyt's evidence was that Mr Higgins relayed to him that Mr Davidson had said something to the effect of "would you or could you say they were not close?"

404.Subsequent to that conversation, Mr Hoyt finalised the text of the Letter, including the "no close relationship" language in the text.

405.We have no doubt that Mr Higgins did read the text of the draft to Mr Davidson on the call. Mr Hoyt corroborates that evidence as demonstrated by the fact that Mr Hoyt has a clear recollection of Mr Higgins telling him after the call that he had read the draft to Mr Davidson.

406.We have also no doubt that the request that the Letter contain the "no close relationship" language came from Mr Davidson. We see no reason why Mr Higgins would have raised that issue with Mr Davidson because his perception was that the Authority was most concerned about whether Mr Staley knew or ought to have known of Mr Epstein's misconduct. It is also worth bearing in mind that wording to the effect of there being no close professional relationship between Mr Staley and Mr

Epstein had been deleted from the first September draft on the basis that Barclays's understanding was that issue was not relevant to the Authority's enquiry.

407. We find Mr Hoyt's evidence on this point more reliable than that of Mr Davidson, based as it was on his recollection of the conversation with Mr Higgins immediately after the call had taken place.

408. At 5.50 pm, Mr Higgins rang Mr Staley. This phone call lasted 8 minutes. Mr Higgins does not have a clear recollection of this call, although he considered it likely that he would have referred to his conversation with Mr Davidson.

Further drafts: 5 and 6 October

409. At 2.43 pm on 5 October 2019 Mr Hoyt emailed Mr Higgins. He said:

> "Here is a new draft letter along the lines of what we discussed last night. I shortened it from the earlier version, although it could be shortened even further if you wish. Once you have a draft that you are satisfied with, I recommend showing it to Jes to ensure that he thinks it fairly describes what he has told us. He was comfortable with the earlier draft, so this should be straightforward."

410. That draft contained, for the first time, the statement that Mr Staley did not have a close relationship with Mr Epstein. It read:

> "Dear Jonathan,
>
> I am writing to close the loop on your request for assurance that we have informed ourselves and are comfortable in regard to any association of Jes Staley or Barclays with Jeffrey Epstein. I can now report that Crawford Gillies, Bob Hoyt and I have had conversations with Jes where he has described his interactions with Mr. Epstein. Jes has confirmed to us that he did not have a close relationship with Mr. Epstein, and he is resolute that at no time did he see anything that would have suggested or revealed any aspect of the conduct that has been the subject of recent allegations. Jes' last contact with Mr. Epstein was before he joined Barclays in 2015.
>
> Separately, Barclays' Financial Crime team has conducted a thorough review of our records, which did not reveal any client or customer relationship with Mr. Epstein.
>
> In sum, neither our discussions with Jes nor our review of the bank's records have revealed any cause to suspect that Barclays or Jes have played any role in the activities of Mr. Epstein that are under investigation.
>
> I trust this addresses your questions."

411. It is to be noted that the "no close relationship" language replaced the statement in the previous draft about Mr Staley only having had "occasional meetings" with Mr Epstein since the latter's release from prison. Mr Hoyt explained in evidence that he regarded this as not a substantial change. In answer to a question from the Tribunal, Mr Hoyt agreed that the easiest way of including the "no close relationship" language was to substitute it for the "occasional meetings" language because the two phrases were synonymous.

412.It is clear from Mr Hoyt's evidence on this point that he was influenced by the language in the Bowdoin College Talking Points to the effect that there was no professionally close relationship between the two men after Mr Epstein's release from prison and limited contact after that time. As the Authority submitted, in those circumstances it was not surprising that Mr Hoyt and Mr Higgins concluded that it was fair to say that Mr Staley "did not have a close relationship" with Mr Epstein. As the Authority submitted, the impression they had, as the Bowdoin College Talking Points records, was that Mr Staley's relationship with Mr Epstein had been a strictly professional one, rooted in Mr Staley's role as Mr Epstein's banker and Mr Epstein's propensity to introduce clients to Mr Staley in that role, which had started to taper off after 2009 – a decade before the Letter being written.

413. At 4.23 pm, Mr Higgins responded, suggesting the changes which we have already discussed at [354] to [359] above. He also suggested that they say "a long time before" in reference to Mr Staley's last contact with Mr Epstein.

414.At 7.40 pm, Mr Hoyt then sent a revised draft. He explained to Mr Higgins that he had gone with the phrase "well before" instead of a "long time before", because he believed "the last meeting was in 2015". As previously discussed, He also indicated he was leaving the last paragraph in even though it "may not be what Jonathan is looking for".

415.It is to be noted that even though Mr Hoyt said that he had introduced the "well before" language because he believed the last meeting between the two men had taken place in 2015, the draft referred to there having been no "contact" between the two men since that time. As we have discussed above, "contact" is wider than "meeting", but, for the reasons we explain below, it appears that Mr Hoyt focused his attention on the last time the two men met rather than the last time they had contact.

416.In his evidence, Mr Hoyt explained that he did not have the impression from Mr Staley that there had been any contact between Mr Staley and Mr Epstein around the time that Mr Staley was appointed as chief executive of Barclays. It appears that Mr Higgins did in fact discuss with Mr Staley when "contact" diminished and when it stopped. Mr Higgins said in interview that he was told that there was "nothing" after Mr Staley joined Barclays in 2015 and he was given the impression that the last "contact" was earlier in the same year and was not stopped just because Mr Staley was joining Barclays.

417. Mr Higgins's understanding – that there been no contact of any kind "well before" Mr Staley joined Barclays – was put to Mr Staley in the light of Mr Staley's evidence that the decision to cease contact was linked to Mr Staley assuming the role at Barclays. Mr Staley declined to say that Mr Higgins had the wrong impression; contending that he did not know what definition of "contact" Mr Higgins was using in his evidence.

418. Mr Staley's evidence was that the language of "well before" was intended to be by reference to the date of the island visit on 12 April 2015, because, on his case, "contact" meant in person meetings. In cross-examination he asserted that Mr Hoyt had expressly advised him that "contact" meant an in person meeting.

419.There is no evidence to support Mr Staley's assertion that he was advised by Mr Hoyt that the reference to "contact" in the draft meant physical meeting. Mr Hoyt's evidence, which was not challenged, was that Mr Staley had explained to him that he had last seen Mr Epstein in April 2015, and he did not think that they had discussed whether there had been any email or telephone communication. That, Mr Hoyt explained, was because he believed the question of concern from the Authority was whether by virtue of Mr Staley's relationship with Mr Epstein, he would have been aware of or participated in Mr Epstein's illegal activities. Mr Hoyt said that as a result, face-to-face

contact was more in his mind at that time than other forms of contact. That, in our view, explains the emphasis that Mr Hoyt put on "meeting" in his email of 7.40 p.m. referred to at [414] above.

420. However, it would appear from their evidence that Mr Staley had not informed either Mr Higgins or Mr Hoyt of the contact between Mr Staley and Mr Epstein that had taken place after April 2015, despite Mr Higgins having asked Mr Staley when contact had stopped. Therefore, it did not occur to them that there had been any contact after the meeting in April 2015 which Mr Staley did disclose to them.

421. At 12.33 am on 6 October that night, Mr Higgins responded to Mr Hoyt's email referred to at [414] approving the revised draft. He said: "Ok. Will you share with Jes and I'll sign next week?"

422. On 6 October 2019, Mr Hoyt sent Mr Staley (copying Mr Higgins) the final draft of the Letter for his review. His covering email said:

> "Jes,
>
> Please have a look at the attached draft letter. It is only slightly revised from the draft I showed you last week, but we want to be sure you feel that the language is fair and accurate. Based on a discussion between Nigel and Jonathan on Friday, we think this will meet the FCA's needs.
>
> If you have any questions or suggested edits please let us know. Jonathan will be expecting the letter this week."

423. As the Authority submitted, Mr Hoyt was making it clear to Mr Staley that he needed to come to his own view as to whether the language and the letter was fair and accurate.

The call of 7 October between Mr Hoyt and Mr Staley

424. On 7 October 2019, there was a phone call between Mr Hoyt and Mr Staley, lasting approximately 5 minutes. There is a dispute over what was said in this call.

425. Mr Hoyt's evidence in relation to the call, as set out in his first witness statement, was that he described to Mr Staley the changes which had been made from the previous version of the letter he had seen as not being very significant, because "I did not think that they were." In particular, he said that he did not regard a change from the "occasional meetings" language to "no close relationship language" a substantive change. We have dealt with why Mr Hoyt was of that view at [411] above.

426. Mr Hoyt also confirmed in his evidence what he had said in his first interview with the Authority to the effect that Mr Staley had asked about the "no close relationship" language and that they had discussed where this language had come from and whether it was the right language to use. Mr Hoyt's evidence was that he said that from his perspective, in light of the discussions he had had with Mr Staley from July 2019 onwards regarding the nature of his relationship with Mr Epstein, it seemed to appropriately reflect the position. Mr Hoyt went on to emphasise, however, that he told Mr Staley that it was for Mr Staley to decide for himself if he thought that language was accurate or not. Mr Hoyt's evidence was that Mr Staley then asked Mr Hoyt what he thought, and he replied that given what Mr Staley had previously described, he did not think it sounded like a close relationship – it was a business-oriented, networking-based relationship, involving sporadic and intermittent contact, especially in recent times. He said that he understood at that time that Mr Staley had had no contact with Mr Epstein since 2015. Mr Hoyt's evidence was that he explained to Mr Staley that on that basis, the language felt comfortable to him, and Mr Staley confirmed that was fine.

427. Mr Hoyt's evidence under cross-examination remained consistent with what is set out at [426] above. He confirmed that during the call he did pass on to Mr Staley what Mr Higgins had told Mr Hoyt about the conversation with Mr Davidson. In re-examination, he was asked why he wanted to ensure that Mr Staley felt the language was fair and accurate. His evidence was that only Mr Staley had knowledge of the facts to ensure the Letter was accurate.

428. Mr Staley's recollection of the call is different in a number of respects.

429. Whilst he said in his first witness statement that he asked Mr Hoyt why the draft now incorporated words to the effect that he had not had a close relationship with Mr Epstein, in his cross-examination he rowed back on that point and said he could not recall asking the question.

430. Mr Staley also said in his first witness statement, a position which he maintained in cross-examination, that he asked Mr Hoyt "whether the draft was a reflection of everything that I had said over the last number of months about my relationship with Epstein". Mr Hoyt was asked about this in his cross-examination and said that he did not recall that question being put to him. He said it would have been an odd thing for him to be asked and that he believed he volunteered that the wording reflected what Mr Staley had told him over the past months.

431. We prefer Mr Hoyt's evidence on what was said during the call. Mr Staley said in cross-examination that he only "vaguely" remembered the call and some of the answers he gave in his cross-examination were inconsistent with what he has previously said in his first witness statement. The email communications are also consistent with Mr Hoyt's recollection of the purpose of the call which was to obtain Mr Staley's confirmation that he was comfortable with the language in the letter, a matter which he would have to decide independently for himself.

Finalisation of the Letter

432. Very shortly after this call, at 12.37 pm, Mr Hoyt sent an email to Mr Higgins, copying Mr Staley, in which he said "Jes has reviewed it as well and is comfortable with the language." His email suggested one minor change from Mr Staley, which was not in respect of the statements in issue, but related to changing the words "are under investigation" to "have been under investigation" because (so Mr Hoyt's email recorded) it was "not clear what was still being investigated following Mr Epstein's death". Mr Staley does not dispute that he did, in fact, approve the Letter.

433. Mr Higgins indicated his approval of the final draft to Mr Hoyt and sent the letter to Mr Davidson the next day, 8 October 2019.

THE AUTHORITY'S INVESTIGATION

434. In his Amended Reply, Mr Staley raised a number of criticisms of the Authority's approach to its investigation, which was opened in December 2019. In particular, Mr Staley contended that the Authority's decision-making process when commencing a formal investigation was not conducted fairly and impartially in that:

> (1) Mr Staley and Barclays were not given the opportunity to provide an initial explanation of any apparent inconsistency between the email correspondence that was provided to the Authority by JPM and the terms in which the Letter was expressed; and
>
> (2) the PRA and the Authority prejudged the issue of Mr Staley's culpability and then directed that an investigation should be commenced.

435.Mr Staley also contended that the Authority did not make reasonable disclosure of material in its possession either at the date of Mr Staley's first interview on 20 December 2019 and/or at the time of the subsequent interviews with Mr Staley conducted in June 2020 and March 2021. It is argued that he was placed at a significant disadvantage in attempting to provide the Authority, during these interviews, with his recollection of the events in question concerning his relationship with Mr Epstein.

436. In the event, these concerns were not put to the relevant witnesses other than (in relation to the disclosure issue) to Mr Steward. Mr Smith, in his closing submissions, reiterated the criticism that it was unfair of the Authority to keep from Mr Staley the email correspondence obtained from JPM when interviewed him on 20 December 2019. Mr Smith submits that the Authority deliberately disclosed only a selection of the emails which it had in its possession and which it had then analysed in a document which the Authority created. Out of the 1200+ emails provided by JPM the Authority provided Mr Staley with 15 emails which incorporated a number of chains. They included emails relating to expressions of friendship, the purchase and sale of American Century, the 2009 email relating to the visit to the Santa Fe ranch, the email referring to "Snow White", and Mr and Mrs Staley's gratitude for what Mr Epstein had done for their daughter.

437.Mr Smith submits that the Authority's failure to conduct the interview of 20 December 2019 fairly should deprive the Authority of its ability to make constructive criticisms of how Mr Staley responded to their questions at that time. He says it was 2 hours into that interview before the Authority asked Mr Staley to explain his relationship with Mr Epstein which was a carefully constructed attempt by the Authority to place Mr Staley at a significant disadvantage in that interview.

438. We accept, as the Tribunal has done in previous cases, that where the subject of an investigation appears to have been treated unfairly during the interview or the lead up to it, that the Tribunal should put less weight on interview evidence when compared with what the subject has said on the matter subsequently, and therefore should place limited weight on any inconsistencies between interview evidence and evidence given later in the process.

439.However, in this case we are not satisfied that the Authority acted unfairly in its approach to disclosure in advance of the interview in December 2019. It seems that Mr Staley was given a reasonable selection of emails which would indicate the existence of a personal rather than a purely professional relationship between him and Mr Epstein. He himself would have known, without needing to see the entirety of the email correspondence, that bearing in mind the frequency of the contact between the two men up to October 2015 over a period of 15 years and the manner in which the professional relationship developed into a personal one, what the nature of that relationship was. We do not consider that it was necessary for him to see the emails to jog his memory on the essence of that relationship, as Mr Steward observed in his cross-examination.

440.It was also open to Mr Staley to have responded unilaterally with any further representations, having received a transcript of the interviews.

441.In any event, we have not relied to any material extent on the interview evidence in evaluating the nature of the relationship between Mr Epstein and Mr Staley. As we have observed at [210] and [211] above, Mr Staley did not materially alter the line he took on the closeness of the relationship between what he said in interview and what he said in his first witness statement. In coming to our conclusions on the closeness of the relationship, we have relied to a large extent on our evaluation of the correspondence and what Mr Staley said in his cross-examination.

442.We therefore do not consider that Mr Staley's criticism of the disclosure process is of material significance in relation to our evaluation of the evidence regarding the closeness of the relationship between Mr Epstein and Mr Staley.

ISSUES TO BE DETERMINED

443.We now turn to the issues that we need to decide in order to determine this reference.

The Scope of the Authority's Initial Enquiry in 2019

444.We have dealt with this issue in our findings of fact as set out at [318] to [371] above. As we have found, the Authority was expecting to receive a response which explained what steps Barclays had taken to understand the relationship between Mr Staley and Mr Epstein, and therefore whether or not there was any risk that there was any impropriety in that relationship. Following the request made during the call on 4 October 2019, the Authority also required confirmation that the relationship between the two men was not a close one. That enquiry required, as Mr Hoyt and Mr Higgins were aware, Barclays to establish the facts as to the nature of the relationship between Mr Staley and Mr Epstein.

Materiality of the Statements

445.We accept the Authority's submission that the two statements made in the Letter as to closeness and recency of contact were self-evidently material to its enquiry, as was the Letter as a whole.

446.It was clear from Mr Davidson's evidence, that as a result of what Mr Higgins told him on the telephone on 15 August 2019, and what was subsequently written in the Letter, that he did not consider that it was necessary for the Authority to make any further enquiries in relation to Mr Staley's fitness and propriety. As he said in his cross-examination, he understood from what Mr Higgins described that essentially the relationship was not close and that was based on Mr Higgins's understanding of what Mr Staley had told him. Mr Davidson said because Mr Higgins gave him to understand that the relationship was not close, there was no need to undertake a further detailed understanding of the relationship.

447.It follows from that evidence that had Mr Higgins indicated that the relationship was close or had been close, then undoubtedly, as Mr Davidson indicated in his evidence, further steps and additional enquiries would have been undertaken. In those circumstances it is clear that the Statements were highly material to the Authority in its evaluation as to whether any further enquiries into the relationship were necessary.

448.The Letter stated that there was no close relationship and the date of the last contact was "well before" Mr Staley joined Barclays, as well as there being no impropriety to the relationship. Those statements caused the Authority not to pursue any further enquiries.

449. Had it known the true position, then in our view the Authority would have explored further whether there were any issues regarding Mr Staley's fitness and propriety.

450.We therefore agree with the Authority that it is self-evident that the Statements were significant to the fitness and propriety of Mr Staley and so were material to the Authority.

Accuracy of the Statements

451. We have dealt with this issue in our findings of fact as set out at [81] to [233] above. We have concluded that on an objective basis both the Statements were inaccurate.

Recklessness of approving the Statements

Mr Staley's position

452. In order to determine this issue, we have to decide whether Mr Staley was aware of a risk that the Authority might be misled by the Statements. It is accepted that if Mr Staley is proven to have been aware of the risk, it was unreasonable for him to take that risk.

453. This reflects the correct legal test for determining recklessness in cases of this kind, as referred to at [41] above. By way of reminder, what needs to be determined in relation to the allegation of recklessness made against Mr Staley in this case is (i) what facts in relation the matters on which the Authority relies Mr Staley was aware of and, in particular, whether he knew, when he approved the Letter, that its contents were factually inaccurate; (ii) whether in light of those facts, Mr Staley was aware that if he approved the statements in the Letter then the risk that the Authority would be misled by the statements in question would occur and; (iii) whether it was unreasonable in light of the circumstances as Mr Staley knew or believed them to be to take the risk in question.

454. Mr Staley accepts that he and Mr Epstein had been professionally close for many years and that he had ceased all contact with Mr Epstein on or about 28 October 2015. His case is that notwithstanding his knowledge of those facts, he did not believe that the Statements were inaccurate because of what he, in common with Ms Wiggins, Mr Higgins and Mr Hoyt, believed to be the question that the Letter was answering.

455. We have found that in his discussions with Barclays on the nature of the relationship between himself and Mr Epstein, Mr Staley "downplayed" the relationship, not revealing that it went beyond a professionally close relationship during the years that Mr Epstein was a client of the JPM Private Bank. In particular, Mr Staley gave the impression to Barclays that the two men were not personally close, and that they met infrequently after Mr Staley ceased to run the JPM Private Bank. Mr Smith submits that the mere fact that Mr Staley may have downplayed the relationship at times does not lead to the conclusion that the Letter contained factual inaccuracies. He submits that it is important to balance against that fact that Mr Staley was presented with a document which he did not draft, with a resulting unlikelihood that purely fortuitously, the draft served to further downplay his account of the relationship.

456. Mr Smith's submissions on the question of recklessness can be summarised as follows:

(1) Mr Staley approved the final draft of the Letter after he had been told by Mr Hoyt that, in the light of the discussions that have taken place, it would meet the Authority's needs.

(2) Mr Staley questioned the inclusion of the "close relationship language" in the telephone phone call he had with Mr Hoyt on 7 October. That discussion influenced his decision to approve the draft as being fair and accurate.

(3) Barclays was aware that Mr Staley had had a professionally close relationship with Mr Epstein.

(4) The enquiry made by the Authority was not an enquiry into how Mr Staley or Barclays would define the relationship between Mr Staley and Mr Epstein, but whether Mr Staley

had knowledge of or involvement in Mr Epstein's offending and the draft accurately answered that question. The final paragraph of the Letter made that clear.

(5) Mr Staley was not being asked to provide details of the history and nature of his relationship with Mr Epstein. In that regard, he was working from his memory and was not being asked what he remembered of the email exchanges with Mr Epstein which subsequently came to light.

(6) If the Letter was inaccurate, it would obviously appear to be inaccurate to everyone else at Barclays involved in its preparation.

(7) Mr Staley did not draft the Letter, nor did he choose the wording. He was reasonably entitled to believe, and did believe, that the Letter was drafted with the intention of serving the purpose of providing the Authority with an accurate answer to its enquiry, which was whether Barclays was satisfied that there had been no impropriety in the relationship between Mr Staley and Mr Epstein. Mr Hoyt, with the assistance of Mr Higgins, drafted the Letter with that purpose in mind. The Letter reflected the fact that Mr Staley's relationship with Mr Epstein was such that he was not involved in, nor would he have been aware of, the misconduct which had resulted in Mr Epstein's arrest and which had given rise to the attendant publicity which generated the Authority's enquiry, and that Barclays was satisfied as a result of discussions that had been conducted with Mr Staley.

(8) The Authority's case fails to engage with the details of the relationship which were already in the public domain by the time the Letter was provided and which form part of the context. Its focus, in presenting its case, has been on one issue, namely that the email correspondence shows that Mr Staley had a "close" relationship with Mr Epstein and that his last contact with Mr Epstein was not "well before" he joined Barclays in 2015. In doing so, the Authority relies on an "apparent disjunction" between the email correspondence and the terms of the Letter without confronting the central question of why the Letter was drafted, approved and signed in these terms. That can only be done by examining the factual context in which the Authority's enquiry took place and what it was believed by Mr Hoyt, Mr Higgins and Mr Staley the Letter was responding to.

(9) The Authority's case is based on the flawed logic that purely fortuitously, Mr Staley was presented with an opportunity by Mr Hoyt, in the form of the draft Letter on 6 and 7 October 2019, which Mr Staley had not drafted, to mislead the Authority. For that to hold good it would mean that Mr Staley questioned Mr Hoyt during a telephone conversation on 7 October as to the accuracy of the drafting, but nonetheless was prepared to take advantage of this fortuitous error of which he was aware. Making that enquiry of Mr Hoyt would be inconsistent with someone who was seeking to take advantage of an opportunity which had presented itself fortuitously and which was now seen by Mr Staley as an opportunity which could somehow be exploited by approving the draft.

Whether Mr Staley knew that the Statements were inaccurate

457. In considering these submissions, we deal first with Statement 1.

458. Mr Staley accepts he had a close professional relationship with Mr Epstein. He repeated this on numerous occasions during the course of his cross-examination, even going as far as to say that he was a "very close professional friend". Our findings of fact demonstrate that the relationship was more profound than that: see our evaluation at [189] to [217] above. Mr Staley did not contend that he forgot about the nature of his relationship at the time of approving the Letter but later remembered that the relationship was close. Even without access to the emails from JPM later provided by the Authority he knew that at the very least that the relationship was a close professional one.

459.As the Authority submitted, Mr Staley self-evidently knew the type of relationship he had with Mr Epstein because of its length, the extent of their contact and the level of involvement between them.

460. This is reinforced, as the Authority submitted, by the way that his evidence changed under cross-examination: see our findings at [213] above. As the Authority observed, Mr Staley knew the true status of the relationship but had until the hearing sought to minimise it. That approach started with the first press enquiries when the Mail on Sunday made contact in October 2015 and Mr Staley told Mr Epstein that he was going to "play it simple" and take the line that he simply knew Mr Epstein as a client. The approach did not change as demonstrated by what Mr Staley told Barclays during the preparation of the Bowdoin Talking Points and the early drafts of the Letter, as described at [281] to [317] and [372] to [387] above. Mr Staley has always been the only person involved in the preparation of the Letter who knew first-hand the facts about and true nature of the relationship, as he accepted in his cross-examination. As we have found, he had consistently given Mr Hoyt and Mr Higgins the impression that the relationship was less close than had in reality been the case.

461. Against those findings, we turn to the question as to whether in the context in which Mr Staley approved the Letter was such that Mr Staley did not believe that Statement 1 was inaccurate.

462.Mr Staley's position is that the enquiry was very narrow and restricted, and intended to achieve only one purpose, which was to inform the Authority that neither Mr Staley nor Barclays had had any knowledge of or involvement in Mr Epstein's unlawful conduct. We note that in his closing submissions, Mr Smith described the Authority's enquiry in wider terms, that is whether Barclays was satisfied that there had been no impropriety in the relationship between Mr Staley and Mr Epstein: see the summary at [456(7)] above.

463.If Mr Staley's impression was that the Authority had made a very narrow and restricted enquiry, then he could only have obtained that impression from either Mr Higgins or Mr Hoyt. However, although Mr Higgins's view of the scope of the enquiry was that it was focused on whether Mr Staley had been, or should have been, aware of Mr Epstein's criminal misconduct, as we have found, both he and Mr Hoyt appreciated that in order to give the Authority comfort on that point, both of them needed to have from Mr Staley a full picture of the extent of the relationship between Mr Staley and Mr Epstein: see our findings on this point at [367] to [371] above.

464.The reason why Mr Hoyt and Mr Higgins had become comfortable that the "no close relationship" language could be included in the Letter was because it was what they believed to be the case on the basis of what Mr Staley had told them. As we have found, he had given them the clear impression that the relationship was only close, and during that time only professionally close, in the period where Mr Epstein was a client of the JPM Private Bank and that there had only been occasional meetings between the two men after that time. As we have found, the language about occasional meetings, which Mr Staley had not objected to despite seeing the draft in which it was contained, was considered by Mr Hoyt to be indicative of the fact that there was no close relationship between the two men.

465.Therefore, we do not consider that Mr Staley has any legitimate complaint that the draft did not represent what he said he had consistently told Barclays, namely that the two men did have a professionally close relationship.

466.Mr Hoyt and Mr Higgins, believed that the focus of the Authority's enquiry was on whether Mr Staley was aware, or should have been aware of Mr Epstein's criminal misconduct, but appreciated that to understand what the true position was they needed to assess in the round whether what they

were being told made it plausible or implausible that Mr Staley was aware of or participated in Mr Epstein's misconduct. They proceeded on the basis that because they were under the impression that since Mr Epstein's release from prison the relationship had not been close, then they could be satisfied that Mr Staley was not, and could not have been, aware of Mr Epstein's criminal misconduct.

467. Therefore, we are satisfied that Mr Staley could not have had a narrower view of the scope of the enquiry than Mr Hoyt or Mr Higgins. He must have appreciated, as those two men did, whether the enquiry was as wide as the Authority contended, or as narrow as Mr Higgins believed to be the case, that in order to give an accurate answer to the Authority, Mr Staley had the responsibility of ensuring that he gave an accurate account of the nature of the relationship between himself and Mr Epstein and that this was properly reflected in the terms of the Letter. Indeed, he must have known that was the case because it was reflected in the first paragraph of the Letter, which was to the effect that Mr Higgins had informed himself and become comfortable regarding the association between Mr Staley and Mr Epstein on the basis of the conversations that had taken place between him and others and Mr Staley.

468. We do not consider that there is any support for Mr Staley's case from what was said between him and Mr Hoyt on the call that took place on 7 October 2019. Our findings as to what was said on that call are set out at [424] to [431] above. These findings do not indicate that Mr Staley relied on what Mr Hoyt told him about the reasons for including the "no close relationship" language. We have accepted Mr Hoyt's evidence that he had made it clear to Mr Staley that it was his responsibility to come to his own independent view as to whether that was the correct characterisation of the relationship between himself and Mr Epstein. Although Mr Staley did not draft the Letter himself, Mr Hoyt's email of 6 October 2019, set out at [422] above, made it clear that it was Mr Staley's responsibility to confirm that the language used was fair and accurate. Neither does the fact that Mr Hoyt said that he thought the letter would meet the Authority's needs assist Mr Staley. It is clear that Mr Hoyt made that statement because it reflected the understanding that he had from Mr Staley as to the nature of the relationship between him and Mr Epstein. Again, Mr Staley could not have thought that the inclusion of that statement obviated the need for him to be satisfied that Statement 1 was accurate. Indeed, he told Mr Hoyt during the call that the "no close relationship" language was "fine".

469. Neither do we consider that Mr Staley can place any reliance on the last paragraph of the Letter to support his case. As the Authority observed, this paragraph focuses purely on the question of whether Mr Staley had any involvement in the activities of Mr Epstein and does not address Mr Staley's knowledge or awareness of Mr Epstein's alleged misconduct.

470. We reject Mr Smith's submission that it was flawed logic that Mr Staley took advantage of the fortuitous opportunity afforded by the inclusion of the "no close relationship language".

471. We accept that there was no evidence that Mr Staley has acted without integrity at any other time during his long and distinguished career. We also accept that he appears to have performed very well as the Chief Executive of Barclays, as shown by Mr Higgins's generous tribute to Mr Staley's work with Barclays, as described at [79] above.

472. Nevertheless, it was clear that Mr Staley had a clear motive for downplaying his relationship with Mr Epstein, in common with a considerable number of other well-known business and public figures who would have been very concerned about their reputations when the allegations against Mr Epstein came to light and when they were named as having an association with Mr Epstein. As we have said, Mr Staley adopted a strategy of downplaying the relationship and he never deviated from it. We have found that in a number of respects his evidence before the Tribunal was not credible and he declined to assist the Tribunal with explanations as to matters which clearly called for an

explanation. At the time he described his relationship to Barclays, he had no reason to believe that the full position would emerge through the disclosure by JPM of the many emails he exchanged with Mr Epstein.

473. Therefore, we do consider that Mr Staley, in full knowledge that the nature of the Authority's enquiry required him to give a full account of the nature of his relationship with Mr Epstein, decided to approve the Letter with the "no close relationship language" despite knowing that this language was inaccurate. As the Authority submitted, Mr Staley faced a difficult dilemma; either he disclosed to Barclays the true nature and extent of his relationship with Mr Epstein, which would be likely to result in an investigation by the Authority and a risk to his career with Barclays, or he could take the risk that the Authority would be misled by the Statements which he approved in the Letter.

474. Indeed, as the Authority observed, even if Mr Staley's belief was that the scope of the enquiry was as narrow as he intended, that would not render Statement 1 accurate. The Letter still would have stated that the men were not close when they clearly were.

475. It is important to note that Mr Higgins and Mr Hoyt have (since October 2019) come to doubt the terms in which the Letter was stated. Mr Higgins's evidence (which was not challenged) was:

> "Had my colleagues at Barclays and I been aware of all of the information of which I am now aware, I am sure that we would have questioned Mr Staley about that further information in depth. At this distance, and without the benefit of discussing this information with Mr Staley and other colleagues, I cannot be certain what we would have concluded. However, based on the information of which I am now aware (albeit without having had the chance to test it with Mr Staley) it is likely that we would have taken a different approach to responding to Mr Davidson's question."

476. His oral evidence was that: "It may well have resulted in a different letter, or no letter or a discussion with the Authority". Mr Hoyt was of a similar view. In his witness statement, he was clear that from his perspective, his drafting had been based on what he had known at the time; he was reliant upon Mr Staley's judgement as to how the relationship should be described; he was not aware of the emails he has since become aware of; and that he considers that those emails are "at odds with how the relationship is described in the 8 October Letter". He explained that, had he been aware of them at the time, he would have raised them with Mr Staley and taken them into account when considering Barclays' response to the Authority.

477. Therefore, in our view there is no basis on which Mr Staley could have drawn the conclusion that inclusion of the "no close relationship language" was accurate.

478. We can deal with Statement 2 briefly.

479. We have found at [419] that there is no evidence to support Mr Staley's assertion that he was advised by Mr Hoyt that the reference to "contact" in the Letter meant physical meeting. As we found, Mr Hoyt had in mind the idea that Mr Staley and Mr Epstein had last met in April 2015, and had not focused on the question of whether there had been any "contact" since then. In our view, it was incumbent on Mr Staley to inform Mr Higgins and Mr Hoyt that the language was inaccurate because he had been in contact with Mr Epstein after April 2015, indeed he had been in contact until October of that year. It is therefore clear to us that Mr Staley knew that Statement 2 was inaccurate.

480. For completeness, we should note that Mr Smith referred to the fact that Mr Staley was dyslexic, the implication being that this may have affected Mr Staley's understanding of what was being said in the Letter. We had no evidence to support this assertion or how it might have affected Mr Staley's

knowledge as to the accuracy of the Statements. Accordingly, we have not placed any reliance on that point.

Whether Mr Staley was aware that there was a risk that the Statements would mislead the Authority

481. We have found at [450] that it is self-evident that the Statements were significant to the fitness and propriety of Mr Staley and so were material to the Authority. We have also found that the Statements were misleading. We have also found that Mr Staley knew that the Statements were inaccurate. We turn now to the question as to whether Mr Staley appreciated the risk that if he permitted the Letter including the Statements to be sent there was a risk that the Authority would be misled by its contents.

482. As the Tribunal found in *Batra v Financial Conduct Authority* [2014] UKUT 0214 (TCC) at [15], quoted at [38] above, the Tribunal gave the following example of recklessness in relation to the making of statements:

> "One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements."

483. As the Authority submitted, there is a clear and obvious disconnect between the facts of the relationship (of which Mr Staley was aware) and the language of the Letter.

484. The Statement that "Jes has confirmed to us that he did not have a close relationship with Mr. Epstein" was at direct odds with Mr Staley's knowledge that it was a close relationship (even on his own case that it was a "very close professional relationship" and that he saw Mr Epstein as a "friend").

485. The statement that "Mr Staley's last contact with Mr Epstein was well before he joined Barclays in 2015" on its face conveyed the impression that a considerable period of time had passed between the last interaction between Mr Staley and Mr Epstein prior to Mr Staley's appointment as Chief Executive on 28 October 2015 (and his subsequent commencement in post on 1 December 2015). Our findings of fact demonstrate that was not the case, as Mr Staley knew. He gave Mr Hoyt and Mr Higgins the impression that his last contact with Mr Epstein was in April 2015.

486. We have rejected Mr Staley's submissions that the context of the Authority's enquiry meant that he did not believe that the Statements were inaccurate. We have found that Mr Staley was aware that the Statements were inaccurate.

487. As we observed at [43] above, in making our finding as to the state of knowledge of Mr Staley as to the risk, the Tribunal is entitled to have regard to inherent probabilities and how a reasonable professional would respond in the relevant situation and enabling the Tribunal to conclude, if appropriate, that the risks concerned would have been obvious to Mr Staley, such that an inference can be drawn as to such awareness.

488. In our view, a reasonable professional who found himself in the circumstances of Mr Staley would have appreciated the importance of ensuring that any statements made to his regulator in response to such an important enquiry were fair and accurate. Mr Staley had had previous experience of the enforcement process at the Authority resulting in a finding against him and he would therefore have appreciated the need to be fully cooperative and open with the Authority on such matters. It would have been expected that a reasonable person in Mr Staley's position would have thought carefully about whether the Statements were an accurate representation of the true position regarding his relationship with Mr Epstein and the last time he had contact with him. In any event, Mr Staley

accepted in his cross-examination that what was said in the Letter was what he had confirmed to Mr Higgins, Mr Hoyt and Mr Gillies and that if it was not fair and accurate he was required to say so.

489. Mr Staley himself denies that he was aware of the risk that the Authority would be misled by the Statements. We therefore have to determine this issue by drawing inferences from the circumstances in which Mr Staley found himself. In our view, the inherent probabilities, Mr Staley having been aware that the Statements were inaccurate, demonstrate that it was obvious to Mr Staley that the Authority would have been misled by the Statements. In our view, the statements would give the Authority the impression that there had never been a close relationship between him and Mr Epstein and that such contact as there had been between the two men had ceased well before he joined Barclays. In those circumstances, Mr Staley would have been aware, bearing in mind that the Letter indicated that the Statements were made after explanations had been given by Mr Staley to Barclays about the nature of the relationship and the recency of contact, that the Authority would be likely to accept those representations at face value and not undertake any further investigation.

490. Mr Staley would also have been aware that had there been a fully accurate description of the nature of the relationship and the frequency of contact between the two men, including the fact that it continued to the point just before Mr Staley's appointment and included discussing with Mr Epstein the possibility of his appointment, then it is likely that the Authority would have made further enquiries and possibly opened an investigation. In our view, that would have been the case even if the initial enquiry had been as narrow as Mr Staley suggested. That is because the Authority may well have considered in the light of the relationship between the two men having been close, that they would need to enquire further into whether the circumstances of that relationship gave Mr Staley the opportunity of learning about Mr Epstein's criminal misconduct. We are fortified in that view by the fact that both Mr Hoyt and Mr Higgins said that they would have taken a different approach to the Letter had they known the facts that subsequently came to their attention during the course of the Authority's investigation.

491. We put no weight on Mr Staley's assertion that he believed that the wording of Statement 1 was accurate because the "close relationship" language was linked to what he believed was the scope of the enquiry, namely whether he was aware of Mr Epstein's misconduct.

492. To reiterate, Statement 1 was in the following terms:

> "Jes has confirmed to us that he did not have a close relationship with Mr. Epstein, and he is resolute that at no time did he see anything that would have suggested or revealed any aspect of the conduct that has been the subject of recent allegations."

426. Mr Staley's point was that the "close relationship" language is qualified by the rest of the sentence, that is it was not a relationship that was such that he became aware of Mr Epstein's misconduct.

494. We reject that interpretation of Statement 1 and in our view no reasonable professional could have believed that interpretation to be correct. The two parts of the sentence deal with two distinct points, as demonstrated by the comma before "and".

495. In these circumstances, it is not credible that Mr Staley did not think that the Letter would mislead the Authority. In our view it was obvious to him that there was a risk that it would.

Conclusion on recklessness in relation to the Statements

496.We have found that Mr Staley knew, when he approved the Letter, that its contents were factually inaccurate. We have also found that Mr Staley was aware that if he approved the Statements in the Letter the Authority would rely on them and that the risk that the Authority would be misled by the statements in question would occur. Mr Staley accepts that in those circumstances it was unreasonable for him to take the risk in question.

497.Accordingly, we conclude that Mr Staley acted recklessly in approving the Letter, containing as it did the Statements.

Whether the approval of the Statements amounted to a breach of the Authority's Rules

498.The Authority contends that Mr Staley acted in breach of the following conduct rules:

> (1) Individual Conduct Rule 1 (ICR 1) which states: You must act with integrity.
>
> (2) Individual Conduct Rule 3 (ICR 3) which states: You must be open and cooperative with the [Authority], the PRA and other regulators.
>
> (3) Senior Manager Conduct Rule 4 (SMCR 4) states: You must disclose appropriately any information of which the [Authority] or PRA would reasonably expect notice.

499. In this case it follows inevitably from our finding that Mr Staley acted recklessly in approving the Statements in the Letter that in doing so he acted without integrity in breach of ICR 1.

500.That is because, as the authorities which are summarised at [37] to [40] demonstrate, acting recklessly is an example of a lack of integrity, albeit that it does not involve dishonesty. As was observed at [15] of *Batra*, as set out at [482] above, recklessness as to the truth of statements made to others who will or may rely on them is an example of a lack of integrity. That is exactly the position in this case: as we have found, Mr Staley was reckless as regards his approval of the Statements and was aware that the Authority would rely on them.

501. At [58] we refer to Mr Smith's submission that the allegations of breach of the three rules will stand or fall together. As we observed in that paragraph, we do not accept that submission. In our view, it would have been open to us to find that there had been a breach of either or both of ICR 3 and SMCR 4 had we not found that ICR 1 had been breached.

502.However, it is clear that in this case the findings that we have made also amount to a breach of ICR 3 and SMCR 4.

503. Clearly in this case on the basis of our findings Mr Staley failed to disclose appropriately information of which the Authority would reasonably expect notice. The Authority was expecting the Letter to have been written on the basis of an accurate description of the nature of the relationship between Mr Epstein and Mr Staley and an accurate description of the recency of contact between the two men. Mr Staley failed to ensure that the Letter contained an accurate description of the nature of the relationship and the recency of contact and as a result failed to disclose appropriately the true position in relation to those two matters. Accordingly, Mr Staley acted in breach of ICR 3. On the basis of the same facts, compliance with SMCR 4 required Mr Staley to ensure that the Letter disclosed appropriately information that the Authority would reasonably expect notice, namely a true account of whether there was a close relationship between Mr Epstein and Mr Staley and the recency of contact between the two men. Accordingly, Mr Staley also acted in breach of SMCR 4.

Sanctions

Prohibition

504. In relation to the power to make prohibition orders in respect of individuals under s.56 FSMA, such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities. The Authority may make a prohibition order "if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity": see s.56(1). As the Authority submitted, a key issue is whether a prohibition order is compatible with the Authority's statutory objectives, as referred to in EG 9.1, as set out at [33] above.

505. It is well established that prohibition orders are a protective measure, intended to protect the public in pursuit of the Authority's statutory objectives. The primary purpose of a prohibition is not to punish the individual.

506. Relevant factors include the risk to consumers or the market, the length of time that has elapsed between the events in question and the decision to impose a prohibition, whether the individual has reflected on his or her conduct in that time and whether he or she has shown genuine remorse, and the individual's disciplinary record.

507. As the Authority submitted, integrity, being open and cooperative with the Authority at all times, and demonstrating good judgement are fundamental requirements of senior managers. In that regard, Mr Staley had a particularly important position of responsibility, as the Chief Executive of one of the UK's most significant financial institutions. As the Authority correctly observed, for the proper functioning of the regime of oversight of the financial services sector and the market, the Authority relies upon, and must be able to rely upon, the veracity and completeness of the representations made to it and openness in disclosing matters of which it would reasonably expect to be given notice.

508. As we observed at [28] above, this Tribunal has also recognised in a number of cases that the Authority cannot carry out its responsibilities effectively without having an open and cooperative relationship with firms and approved individuals. It must be able to rely on regulated bodies and individuals bringing matters relating to their ability to comply with relevant rules and requirements to its attention.

509. We agree with the Authority that Mr Staley's breaches of the Authority's rules represented a serious failure of judgement by Mr Staley. Bearing in mind the importance of Barclays as a financial institution, this was conduct that could have resulted in confidence in the financial system being adversely affected. The conduct clearly engages the Authority's objective of enhancing and protecting the integrity of the UK financial system in section 1D FSMA and the imposition of a prohibition order against Mr Staley in the form sought by the Authority will further that objective.

510. Mr Staley was subject to regulatory action by the Authority and the PRA in 2018, albeit relating to unconnected matters and not involving allegations of a lack of integrity. As a consequence of this experience of the enforcement process, in common with the Authority we would have expected Mr Staley to have been particularly careful to ensure that the Letter was factually accurate. The conduct in this case occurred only a year after that earlier regulatory action. He has shown no remorse for his conduct which has led to the Authority's investigation.

511. In those circumstances, it is clear that the imposition of a prohibition order on the grounds that Mr Staley is not a fit and proper person to perform any senior management or significant influence

function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm is a course of action reasonably open to the Authority on the basis of the findings that we have made. We therefore see no basis on which we should interfere with the Authority's decision in that regard.

512. We should point out that we have come to this conclusion without it being necessary for us to engage with the Authority's submissions that Mr Staley was less than candid in his interviews with the Authority. The Authority had sought to rely on these allegations as additional grounds on which the Tribunal could conclude that Mr Staley lacked integrity and as additional reasons why a prohibition order was appropriate.

513. We recognise that in an appropriate case a finding that an individual is not fit and proper and that a prohibition order should follow as a result could be founded on findings that the individual concerned had misled the Authority during the interview process. However, in the circumstances of this case, we do not consider that the Authority's allegations add materially to its case. In our view, that case is sufficiently strong to justify the sanctions that the Authority is seeking purely on the basis of Mr Staley having acted without integrity in approving the Statements in the Letter.

Financial penalty

514. The Authority decided to impose a financial penalty on Mr Staley on the basis that he has committed misconduct while holding a Senior Management Function, in the sum of £1,812,800.

515. Chapter 6 of the Decision Procedural and Penalties Manual ("DEPP") provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and generally demonstrating the benefits of compliant behaviour. DEPP 6.2.1 provides a non-exhaustive list of factors the Authority will consider when looking at the full circumstances of the case, in order to determine whether or not to impose a financial penalty.

516. In calculating the financial penalty in this case, the Authority has applied the five-step framework set out in DEPP 6.5B and which we have set out at [48] above.

517. Mr Staley challenges two features of the Authority's penalty calculation as follows:

> (1) Issue 1: the proper interpretation and application of DEPP 6.5B.2 as to (i) whether the calculation of "relevant income" at Step 2 of the penalty calculation should take account of deferred shares earned during the relevant period but not yet vested and (ii) whether the assessment of relevant income should be as at the time of the misconduct or be based on an assessment after the event if changes occur to an individual's deferred compensation package subsequently.
>
> (2) Issue 2: the application of aggravating and mitigating features under Step 3 of the penalty calculation and the 10% increase in the Step 2 figure.

518. At Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The reason for this is explained in DEPP 6.5B.2G(3) as follows:

> **"**This approach reflects the FCA's view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The FCA also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The FCA recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the FCA still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if their employment is not totally related to a controlled function."

519. The individual's relevant income is the gross amount of *"*all benefits" received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

520. In determining an individual's relevant income, DEPP 6.5B.2G provides that "benefits" includes but is not limited to "salary, bonus, pension contributions, share options and share schemes."

521. Mr Staley received benefits in the form of salary, bonus, pension contributions, benefits and share incentive schemes. In his case, the share incentive scheme included deferred shares which represented a significant proportion of that scheme. In relation to deferred shares, he was awarded:

> (1) As part of the 2018 Incentive Award: £661,000 in deferred shares as part of the Share Value Plan; and £3,295,200 in deferred shares as part of a Long-Term Incentive Plan for 2019-2021 (the "2018 LTIP"). At the time of the Decision Notice, the shares under the Share Value plan had vested.
>
> (2) As part of the 2019 Incentive Award: £1,247,000 in deferred shares as part the 2019 Share Value Plan; and £3,295,200 in deferred shares as part of a Long-Term Incentive Plan for 2020-2022 (the "2019 LTIP").
>
> (3) Based on Barclays's 2019 Annual Report, Mr Staley received 48.5% of his maximum LTIP for the 2017 to 2019 period. Based on Barclays's 2020 Annual Report, Mr Staley received 23% of his maximum LTIP for the 2018 to 2020 period. The average received was 35.75%.

522. In January 2022, Barclays exercised its discretion to suspend the vesting of all of Mr Staley's unvested shares. This followed the Authority sending Mr Staley the updated Annotated Warning Notice and was pending further developments in the proceedings. In June 2023, following the receipt of the Decision Notice, the Remuneration Committee of Barclays exercised its discretion not to treat Mr Staley as a "good leaver" in respect of his unvested LTIP awards and therefore those awards lapsed. Nevertheless, in its penalty calculation, the Authority has continued to treat the unvested shares, which will not now be awarded, as a benefit received by Mr Staley and therefore part of Mr Staley's "relevant income" for the relevant period for the purposes of the penalty calculation.

523. Mr Staley's position on Issue 1 can be summarised as follows:

> (1) The focus should be on the language "the gross amount of all benefits received" in DEPP 6.5B.2(1), with the emphasis on "received".
>
> (2) As the shares have not vested and their vesting is contractually contingent, it is not possible to conclude that the value of the unvested shares has been "received" and therefore they should not be included in the calculation.
>
> (3) The argument that the shares can be described as a benefit that has accrued or one that is reasonably expected to be payable in a future period is not established on the facts. If

the relevant benefits are to be assessed at the date when the alleged misconduct occurred, at that point the shares had not vested. They were subject to contingent contractual provisions reached between Mr Staley and Barclays and which permit a level of discretion by the relevant Committee to withhold the vesting of the shares in the event of regulatory misconduct being established.

(4) The situation is no different if the date of approval of the Letter of 8 October 2019 is adopted. On that date, the shares remained unvested and were dependent upon performance which would have to be assessed retrospectively.

(5) The Authority's approach is unsustainable in presupposing that there is a reasonable expectation that the shares will vest in circumstances in which a prohibition order is appropriate.

(6) This approach is also unsustainable in the light of Barclays' decision that the shares will not vest.

524. The Authority's position on Issue 1 is as follows:

(1) The task set by DEPP is to value "all benefits received" and that this properly includes Mr Staley's share incentive scheme. Deferred shares earned during the Relevant Period but not yet vested, where there is a reasonable expectation at the date of the misconduct that these will ultimately be received in the future, should also be included in the relevant income category. The right to receive the shares, albeit subject to contingencies, was a valuable right that accrued during the relevant period and therefore falls to be valued as part of the assessment of relevant income.

(2) The vesting to Mr Staley of the deferred shares awarded under the 2018 and 2019 LTIPs was contingent on Mr Staley meeting certain performance criteria and as such the vesting of the full amount of the award was not guaranteed. Therefore, the Authority applied a contingent adjustment to the value of those deferred shares based on the average percentage of LTIPs awarded to Mr Staley in previous years. This represented a reasonable assessment of the value of the deferred shares, as they would have been assessed during the relevant period.

(3) Although DEPP 6.5B does not provide a definition of "received", DEPP 6.5B.2G(2) refers to "relevant income … earned" and DEPP 6.5B.2G(3) to "the benefit that an individual gains". This indicates that the focus is not on actual payment but rather on whether something can be said to have been "earned". If a benefit has accrued (or been "earned") and is, at the time of accrual, reasonably expected to be payable in a future period, this must be taken into account.

(4) The purpose of Step 2 is to establish a figure for the core amount of the penalty as the punitive element, and not to reflect precisely what value an individual actually has earned in a particular period. The value of a bonus or unvested shares is relevant to that sum, even if the individual does not actually obtain them.

(5) The approach proposed by the Authority and adopted in the Decision Notice, seeks to value as best it can the benefits earned by an individual during the relevant period, as at the time of the misconduct. To adopt the approach as proposed by the Applicant would be to value the Step 2 figure on the basis of post-misconduct evidence which only becomes available after the event, undermining the certainty of the penalty figure and requiring the Authority to revisit the calculation with hindsight and in variable circumstances.

(6) The rationale set out at DEPP 6.5B.2G(3) behind the calculation of relevant income would be undermined if the fact that a firm could cancel or undo part of a person's remuneration as a result of findings of misconduct were relevant to the calculation of their income.

(7) The income figure should be the income that reflects the responsibilities of the individual, which ought to be valued at the time of the misconduct, without taking into account the risk of it being forfeited for wrongdoing. However, where, as in this case, the vesting of deferred shares is contingent on achieving certain performance metrics, the Authority considers there should be an adjustment to the value of deferred shares to reflect their contingent nature and it has made such an adjustment. This is a reasonable way to place a value on the rights accrued under the LTIP schemes during the relevant period.

(8) It would not reflect the intention behind DEPP to adjust the value attributed to the deferred shares based on the fact that Barclays has exercised a discretion not to let them vest. That would be to value the benefit by reference to current events rather than at the time that the benefit was earned.

525.We have concluded that in the circumstances of this case, the amount of the financial penalty should be calculated on the basis that the value of the unvested shares is not to be included in Mr Staley's relevant income for the following reasons.

526.The provisions of DEPP must be applied flexibly according to the circumstances of the case. This is apparent from the Tribunal's decision in *Arian Financial LLP v FCA* [2024] UKUT 00352 (TCC). The Tribunal said this when considering the interpretation of the phrase "financial benefit" as used in Step 1 of the five step process set out in DEPP:

> "The phrase "financial benefit" should not be construed in an overly legalistic fashion. The policy should not be construed in the same way as a statutory provision and should be capable of being applied flexibly, depending on the facts. Therefore, for instance, in a case where the firm is legally entitled to receive the full amount of the income it derives from the misconduct in question in circumstances where it is obliged to meet certain expenses out of the amount received, the fact that it had a legal entitlement to the whole amount should not be decisive as to the amount of the financial benefit. Whether the "financial benefit" is the gross amount, or a lesser amount to take account of expenses, needs to be considered on a case-by-case basis."

527.Although the Tribunal in that case was considering the interpretation of a different provision in DEPP, in our view the same principle applies in relation to the interpretation of "received" in the context of the calculation of an individual's relevant income.

528.We do not accept the Authority's submission to the effect that the use of the term "earned" in DEPP 6.5B.2G(3) shows that the term "received" always includes sums to which an individual may become entitled subject to the satisfaction of any contingencies. It is important to note that DEPP 6.5B.2G(3) is merely guidance and as we have said, should not be construed in an overly legalistic fashion. In any event, there is nothing in this provision which clearly indicates that the use of the term "earned" was intended to be a wider scope than "received", bearing in mind that the opening line of the provision refers to an individual who "receives remuneration".

529.We understand that there may be occasions when it is appropriate to calculate relevant income on the basis of an estimate of what is likely to be received in respect of benefits where their receipt is dependent upon the satisfaction of conditions. We do not criticise the Authority for having taken that approach at the Decision Notice stage on the basis of the information available to the Authority at the

time or its approach of applying a contingency adjustment to the value of the deferred shares based on the average percentage of LTIPs awarded to Mr Staley in previous years.

530. However, if, as in this case, the matter is referred to the Tribunal, in our view it is clear that the Tribunal must look at all the circumstances that exist at the time it comes to determine the reference. If circumstances change, as in this case, and benefits which the Authority considered were likely to be received will not in fact be received, then the Tribunal must take that into account. As the authorities demonstrate, whilst the Tribunal should pay due regard to the provisions of DEPP and its application in the circumstances of the case by the Authority, it is able to depart from the Authority's calculation where it is in the interests of justice to do so.

531. In our view this is such a case. We do not accept that taking this flexible approach in this particular case undermines the certainty of the penalty figure. In any event, that figure was calculated by the Authority on the basis of some uncertainty at the time as to whether the benefit would be received, so in our view it is necessary for the Tribunal to consider whether it is appropriate to adjust the penalty if the benefit in question is in fact not received.

532. The Authority refers to possible perverse results if the strict position for which it argues is not followed. By way of example:

> (1) Some traders are paid a relatively low base salary and derive the vast majority of their income from their bonus. A trader whose misconduct causes his bank £5 billion of losses might forfeit his £1 million bonus, but that does not mean that his penalty should be calculated solely by reference to his base salary.
>
> (2) At the Decision Notice stage, the decision whether to forfeit the bonus might not have been made (the firm may be waiting for the Authority's Decision before taking its decision, as was the case with Mr Staley) and the RDC might issue a penalty based largely on the expected bonus. Immediately after the Decision Notice, the firm may properly determine to cancel the bonus. The trader could go to the Tribunal and say the penalty should be heavily reduced as a result. Yet nothing has changed about the nature of the responsibilities that the trader had, nor about his misconduct. There is therefore no obvious reason why the penalty should change. However, the interpretation that bases the penalty on what the firm ultimately decides to do in relation to the bonus would create a perverse incentive to contest rather than settle cases.

533. As we have said, the policy in DEPP should be applied flexibly depending on the circumstances of the case. Anomalies such as those which the Authority has identified can easily be addressed. In particular, Step 4 of the five step process allows the penalty to be adjusted in order to ensure credible deterrence. Sub-paragraph (e) of that provision gives an example of when an adjustment for credible deterrence may be necessary. The example given is where a penalty based on an individual's income may not act as a deterrent, for example if an individual has a small or zero income but own assets of a high value. The examples that the Authority gives can easily be accommodated by making an adjustment at Step 4, particularly in circumstances where a firm and an individual may connive to manipulate the reality of the situation, as described in the Authority's second example. As we have said, DEPP is guidance and there is ample scope for it to be applied flexibly to meet the circumstances of the case.

534. The Authority has not submitted that reducing the penalty in this case to take account of the fact that the deferred shares have not vested would result in a penalty which is insufficient to ensure that the penalty acts as a credible deterrent to others who may commit some of the breaches in the future. We do not consider that a reduction of the penalty will diminish the deterrent effect of the penalty in

this particular case. By our calculations, if Mr Staley's income is adjusted to remove the value of the deferred shares which will not now vest, then the calculation at Step 2 will give rise to a figure of £1,006,642.65.

535. We now turn to Issue 2.

536. 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, but not including any amount disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.

537. Having regard to the factors set out in DEPP 6.5B.3G, the Decision Notice at paragraph 6.16(1) identified one relevant aggravating feature namely, the previous disciplinary record and general compliance history of the individual. Mr Staley was the subject of regulatory action by the Authority and the PRA in 2018 for breaching ICR2 in the way he acted in response to an anonymous letter that Barclays received raising concerns about its hiring process.

538. At paragraph 6.17 of the Decision Notice, the Authority stated that it considered that there were no factors that mitigate Mr Staley's breach.

539. The Authority increased the penalty at Step 3, by increasing the Step 2 figure by 10% as a result of the aggravating feature above and the absence of mitigating features.

Aggravating features

540. Mr Staley contends in his Amended Reply that an uplift of 10% at Step 3 was not appropriate in light of Mr Staley's previous disciplinary finding because that was a finding of a breach of ICR2 (acting with due skill, care and diligence) and not a finding of lack of integrity and because the circumstances were wholly unrelated to the issues at hand.

541. However, the Authority considers that the factor identified as aggravating the breach under DEPP 6.5B.3G is properly applicable in this case as Mr Staley should have been particularly careful to ensure representations made to the Authority were accurate in light of the previous disciplinary finding.

Mitigating features

542. Mr Staley's position as set out in his Amended Reply, is that the following features, which it is contended amount to mitigation, should be applied:

> (1) that any error of drafting of the Letter did not have the capacity to impact upon investors at Barclays nor the wider financial market;
>
> (2) that Mr Staley fully disclosed the terms of the relationship to Barclays prior to the Letter being written;
>
> (3) that there is no reason to believe any such conduct would occur again; and
>
> (4) that Mr Staley's achievements as CEO of Barclays should be taken into account, along with the loss of his long-standing career.

543. We are in full agreement with the Authority on these points.

544. As far as the aggravating feature identified by the Authority is concerned, we do not consider that the fact that the previous action taken against Mr Staley did not call into question his integrity

makes any difference. He had only recently been through the enforcement process when the event which is subject to these proceedings occurred and he should therefore have learned lessons from that process and been particularly careful to avoid any further breach of the Authority's regulatory requirements. The expectation is that the CEO should set an example for other employees to follow.

545. As far as the alleged mitigating features are concerned:

(1) It is wrong to characterise the breach in this case as merely "an error in the drafting of the Letter". It was much more serious, involving Mr Staley approving a Letter which he knew to contain inaccuracies which might mislead the Authority.

(2) We do not accept that the Letter was not capable of having a wider impact. We have explained at [504] that Mr Staley's conduct was such that it could have resulted in confidence in the financial system being adversely affected.

(3) We have found that Mr Staley did not fully disclose the terms of his relationship with Mr Epstein to Barclays prior to the Letter being written.

(4) We regard the suggestion that there is no reason to believe that any such conduct would occur again as being neutral in this case.

(5) We have noted Mr Staley's achievements as Chief Executive of Barclays, but in our view these do not diminish the seriousness of the misconduct. The loss of his long-standing career is an inevitable consequence of that conduct.

546. Accordingly, we accept that the penalty should be adjusted at Step 3 for the aggravating feature identified by the Authority and should not be mitigated. Accordingly, having taken account of the reduction for benefits which will not be received in respect of relevant income as determined above, we shall direct that the Authority impose a financial penalty of £1,107,306.92 on Mr Staley.

DISPOSITION

547. The reference is dismissed, except insofar as we have determined a lower level of financial penalty to that sought by the Authority. Our decision is unanimous.

DIRECTIONS

548. In relation to Mr Staley's disciplinary reference we determine that the appropriate action for the Authority to take is to impose on him a financial penalty of £1,107,306.92 pursuant to s 66 (3)(a) FSMA for failure to comply with the requirements of ICR 1, ICR 3 and SMCR 4 in carrying out his functions as Chief Executive of Barclays as regards his approval of the Letter.

549. In accordance with s 133 (6) FSMA we have dismissed the non-disciplinary reference. It is therefore open to the Authority to make a prohibition order against Mr Staley prohibiting him from performing senior management and significant influence functions.

550. We remit the references to the Authority with a direction that effect be given to our determinations.

TIMOTHY HERRINGTON

UPPER TRIBUNAL JUDGE
RELEASE DATE: 26 June 2025