محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2021] QIC (RT) 2

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

19 May 2021

CASE Nos RTFIC0003/2020 and RTFIC0001/2021

BETWEEN:

INTERNATIONAL FINANCIAL SERVICES (QATAR) LLC

Appellant

v

QATAR FINANCIAL CENTRE
EMPLOYMENT STANDARDS OFFICE

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Before:
Sir William Blair, Chairman
Justice Laurence Li S.C.
Justice Muna Al Marzouqi

DECISION

1. These are appeals by International Financial Services (Qatar) LLC ("IFSQ"), a company which was established and registered in the Qatar Financial Centre (QFC) in 2009. The appeals are against two decisions by the QFC Employment Standards Office (ESO) being:

   (1) the Determination of Complaint No 17 of 2020 dated 17 November 2020 in which Ms A was complainant and IFSQ was respondent, by which it was determined 1. that the complainant's complaint of her employment being terminated for whistleblowing[1] was well-founded, and 2. that IFSQ by dismissing the complainant for whistleblowing without notice had contravened Articles 16 and 23 of the QFC Employment Regulations; and

   (2) the Determination of Complaint No 18 of 2020 (as amended) dated 27 October 2020 in which Ms B was complainant and IFSQ was respondent, by which it was determined 1. that the complainant's complaint of being subject to detriment for having made a protected reporting of whistleblowing was well-founded, and 2. that IFSQ by dismissing the complainant without notice had contravened Articles 16 and 23 of the QFC Employment Regulations.

2. The issues in the case relate to the summary dismissals of Ms A, the CEO of IFSQ on 14 September 2020, and of Ms B, Head of Compliance of IFSQ on 27 September 2020. In summary, it is submitted by Mr Veiss on behalf of IFSQ that the dismissals were for good cause. In response, it is submitted by Mr Parker on behalf of the ESO that the dismissals were because of whistleblowing to the regulator by the two employees in respect of allegedly unacceptable practices within IFSQ, and that the determinations should be upheld. In response, IFSQ's case is that it behaved properly, and that the determinations to the contrary came about following an unfair investigation by the ESO, and should be set aside.

[1] In view of the conclusions set out below that the Tribunal has reached as to whistleblowing, it has anonymised the complainants' names.

3. IFSQ is represented on the appeals by Mr Rudolf Veiss who is or was the ultimate beneficial owner of the shares in the company. He told the Tribunal that the COO of the company had authorised him to deal with the appeals on behalf of the company. The ESO is represented by Mr Jonathan Parker of Clyde & Co, Doha.

4. Though the cases must be considered separately, they have much the same factual background, and raise the same issues, and having obtained the views of the parties, on 8 March 2021 the Tribunal directed that both appeals were to be case managed and heard together.

5. On 16 March 2021, IFSQ raised what was in effect a new ground of appeal, namely that Ms Luigia Ingianni, Commissioner of the Employment Standards Office of the QFC, was in a personal conflict of interest during the investigation process and upon the issuance of the determinations on the basis that she established a business relationship with IFSQ in 2019 as a customer of IFSQ. The ESO objected on the basis that the point should have been raised at the outset. On 17 March 2021, the Tribunal said that it would hear the parties on the point which could be addressed in their skeleton arguments, and directed that if there was any further evidence on the point from either party, it had to be included in the bundles for the hearing.

6. The hearing of the appeal took place partly in the courtroom and partly remotely on 19 April 2021. The material before the Tribunal consisted of five indexed, paginated and searchable bundles of documents, which included the parties' pleadings, and a considerable volume of documentation relating to the dispute. Each party also filed skeleton submissions dated 5 April 2021 which were supplemented by oral submissions (including factual submissions) at the hearing. The skeleton submissions helpfully identify the issues raised on the appeals.

7. The Tribunal's Directions of 8 March 2021 required the parties to identify any person who would give evidence at the hearing. In its skeleton argument, the ESO said that it was "seeking to have" (a) Ewald Müller, Managing Director, Supervision & Authorisation at the QFC Regulatory Authority, and (b) Luigia Ingianni of the ESO "available to give evidence at the hearing, if required".

8. On 18 April 2021, the QFC Regulatory Authority wrote to the effect that it objected to Mr Müller giving evidence because he was engaged in various ongoing matters with IFSQ which had significant factual overlap with the appeals, and that his appearance at the hearing would give rise to complex issues of confidentiality and privilege and could potentially compromise the Regulatory Authority's ability to administer its regulatory functions in relation to the firm.

9. On behalf of IFSQ, it was submitted by Mr Veiss that if Mr Müller was not comfortable with any questions, he should be allowed not to answer them. The questions would be asked, it was said, in a manner that did not require the divulging of any confidential information related to QFCRA investigations: the questions would be limited to fact checking as to the ESO Determinations.

10. In the event, Mr Parker withdrew both potential witnesses, stating that the ESO was content to have the case decided on the documents, and that there was therefore no scope for cross-examination. He accepted that IFSQ might submit that an adverse inference should be drawn against the ESO in these circumstances if it could show any grounds.

11. In the Tribunal's view, the witnesses having been withdrawn by the ESO, the right to cross-examine on behalf of IFSQ fell away. The question therefore is whether an adverse inference should be drawn against the ESO, and if so what inference.

12. Leaving aside the policy concerns raised by the Regulatory Authority (which seemed to the Tribunal to be weighty), the Tribunal does not consider that a case was made out by Mr Veiss that there were any relevant matters upon which Mr Müller could give evidence. The way it was put in submissions was that he could independently "verify" or fact check points made in the Determinations. However, no points relevant to the issue on the appeals were identified by Mr Veiss upon which Mr Müller could cast any light. The only matter concerning Mr Müller directly which were mentioned in IFSQ's submissions concerns a call which Mr Veiss says he made to Mr Müller on 14 September 2020 prior to the board meeting which resulted in Ms A's dismissal. This is said to have concerned the question whether an inquorate meeting (since by then the only director was Mr Veiss himself) could take a dismissal decision. According to Mr Veiss, Mr Müller gave an affirmative answer. However,

even on the assumption that this is correct, it does not bear on the issue in the appeals, namely whether Ms B and Ms A were dismissed for cause or because of whistleblowing. There is no adverse inference to be drawn in the Tribunal's view.

13. As regards Ms Ingianni, she signed both of the ESO's Determinations, and must be taken to have been responsible for the investigations that led to the decision. IFSQ challenges the Determinations on various grounds, in summary that the Determinations were not balanced and objective, that the ESO approached decision making the wrong way round, was not free from bias, was one-sided, did not adequately consider the professional failures and disciplinary breaches of Ms A and Ms B, and incorrectly applied the QFC Employment Regulations. These however are all matters for submission and not for cross-examination of the decision maker, which would be a very unusual course in the Tribunal's view. There is no basis upon which to draw an adverse inference, in the Tribunal's view. The allegation of bias raises different considerations and is considered below.

The facts

14. IFSQ is regulated by the QFC Regulatory Authority (QFCRA) and (though it has been subject to various suspensions) it is authorised to carry on insurance mediation in or from the QFC in Qatar. There had been problems with compliance in the past, specifically in July 2019 when by way of settlement the QFCRA imposed a financial penalty of US$100,000 on IFSQ in relation to AML contraventions (it was not suggested however that there were any instances of illicit finance on the part of IFSQ).

15. Mr Rudolf Veiss acquired the shareholding in IFSQ through a company called Amberberg Ltd at the end of 2019, and in January 2020 became the controller, and in July 2020 became the director, with the appropriate regulatory approvals from the QFCRA. Ms A became CEO of the company in January 2020, and was approved by the QFCRA in the capacity of Senior Executive Function. Ms B became Head of

Compliance of IFSQ in April 2020, and in that capacity (which is also a controlled functions) was approved by the QFCRA.

16. There is no full account available to the Tribunal of the events that led to the present dispute. There are however a number of points that emerge from the documents. These may or may not be accurate in terms of the truth of the allegations and counter allegations to which they speak. They do however go to establishing the fundamental issue on these appeals, namely whether Ms A and Ms B were dismissed for cause, as IFSQ maintains, or because of whistleblowing, as the ESO maintains.

17. A convenient starting point is 9 April 2020, when the QFCRA issued a Supervisory Notice preventing IFSQ from taking on additional customers and new business including new business for existing customers. On 12 April 2020, the company received notice of the appointment of investigators. The ban on new business was withdrawn on 24 June 2020 on the basis that IFSQ had committed to rectifying regulatory gaps, but it was stated that "IFSQ will continue to be subject to a strict and enhanced supervisory plan", and the investigation continued.

18. A central part of the investigation, according to QFCRA documents, included the confirmation by IFSQ of its clients. This was included in a Notice to Produce documents issued by the QFCRA on 19 July 2020. An email from the QFCRA to Ms A copied among others to Mr Veiss on 23 July 2020 reminds her that there has not been compliance.

19. It is clear that matters came to a head in August 2020. As to what happened, one source as to the sequence of events is an internal investigation report undated but showing events up to 31 August 2020 and signed by both Ms B and Ms A. As explained below, Mr Veiss considers that the report was malicious and part of blackmailing campaign to drive him out of the company, and should not form part of the evidence before the Tribunal. However, whilst it is not for the Tribunal to decide whether the matters set out in the report are right or not, the report can properly be taken into account, at least to the extent of showing how matters were perceived and/or alleged by Ms A and Ms B at the time.

20. According to this document, it was noticed on 26 August 2020 that certain transfers had not been sent for processing, and that the explanation given was that authorisations had already been sent to service providers on the instructions of Mr Veiss. Also on 26 August 2020, Mr Veiss received a notice signed by Ms A as CEO suspending him from performing customer facing activities on the basis (it was said) that despite repeated warnings by compliance and AML, he had continued to submit new business/transfer-in applications to service providers prior to obtaining compliance approval. The Tribunal notes that there is no documentary evidence of such warnings.

21. The internal investigation report states that on 27 August 2020, a review found that transfers had been made prior to compliance approval, and in some cases during the period during which IFSQ was restricted from carrying out regulated activities for new clients – in other words, between 9 April and 24 June 2020. The report states that these results were submitted by compliance to the CEO (i.e. Ms A) on 27 August 2020. The report states that further matters were identified up to 31 August 2020 including (it was alleged) the fact that Mr Veiss had changed the date of a client's authority letter using a whitener (correction pen). The report states that on 30 August 2020, Mr Veiss expressed the view that he did not breach the rules since the client could himself go to the service provider and ask that IFSQ become intermediary. The report also records numerous further points made by Mr Veiss explaining why in his view there had been no wrongdoing whilst indicating that his points were not accepted by compliance.

22. These matters were raised with the regulators almost straight away. IFSQ objects to how this was done on the basis that (as is submitted by Mr Veiss) management did not attempt to solve the issue in an amicable way within the company first. A meeting took place on 30 August 2020 between the QFCRA and Ms B together with the person who performed IFSQ's Money Laundering Reporting Function (the MLRO)[2]. They said that customers had been onboarded during the prohibition period, and that there were customers who had been onboarded without the approval of compliance. This appears from a subsequent interview which took place on 3 September 2020 at which Ms B was interviewed by the QFC Regulatory Authority

[2] Name omitted.

on a compelled basis, and answered questions put to her by the investigator who was conducting the investigation for the QFCRA.

23. An issue arose over the following days about the QFCRA's request for a client list. The emails show Mr Veiss saying that he was getting the information, but there ensued a dispute as to passwords. On 6 September 2020, the QFCRA issued a requirement that IFSQ and Mr Veiss produce information as to passwords. He explained what he said were difficulties in doing so, namely that password-protected access to data was given to individuals rather than the company as a whole.

24. The emails also show Ms A objecting to Mr Veiss carrying out both business and governance functions, and Mr Veiss asking for updates as to the business including the capital position and cash flow. Ms A approached a person to join the board as a non-executive director though that seems to have come to nothing. On 14 September 2020 Mr Veiss's co-director resigned leaving him as the sole director of IFSQ. Mr Veiss says that this was because he felt he could not go against the CEO.

25. On that day a board meeting of IFSQ took place – this has already been referred to above. The record of the meeting shows that only Mr Veiss and the Head of Administration were present. It records the board resolution to terminate the CEO summarily. The "key reasoning" is that the "Board decision is made in efforts to maintain the business operations in the best interest to the firm's customers, the Regulator, the shareholders, current and future QFC users enforcing the rule of law. Zero tolerance to 'hidden agendas' or it may be described as an internally organised 'Coup'". The latter shows Mr Veiss's conviction (which continues) that these events were part of a plan to force him out of the company.

26. The dismissal letter of the same date (14 September 2020) gives as reasons – the misleading by Ms A of the regulator about the company's business causing an issue which was solved on 24 June 2020, failure to address a notice from the regulator to produce documents in July 2020, so managing the business as to cause the regulator's notice of 6 September 2020, and not maintaining the company as a positive work environment for all employees.

27. A Final Settlement Computation prepared by IFSQ shows Ms A due her September salary, an amount on the basis of leave benefits, and end of service benefits amounting to QAR83,270. Deducted from that, however, is the sum of QAR 5,900,000 as "provision for Article 15 breaches". This is apparently a reference to her contract of employment, by which it is asserted that the employee agrees to indemnify the company during and after employment against all liability resulting from the employee's breaches. In the result, Ms A is said to owe the company QAR5,816,730.

28. On 15 September 2020, Ms A filed a complaint with the ESO against her summary dismissal, notice being given to IFSQ dated 17 September 2020.

29. On 17 September 2020, the QFCRA issued a First Supervisory Notice to IFSQ addressed to Mr Veiss prohibiting IFSQ from carrying on the regulated business of insurance mediation in the QFC, subject to permission in respect of existing customers. Various other regulatory requirements were also imposed. The same day the MLRO submitted his resignation, and though he served out his three month notice period, according to the QFCRA, he was hindered in his role as MLRO and was largely non-operational.

30. There are emails showing ongoing internal disputes within IFSQ as to the provision of client lists and other information requested by the QFCRA. IFSQ appears to confirm Ms B's inability to achieve this in so far as it told the QFCRA that her access to records was blocked "to protect the IFSQ business due to concerns relating to data breaches". There are internal emails critical of her behaviour from the Head of Administration and a Senior Wealth Manager.

31. On 24 September 2020, Mr Veiss emailed Ms B a client list and asked her to provide her confirmation to the regulator as required by the First Supervisory Notice. She responded to the effect that because of the issues already raised she was not able to certify the list as complete and accurate as the First Supervisory Notice required: the best she could do, she said, was to say that it was complete to the best of her knowledge.

32. On 27 September 2020, Ms B was summarily dismissed by IFSQ. Again, the record of the meeting shows that only Mr Veiss and the Head of Administration were present, and the "key reasoning" is the same as that in the case of Ms A. The contraventions alleged are failing to act with due skill and care in relation to IFSQ's relations with the Regulatory Authority and the board, failing to act in good faith and promote the best interests of the company, and failing to deal with the board in an open and cooperative manner and keep it promptly informed.

33. The dismissal letter of the same date gives as reasons for her summary dismissal non-compliant activities as regards passwords, failures to act properly as regards communication between the company and the Regulatory Authority, failure to provide a client list certified as true and correct to the Regulatory Authority, and not maintaining the company as a positive work environment to all employees. The letter says that her earned salary to date will be forwarded in due course, though so far as the Tribunal is aware, this was not done.

34. On 28 September 2020, Ms B filed a complaint with the ESO against her summary dismissal, notice being given to IFSQ subsequently.

35. Although the regulatory issues as regards IFSQ continued, and are continuing, it may be noted that on 6 October 2020 the Regulatory Authority issued a Second Supervisory Notice to IFSQ requiring it to take immediate steps to rectify various rule breaches. The Notice also required IFSQ to advise all customers that they should contact their insurance policy provider directly (rather than contacting IFSQ) if they require any information or assistance with respect to their policies.

Determinations issued by the ESO

36. Ms B's complaint was determined on 27 October 2020. An earlier determination was amended by omitting a statement that IFSQ had provided false and misleading information to the ESO. The Tribunal understands that this followed objections raised by IFSQ.

37. In the Determination, the ESO analyses the cases as put before it by both parties, notes the documentation provided on both sides, and sets out the nature of the investigation it carried out aimed at determining whether Ms B's alleged failures amounted to gross misconduct or whether her report to the QFCRA was protected whistleblowing. It concludes that none of her alleged failures amounted to gross misconduct. The evidence clearly shows, it considers, that the investigation which Ms B conducted was related to serious misconduct on the part of Mr Veiss which was reported to the QFCRA. Far from showing misconduct, the facts show her adherence to the responsibilities of her role. The facts, circumstances and documentary evidence leave no doubt that that Ms B's report to the QFCRA was whistleblowing and was related to the subsequent steps taken by the QFCRA. Her whistleblowing was not only a contributory factor in her dismissal but the principal if not sole reason for it. Ms B had not committed any gross misconduct, and the ESO is satisfied that her dismissal was a retaliatory action against her whistleblowing. The ESO ordered IFSQ to pay Ms B's September salary, three months salary in lieu of notice, and compensation in lieu of annual leave and public holidays between 27 September and 27 December 2020, as well as compensation in lieu of annual vacation air ticket.

38. Ms A's complaint was determined on 17 November 2020. Its structure is similar to that of Ms B. This determination also considers issues around a company called Gateway LLC dealt with below.

39. In the Determination, the ESO sets out the nature of the investigation it carried out aimed at determining whether Ms A's alleged failures amounted to gross misconduct or whether her report to the QFCRA was protected whistleblowing. It concludes that although the investigation showed a genuine belief on the part of IFSQ, none of her alleged failures amounted to gross misconduct. In reality, she had a duty to disclose to the regulators the contraventions she detected. The ESO considers that Mr Veiss's directing role within the organisation had often restricted the actual exercise of Ms A's powers, with the effect of paralysing her functions and that she was not given sufficient authority or resources to be able to carry out her role effectively. As to the setting up of Gateway LLC, the ESO finds that this had been discussed with Mr Veiss, and that this did not constitute gross misconduct. The facts,

circumstances and documentary evidence leave no doubt, the ESO considers, that that Ms A's report to the QFCRA was whistleblowing. She had an objectively reasonable belief that that IFSQ was contravening the legal requirements imposed by the QFCRA and raised her concerns with the QFCRA in good faith. Her whistleblowing was a material, and essential, factor in her dismissal. She had not committed any gross misconduct, and the ESO is satisfied that her whistleblowing was the real reason behind IFSQ's a retaliatory decision to terminate her employment. The ESO ordered IFSQ to pay Ms A's September salary, three months' salary in lieu of notice, and compensation in lieu of annual leave and public holidays between 14 September and 14 December 2020, as well as compensation in lieu of annual vacation air ticket and end of service gratuity.

IFSQ's grounds of appeal

40. IFSQ has presented its submissions on the appeals under eight headings. The Tribunal found this a useful way to consider its points, and will adopt the same approach. At the outset Mr Veiss emphasised that it is for the ESO to prove its case both on liability and quantum. The Tribunal accepts this submission, whilst noting that many matters fall within the company's knowledge, and that ultimately the ESO had to reach conclusions on the basis of the material before it (as the Tribunal does). IFSQ's submissions must be seen against the nature of an appeal to the Regulatory Tribunal. In such an appeal, the Tribunal considers the case *de novo*, or in non-technical language, it re-makes the decision depending on its view of the evidence and the arguments.

(A) The ESO failed to provide a balanced and objective determination

41. There was no properly reasoned decision, and the investigation was one-sided, uncertain, and wrong, and amounted to a blanket acceptance of the alleged "whistleblowing" and a blanket rejection of IFSQ's case.

42. The Tribunal does not accept this submission. It is certainly correct that the facts in these cases are relatively complex, and hotly disputed. But it appears to the Tribunal

that the ESO went about its task in a way which was both balanced, and objective. In particular, it considered both parties' submissions as to the case, and analysed the material which was placed before it. This included material which emanated from the QFCRA in the course of its various actions against IFSQ. The ESO had to, and did, reach factual and legal conclusions based on this material, albeit conclusions which IFSQ strongly disagrees with. This however does not impugn the process.

(B) The ESO approached the decision making process the wrong way round

43. This submission appears to be based on the fact that the Determination states at the beginning a "Summary of the Determination". This is simply a matter of presentation, and has no substantive effect. In any case, there is nothing to suggest that the ESO approached the decision-making process the wrong way round.

(C) Breaching procedural rules

44. IFSQ submits that the ESO failed to evaluate the complainants' legitimacy in making complaints about IFSQ without even trying to solve the matter in an amicable way, as is required by their employment contracts, and the conduct of what was a limited investigation which did not capture the breaches by the complainants of their employment contracts or their responsibilities under the relevant regulatory rules and their employment contracts. The investigation was limited to the protected reporting whistleblowing aspect of the case and its relation to the termination of the contracts without notice. There was no opportunity to provide input into the Determinations prior to their adoption. However, independent accountants, Mazars LLC, reviewed IFSQ's systems and controls, and identified operational and compliance failures for which Ms A and Ms B were individually responsible and accountable. This is proof of their deficiencies in carrying out their roles which was not taken into account in the investigation.

45. In the Tribunal's view, Ms A and Ms B were obliged to report their findings as to IFSQ to the QFCRA promptly. This follows from their status as carrying out controlled functions, and a number of regulatory provisions, including INDI Rule 2.1.5 by which an "individual must deal with the Regulatory Authority in an open and cooperative manner, and must disclose appropriately to the authority any information that the authority would reasonably expect to be informed of". The

authority would obviously expect to be informed of the matters which Ms B and Ms A identified in August 2020 as set out above which raised serious questions about how IFSQ was maintaining its client records, and complying with the regulators' instructions. In fulfilling their regulatory obligations, they were not acting in breach of their employment contracts. Whilst it is correct that a focus of the investigation was as to the protected reporting aspect of the cases and its relation to the summary termination of the contracts, this was not the sole focus, and a consideration of this issue requires (and in the view of the Tribunal received) taking into account matters such as the regulatory responsibilities of Ms A and Ms B and the alleged breaches of contract which led to their dismissal. IFSQ did have an opportunity to input into the Determinations, as is evidenced by emails requesting information from the ESO, and the fact that the original Determination regarding Ms B was withdrawn and reissued minus one of the grounds following representations by IFSQ.

46. It is correct, as IFSQ submits, that Mazars LLC (on the QFCRA's direction) conducted a review from November 2020 to January 2021 of the effectiveness of the IFSQ's internal controls and compliance with QFCRA regulations. It presented a report of the findings to QFCRA in February 2021. Mazars LLC reported some key strengths including the recent hire of an MLRO and Compliance office and a willingness on the part of the firm to update the systems of internal controls to meet the regulators' requirements and expectations, which is clearly very positive.

47. The Mazar's report also identified some key weaknesses however, which amounted, when viewed as a whole, to substantial regulatory failings. These included the fact that "The client database was incomplete and inaccurate", and the "Consultant noted clients were tagged incorrectly". However, the Tribunal does not consider – as IFSQ has submitted – that this is proof of the deficiencies of Ms A and Ms B in carrying out their roles. Their dismissal from the company in September 2020 followed their identification of the same failings. Mazars's findings provide independent support for the concerns that Ms A and Ms B reported to the QFCRA as to the state of the company's client records. The Tribunal appreciates that IFSQ's case is that Ms A and Ms B were the cause of these deficiencies, which was developed by Mr Veiss in his oral submissions which characterised Ms B as having a lack of understanding and Ms A as failing to supervise her. This however was not the view of the QFCRA,

which regarded obstructive behaviour by IFSQ as hindering them (and particularly Ms B) from accessing the data required to verify the client list, and hence hindering the QFCRA's investigation. It was this that gave rise to the First Supervisory Notice of 17 September 2020 and the Second Supervisory Notice of 6 October 2020 issued after the dismissal of Ms B. The QFCRA's views are further set out in the Second Supervisory Notice which contains specific examples of such obstructive behaviour, and the steps the regulators had to take in response. IFSQ cannot complain that Ms A and Ms B were not properly doing their jobs when it itself was preventing them from doing so.

48. In any event, the key question is not whether there were deficiencies in Ms A and Ms B carrying out their roles, but whether, even if there were deficiencies, those deficiencies were the reason that their employment was terminated. Bearing this in mind, it is difficult to see how IFSQ could cite alleged deficiencies which (particularly in the case of Ms A) went back some time before the termination as reasons for the termination, especially where it had not raised those matters with Ms A and Ms B contemporaneously. The ESO refers us to IFSQ's internal policies on due warnings to staff for performance issues. The Tribunal would add that IFSQ as a regulated entity had a duty to manage its staff. It would be unacceptable if IFSQ had kept quiet and did not address what it now alleges to be serious failings on the part of two key managers, until the matters became so intolerable that it had to summarily terminate their employment. The Tribunal does not think this is what happened.

(D) Not being bias free and independent

49. This ground is based on the fact that Ms Ingianni, who investigated and decided these complaints to the ESO established a business relationship with IFSQ in 2019 and she remains as a client. IFSQ's case is that she potentially became dissatisfied with the company's services and moved her account away, but that does not mean that the relationship with IFSQ stopped. More importantly, it is submitted, Ms Ingianni transferred policies from IFSQ in March 2020, and a former dissatisfied client may be potentially biased and not objective in conducting the determination of the complaints of Ms A and Ms B.

50. On behalf of the ESO it is submitted that the conflict of interest allegation was raised late and is new and wrong. The facts it submits are that:

a. Ms. Ingianni's Financial Adviser, Ms. Aycan Richards, was in the process of buying IFSQ and processed her as a customer but the purchase of IFSQ did not proceed and Ms. Ingianni moved to another firm to continue using Ms. Richards as her financial adviser;

b. Ms Ingianni was only technically a customer of IFSQ in that whilst documents were signed, no transactions took place. There are no dealings between IFSQ and Ms. Ingianni that could lead to her having any negative or biased views against IFSQ;

c. In any event, the Tribunal is able to determine whether the Determination is materially correct or otherwise. The reasons for any errors (if any) in the Determination are not relevant to this Appeal.

51. The state of the evidence is as follows. A "to whom it may concern" document produced to the Tribunal signed by Ms Richards of Oscar Wealth contains a timeline supported by various documents. This shows that Ms Richards has been Ms Ingianni's financial adviser since 2014, and that at some point a USD policy was taken out with a Swiss insurance company. In 2016 the agency was transferred to a new financial adviser. There was a further change of agency, a document dated 9 March 2019 showing the agency in relation to a USD policy with a different insurance company being transferred to IFSQ naming Ms Richards as financial adviser. Terms of business with IFSQ are dated 7 March 2019. There was a yet further change of agency, documents dated 1 and 12 December 2019 showing the agency in respect of these policies being transferred to Oscar Wealth. An email from the Swiss insurance company shows that the date on which that policy was actually transferred out of IFSQ's agency was 20 March 2020.

52. In his oral submissions, Mr Veiss said that it was incorrect that there had been no transactions taking place with IFSQ, because there was a transaction for USD340,000 executed by IFSQ. However, there does not appear to be a

documentary record of this before the Tribunal, and neither he nor Mr Parker for the ESO shed any light on it. That is not to say the transaction does not exist – as already explained, Ms Ingianni did not give evidence. But it does not seem to take matters any further.

53. The test for establishing bias on the part of an administrative decision maker such as the Commissioner of the Employment Standards Office (ESO) may be taken from the widely applied decision in *Porter v Magill* [2002] 2 AC 357, and is whether a "fair minded and informed observer", having considered the facts, would conclude that there was a "real possibility" of bias on the part of the decision maker.

54. On the facts, the Tribunal does not accept IFSQ's case that Ms Ingianni remains in any substantive sense a customer of IFSQ. It is plain that the agency has been transferred from IFSQ to Oscar Wealth, which is the latest of a number of transfers. It is not suggested that there is any further business between them. Unexplained, the Tribunal accepts that a question might arise as to whether the transfer happened because Ms Ingianni was dissatisfied with IFSQ, and that this could give rise to the appearance of bias. But the facts support Ms Richards' statement that Ms Ingianni moved to Oscar Wealth to continue the personal relationship between them as financial adviser and client that had begun in 2014 long before the move to IFSQ. A reason is given for Ms Richards' move from IFSQ, namely that she had decided not to proceed with the purchase of the company. The question of dissatisfaction on the part of Ms Ingianni with the IFSQ's services causing her to move her account from IFSQ does not arise.

55. The Tribunal is satisfied therefore that a fair minded and informed observer, having considered these facts, would not conclude that there was a real possibility of bias on the part of Ms Ingianni. There is no adverse inference to be drawn by reason of the fact that she did not give evidence.

(E) One sided investigation

56. Most of the matters raised here are raised under heading (A), (B) and (C), and reference is made to the relevant paragraphs above. As a matter of record, there is correspondence between the ESO and Mr Veiss showing that he was actively

involved in the investigation. It is submitted further by IFSQ that the alleged whistleblowing had no relevance, and was not a central issue in the termination without notice. This raises the question as to the true reason for the dismissals, which is considered further below.

(F) Professional failures of Ms A and Ms B

57. It is submitted by IFSQ that Ms A was responsible for Ms B, and had to closely monitor her performance, but that Ms B failed the AML qualification, and had to be withdrawn from this aspect of her duties. Neither Ms A nor Ms B had a clear understanding of the concept of a customer of the firm. Mazars LLC has confirmed these shortcomings during the course of its investigations. Further, IFSQ submits, neither of them performed properly the controlled function in that they failed to deal with the QFCRA in an open and co-operative manner in that they did not disclose appropriately information which the regulators would reasonably be expected be informed of, and provided incorrect and misleading information. As a consequence, various further enquiries and investigations into IFSQ started. Their claims made to the ESO one day after termination were not made in good faith.

58. The Tribunal notes that Ms B accepted in her compelled interview that she had not passed the AML qualification, and it appears that she ceased to be MLRO from 10 May 2020. But there is no evidence that this had any effect on IFSQ, and the position was taken by someone else. The submission that neither Ms A nor Ms B understood the customer concept has to do with the questionable proposition advanced on behalf of IFSQ in August 2020 that the QFCRA prohibition against new customers was not breached where the approach came from the customer.

59. As regards other matters raised under this head, the findings by Mazars LLC have been dealt with above. The contentions that Ms A and Ms B did not deal with the QFCRA in an open and co-operative manner are discussed above and have no factual basis in the evidence – the QFCRA itself took the opposite view. The Tribunal does not consider that it unusual or inappropriate for the Head of Compliance to initiate a direct communications channel with the regulators where circumstances appear to require it. There is no reason to suppose that the claims Ms A and Ms B made to the ESO following their summary dismissal were made in bad faith. The fact that the

claims were made immediately after dismissal, does not, as IFSQ submits, suggest bad faith.

(G) Exceeding the scope of its powers and authority – incorrectly applying QFC Employment Regulation Article 16

60. Some points under this head have been made under other heads above. Additionally, IFSQ submits that in order to be "protected reporting" QFC Employment Regulation Article 16, the report has to be made through one of three prescribed routes, which did not happen. Other procedures including the making of a protected report were not followed. The result is that the ESO exceeded its powers and authority. The ESO had no power to make a Determination as regards whistleblowing.

61. This submission is based on the QFCRA's Protected Reporting Guide referred to below, which gives guidance on making a "protected report" to the Regulatory Authority. It is not accepted by the Tribunal for reasons given below.

(H) Dismissing disciplinary breaches, and relying on fictitious evidence given by Ms A with malicious intent

62. Some of the points under this head are raised under earlier heads, and the Tribunal refers to the discussion above. As further points, IFSQ submits that the internal investigation report of 31 August 2020 signed by both Ms B and Ms A was created for their personal benefit, and locked away in a drawer and kept away for their personal benefit. Notice was never given to IFSQ that an investigation was taking place. It is part of a blackmailing campaign to sabotage the company, and drive out the beneficial owner, and it contains groundless allegations of criminal conduct. It was submitted to the QFCRA without fact checking with the company. The fact that the MLRO resigned shortly after Ms A shows that they acted together against the company's best interest, e.g. in respect of the establishment of Gateway LLC. Ms A and Ms B were dismissed, Mr Veiss submitted, because they were a danger to the company.

63. The suggestion that the Report was found in a drawer subsequently was not addressed on behalf of the ESO. The report lists supporting documents, including a Zoom interview with Mr Veiss on 31 August 2020 – but these are not in evidence. No explanation was given of this. However, points made in the report appear to be

consistent with the overall facts, including the views of the regulators at the time who were conducting their own investigation into IFSQ, and the established fact that IFSQ's client lists were deficient. The question whether or not the content of the report was correct is not one which arises on these appeals. As stated above however, in the Tribunal's view, the internal investigation report can properly be taken into account, at least to the extent of showing how matters were perceived and/or alleged by Ms A and Ms B at the time. The question for the Tribunal is whether they made the allegations in the report in good faith, as the ESO concluded, or maliciously as is submitted on behalf of IFSQ. If the former, they were under a duty to report their conclusions, and entitled to protection in doing so.

64. The basis of the allegations of malice made on behalf of IFSQ are that Ms A and Ms B had an ulterior motive in making their allegations, seemingly a reference to the establishment of a company called Gateway LLC which the documents show was incorporated in the QFC on 31 August 2020 with the director being Ms A and the MLRO as secretary. Mr Veiss says he knew nothing about this, Ms A and Ms B says that he did.

65. The documentary record shows that the reference to Gateway LLC was contained in documents provided to the ESO by Mr Veiss, which the ESO followed up. Ms A said in an email of 27 October 2020 that the idea of establishing the company was as a referral for corporate clients the plan being to extend IFSQ's business to the corporate sector. She said that this had been discussed with the MLRO and Mr Veiss.

66. In his submissions to the ESO, Mr Veiss said that he spoke with the MLRO (who at that time was serving out his notice of dismissal) about Gateway LLC in October 2020. He put various points arising out of the conversation with the MLRO in an email on 22 October 2020, the gist of which was that the idea was to establish a company that would act as a referral vehicle to IFSQ in respect of corporates, and asked for confirmation that this what he was told, which confirmation the MLRO gave. Mr Veiss forwarded this email exchange to the ESO the same day, saying that he only found out about the company in October.

67. This was put to Ms A by the ESO, and by email of 28 October 2020 she said that Mr Veiss said during the discussion about the company that he did not mind having her

name on the register so long as there was no conflict of interest in the company's activities, and she said there would not be a conflict since the plan was to have a referral agreement signed between IFSQ and Gateway. She said that the discussion took place at IFSQ's office, and after that when the establishment process started Mr Veiss joined a meeting with corporate clients which were a potential target. She says that the establishment process was interrupted by the events of August 2020.

68. On 2 November 2020, the ESO obtained a formal, signed witness statement from the MLRO. It is the only witness statement in this case. There was no application to cross examine the MLRO. He says that around the end of March 2020, he was asked by Ms A about the procedures to follow to establish a non–regulated company in the QFC. The question, he says "… was asked to me in front of Rudolf Veiss after the two had concluded one of their business meetings. For the avoidance of doubt, I was neither involved nor present in the said business meeting". He says he gave his explanation "with Rudolf present". He says that "Around mid – June 2020, I was asked by [Ms A], in the presence of Rudolf, if a non-regulated QFC company can act as a referral vehicle to IFSQ …". He says that he gave an affirmative answer about a week later. He says that, "Around the end of June 2020, I was asked to join Ms A and Rudolf after they had concluded their business meeting. … The discussion was very brief and I explained that the first step would be to incorporate the company and later sign a referral agreement that can be in any form as long as it will not be mistaken for an intermediary agreement. After hearing my answer, Ms A asked me to get started on incorporating the company. For the avoidance of doubt, the name "Gateway" was not mentioned, and the name was later selected by Ms A for marketing purposes".

69. IFSQ's Responses state that due to a hostile business environment and personal attacks on Mr Veiss from various parties, matters changed as regards the ownership of the company. Reference is made to the fact that a 'coup' appears to have achieved its malicious original purpose to drive out Mr Rudolf Veiss as the beneficial owner and obtain the control of IFSQ. Further details of how he says that these events happened have been supplied to the Tribunal by Mr Veiss, who requests confidentiality, and there is no need for the Tribunal to make findings as to precisely what took place.

70. Mr Veiss did not give evidence, nor did Mr Parker ask to cross-examine him. However, as set out above he has put his IFSQ's case in submissions, and no adverse inference is to be drawn in these circumstances. Nevertheless, having considered the available material, the Tribunal does not accept IFSQ's case under head (H). It concludes on the balance of probabilities (that being the relevant standard of proof – *Seifeldin Abdelkareem v Qatar Financial Centre Regulatory Authority* [2012] QIC (RT) 1 at paragraph 31) that there was no malicious intent on the part of Ms A (or Ms B to the extent that she may have been involved) in the establishment of Gateway LLC. The Tribunal accepts the evidence that it was intended as a company which would refer corporate business to IFSQ. The MLRO make it clear that Mr Veiss was aware of the proposal, though the Tribunal accepts he did not know the name of the company until October 2020.

71. For the above reasons, the Tribunal does not accept IFSQ's submissions as set out under (A) to (H) above.

72. Discussion and conclusion

Whistleblowing

73. Before expressing the Tribunal's conclusion, it is necessary to say something about whistleblowing as it applies in financial regulation generally. Whistleblowing means calling attention to wrongdoing that is occurring within an organisation. As the QFCRA put it in 2017 when consulting on the introduction of rules protecting whistleblowers, anonymous reporting mechanisms help foster a climate whereby employees are more likely to report potential or actual wrongdoing without fear of retaliation from their employer, such as immediate termination or ongoing harassment on the job. The principles are widely recognised internationally as an important tool for identifying wrongdoing in financial institutions particularly where it might otherwise be covered up, or not see the light of day. The reports can either be made within the organisation concerned, or to some external body such as a regulator. The QFCRA states that it developed its protected reporting framework in accordance with best practice international standards, including those set out by the OECD.

74. The QFCRA's Protected Reporting Guide gives guidance on making a "protected report" to the Regulatory Authority. The purpose is to have a framework that allows persons such as employees to confidentially submit reports of suspected misconduct relating to QFC authorised firms to the Regulatory Authority provided that they are made in good faith. Misconduct is widely defined to include regulatory breaches (but excludes certain matters such as employee grievances). Methods by which a protected report can be made are set out, being through the website, through email or through a letter. The purpose being to assure the reporter of confidentiality and to protect the reporter from any reprisal or victimisation. The Guide expressly states that any sort of harassment, victimisation and retaliation towards a protected reporter will not be tolerated.

75. These principles are enshrined in Article 16 of the QFC Employment Regulations dealing with whistleblowing which provides that:

> "Any person who in good faith raises concerns about or reports crimes, contraventions (including negligence, breach of contract, breach of law or requirements), miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these by their Employer shall not be dismissed or otherwise penalised directly or indirectly for such acts, including in respect of any prohibition against disclosure of non–public information."

This provision appears in identical form in Article 27 of the contracts of employment of Ms A and Ms B. It is not in dispute that these are the principles by which the present dispute must be determined.

76. IFSQ contends that the methods by which a protected report can be made as set out in the QFCRA's Protected Reporting Guide are exclusive, and that since the reporting was made in the present case at a meeting with the QFCRA, it falls outside the whistleblowing provisions. The Tribunal does not accept this. The purpose of providing that the report can be made being through the website, through email or through a letter is to enable the whistleblower to report confidentially – but this does

not exclude reporting by other means. This is confirmed by the language of the Guide which states that a protected report can (not must) be made by the means listed.

77. In the present case, the company was fully aware that Ms A and Ms B were reporting to the Authority – and objected on the grounds that an effort should have been made to solve matters internally in an amicable way. But employees may feel that suspected misconduct needs to be reported to the external regulator, despite the ill feeling that this will cause, and the law will support them provided that they act in good faith. Mr Veiss on behalf of the company objected that this in effect means that any regulatory report falls within the whistleblowing protections, with the result, as he put it, that the employees concerned become untouchable. That is not the intent of the law. Reference may be made to the QFCRA's rules in this regard which though not directly applicable to the ESO can be applied by analogy. GENE4A.1.2 states that "a report is made in good faith only if the individual who made it believes on reasonable grounds that it is true". GENE 4A.1.3 provides that a firm that receives a report that purports to be a protected report must treat it as such until it has decided, on the basis of a proper investigation, that the report is not a protected report. These provisions help to provide adequate safeguards to a firm against spurious reporting.

The present case

78. The requirements of Article 16 of the QFC Employment Regulations dealing with whistleblowing may be broken down as follows:

(1) The person concerned must have raised concerns about, or reported, crimes, contraventions (including negligence, breach of contract, breach of law or requirements), miscarriages of justice, dangers to health and safety or the environment, and the cover up of any of these by their employer (as noted above, such report may be made to the employer itself or to a third party such as a regulator or both).

(2) The person concerned must have done so in good faith – as noted above, a report is made in good faith if the individual who made it believes on reasonable grounds that it is true.

(3) In such cases, the person concerned is not to be dismissed or otherwise penalised directly or indirectly for doing so (this includes the situation in which there is a prohibition, e.g. in the contract of employment, against disclosure of non–public information).

79. In the present case, the Tribunal considers that:

(1) As set out above, both Ms A and Ms B raised concerns about or reported to IFSQ and/or the QFCRA contraventions of the QFCRA requirements in relation to clients of the firm either through the internal investigation report or through the various reports to the QFCRA mentioned above. The Tribunal agrees with the reasoning of the ESO in this regard.

(2) They did so in good faith – as set out above, the Tribunal rejects IFSQ's submissions that they did so maliciously or for an ulterior motive. The Tribunal agrees with the reasoning of the ESO in this regard.

(3) They were summarily dismissed directly or indirectly for doing so:

a. Though this was not the reason given in the dismissal letters of either Ms A or Ms B, and although IFSQ maintains that "The alleged whistleblowing had no or very little relevance and was not a central issue of the termination without notice", the reasons given for their summary dismissal are not supportable. See further below.

b. It is plain from the submissions made by IFSQ in this case that it strongly objected both to the manner in which the reports were made within the company and to the manner in which reports were made to the QFCRA.

c. The dismissals followed on shortly after the reports at the end of August and the beginning of September 2020, i.e. 14 September and 27 September respectively.

d. In the case of Ms A, she was also penalised by a claim for a sum of QAR5,900,000 allegedly due from her to the company.
e. The Notices of Appeal say that if their present claims against IFSQ are enforced, the company may bring its own claims for QAR 2,200,000 in the case of Ms A, and QAR 2,000,000 in the case of Ms B.
f. The Tribunal agrees with the reasoning of the ESO in this regard.

80. Ms A's dismissal letter of 14 September 2020 and the reasons given for the dismissal is referred to above. Taking the reasons in order the Tribunal considers that:

(1) This relates to her alleged regulatory failures which (even on the assumption that Ms A was at fault in any way) were resolved in June 2020.

(2) This relates to her alleged failures to produce documents to the regulators which (even on the assumption that Ms A was at fault in any way) were resolved at the end of July 2020.

(3) This relates to her alleged failure to use the "most appropriate channels of communication" in relation to compliance challenges: this is a clear reference to the protected report/s that Ms A made the QFCRA.

(4) This relates to her alleged failure to maintain the firm as a positive work environment, which plainly is not a matter for summary dismissal without any prior warnings.

(5) The reference to "key contraventions" does not materially add to the above.

81. Ms B's dismissal letter of 27 September 2020 and the reasons given for the dismissal is referred to above. Taking the reasons in order the Tribunal considers that:

(1) This relates to passwords, which were an important part of the regulators investigation, but there is no evidence that "password sharing" on the part of Ms B were an issue: the regulators' complaints were directed at Mr Veiss.

(2) This relates to her alleged failure to use the "most appropriate channels of communication" in relation to compliance challenges: this is a clear reference to the protected report/s that Ms B made the QFCRA.

(3) This relates to her alleged failure to provide a proper client list prior to the regulatory deadline: the provision of such a list was a central regulatory requirement, however there was no suggestion by the regulators that the failure to do so was the fault of Ms B – the opposite is the case. The QFCRA said that if the information was not provided by the company, Ms B was to be given access to the provider/s portals herself.

(4) This relates to her alleged failure to maintain the firm as a positive work environment, which plainly is not a matter for summary dismissal without any prior warnings.

(5) The reference to "key contraventions" does not materially add to the above.

82. So far as IFSQ relies in the course of the appeals on justifications beyond the reasons given in the dismissal letters, these do not advance its case.

83. In summary, the Tribunal is satisfied that both Ms A and Ms B were dismissed by IFSQ for making a protected disclosure in breach of Article 16 of the QFC Employment Regulations.

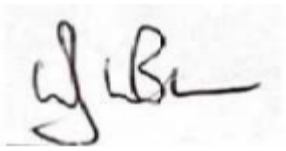
84. The ESO Determinations state in the case of each complainant that by terminating their employment without notice, IFSQ was in breach of Article 23 of the Employment Regulations. The Tribunal confirms this finding. The ESO Determinations further state that the complainants are entitled to payments in accordance with their contracts of employment, and though the nature of the liabilities said to arise is identified, the amounts are not. The amount is to be communicated by a separate order of the ESO, which so far as the Tribunal is aware, has not been done. The submissions on behalf of the ESO for the hearing do not deal with the subject in any detail and not at all so far as the amount of the payment due from IFSQ is concerned and on what basis it is said to be contractually due.

85. The parties are asked to agree the sums in question bearing in mind that the complainants were not employed by IFSQ for very long. Failing that, the matter can be referred back to the Tribunal.

Decision

86. IFSQ's appeals in both cases are dismissed.

By the Regulatory Tribunal,



Sir William Blair, Chairman

Representation:

The Appellants were represented by Mr Rudolf Veiss.

The Respondent was represented by Mr Jonathan Parker, Clyde & Co, Doha, Qatar.