

UPDATE

## GFSC: Second Public Statement of 2018

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The Commission has issued its second Public Statement of 2018, following hot on the heels of the first. What are the warnings to be taken and lessons learned?

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On 31 May the Guernsey Financial Services Commission (the **Commission**) issued its second Public Statement of 2018. The recipient was Mr Alan Michael Chick. Mr Chick was formerly the chairman of the Richmond Fiduciary Group, which received the first Public Statement of 2018.<sup>1</sup> The Public Statement was accompanied by

- a Financial Penalty of £50,000;
- a five year order preventing Mr Chick from performing the functions of director, controller, partner or manager; and
- the disapplication of exemptions under the Fiduciaries Law which would otherwise have allowed Mr Chick to hold up to six directorships without that counting as regulated activity.

The above penalties are some of the sanctions available to the Commission to punish breaches of the regulatory laws and/ or non-fulfilment of the minimum criteria for licencing.

The Commission is required to use its enforcement powers fairly and proportionately to achieve effective outcomes. But the use of those powers does not follow prescribed criteria. For Public Statements in particular the Commission seeks to explain the circumstances and identify the breach or nonfulfillment relevant to the imposition of sanctions. To this extent Public Statements should have an educational role to play for industry, but they are usually difficult to decipher.

### Mr Chick Statement

The Public Statement<sup>2</sup> relates to conduct from 1999-2015. In this period Mr Chick was a director of several companies, certain of which were licensed by the Commission. Some of those entities were within the Richmond group. At all material times Mr Chick had executive responsibilities in the relevant entities.

In addition, Mr Chick and an associate were the directors and controllers (i.e. holding financial interests) of a communications research and development company (**R&D Company**).

Mr Chick secured loans and/ or indirect investments into the R&D Company in the sum of £6.7m. Mr Chick's access to the contacts / potential investors appeared to be through his connections to the licensed entities, or in his capacity as a trustee or director of certain investing entities. Mr Chick's role as a director

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<sup>1</sup> See our earlier publication <https://www.mourant.com/news-and-views/updates/updates2018/gfsc--first-public-statement-of-2018.aspx>

<sup>2</sup> Full version available at <https://www.gfsc.gg/news/article/mr-alan-michael-chick>

of the R&D Company was known to the investors. His financial interest in the R&D Company however was not.

The Commission found that Mr Chick had therefore acted in a conflict of interest which had not been adequately disclosed. The position was exacerbated because Mr Chick acted in isolation from the relevant licensees, circumventing procedures and not producing proper documentation, such as to put other entities in breach of their own regulatory obligations.

Additionally, Mr Chick opened a bank account for a PEP without proper CDD and consequent procedures, again causing other companies to be in breach.

## Inferences

The Commission's findings are of facts which are relatively extreme. However this is not reflected in the level of sanctions. It may be that in view of the recent Richmond Public Statement that the sanctions were administered collectively, although this is not apparent from either Public Statement.

The sanctions appear light when considering that the only mitigating factor noted in the Public Statement is an absence of complaints and where aggravating factors included:

- the failure to self-disclose by Mr Chick;
- the seriousness of the contraventions, in particular as regards putting other entities in breach; and
- that the conduct was deliberate and Mr Chick took no steps to mitigate it.

Mr Chick contended that greater disclosure had been made than was accepted by the Commission. Lack of clear documentation left Mr Chick unable to prove those contentions. As well put by the Public Statement:

*These instances highlighted the importance of documentation. It provides a paper trail of the reasons why the decision to invest was made which might protect the company or directors in the future. It also ensures that the management of the company are aware of the investment, and it enables successor directors to inform themselves as to the investment.*

A final point, the public statement considers matters dating back to 1999. By contrast to civil claims, regulatory matters are not subject to limitation / prescription periods. That matters are historic does not provide a defence to regulatory enforcement action.

## Contacts

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