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## Chamberlain Heritage Services Limited, Mrs Deborah Anne Ellis

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24th August 2023

[General](#), [Fiduciary](#), [Financial Crime](#)

**The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (the “Financial Services Commission Law”)**

**The Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (the “Fiduciaries Law”)**

**The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the “POI Law”)**

**The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (the “IMII Law”)**

**The Insurance Business (Bailiwick of Guernsey) Law, 2002 (the “Insurance Business Law”)**

**The Banking Supervision (Bailiwick of Guernsey) Law, 1994 (the “Banking Law”) (together “the Regulatory Laws”)**

**The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended (“the Regulations”);**

**The Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (the “Handbook”)**

**The Principles of Conduct of Finance Business (the “Principles”)**

**The Code of Practice – Finance Sector Code of Corporate Governance – (the “Code of Corporate Governance”)**

**The Code of Practice – Corporate Service Providers (the “CSP Code”)**

**The Code of Practice – Trust Service Providers (the “TSP Code”)**

**The Code of Practice – Company Directors (the “Directors Code”)**

**Chamberlain Heritage Services Limited (“CHSL”)**

**Deborah Anne Ellis (“Mrs Ellis”)**

On 20 August 2020, the Guernsey Financial Services Commission (the “**Commission**”) decided:

1. To impose a financial penalty of £14,000 under section 11D of the Financial Services Commission Law on Mrs Ellis;
2. To make orders under section 17A of the Fiduciaries Law, Section 34E of the POI Law, Section 28A of the Insurance Business Law, Section 18A of the IMII Law and section 17A of the Banking Law, prohibiting Mrs Ellis from holding the position of director, controller, partner or manager for a period of 1 year and 5 months.
3. To disapply the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect of Mrs Ellis for a period of 1 year and 5 months.
4. To issue a public statement under section 11C of the Financial Services Commission Law.

The publication of this public statement was delayed in order to allow other parties to complete the statutory appeal process.

The Commission considered it reasonable, proportionate and necessary to make these decisions having concluded that Mrs Ellis failed to fulfil the minimum criteria for licensing under Schedule 1 to the Fiduciaries Law (and also was not a fit and proper person in terms of Schedule 4 to the POI Law, Schedule 4 to the IMII Law, Schedule 3 to the Banking Supervision Law, and Schedule 7 to the Insurance Business Law, which set out the minimum criteria under these Laws).

## **Background**

Mrs Ellis was a Director of CHSL (an entity licensed to conduct regulated activity under the Fiduciaries Law) from 1 April 2011 to 18 March 2018. She was also the Compliance Officer and Deputy Money Laundering Reporting Officer between 21 October 2014 to 19 March 2018.

The primary activities of CHSL were the management and administration of trusts and companies, provision of individual or corporate directors, provision of individual or corporate secretaries, registered office services and nominee services.

## **Findings**

During the period between April 2011 to March 2018:

**Mrs Ellis failed to ensure that adequate enhanced due diligence was obtained for a high risk client, and failed to ensure that this client was subject to ongoing and effective monitoring.**

Regulation 5 of the Regulations states that where a financial services business is required to carry out customer due diligence, it must also carry out enhanced due diligence in relation to a business relationship or occasional transaction which has been assessed as a high-risk relationship.

Regulation 11 of the Regulations stipulates that a finance services business shall perform ongoing and effective monitoring of any existing business relationships.

For example, Client A was a high-risk client and had been with CHSL since 1998. The purpose of the client’s company was to receive royalty payments from retail products sold in a high-risk country.

The Commission noted during its investigation that Mrs Ellis had personally signed off periodic reviews for this client in 2015, 2016 and 2017; however, the following issues were identified by the Commission:

The source of wealth and source of funds information was inadequate, consisting of documents that were poorly translated, and in some cases undated, expired and unsigned;

There was no documentary evidence to support the provenance of incoming funds;

One periodic review detailed that the fees for the client fell outside the standard parameters of the Firm, and could be considered abnormal for a client with virtually no activities; and

The sole point of contact for the client was via a person purportedly acting on behalf of the beneficial owners of the client structure. No due diligence was ever conducted on this person.

**Mrs Ellis did not always act in the best interests of beneficiaries.**

Principle 4 of the TSP Code states that Trust Service Providers (“TSPs”) should treat the interests of beneficiaries as paramount, subject to their legal obligations to other persons or bodies. In particular, TSPs should agree a clear fee structure in advance of taking an appointment and charge fees in accordance with that, and in a fair and transparent manner.

As part of its investigation the Commission looked at five Trust structures relating to one family (“the Family Trusts”). In 2012, the family requested that the Family Trusts be closed down.

The Commission noted during its investigation that Mrs Ellis worked extensively on the closure of the Family Trusts including the taking of closure fees amounting to approximately £287,000. The Commission was concerned to note that the closure fee consisted of a portion of monies already held by CHSL in relation to the Family Trusts, but which was transferred to a bank account that did not appear on CHSL’s audited financial statements. This bank account was referred to at times as “the slush fund” by a fellow director.

The Commission was concerned when it identified that the level of fees charged in relation to the closure of the Family Trusts was based on a calculation of 3 years’ future fees, with no satisfactory explanation as to why they were calculated in this way.

In relation to the explanation given to the family regarding the level of fees charged, the Commission noted that Mrs Ellis referred in correspondence to the prior correspondence of a fellow director’s, that contained a false reference to the Commission’s requirement for insurance cover to be in place, as justification for the level of fees charged. Mrs Ellis claimed that she did not recall any specific insurance requirement in respect of the Family Trust assets, and that she had made this reference to her fellow director’s prior correspondence on the instructions given to her by the director. The Commission was concerned at the lack of diligence, challenge and soundness of judgement demonstrated by Mrs Ellis in acting on this instruction.

In 2017 Mrs Ellis was involved with another trust client, Client B, where a £60,000 closing fee was taken. There was no documentary evidence to show that Client B was informed that the fee had been taken, nor that an invoice had been issued.

As detailed in the TSP Code, TSPs should provide promptly to clients information to which they are entitled about a trust, which would include the taking of closure fees.

#### **Mrs Ellis failed to ensure that signed client agreements were held for all clients.**

Principle 5 of the CSP Code states that a written record of the terms of the business relationship must be kept, including evidence of the client’s agreement to those terms.

For example, Client A (high risk client) had been with CHSL since 1998, however Mrs Ellis continually failed to ensure that a signed client agreement was obtained. Mrs Ellis was directly aware of this failing having signed off periodic reviews for the client where the absence of a signed client agreement was raised. The lack of a signed agreement for a high risk client that had been with CHSL for some 19 years further demonstrated a lack of competence, and knowledge and understanding of the legal and professional obligations to be undertaken by Mrs Ellis.

A separate client, Client C was taken on by CHSL in 2012, and again Mrs Ellis (who had direct knowledge of this client) failed to ensure that a signed client agreement was obtained. A completed client agreement obtained at the outset would have confirmed the ownership position and could have prevented the ownership issues that subsequently arose.

#### **Mrs Ellis failed to treat CHSL as a separate legal entity from its shareholders.**

Principle 3 of the Directors Code states that directors must treat the company as a separate legal entity from its shareholders, directors and others and avoid conflicts of interest with it or deal with them in accordance with the company’s articles of association.

In relation to the activity already detailed regarding the Family Trusts, the Commission was concerned by the manner in which the final closing fees were accounted for, and ultimately distributed. The Commission noted that 11.5% was recorded as income by CHSL and properly accounted for, however a total of 88.5% was distributed directly to the majority shareholder of CHSL, without being recorded as CHSL income or accounted for accordingly.

A series of payments were made to the majority shareholder, or for their benefit in May 2013, December 2013 and a final payment in April 2014. On each occasion Mrs Ellis countersigned the bank instructions with the majority shareholder.

The payment in April 2014 would have represented approximately 26% of CHSL’s annual turnover and the Commission was concerned at Mrs Ellis’s lack of challenge to the majority shareholder in relation to these payments.

Mrs Ellis was unable to evidence why the fees were split between the majority shareholder and CHSL in the way that they were. As a result Mrs Ellis failed to treat CHSL as a separate legal entity from its shareholders and demonstrated a lack of competence and knowledge and understanding of the legal and professional obligations to be undertaken.

The contraventions and non-fulfilments of Mrs Ellis detailed above are not alleged to be deliberate or malicious.

### **Aggravating Factors**

The contraventions and non-fulfilments of Mrs Ellis were considered serious as they have had a detrimental effect on certain clients of CHSL. With regard to the Family Trusts, they have significantly overpaid for simple closures of trusts and the distribution of the underlying assets. The Commission was concerned by Mrs Ellis's failure to raise adequate challenge to the decision to falsely portray these fees as in any way connected to the requirements of the Commission.

The distribution of these fees to an account referred to as a "slush fund" by a fellow director, demonstrates a lack of judgement on the part of Mrs Ellis; and has undoubtedly damaged the reputation of the Bailiwick as an international finance centre.

### **Mitigating Factors**

Mrs Ellis co-operated with the Commission and agreed to settle an early stage of the process and this has been taken into account by applying a discount in setting the financial penalty and prohibitions.