

#### DU VAL - MONEY LAUNDERING - THE FULL STORY

#### **INTRODUCTION:**

We have attached a recent article from the NBR, and thought you may wish to read through that to gather examples of the difference between a good faith attempt to manage AML/CFT obligations, and what looks like at the very least to be wilful blindness.

Dimension GRC run training throughout the year for our managed service law firms. This helps those firms to meet their CPD obligations and is also a great tool for starting the type of conversations that help staff think about and examine the challenges they face with daily AML/CFT matters.

One of the frequent statements made by firms is that "we know all of our clients and they are not money launderers!" To a large extent this is true, however, it is also true that most organised money launderers use a law firm to assist in the placement, layering and/or integration of criminal proceeds, so it can't be true all of the time, or for all law firms.

The answer is: that money launderers are not prolific, and in fact they likely represent less than 0.25% of the individuals that seek representation from a law firm. So maybe 1 in 400 clients may be associated with some type of laundering.

This number is a generalisation as well, because some firms provide services that are more suited to money launderers such as managing M&A deals, corporate financing where the funds come from off-shore, and setting up trusts or other legal arrangements that are more attractive for laundering money. Consequently, those firms with a wider set of services may well face attempts to launder money more frequently.

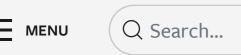
Accordingly, whilst the time, costs and effort to maintain an effective AML/CFT program may seem to be disproportionate compared to the statistical risk, that is actually not the case.

Social harm from money laundering has an outsized effect on the public in general, especially as most non-violent crime is reliant on some type of laundering to reward the criminal, so if we removed the ability of criminals to profit from their illegal endeavours, it would not take long for those bad actors to stop what they were doing if there was no profit in it.

Basically, we are all looking for the proverbial needle in the hay stack, and it is expensive, but! Those cost we incur are actually quite small compared to the damage money laundering does to our society.

I believe it is important to note that our experience with law firms in particular, is that they strive to be compliant, and most of the time we field questions relating to "how can we do better". That attitude is part of the good faith element of all rules and regulations that we as a nation are bound by, and what makes the difference to outcomes.

Lastly for the avoidance of doubt, ICLaw is not, and has never been, a client of Dimension GRC.



## LAW © 6 mins to read Du Val lawyer's 'politically exposed' money transfer links

**NBR** 

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Owen Culliney's law firm linked to millions of dollars of offshore transactions on behalf of deregistered financial services company Worldclear.



Owen Culliney.



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A document provided to *NBR* suggests a trust account of Du Val lawyer Owen Culliney's law firm iClaw transferred tens of millions of dollars on behalf of overseas people and entities with high money laundering risks.

It appears the transfers were made on behalf of a now-deregistered financial services company in Hamilton called Worldclear, which was founded by former financial adviser David Hillary.

That business was set up to provide account, foreign exchange, and payment services to personal, commercial, and institutional customers, in New Zealand and overseas.

It was de-registered from the Financial Service Providers' Register in February 2019 and isn't on the list of complying entities under the Anti-Money Laundering and Countering Financing of Terrorism Act (AML) by the Department of Internal Affairs.

The Excel spreadsheet leaked to *NBR* contains details copied from a bank statement for Chambers Associates Partners, which is now registered as C.A.P.A.C Ltd on the Companies Office and trades as iClaw. IClaw has been provided with a copy of the document.

It appears to show multiple transactions including for a Cayman Islands-registered entity, which later had its banking licence revoked; a transfer to an entity associated with a prominent Belarusian businessman and oligarch later detained for large scale tax evasion; and a disbarred Vancouver lawyer.

The spreadsheet was copied by former Worldclear employee Richard Whitham, who later spent two years in jail after misappropriating millions of dollars from that company.

IClaw chief executive Richard Briggs said any funds held in the firm's trust account were held on clients' behalf and "we are required to act on our client instructions".

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ient Name		Currency Transaction Da	te Amount	Reference	Balance
hambers Associates Partners and Co Ltd	T/A IC Law	USD 12-Jan-	18 \$3,000,000.00	5264879 IMT GLOBAL FI	DELITY BANK 3,006,424.00
nambers Associates Partners and Co Ltd	T/A IC Law	USD 22-Jan-	18 \$4,000,000.00	5295492 IMT GLOBAL FI	DELITY BANK 6,858,696.10
hambers Associates Partners and Co Ltd	T/A IC Law	USD 30-Jan-	18 <b>\$1,500,000.00</b>	5323620 IMT GLOBAL FI	DELITY BANK 4,348,932.92
nambers Associates Partners and Co Ltd	T/A IC Law	USD 5-Feb-	18 <b>\$2,000,000.00</b>	5347411 IMT GLOBAL FI	DELITY BANK 2,545,004.21
hambers Associates Partners and Co Ltd	T/A IC Law	USD 9-Feb-	18 \$2,000,000.00	5365136 IMT GLOBAL FI	DELITY BANK 2,350,589.85
nambers Associates Partners and Co Ltd	T/A IC Law	USD 14-Feb-	18 \$2,000,000.00	5380750 IMT GLOBAL FI	DELITY BANK 3,878,498.88
nambers Associates Partners and Co Ltd	T/A IC Law	USD 26-Feb-	18 \$2,000,000.00	5418036 IMT GLOBAL FI	DELITY BANK 2,402,176.01
hambers Associates Partners and Co Ltd	T/A IC Law in Trust for WorldClear Ltd	USD 2-Mar-	18 \$1,000,000.00	5440972 IMT GLOBAL FI	DELITY BANK 1,995,486.74
hambers Associates Partners and Co Ltd	T/A IC Law in Trust for WorldClear Ltd	USD 13-Mar-	18 \$1,500,000.00	5476064 IMT GLOBAL FI	DELITY BANK 5,094,856.72
hambers Associates Partners and Co Ltd	T/A IC Law in Trust for WorldClear Ltd	USD 27-Mar-	18 \$1,500,000.00	5525302 IMT GLOBAL FI	DELITY BANK 5,794,308.20
hambers Associates Partners and Co Ltd	T/A IC Law in Trust for WorldClear Ltd	USD 6-Apr-	18 \$1,500,000.00	5562089 IMT GLOBAL FI	DELITY BANK 5,714,495.03
nambers Associates Partners and Co Ltd	T/A IC Law in Trust for WorldClear Ltd	USD 17-Apr-	18 \$2,000,000.00	5595065 IMT GLOBAL FI	DELITY BANK 5,610,264.25
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#### $\downarrow$ KEY POINTS

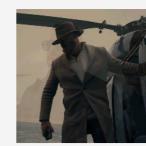
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- What's at stake: Hamilton law firm iClaw, a firm that acts for Du Val Group, among others, appears to have used its trust account to transact tens of millions of dollars on behalf of overseas people and entities with high money laundering risks.
- Background: A document leaked to *NBR* shows multiple transactions, including for a Cayman Islands-registered entity, which later had its banking licence revoked and a transfer to an entity associated with a prominent Belarusian businessman and a disbarred Vancouver lawyer.
- Key players: iClaw, Owen Culliney, David Hillary, Richard Whitham, Worldclear, Global Fidelity Bank, DIA, Law Society.

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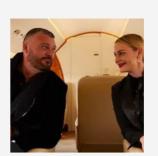
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LAW 7 O Du Val founders seek legal aid, receivers don't want to pay rent



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LAW Du Val was in a 'precarious position' – Andrew Bayly

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LAW 2  $\bigcirc$ Police, FMA close ranks on Du Val firearm, asset seizures

#### Fit and proper

Hamilton-based Worldclear was founded in 2014 and, in late 2017, Whitham established a separate firm called T1 Holdings.

That firm was set up to open local and international bank accounts on Worldclear's behalf.

Later, however, Whitham fled the country with his family and was found to have misappropriated about US\$4.3m from Worldclear, for which he spent two years in a Singaporean jail.

T1 was then moved into liquidation after an application by Worldclear's Hamilton founder, Hillary, in June 2018.

In the months leading up to that, however, there were multiple transactions on behalf of Worldclear through iClaw's account.

The most significant, across 12 separate international money transfers amounting to US\$24m, were from Cayman Islandsregistered Global Fidelity Bank between January and April 2018.

In September of that year, Global Fidelity obtained preservation orders against Worldclear in the Hamilton High Court, claiming the firm had acted in breach of its trust and fiduciary duty against funds deposited of more than US\$7m.

In August 2021, the Cayman Islands Monetary Authority announced it had revoked Global Fidelity's banking licence after the Grand Court placed the bank into official liquidation in July of that year. Its three directors were found "not fit and proper to hold the positions of director and/or shareholder of a licensee".



IClaw's head office in Hamilton.

#### **Politically exposed**

Other transactions contained in the spreadsheet showed the trust account making an international money transfer of US\$1.13m to Redcast Holdings in early 2018.

That Cyprus-registered company, according to a Russian language report by Municipal Scanner, is associated with prominent Belarusian businessman and oligarch Yury Chizh, a close adviser to Belarussian President Alexander Lukashenko.

In May 2016, Reuters reported that Chizh had been detained for large-scale tax evasion – making him a "politically exposed" person, as defined by the AML Act.

Then, on February 15, the trust transferred \$512,734 to Aliaksei Aleksin, a Belarus businessman with interests across oil and energy, real estate, tobacco, and finance. Aleksin, described by the Organised Crime and Corruption Reporting Project as one of Lukashenko's 'wallets' has been blacklisted by both the EU and US governments.

Another transaction in the spreadsheet included a C\$200,000 transfer from Vancouver lawyer Ron Pelletier, who was disbarred last November for helping clients launder about C\$31m.

In its decision, the Law Society of British Columbia tribunal said Pelletier had treated his trust account like a bank, moving funds in and out as directed by his clients, with funds used to buy a Vancouver property, purchase a car, and a ring from luxury jeweller Tiffany and Co.

"A lawyer's trust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal adviser and facilitator. They are not to be used as a convenient conduit," the society noted.

A New Zealand Law Society spokesperson told *NBR* it provided guidance to lawyers about suspicious transactions and publishes trust accounting guidelines for lawyers on its website. Lawyers were encouraged to contact the Department of Internal Affairs (DIA) with questions about AML.

"Lawyers operating trust accounts cannot use the money in those accounts without the consent of their clients, and that money

can't be used by the lawyer or the law firm for private use. Lawyers must certify monthly to the Law Society that they have met their legal requirements in relation to their trust account.

"If a lawyer holds client money in a trust account, they may only pay it to the client or to someone else as directed by the client."

#### IClaw's response

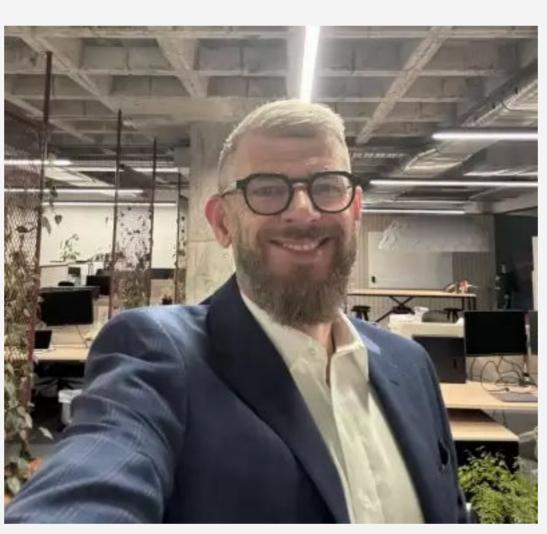
NBR asked iClaw to comment on the veracity of the document, as well as:

- whether iClaw still works on behalf of Worldclear or any of the entities associated with David Hillary; and
- what steps the firm generally takes, or did take in this instance, to establish the bona fides of the parties involved

   given the politically exposed nature of some of these
   parties and the requirements of the AML/CFT.

IClaw's Briggs told *NBR* that the firm's professional obligations prevented it from discussing "client matters".

Briggs, chief executive of the Hamilton City Council for seven years to 2021, said any funds held in the firm's trust account were held on clients' behalf and "we are required to act on our client instructions".



IClaw chief executive Richard Briggs.

But head of governance, risk, and compliance at software and consultancy service provider Dimension GRC, Phil Sarsfield, told *NBR* a number of the transactions should have raised red flags for iClaw, under what was then the Financial Transactions Act.

Sarsfield was employed from 2015 to 2017 by US payment platform Akirix, a company that provided transactions for a number of Worldclear customers. The relationship ended up in a US court in October 2017, with Hillary attempting to recoup about \$4.3m in funds held by Akirix for compliance purposes under federal law.

Sarsfield argues that Global Fidelity, in particular, is effectively a shell bank, without a physical presence in its country of incorporation. Under AML regulations, reporting entities are precluded from having a relationship with a shell or offshore bank.

Sarsfield said following his investigations, Dimension GRC had made the FMA, Department of Internal Affairs, and NZ Police aware of the conduct. It had also passed information to the fraud department of ASB Bank as it was providing the trust account that was being used.



#### Culliney

Culliney has not responded to multiple *NBR* requests for comment and there is some question as to his whereabouts.

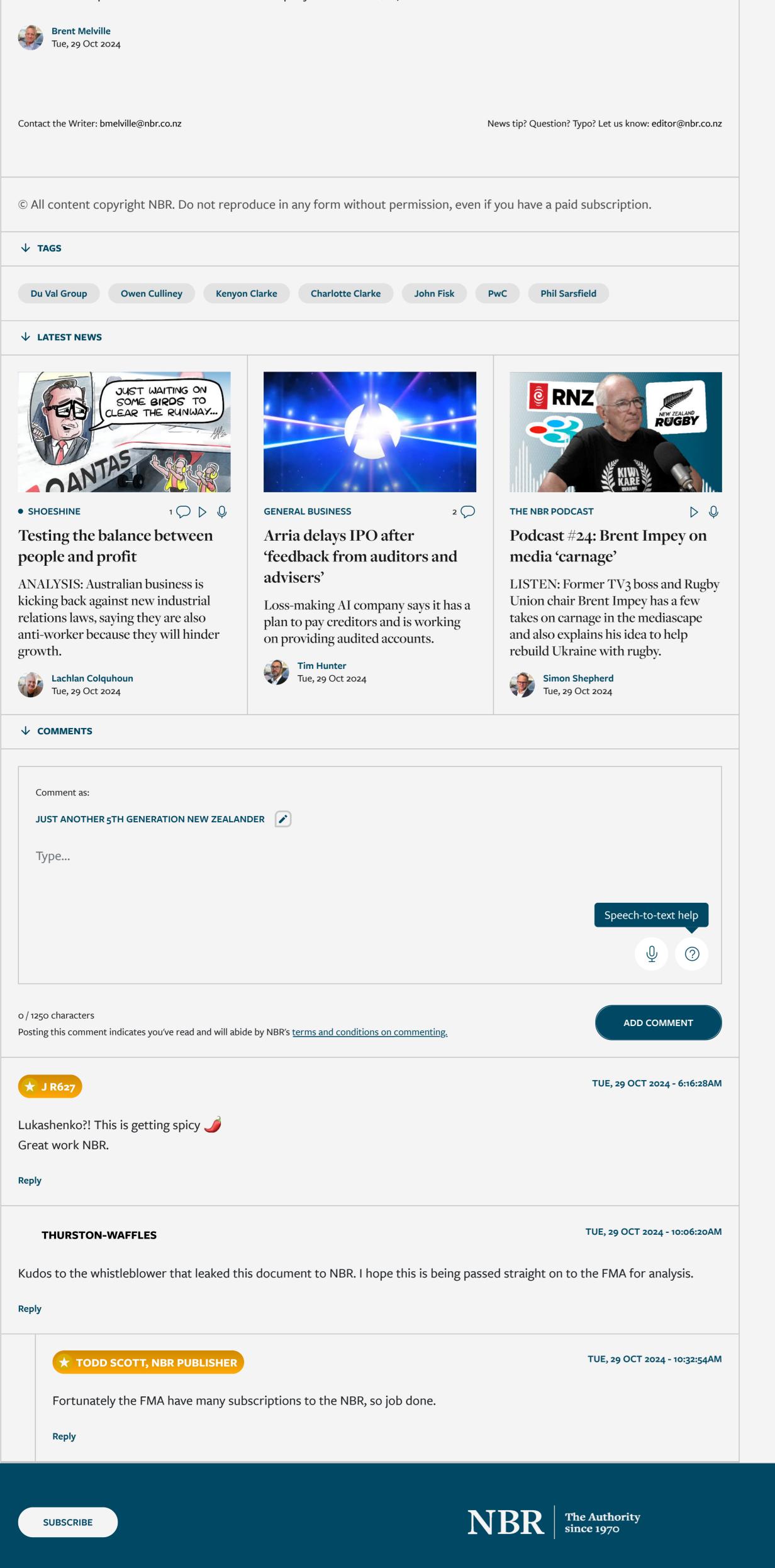
He was the lawyer for Du Val property group and a former director of a number of its group entities but, on August 2, his home and business was raided by the FMA at the same time the market regulator and police swooped on the Auckland home of Du Val founders Kenyon and Charlotte Clarke.

Culliney also resigned 21 Du Val directorships on August 22, a day after 70 Du Val entities were placed into statutory management.

He left for the UK after the raid on his home and business and put his Tamahere home on the market several weeks ago. It failed to sell under the hammer <u>last Wednesday.</u>

John Fisk of PwC, the statutory manager of the Du Val group of companies, told *NBR* the firm has now started investigating the Du Val money trail as it explored "avenues of recovery" for upwards of 150 investors.

PwC's initial reports on Du Val disclosed the company owed about \$240m to creditors and investors.





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L3, Suite 304, 131 Queen Street 1010, Auckland, NZ

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