

*Fit and proper per person – section 61 Financial Services and Markets Act 2000 –
adequate resources – mortgage advisory services - References allowed.*

FINANCIAL SERVICES AND MARKETS TRIBUNAL

(1) BARKET FINANCIAL MANAGEMENT LTD First Applicant

(2) MR BASHIR AHMED Second Applicant

- and -

FINANCIAL SERVICES AUTHORITY The Authority

**Tribunal: TERENCE MOWSCHENSON QC
 MR P V BURDON
 MRS C E FARQUHARSON**

Sitting in public in London on 14 and 15 October 2008

Mr Kanth, instructed by Shakespeare Putsmann LLP, for the Applicants

Mr Simon Gerrish, instructed by the Authority, for the Authority

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DECISION

5 INTRODUCTION

1. By an application received by the Authority on 24 October 2006 Barket Financial Management Ltd (“BFM”) applied under section 40 of the Financial Services and Markets Act 2000 (“the Act”) for Part IV permission to carry on the regulated activities of:

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- (a) agreeing to carry on a regulated activity;
- (b) advising on investments (except on pension transfers and pension opt outs);
- 15 (c) arranging (bringing about) deals in investments;
- (d) making arrangements with a view to transactions in investments;
- 20 (e) advising on regulated mortgage contracts;
- (f) arranging (bringing about) regulated mortgage contracts; and
- (g) making arrangements with a view to regulated mortgage contracts.

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2. By an application received by the Authority on 24 October 2006, BFM applied under section 60 of the Act for the approval of Mr Ahmed (“Mr Ahmed”), the Second Applicant, to perform the controlled functions:

CF1 – Director function;

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CF8 – Apportionment and oversight function; and

RIM – Responsible for Insurance Mediation.

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3. On 6 December 2007, the Authority issued two decision notices refusing both applications. The reasons for the refusal were that the Authority concluded that it could not ensure that Mr Ahmed is a fit and proper person to perform the controlled function to which his application related. BFM’s application was also refused as Mr Ahmed was the only director of BFM with the experience to perform the controlled functions on behalf of BFM and accordingly, the rejection of Mr Ahmed’s application resulted in BFM having inadequate resources to carry out the regulated activities in respect of which it sought authorisation. The Applicants have referred the matters relating to those decisions to the Tribunal by references dated 4 January 2008 and served on the Tribunal 21 January 2008. On 1 February 2008 the references were consolidated.

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4. The Authority accepted that the issue in respect of BFM is contingent upon the finding of the Tribunal in respect of Mr Ahmed's fitness and propriety. If Mr Ahmed failed to satisfy the Tribunal that he is fit and proper both references fall to be dismissed. If he succeeded in so persuading the Tribunal then it is likely that BFM will satisfy the conditions for authorisation.

5. It was common ground that the burden of proof lay on the Applicants to satisfy the Tribunal that Mr Ahmed was fit and proper. The task of the Tribunal is not to review the reasonableness of the decision by the Authority but to determine for itself what action the Authority should take over the applications.

6. The question before the Tribunal may be stated shortly. Is Mr Ahmed a fit and proper person to perform the functions described above?

15 THE EVIDENCE

7. We heard oral evidence from Mr John Bridge, a director of Bridge Home Finance Limited and Expert Mortgage Advice Limited, called by the Authority and Mr Ahmed on behalf of the Applicants.

20 THE BACKGROUND

8. BFM has three directors: Mr Ahmed, Mrs Koniz Ahmed and Mrs Nahid Ahmed. BFM applied for each of the individuals to be approved to perform the controlled governing function – director function (CFI).

9. Of these candidates, Mr Ahmed is the only individual with the relevant experience and qualifications to advise on and to arrange mortgage and general insurance products. Both Mrs Koniz Ahmed and Mrs Nahid Ahmed perform administrative roles on behalf of BFM. This was common ground.

10. Mr Ahmed holds a controlling interest in BFM; Mrs Koniz Ahmed holds part of the balance of the shares in BFM.

30 11. BFM has previously provided financial services:

(a) as a mortgage packager to Amber Homeloans Limited ("AHL"); this relationship was terminated by AHL on 7 March 2007;

35 (b) as an appointed representative of Bridge and Company ("B&C") between 1 April 2005 and 11 May 2007; this relationship was terminated by B&C.

The circumstances of the terminations are described below.

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The relationship with AHL

12. BFM, trading as Exclusive Connections Luton, was part of a network of mortgage packagers, Exclusive Connections Limited, from 14 July 2004. BFM was a mortgage packager for AHL.

10 13. On 23 June 2006 a member of staff at BFM materially altered an email sent from AHL. The original email read:

“Further to my telephone conversation, [this] case is ok to proceed so long as it is on a full status basis with having had a mortgage for only 6 months.”

15 14. This email was faxed to another department of AHL on 25 June together with an account referral, but this time purporting to show that AHL had agreed to proceed on a self-certification basis. It read:

“Further to my telephone conversation, [this] case is ok to proceed on a self cert basis with having had a mortgage for only 6 months.”

15. This was sent with a note from BFM reading:

20 “Please find copy e mail received...confirming Head Office have accepted this case provided applicant has a minimum of a 6 month mortgage history which she has.”

25 16. The Authority does not suggest that the alteration was carried out by Mr Ahmed or that he had any knowledge of it at the time. Indeed it is common ground that BFM immediately took steps to dismiss the employee when this matter was brought to BFM’s attention.

30 17. In the Summer of 2006 AHL suspended BFM from its panel of packagers in order to investigate the matter for a period of approximately 2 months, but following the dismissal of the staff member who had forged the email, and following its investigation, AHL agreed to reinstate BFM but put them on “amber” alert. This meant that future applications would undergo more scrutiny than normal. The Authority accepted that Mr Ahmed and BFM were unaware that BFM had been placed on amber alert. It is noteworthy that the period of suspension was over by 5 October 2006 when the applications for authorisation were submitted.

35 18. The suspension was not notified to BFM’s principal Bridge and Co (“B&C”), which was at that time assisting the Applicants in seeking authorisation and approval.

19. However, on 7 March 2007 AHL permanently removed the First Applicant (trading as Exclusive Connections Luton) from their panel. AHL gave the following reasons to the Applicants:

“We write to advise you that Barket Financial Mortgages has been removed from our panel due to the poor quality of the case(s) submitted and that we are not satisfied with the type of business they have introduced to us.”

20. At the same time, AHL contacted the Authority stating that they had removed BFM from its panel, providing details of a case submitted to it by BFM, and concerns that it raised. That case related to a Mrs Tajinder Dhawan. AHL also informed the Authority of their concerns relating to the altered email described above.

21. AHL was not a significant lender on BFM’s cases. It appears to have been the lender in relation to 2 cases on the May 2007 list (which listed 97 cases) which was said to reflect the cases over the preceding six months. BFM dealt with many other lenders. The AHL cases were non regulated matters.

The Application for Authorisation

22. The application for authorisation includes a form “Disclosure of significant events appendix”. This form asks a series of questions covering past matters that may have an impact on an applicant’s ability to meet the threshold conditions. These cover matters including whether the applicant has had material complaints made against it by its clients or former clients. Whether it has been criticised, censured, investigated, disciplined, or suspended by any financial services regulator or government body.

25. Question 1.15 asks:

“Are there any other significant events relating to the applicant firm which have not been asked about [above] that have happened – or are taking place – that are relevant to the applicant firm’s application for authorisation.”

23. The box marked “No” was ticked.

24. The Applications were signed by Mr Ahmed on behalf of BFM, and dated 4 and 5 October 2006.

The relationship with B&C

25. B&C was at all material times a firm authorised by the Authority to conduct mortgage business. It operated primarily through appointed representatives (“ARs”). BFM became an AR of B&C in February 2005. B&C has an associated company

Expert Mortgage Advice Limited (“EMAL”) to which B&C had transferred its compliance consultancy business on 1 April 2006 previously carried on by B&C under the name “Expert Mortgage Advice” (“EMA”). EMA provide compliance consultancy services. All of B&C’s ARs, including BFM, were monitored and supervised by EMA. Miss Lara Earl (“Miss Earl”) was one of B&C or EMA’s, and subsequently EMAL’s, full time compliance consultants. B&C subsequently transferred its mortgage advisory business to Bridge Home Finance Limited (“BHFL”) on 7 September 2007.

26. On or about 16 June 2006 B&C received an enquiry from BFM (acting by Mr Joynal Ahmed) about the possibility of Adnan Chattha (“Mr Chattha”) becoming an AR of B&C. In due course, Mr Chattha applied to become an AR of B&C and provided the names of two referees, one of whom was BFM. BFM did not, in the event, provide a reference. As a result of a negative reference from one of the referees, Mr Chattha’s application to become an AR was declined by B&C. Miss Earl during the course of one of her periodic visits to BFM’s offices informed Mr Ahmed that Mr Chattha’s application had been refused because of the failure to obtain satisfactory references, and that no referral fee would be paid. It is not suggested that he was given any details as to the content of the adverse reference.

27. Following this someone (but not Mr Ahmed) working for BFM apparently recommended to a Mr Tasawar Chattha that he apply to B&C to be an AR of B&C and he contacted B&C on or about 5 September 2006. Tasawar Chattha was accepted as an AR of B&C. At that date B&C was not aware of any connection between Tasawar Chattha and Mr Chattha.

28. Further enquiries by B&C linked Tasawar Chattha to Mr Chattha, and the appointment was terminated 18 October 2006. As BFM had introduced that AR, BFM was informed that Tasawar Chattha had been removed as an AR of B&C.

29. Paragraph 4.1 of BFM’s AR agreement with B&C required it to comply with the provisions of B&C’s “Network Manual” a copy of which was provided to BFM. The network manual included provisions relating to introducers. Paragraph 3.3.1 required ARs to take reasonable steps to satisfy themselves as to the suitability of the person concerned to act as an introducer, and once satisfied, for an introducer agreement to be completed. This required among other things that an AR was required to set up a formal introducer agreement detailing the terms of that agreement and whether any remuneration would be paid. BFM was required to “consult” with EMA as to the content of the introducer agreement and the network manual provided that all introducer agreements would be checked during compliance visits. It did not provide in its terms that B&C’s consent was required before an agreement with an introducer could be entered into.

30. Periodically further requests for information concerning a firm's introducers were made by B&C. B&C sent a letter dated 28 September 2006 to BFM requesting details of any introducers by 13 October 2006. As at 9 May 2007 B&C had not been informed of any introducer agreements.

31. B&C were assisting the Applicants in seeking authorisation and approval by the Authority. Apparently B&C had commenced helping BFM apply for authorisation from the Authority. An earlier version of the application form had been completed by
5 B&C in early 2006 but that had been held up for some reason and Miss Earl completed the forms which were eventually submitted and dated 5 October 2006.

32. On 19 April 2007, B&C received a business register from BFM listing 54 regulated cases in which it had been involved during the period from April 2005.

10 Following the permanent removal of BFM from the AHL panel on 7 March 2007, the Authority contacted B&C on 2 May 2007 requesting further details concerning the circumstances which had led to the First Applicant's removal.

33. As a result of BFM's removal from AHL's panel B&C commenced an investigation into the sources of BFM's clients. On 3rd May 2007 B&C wrote to BFM informing it that its status as B&C's AR had been suspended until B&C received
15 confirmation that the FSA was satisfied as to the circumstances in which BFM had been removed from AHL's panel. The letter also informed BFM that Miss Earl would be visiting its offices to investigate the business carried on by BFM and asking BFM to have ready a new business register for the last 6 months including information relating to (amongst other matters) all business applied for whether
20 cancelled or not and the source of any introductions.

34. On 8 May 2007 Miss Earl attended BFM's premises and met Mr Ahmed. Miss Earl prepared a report of that meeting.

35. During the course of that meeting Mr Ahmed volunteered:

25 "that he had started to accept cases from a Mr Adnan Chattha (a potential AR that Barket had referred to [B&C] last year. He said that he had started to accept the cases while Mr Chattha's AR application was being processed. He confirmed that the case [AHL] had declined was one of those cases. He confirmed that all the cases by Mr Chattha were non advised cases. He confirmed there were varying amounts of paperwork on the files. He stated
30 that in some cases he had spoken to the clients but not in all cases....I asked him if he continued to accept cases after he knew that we had declined Mr Chattha as an AR. He confirmed that he had....I asked him why he had continued to accept cases form a declined source. He said he had no excuse...".

35 36. Mr Ahmed had accepted fourteen cases that had been introduced to BFM by Mr Chattha, including that relating to Mrs Dhawan that had been refused by AHL, and which had contributed to AHL permanently removing BFM from its panel of packagers.

37. The note of the meeting of 8 May 2008 does not suggest that Mr Ahmed did anything to conceal the fact that he had accepted introductions from Mr Chattha but revealed what he had done to Miss Earl with some considerable frankness. He stated that he did not keep the files relating to introduced cases separately from those relating to other cases. It should be noted that certain cases introduced by Mr Chattha were on the list supplied in April 2007 although the list did not indicate that any cases had been introduced, and if so, by whom. Mr Ahmed also said that it would have been difficult for Miss Earl to discover which cases had been introduced by Mr Chattha if he had not confessed what he had done and identified them himself. The identification in the particular files would have been difficult for Miss Earl to follow up as Mr Ahmed often wrote notes on the file in Bengali and in abbreviated code.

38. Mr Ahmed also denied in evidence that he had ever misled Miss Earl in relation to whether BFM had accepted cases introduced by third parties. There is a reference in Miss Earl's note to the effect that she had asked about this in the past and been assured that BFM were not accepting introductions from third parties. In the absence of direct evidence from Miss Earl we accept Mr Ahmed's evidence in relation to that point. He also said that he had asked within his community for references for Mr Chattha and been informed that he was a reliable person.

39. Mr Ahmed said that he had continued to accept introductions from Mr Chattha after he had been turned down as an AR by B&C as Mr Chattha had told him that he had applied to another company for authorisation and it was only a matter of time before he became an AR. He had in fact succeeded in obtaining an appointment with another firm. Mr Ahmed admitted accepting introductions after he had been informed by Miss Earl that Mr Chattha had been turned down. He could not recall how many introductions had been accepted but thought that there had been a few.

40. One area of the evidence before the Tribunal remains obscure. It was Mr Ahmed's evidence that he never positively misled B&C as to whether he had been accepting cases from an undisclosed introducer and had done nothing to positively conceal the fact that Mr Chattha had introduced cases to him. The Authority contended that he had deliberately failed to list cases introduced by Mr Chattha on the business register produced in April 2007. Mr Bridge exhibited two schedules to his witness statement. The first schedule apparently showed the April register listing 77 cases of which 54 were said to be regulated cases dating from April 2005 (according to the Authority's skeleton argument) and the second a register produced in May 2007 covering the 6 month period to May 2007. Mr Bridge stated in his witness statement that the May 2007 register "listed 97 cases of which 60 were regulated cases. 10 of the regulated cases were referrals from Adnan Chattha. A copy of the May 2007 register appears at pages 28-30 of JB2. I have highlighted in blue type the referrals from Adnan Chattha. There are 25 in total but only 14 are regulated cases". In fact the May schedule attached to his witness statement contained no highlighted entries. It then transpired in the course of Mr Ahmed's evidence that that May schedule attached to Mr Bridge's witness statement had not been completed on the same basis as the April schedule in that it contained both completed and uncompleted cases. On the second day of the hearing after the Tribunal had completed the hearing of the

evidence the Authority informed the Tribunal that the wrong schedule had been attached to Mr Bridge's witness statement and handed up a new May 2007 schedule which did contain highlighted entries. Mr Ahmed was recalled to give evidence about the new schedule. It soon transpired that the new schedule was also completed to a date in May 2007 as opposed to a date in April 2007. Furthermore the cases that had been highlighted on the schedule were all unregulated cases and did not fall within the remit of the Authority and were not all cases introduced by Mr Chattha. It was contended that the May schedule showed cases which should have appeared on the April schedule and these had been deliberately left off the schedule by Mr Ahmed. We do not consider that the evidence placed before us supported that suggestion and we reject it.

41. By letter dated 16 May 2007 B&C terminated BFM's status as an authorised representative. Mr Ahmed responded immediately to B&C by apologising for his conduct and apologising unreservedly for his actions. BFM informed the Authority of this turn of events by email on 21 May 2007.

THE LEGAL BACKGROUND AND THE AUTHORITY'S CONTENTIONS

42. Section 42(2) of the Act provides that the Authority may give permission to an applicant to carry on the regulated activities to which the application under section 40 of the Act relates.

43. Section 41(2) of the Act provides that in giving permission under section 42(2), the Authority must ensure that the firm will satisfy and continue to satisfy the threshold conditions in relation to all the regulated activities for which it will have permission ("the Threshold Conditions"). The Threshold Conditions are set out in Schedule 6 to the Act. Threshold condition 4 (1) provides:

"The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on."

(1) The Authority will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non financial resources and means of managing its resources. (COND 2.4.2G(2))

(2) When assessing threshold condition 4, the Authority may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, which might pose a risk to the firm's satisfaction of the threshold conditions. (COND 2.4.3G(1)). Examples of such a person include a firm's directors or partners.

Threshold condition 5 provides that:

"The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including –

- (a) his connection with any person;
- (b) the nature of any regulated activity that he carries on or seeks to carry on; and
- (c) the need to ensure that his affairs are conducted soundly and prudently."

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44. Section 49(1) of the Act entitles the Authority, in considering an application under Section 40, to have regard to any person appearing to be, or likely to be in a relationship with the firm which is relevant.

45. Section 61(1) of the Act provides that the Authority may grant an application made under Section 60 for approval only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the function to which the application relates.

46. The Authority relied upon a number of matters as giving rise to concern as to whether Mr Ahmed was a fit and proper person and as leading it to conclude that he was not.

47. The first was BFM's failure, under the control of Mr Ahmed, to reveal that BFM had been suspended by AHL from its panel in the application dated 5 October 2006 in response to question 1.15. We do not consider that any adverse inference can be drawn by the failure to refer to the suspension. By October 2006 BFM had been reinstated. The applicants were unaware that BFM had been placed on amber alert by AHL. AHL was not a significant lender in BFM's cases and the matter related to unregulated business. In relation to the latter point the fact that it related to unregulated business is a factor to be taken into account; that a matter related to unregulated business would not necessarily lead to the conclusion that it should not be disclosed. We do not consider that the suspension by AHL was a matter which clearly fell to be disclosed in response to that question. We do not consider that it was significant. Accordingly we do not consider that the application was completed incorrectly. For similar reasons we do not consider it appropriate to draw adverse inferences from the failure by Mr Ahmed to reveal the suspension in his application dated 5 October 2006 to exercise regulatory functions in response to question 6.

48. The second was BFM's failure to reveal the suspension to B&C, or more particularly Miss Earl, when she was assisting in the completion of the application forms. For similar reasons we do not consider that any adverse inferences can be drawn from that failure. In all the circumstances a person in BFM's or Mr Ahmed's position might, or might not, properly raise the matter with its compliance consultant.

49. The third was the failure to reveal to B&C or the Authority that AHL had removed BFM from its panel. The letter dated 7 March 2007 informing BFM of the termination referred to the poor quality of the cases submitted and AHL's dissatisfaction with the type of business submitted. On the same date AHL informed the Authority of the termination. There was nothing in the letter to alert BFM or Mr Ahmed that AHL considered that BFM had acted in a discreditable manner. In relation to the case involving Mrs Dhawan Tajinder, which had been introduced to BFM by Mr Chattha, which led to BFM's removal from the panel, AHL's concerns were about the customer's accountant. BFM appears to have been removed from the panel because it had been involved in two incidents; the case involving the altered email and the introduction of Mrs Tajinder. In neither case was any criticism directed at the conduct of BFM or Mr Ahmed. Once again we do not consider that any serious adverse inference can be drawn from the failure by BFM or Mr Ahmed to disclose BFM's removal from the panel in the light of the information given to BFM as to the reasons for its removal.

50. The Authority relied upon the cumulative effect of the non disclosure to the Authority and B&C together with the acceptance of introductions from Mr Chattha in breach of contract as reasons for concluding that Mr Ahmed was not fit and proper or not competent to be authorised to carry out controlled functions. As noted above we cannot draw any adverse conclusions from the manner in which the register was drawn up.

THE DECISION OF THE TRIBUNAL

51. We do not agree with the grounds put forward by the Authority for its refusal for the reasons set out above. Mr Ahmed has, of course, to satisfy the Tribunal that he is a fit or proper person for the approval which he seeks.

52. We have had the advantage of seeing Mr Ahmed giving evidence. He accepted that the conduct in accepting introductions in breach of contract was a serious breach of contract. We do not consider that the circumstances in which the introductions were accepted, on their own, are such as to lead to the conclusion that Mr Ahmed is not fit or proper and we do not understand the Authority to have contended otherwise. We do not consider that the applications for authorisation were completed incorrectly and we do not accept that B&C were positively misled by Mr Ahmed or BFM in relation to the introductions from Mr Chattha.

53. We note that despite the volume of business revealed in the schedules involving subprime lending the only criticisms directed at Mr Ahmed are those summarised above relating to disclosure and breach of contract. It was not suggested that he did not otherwise manage a competent business or that he was in some way responsible for difficulties incurred by lenders in the subprime market in relation to cases he or BFM handled.

CONCLUSION

54. It follows that Mr Ahmed has satisfied us that he is a fit and proper person for the purpose of his application. Accordingly the Tribunal directs that the Decision Notice in relation to him should be withdrawn. For the reasons set out above and
5 accepted by the Authority, it follows that the Decision Notice in relation to BFM should also be withdrawn.

TERENCE MOWSCHENSON QC
CHAIRMAN

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