

APPROVAL – Controlled function – Investment adviser – Whether fit and proper – Individual agent made three mortgage agency applications for his principal – Agent submitted his personal bank details and not those of principal – Errors corrected once drawn to his attention – Whether despite those errors individual agent remains a fit and proper person – Yes, by majority vote of Tribunal – FSMT 2000 ss 59 and 60

FINANCIAL SERVICES AND MARKETS TRIBUNAL

**(1) STEPHEN JOHN EDWARDS
(2) WHITE KNIGHT GROUP**

Applicants

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

**Tribunal: SIR STEPHEN OLIVER QC
TERENCE CARTER FCA
MICHAEL HANSON FCA, ACIB**

Sitting in public in London on 8 November 2007

Jeffrey Jones , solicitor, for Stephen Edwards

Daniel Thornton of the Financial Services Authority, for the Authority

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DECISION

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This reference

1. Stephen John Edwards (“Mr Edwards”) and White Knight Group (“White Knight”) have referred refusals by the Authority of an application by White Knight of 31 January 2006 for approval under section 16 of Financial Services and Markets Act 2000 (“the Act”) of Mr Edwards to perform the controlled function of investment adviser.

The law and the criteria

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2. The Authority refused the application because it was not satisfied that Mr Edwards is a fit and proper person to perform the controlled function (CF 21) for which approval has been sought.

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3. 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 (referred to as “the candidate”) is a fit and proper person to perform the function to which the application relates. Further, a firm has an obligation under section 59 of the Act to ensure that no one performs a controlled function unless that person is approved by the Authority. Section 59 provides that such a person must take reasonable care to ensure that no person performs a controlled function unless the Authority has approved the performance by that person of the relevant controlled function.

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4. The Fit and Proper Test for Approved Persons (“FIT”) in the Authority’s Handbook sets out the criteria that the Authority will consider when assessing the fitness and propriety of a person to perform a particular controlled function. We adopt as relevant to this matter the guidance in the following parts of the Handbook:

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(i) When assessing the fitness and propriety of a person to perform a controlled function, the Authority will have regard to a number of factors. The most important considerations include the candidate’s honesty, integrity and reputation and that candidate’s competence and capability. (FIT 1.3.1G)

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(ii) In assessing fitness the Authority will take account of the activities of the firm for which the controlled function is to be performed, and the permission held by that firm and the markets within which it operates. (FIT 1.3.2G).

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(iii) The criteria listed in FIT 2.1G to FIT 2.3G are guidance and will be applied in general terms when the Authority is determining of candidate’s

fitness and propriety. [It is not practicable to produce a definitive list of all the matters which will be relevant to a particular determination.] (FIT 1.3.3G).

5 (iv) If a matter comes to the Authority's attention which suggests that the candidate might not be fit and proper, the Authority will take into account how relevant and how important that matter is. (FIT 1.3.4G).

10 (v) In determining a candidate's honesty, integrity and reputation, the matters to which the Authority will have regard include, but are not limited to the following. First is the issue of whether the candidate has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)). Second, is the question of whether in the past, the candidate has been candid and truthful in all his
15 dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1G(13)).

The facts : the background

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5. We heard evidence from Timothy Beale of White Knight and from Stephen Edwards.

25 6. Mr Edwards has since 1 December 2001 held the investment advisers controlled functions, CF 21, with a number of entities. In April 2003 Mr Edwards started working for The Financial Practice (Bridgend) Ltd ("FPB"), an appointed representative of the M&E Network Ltd. Mr Edwards held a CF 21 controlled function with the M&E Network Ltd from 27 March 2003 until 10 November 2005.

30 7. The directors of FPB decided to set up their own directly authorised firm, The Financial Practice UK Ltd ("FPUK"). FPUK was authorised on 3 October 2005. Mr Edwards held the CF 21 function with respect to FPUK from 3 October 2005 until his suspension on 24 October 2005.

35 8. On 24 October 2005 Mr Edwards' employment was suspended by FPUK pending the outcome of an investigation into Mr Edwards' setting up of mortgage agencies with certain mortgage providers. On 13 January 2006 FPUK terminated Mr Edwards' employment as a result of the findings of its own investigation into his setting up of mortgage agencies.

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9. Prior to December 2001 Mr Edwards had worked in the mortgage departments of three large insurance companies. He has a "Ce-Map" qualification.

45 10. The agreement between Mr Edwards and FPB of 1 January 2005 engaged Mr Edwards as FPB's agent with authority to carry out independent financial advice on behalf of FPB "as described in his contract with the M&E Network". Mr Edwards was made personally responsible for all indemnity premiums. Clause 4.1 of Mr

Edwards' contract with FPB provided that FPB was to be entitled to 10% of all applicable commissions and other fees in relation to Mr Edwards' activities. Clause 4.3 provided that Mr Edwards' "agreed percentage" was to be "maintained by The M&E Network Ltd in its Reserve Account".

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11. Mr Edwards' percentage take in the latter part of 2005 was, he said, in the £10,000-£15,000 a month bracket. We have no reason to doubt this.

12. It was not in dispute that Mr Edwards' engagement with FPUK (as successor to FPB) was on terms similar to those as his engagement with FPB.

13. The circumstances leading to the Authority's referral of the application for CF 21 approval for Mr Edwards took place in October 2005. We will summarise these and reach relevant conclusions of fact in paragraphs 15-43 below. At this stage we record that on 24 October Mr Edwards' engagement with FPUK was suspended by FPUK pending the outcome of an investigation into Mr Edwards' setting up of mortgage agencies with certain mortgage providers. On 13 January 2006 the engagement was, as noted above, terminated.

14. White Knight's application to the Authority for CF 21 approval for Mr Edwards was submitted on 26 January 2006. The application form specifically drew attention to the circumstances of the termination of Mr Edwards' engagement with FPUK. The Authority conducted its own investigation and refused the application for reasons that arose from the use by Mr Edwards of his own personal bank account details in three applications on behalf of FPUK for mortgage agencies with mortgage providers. The Authority's concerns related to Mr Edwards' honesty and integrity rather than his competence and capability.

The Facts : setting up the Simply Biz agency

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15. The directors of FPB (Messrs Paul Lawrence and Brinley George) had decided to discontinue their relationship with the M&E Network. They formed the new company, FPUK, and it was authorised from 3 October 2005. From that date Mr Edwards held a CF 21 function with FPUK. Mr Edwards was required to inspect all the files concerning M&E Network business that had related to his engagement with FPB.

16. From 3 October 2005 Mr Edwards, as the only person engaged by FPUK was qualified to do mortgage work, had the task of renewing and creating new mortgage agencies in the name of FPUK.

17. The first relevant contact made by Mr Edwards was with an entity known as "Simply Biz". Paul Lawrence had given him that name because he (Mr Lawrence) had been dealing with Simply Biz in the setting up of life agencies for FPUK. Mr Edwards said, and we accept this, that he understood that, by the time he approached Simply Biz, Simply Biz already had all FPUK's details. Mr Edwards first spoke to Emma Holloway of Simply Biz in the morning of 3 October. The conversation

evidently covered the facilities offered by Simply Biz and the requirements of FPUK. One of the topics discussed was Simply Biz's "Trigold" facility. Trigold is something in the nature of a mortgage club that brings lenders into contact with agents. The lenders authorise Simply Biz to run a software programme whereby agent members of Trigold such as FPUK can feed in their own customers' mortgage requirements and obtain in return details of mortgage facilities on offer from the lenders. The agent member of Simply Biz is given free access to the programme so long as the agent submits a minimum of one application a month through Simply Biz; but if no application is submitted in any month, access to the software programme is charged £15 and invoiced by Simply Biz to the agent quarterly.

18. The same day as the telephone conversation (3 October) Emma Holloway e-mailed Mr Edwards enclosing a registration form as an attachment and giving him details of a mortgage meeting to be held shortly after that.

19. On Friday 14 October 2005 at 15.02 Mr Edwards faxed a Mortgage Lender's Application Form to Simply Biz. This showed FPUK as "the Company" with Mr Edwards' name and address as "main Contact Name". A further message (also faxed at 15.02) on FPUK letter heading with its address and contact details was sent with the Application Form: the message stated that FPUK was not VAT registered. The Application Form gave as the "Bank Details" the Barclays Bank details of Mr Edwards' own bank account. The form went on to supply additional information about FPUK's business. This information shows that FPUK expected to write twenty mortgages each month and that mortgages accounted for 20% of FPUK's business. The Form states that Trigold is the "current mortgage system used".

20. On receipt of the Registration Application Form a Miss Jenny Fergusson of Simply Biz telephoned Mr Edwards. Simply Biz's account to the Authority's investigating officer in a letter of 28 March 2006 is as follows:

"... We received a registration form on 14 October 2005. ... On the form Mr Edwards had not correctly completed bank details for the payment of commission. We rang Mr Edwards on receipt of this and requested the Bank details for FPUK. We also requested a copy of his company letterhead, a copy of which is also enclosed. The bank details were provided and the form was amended."

Simply Biz altered the application form by deleting Mr Edwards' bank details and substituting FPUK's.

21. We go on to mention that on Thursday 20 October 2005 Mr Edwards called Simply Biz and asked why he had not been sent the Trigold disk. He was told that he had not sent in the Trigold application form. Following that telephone call Simply Biz e-mailed to Mr Edwards a copy of the Trigold registration form. He looked at it and realised that it was quite different from the original Registration Application Form that he had submitted on Friday of the previous week.

22. Mr Edwards told us that he had thought that the form faxed on the previous Friday had contained the application for access to Trigold. He also stated that his
5 reason for putting his own bank details on the form submitted the previous Friday had been to enable the monthly payments to be taken if the facility were not used. We accept that Mr Edwards might have assumed that completion of the Registration Application Form gave access to Trigold; that explains why, on 14 October, Mr Edwards ticked the box acknowledging that Trigold was FPUK's current mortgage
10 source. We cannot however accept Mr Edwards' explanation that he thought his bank details were needed to enable Simply Biz to draw the £15 a month. We infer that that explanation occurred to him long after the event and in the course of an unthought-out exercise of self-justification.

23. The Authority referred us to a letter of 30 November 2005 from Mr Edwards to FPUK of 30 November 2005. In that Mr Edwards says that, on receipt of Simply Biz's e-mail of 20 October, he had phoned Jenny Fergusson and advised her "that there had been some confusion in respect of the forms and that I understood they required my bank details for payment to Trigold. Jenny said she would correct the
20 error and proceed with the application and notify any panel lenders she may have already written to".

24. It was submitted for the Authority that while Mr Edwards might have requested an amendment of the account details on 20 October 2005 it was more
25 probable that he had done so, not in response to his learning that he had completed the wrong form, but in response to the events of the previous day involving Alliance & Leicester ("A&L" to which reference will be made shortly) which had put him on notice that his action were being subjected to closer scrutiny. Moreover, it was submitted for the Authority, Mr Edwards' explanation as to why he used his own
30 bank details on the Registration Application Form was neither likely nor credible, particularly given the unambiguous nature of the original e-mail of 3 October.

25. There is a conflict of evidence here. Jenny Fergusson had told the Authority's investigating officer that the error had been corrected on 14 October, on receipt of the
35 original application form. Mr Edwards' letter of 30 November 2005 can be construed as showing that Mr Edwards did not, until 20 October, address the fact that his own bank details had been put on the original Registration Application Form. The correction that Mr Edwards was referring to was his misapprehension that on 14 October he had signed up for Trigold. We mention in this connection that both the
40 Simply Biz Registration Application Form and the Trigold Registration are headed "Registration Form" and, as noted, the Simply Biz registration form of 14 October contains Mr Edwards' acknowledgment that FPUK's current mortgaging source was Trigold.

26. We conclude that the error in the bank details submitted with the Registration Application Form, whatever the reason for the error, had been corrected within a very short period and more probably on the same day. There is no evidence that, on Friday

14 October when the error was pointed out to Mr Edwards, he sought to persuade Simply Biz that commissions etc. should be paid to him and not to FPUK. In fact, as we have already noted, Simply Biz had already been provided with FPUK's relevant details in connection with FPUK's insurance business.

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27. We note in this connection is that, according Mr Edwards' contract with FPB, commissions etc. were to be retained, not by FPB, but by M&E Network. In evidence, however, Mr Edward said that "the money had always gone into [the FPB] account". Mr Edwards repeatedly referred to a conflict that had existed between him and Mr Lawrence. According to Mr Edwards, Mr Lawrence had been slow to pass on to Mr Edwards the commissions received from M&E Network in respect of his cases. Mr Edwards is, he claimed, still owed a significant amount by FPUK.

28. We are satisfied that Mr Edwards' inclusion of his own bank details in the Simply Biz Registration Application Form on 14 October 2005 was not motivated by dishonesty in the sense that he was providing misleading information to obtain personal gain. We think he deliberately entered his own bank details on this form. We have considered whether he did so because he was confused. The form starts with the request for personal details which call for the name, address and contact numbers for the "main contact name". Among the "personal details" of the "contact name" is the name of the "Company". The next box following "main contact name" is "Bank Details". Of course any experienced applicant for registration would pause at that stage and ask himself – "Whose bank, mine or the Company's?" He might ring up Simply Biz and check. He might say – "Obviously it is the Company's they are asking for". But we cannot rule out the possibility that someone new to registration and new to the Trigold system might think that, at that point in the application process, Simply Biz were asking for the bank details of the main contact name, i.e. Mr Edwards.

29. Nonetheless, the conclusion that Mr Edwards entered his personal details because he was confused is made less credible in the light of what then happened.

The Facts : setting up the A&L agency

30. We have already concluded on the facts that the bank details contained in the Simply Biz Registration Application Form were raised with Mr Edwards and corrected on Friday 14 October (or conceivably on Monday 17 October if that was the date of receipt). But on Tuesday 18 October, Mr Edwards did it again.

31. At 16.41 on the Tuesday Mr Edwards submitted an online application form for a mortgage agency for FPUK to A&L. Although this was an application for FPUK, it set out Mr Edwards' personal contact details and it included his personal bank details (sort code and account number) and had "Mr S Edwards" entered as "Bank Name".

32. The next day, Wednesday 19 October, according to the Authority's Statement of Case the following messages between A&L and Mr Edwards or FPUK as the case may be took place:

“19/10/05 15.28pm

5 Karen Hutchinson – Sales Administration Adviser of A&L Procurement Fee Team called Steve Edwards to process the new registration and explain that all statements and proc fees would have to be sent to his company’s address, Dragon House. He agreed to accept this, although said he never went to that office.

10 19/10/05 15.35pm

Karen left message asking him to call back and discuss the bank account details provided for the new registration.

15 19/10/05 15.40pm

20 Call received from Steve Edwards – Karen Hutchinson confirmed that we could not pay into his personal bank account. He stated he was the only person who could submit business therefore he wanted the fee paying to him. Karen asked him to send a fax confirming this and she would check it with her line manager.

19/10/05 15.52pm

25 Fax received from Steve Edwards confirming he was the only adviser authorised to sell mortgages within the company.

19/10/05

30 Denise Wigginton, Sales Administration Manager called The Financial Practice and spoke to one of the directors (Brindley George) to check if the personal details could be accepted. He said this was unusual and he would not accept it without referring to his Compliance Officer. Compliance Officer was out of office for a couple of days. He would ask him to call back.

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- To speed things up Denise called Steve Edwards to advise could not accept his personal details and obtained the Company bank details. Took details of the Company bank account over the phone and requested that he confirm in writing.

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- 16.56 – A fax was received on the same day confirming the business bank account.”

45 33. The above note of the call at 15.40pm and the words “he wanted the fee paying to him” can be read as a conscious attempt on Mr Edwards’ part to have all A&L procurement fees paid to him and not to FPUK. But within less than one hour the matter was put right when Denise Wigginton called Mr Edwards who, apparently

straightaway, provided FPUK's details. Mr Edwards explained later (in a letter of 14 July 2006 to White Knight for provision to the Authority) that he could not recall having said that he wanted the money paying into his bank account. We draw attention in this connection to the actual transcript of the 15.40 phone call. Mr Edwards' exact words were:

“Steven – OK right, that account number is the correct one, I am the only one authorised to sell mortgages, nobody else does mortgages at all, it's just me.

A&L – Right, The problem we have is we have to adhere very strictly to FSA regulations.

Steven – Right, OK.

A&L – And we can't be seen to be paying into an individual's bank account for a company.

Steven – The other companies, I know the other companies, in previous times, that's my business account and the money has always gone into there.”

34. We mention in this connection that “the other companies” had included M&E Network. The verbatim account of Mr Edwards' explanation to A&L can, we think, properly be read as the provision of information rather than as a demand that fees be paid direct into his account.

35. The next episode in the A&L application was the reaction of FPUK. FPUK had first become aware of Mr Edwards' actions in the afternoon of 19 October 2005 when A&L had called Brinley George. FPUK wrote to Mr Edwards on 20 October 2005 stating that “it has come to our attention that your recent conduct regarding the setting up of mortgage agencies breaches mortgage regulations as set out by the FSA”. FPUK required Mr Edwards to attend a meeting on 24 October 2005 to hear the case against him. Mr Edwards' note of 24 October 2005 meeting records:

“Brinley stated he had received a phone call from the Alliance & Leicester Building Society at 4.50pm on 19 October stating that Steve Edwards put his personal bank account details on an application form for mortgage registration.”

The note records Mr Edwards' explanation as this. He had, on being phoned by A&L to inform him of the error, requested them to correct the account number. The A&L had requested confirmation by fax details and he had done that immediately. In a subsequent letter to FPUK of 30 November 2005 Mr Edwards had given further information of how on Tuesday 18 October 2005 he had completed the online application form and “the following afternoon” had received a phone call from Karen Hutchinson of A&L to advise him that he had entered his own name in response to the question “bank details”. He had apologised and confirmed the details by fax immediately.

36. The case for the Authority on the A&L application is that, in contrast to Mr Edwards' explanation, he had attempted to persuade A&L both to continue to use his personal bank details and to show that he had the authority of his employers to do so. These features (said the Authority) demonstrated that Mr Edwards' submission that he had corrected the error as soon as he had been notified did not correspond with the evidence. The Authority went on to submit that this showed that Mr Edwards had attempted to mislead A&L for the purpose of diverting fees to his personal account.

37. Our conclusions on the facts start with the finding that Mr Edwards had no dishonest intent. He could not possibly have been attempting to dishonestly divert A&L commissions to himself. The application for registration (as with the Simply Biz form) made it clear that FPUK was "the Company". The possibility of financial gain was small, i.e. 10% of all commissions for one month: (the first monthly statement sent to FPUK would surely have revealed to it the absence of commissions). We have set out the words of the transcript of the telephone call of 19 October at 15.40. Those words are the "smoking gun" at the heart of the Authority's case. We do not, as we have already mentioned, construe those words as an unqualified direction to pay the commissions to Mr Edwards. They appear, rather, as a statement of what had happened in the past and as a self-justifying explanation for what must have appeared a stupid mistake showing a humiliating lack of expertise.

The Facts : setting up the HBOS agency

38. The A&L application was, we noted, corrected in the afternoon of Wednesday 19 October. Earlier that day (at 10.50am) Mr Edwards had sent a fax on FPUK headed paper to Alison Hawkesworth at HBOS with the following instructions:

"As per telephone conversation of my business development manager Ian Andrews.

Please can you register the company to sell mortgage and general insurance.

...

Bank account for commission payments

ABC Bank

Sort Code 12-34-56

Account number: 98765432

Account name: Mr S Edwards."

(In this paragraph and in paragraph 39 we have disguised the bank details.)

39. The next recorded message is a fax of Tuesday 25 October on FPUK headed paper to Alison Hawkesworth at HBOS with the following instructions:

"As per telephone conversation an error on bank details

Bank account for commission payments

XYZ Bank
Sort Code 98-76-54
Account number: 12345678
Account name: Financial Practice (UK) Ltd.”

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40. Mr Edward gave his explanation of what had happened in a letter to FPUK of 30 November 2006; he gave the same explanation to us. Mr Edwards’ account was this. On Wednesday 19 October in the afternoon (the same day as the HBOS registration form is recorded as faxed to HBOS) he had received the call from Karen Hutchinson of A&L about the error on the A&L application form. He had then contacted HBOS to check if he had given them the right details. He was informed by HBOS that Alison Hawkesworth, the HBOS person dealing with the application, was not available but would get in touch when she was free. Alison Hawkesworth had indeed telephoned Mr Edwards on Friday 21 October. He had been out all day but his wife had taken a message. The next Monday (24 October) Mr Edwards had tried to contact Alison Hawkesworth; but that was her day off. When she telephoned him the next day, he had asked her to check the details and the mistake was revealed. This was corrected by the fax referred to in paragraph 39 above.

20 41. The Authority say of the application of 19 October that it had been no innocent mistake on Mr Edwards’ part. The “mistake” had not been corrected until after Mr Edwards’ meeting with FPUK on 24 October. It had been the third occasion on which Mr Edwards had used his personal details in his dealings with mortgage providers or their agents and the purpose must have been to divert fees to his personal account. What was more, the fax of 19 October had given explicit instructions to use his personal account for commission payments. Additionally, say the Authority, the HBOS registration application had been for both mortgage and general insurance business; this suggested that Mr Edwards was seeking to receive fees for more than just his mortgage referrals.

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42. Mr Edwards explained in the course of evidence that Mr Lawrence of FPUK had instructed him to register FPUK for both mortgage and general insurance business. We draw no adverse conclusion against Mr Edwards on account of the application to register for general insurance, particularly as general insurance was not and never had been Mr Edwards’ activity.

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43. The issue of fact for us is whether, as the Authority say, Mr Edwards’ action in changing the instructions to pay the commission to his private account and substituting FPUK’s account was an action taken because of FPUK’s pressure. Mr Edwards’ explanation (in his letter to FPUK of 30 November 2005) was that he had sought to check the position with HBOS the same afternoon as the registration form had been submitted. The error would have been corrected then and there had Alison Hawkesworth of HBOS been available. Mr Edwards’ account seems quite likely to us. The afternoon of Wednesday 19 October was the same afternoon as the error on the A&L application form was drawn to Mr Edwards’ attention and put right. It could have served as a “wake-up call” to Mr Edwards. Mr Edwards has been consistent with this explanation from the start, and before any Authority investigations took

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place. Moreover there is no evidence, only adverse inference, that supports the Authority's assertion of the sequence of events. For those reasons we accept Mr Edwards' account that he contacted HBOS to check the correctness of the application soon after he submitted the application. He probably contacted HBOS the same day.
5 He was unable to progress things to finality on account of Alison Hawkesworth's absence. Hence the brief message to HBOS to Alison Hawkesworth of Tuesday 25 October 2006.

Conclusions

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44. Should we in the light of the evidence and findings that we have made so far conclude that we are satisfied that Mr Edwards is a fit and proper person to perform the controlled function?

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45. Before addressing this we have some specific comments to make.

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46. First, the explanations given by Mr Edwards as to the three applications of October 2005 have at times been confusing and in some cases self-contradictory. It seems to us that, following the inquisitorial meeting of 24 October 2005 with Messrs Lawrence and George of FPUK, Mr Edwards realised that he had got himself into deep trouble; the investigation of the Authority in 2006 must have confirmed this. Mr Edwards did not present himself to us as a clear thinker and, quite likely, had given an overly unfavourable impression of his own case in the course of the investigations. We do not, however, see Mr Edwards' behaviour in the course of the Authority's investigations as a situation in which Mr Edwards demonstrated such a lack of willingness and readiness to comply with the requirements and standards of the Regulatory system as to render him neither a fit nor proper person to carry out the controlled function of an investment adviser.

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47. Second, we accept Mr Edwards' evidence that this was the first occasion on which he had made applications for registration for mortgage business. The arrangements between FPB and M&E had been of a different character from those in issue here. We accept that Mr Edwards may have been under pressure at the time to clear the M&E files.

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48. Third, we are satisfied that on none of the three occasions had Mr Edwards put his own bank details on the forms in order to obtain money by deception. See, for example, our reasons in paragraph 37 above.

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49. Fourth, during the course of his career in the financial services industry, Mr Edwards has been subject to no enquiries and no disciplinary proceedings. Mr Beale, partner in White Knight, said that the firm (who are applicants in the present proceedings) wanted and still want to engage him and had received exemplary references (otherwise than from FPUK). White Knight's agencies would all be set up by White Knight's own compliance office and Mr Edwards would neither receive nor handle any fees.

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50. Fifth, the evidence has tended to reveal a state of mutual antipathy between Mr Edwards and Messrs Lawrence and George of FPUK. This may have been occasioned
5 by the termination of the M&E arrangements. Mr Edwards claims to be still owed a substantial amount of outstanding commissions from FPUK.

51. Sixth, we think that in each of the three registration applications Mr Edwards knowingly gave his own bank details. In the Simply Biz Registration Application
10 Form the requirements could have been clearer and the heading “bank details” following the heading “personal details” (which clearly referred to someone in the position of Mr Edwards) just might mislead the stupid but honest individual in Mr Edwards’ shoes. Mr Edwards’ entry of the “Bank Name” as “Mr S Edwards” in the A&L registration application indicates both carelessness and stupidity on Mr
15 Edwards’ part.

52. With those points in mind we think that the only credible explanation is that Mr Edwards wrote his own bank details on the registration application form with the misplaced aim of obtaining control of the flow of commissions coming down the
20 pipeline; he envisaged that they would be paid to his personal bank account and he could account monthly to FPUK for its 10% share of the mortgage commissions. Mr Edwards’ case has been that the mistakes were “innocent” having been made at a time when he was under stress, working long and irregular hours to help FPUK with its compliance requirements in connection with the discontinuance of the M&E
25 arrangements. We recognise that Mr Edwards probably was under pressure at the time but, even so, we do not accept that the errors were excusable. At the same time, on our findings of the facts, Mr Edwards put all three errors right quite speedily.

53. The conclusion of two of us is that we are satisfied that despite Mr Edwards’
30 shortcomings and the errors committed in connection with the registration applications, he is nonetheless a fit a proper person to perform the controlled functions. We all accept that White Knight, which has a good reputation with the Regulator, want to engage Mr Edwards to perform the controlled functions and that his role with White Knight will not involve him with the responsibility of making
35 applications for registration with mortgage providers and handling commissions. We all recognise that the errors were committed within a very short period and were, as just observed, put right in each case soon after the matter was drawn to Mr Edwards’ attention. Mr Edwards’ behaviour did not have the effect of putting at risk the properties and funds of individual customers. The majority of us took this feature into
40 consideration in assessing how relevant and how important this had been for purposes of the criterion set out in FIT 1.3.4G.

54. The other member of the Tribunal takes the view that Mr Edwards’ behaviour
45 at the time when the errors were committed and in the course of the subsequent investigations renders him unfit to carry out the controlled functions. The controlled functions require the highest standards of the individual in question and conduct of

the present sort (including Mr Edwards' evasiveness and answers under cross-examination) show him to be an unacceptable risk.

5 55. The Tribunal decides this matter in Mr Edwards' favour by a majority (as permitted in Schedule 14 paragraph 12(1) of the Act). We therefore direct the Authority to allow White Knight's application under section 60 of the Act.

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**SIR STEPHEN OLIVER QC
CHAIRMAN**

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