PROHIBITION ORDER – Fit and proper – Whether applicant a fit and proper person to perform approved functions – No – Whether total prohibition appropriate – Yes – FS & M Act 2000 s.56

FINANCIAL SERVICES AND MARKETS TRIBUNAL

DAVID JOHN MARRIOTT **Applicant**

- and -

FINANCIAL SERVICES AUTHORITY **The Authority**

Tribunal: SIR STEPHEN OLIVER QC
MAURICE BATES
KEITH PALMER

Sitting in public in London on 1 December 2009

No appearance for the Applicant

Adrian Berrill-Cox for the Authority

DECISION

1. Mr David J Marriott, the Applicant, has referred a Decision Notice to the Tribunal. The Decision Notice, issued on 17 April 2008, contains a prohibition order; it was referred to the Tribunal pursuant to sections 55(2) and 63(5) of FS&M Act 2000 ("the Act").

2. The Tribunal's function is to consider the evidence relating to the subject matter of the reference, to determine what is the appropriate action for the Authority to take and to direct accordingly. See section 133 of the Act.

3. The Decision Notice which has been referred reads as follows:

> "The FSA has concluded, on the basis of the facts and matters described below and having taken account of the written representations dated 3 March 2008, made on your behalf, that you are not a fit and proper person to perform functions in relation to regulated activities. Having regard to the risks which you pose to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, it is necessary and proportionate for the FSA to exercise its power to make a prohibition order against you."

The effect of the Notice is a full prohibition as distinct from a partial prohibition (such as carrying out a controlled function).

4. We decided that we had to go ahead and hold the hearing of the reference notwithstanding doctors' letters stating that Mr Marriott's health was such as to make his attendance inadvisable for medical reasons. Our reasons are contained in a separate decision to be released at the same time as this decision.

5. This decision will give a brief overview of the circumstances leading to the Decision Notice and of Mr Marriott's position in the firms involved. We will then summarise the relevant statutory provisions and the Authority's handbook provisions. After that we will examine the circumstances relied upon by the Authority as the grounds for the notice and the explanations given by Mr Marriott in his Reply and other communications. Finally we will address the questions of whether in all the circumstances the issue of a prohibition order of the width of that contained in the Decision Notice was the appropriate action and whether any other action was more appropriate in the circumstances.

Background

6. Mr Marriott was chief executive of Target Underwriting Ltd ("Target") and Professional Insurance Select Ltd ("PISL") from the time they started to trade in September 1996 until both went into administration on 2 February 2006. Both firms were insurance intermediaries. They were in effect run as a single firm from the same

premises. Target's business was that of wholesale insurance broker for the PII market. PISL operated as a retail insurance broker for clients seeking PII. Mr Marriott acknowledges in his Reply that he determined and controlled how the firms were run.

7. The other directors of the firms were Ms T Copp (from 2001) and, from November 2003, Simon Gowler.

8. Target's shares were owned as to 40% by Mr Marriott and as to 30% each by two investors (Messrs Edwards and Voak). In 2003 Mr Marriott agreed to buy in those shares. Mr Marriott owned 80% of the shares in PISL and Ms Copp owned the remaining 20%. Messrs Edwards and Voak had each invested £75,000 in Target, half as a loan and half as subscription monies for the shares. The loans had been repaid in 2002.

9. Mr Marriott submitted an application for authorisation from the Authority on behalf of both firms on 20 April 2004. On 14 January 2005 Target and PISL were granted permission to advise on and arrange deals in general insurance contracts under Part IV of the Act. With effect from the same date Mr Marriott became an approved person exercising a number of controlled functions including director (CF1), chief executive (CF3) and "apportionment and oversight" (CF8).

10. At all material times Target received premiums from insured persons. These were retained in client money accounts; a proportion of these could be withdrawn as commission. The balance was payable to the insurance companies, usually within a 60 day period.

11. The only signatories to the client money accounts and office accounts were Mr Marriott and Ms Copp. From 2003 onwards Ms Copp had been absent for health reasons. Mr Marriott arranged for her to pre-sign blank cheques on the client money accounts and the office accounts. Mr Gowler had no relevant cheque signing authority.

12. Both firms were audited by Messrs Wilkins Kennedy, accountants. We heard evidence from Mr Stephen Grant, the partner responsible for the audits. The audit reports for the years to 31 October 2000 and 2001 were qualified with a statement that the evidence available to the auditors was "limited because of the quality of the accounting records. The financial statements consequently contains significant amounts based on estimates. In those circumstances we are unable to carry out all the auditing procedures …" The accounts for the year to 31 October 2002 and 2003 were not qualified by the auditors. The 2003 accounts were signed off by Mr Marriott in December 2004.

13. Client money calculations were prepared by the Authority (when they came to make investigations) using the accruals method. This involves comparing the amount of client resources (including client money balances and insurance debtors) to the client money requirement (including insurance creditors and unearned commissions).

The deficit in the two firms was estimated to be £181,069 as of 31 October 2003 and £570,841 as of 31 October 2005. We note that this shows an increase of nearly £400,000 in the deficit on client money accounts.

14. Directors' loan accounts showed that for the year ended October 2003 Mr Marriott owed £72,000 to Target and £134,000 to PISL; Ms Copp owed some £8,000 to Target and some £73,000 to PISL.

15. Other details of the financial affairs of the firms will be given when examining the circumstances of the conduct that, the Authority claims, required them to issue the Decision Notice. To conclude this outline summary we mention that:

(i) The firms went into administration on 2 February 2006;
(ii) on 16 July 2007, the firms were put into creditors' voluntary liquidation. The published deficits were £733,136 for Target and £349,176 for PISL and
(iii) Mr Marriott was disqualified from being a director for eight years on 17 March 2008 pursuant to section 7 of the Company Directors Disqualification Act 1986.

The statutory framework : the Act

16. Section 56 of the Act provides:

> "(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
>
> (2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function within specified description or any function.
>
> (3) A prohibition order may relate to –
>
> (a) a specified activity, any regulated activity falling within the specified description or all regulated activities; …"

The enforcement framework : the Enforcement Guide

17. The Authority has published, in the form of "The Enforcement Guide" guidance on its policy in relation to the making of prohibition orders. The Authority has the power to make a range of prohibition orders depending upon the circumstances of each case, and a range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case the Authority may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity. The scope of a prohibition

order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or the market.

18. In relation to an "approved person", or a person who was at the relevant time an approved person, it is the Authority's policy to consider whether the individual is fit and proper to perform functions in relation to the particular regulated activity. The criteria for assessing fitness and propriety of approved persons are set out in, among other things, FIT. Further, the Authority's policy is to consider whether and to what extent the approved person has failed to comply with the Standards of Principle issued by the Authority with respect to the conduct of approved persons (APER) or has been knowingly concerned in the contravention by the firm of a requirement imposed on the firm by or under the Act (including the principles and other rules which are referred to below).

19. The Authority's policy is to consider the relevance and materiality of any matters including unfitness and the particular controlled function that the approved person is or was performing, the nature and activities of the firm concerned and the markets in which he operates. The Authority considers the severity of the risk which the individual poses to consumers and to the confidence of the financial system. It has regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform the relevant functions. Examples of types of behaviour which may lead the Authority to decide to issue a prohibition order include providing false or misleading information to the Authority, failure to disclose material information on application forms, severe acts of dishonesty which may have resulted in financial crime and all matters relevant to the individual's fitness and propriety (we refer to e.g. 9.12).

Statements of principle and code of practice for approved persons (APER)

20. These principles apply to approved persons. The APER principles are issued under section 64(1) of the Act. Mr Marriott was consequently, from the point he became approved by the Authority to perform controlled functions, subject to the provisions of APER.

21. Statement of Principle 1 of APER provides that an approved person must act with integrity in carrying out his controlled function. APER goes on to provide that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where the approved person's conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

22. APER 4.1.2E provides further guidance as to the kinds of behaviour that, in the opinion of the Authority does not comply with Statement of Principle 1 of APER. The types of conduct referred include the following:

- Deliberately misleading (or attempting to mislead) the Authority by act or omission; this includes providing false or inaccurate information to the Authority.
- Deliberately misusing the assets of a client; this includes deliberately misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients and using a client's funds for purposes other than those for which they were provided.

The enforcement framework, the Authority's Principles for Business and the Threshold Conditions

23. In the FSA's handbook "Principles for Business", Principle 4 provides that "a firm must maintain adequate financial resources". In this context the term "adequate" is interpreted as meaning sufficient in terms of quantity, quality and availability.

The Fit and Proper Test for Approved Persons

24. The fit and proper test for approved persons (FIT) sets out and describes the criteria that the FSA will consider when assessing the fitness and propriety. The Authority will have regard to a number of factors in regard to a person performing a particular controlled function. The most important consideration will be that person's "honesty, integrity and reputation", his "competence and capability" and his "financial soundness". The Authority's case in relation to Mr Marriott is based on his lack of honesty, integrity and reputation.

25. FIT 2.1.3G provides that the Authority will have regard to the question whether the person has been the subject of disciplinary proceeding and whether he has contravened any of the requirements and standards of the regulatory system. Other matters to be taken into account by the Authority include whether the person in question has been a director of a business that has gone into insolvency or administration and whether the person in question has ever been disqualified from acting as a director. A further matter is whether that person has been "candid and truthful in all his dealings with any regulatory body and whether he demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system.

The Client Asset Manual of the Authority's Handbook (CASS)

26. This provides for business standards to be applied in relation to holding client assets and client money. (In the present context the Authority's case is based upon Mr Marriott's failure to perform his controlled function to ensure that the firms met and complied with the requirements contained in CASS.)

27. Chapter 5.5 of CASS sets out the relevant provisions that applied to "client money" and "insurance mediation activity". CASS 5.5.63R provides, among other things, that:

> "A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days (a) check whether its client money resource, as determined … on the previous business day, was at least equal to the client money requirement, as determined … as at the close of business on that day; and (b) ensure that: (i) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; …"

CASS 5.5.76R provides that: "A firm must notify the FSA immediately if it is unable to, or does not, perform the calculation required by CASS 5.5.63R(1).

CASS 5.5.77R provides that: "A firm must notify the FSA immediately it becomes aware that it may not be able to make good any shortfall identified by CASS 5.5.63R(1) by the close of business on the day the calculation is performed and if applicable when the reconciliation is completed."

Conduct relied upon by the Authority in reaching the decision published in the Decision Notice and findings of the Tribunal

28. The Authority relied upon conduct relating to client money issues prior to and referred to in the application for authorisation.

29. The form for applying for authorisation, submitted on 20 April 2004, contains this question (Question 55) –

> "Has the firm's client money account been audited within the last 12 months?"

Mr Marriott's answer was "Yes".

30. The Authority's Statement of Case states that this answer was untrue: the client money accounts, they say, had never been audited at either firm. No audits had included any audits of those accounts and Mr Marriott had not made any arrangements for them to be included in the firm's audits. Moreover, as already noted, by October 2003 there was a deficit in the client money accounts of £183,069. The Authority say that it can be readily inferred that Mr Marriott knew precisely what the true answer should have been and that he knew what the true position was.

31. Mr Marriott's reply refers to both firms having been the subject of a full two day audit by the General Insurance Standards Council (GISC) prior to authorisation being requested, and also that annual examinations of the client money accounts had been undertaken by Ernst & Young (GISC's appointed auditors).

32. The evidence of Mr Stephen Grant of Wilkins Kennedy was that at no time in the lead up to the Authority's regulation of insurance companies, or since, had Mr Marriott asked him for advice on client money matters or for a client money audit to be carried out. Wilkins Kennedy's terms of engagement had (so far as relevant) been

confined to carrying out an annual audit, to preparing an analysis of the firms' accounting records and preparing the statutory annual financial statements.

33. Mr Stephen Grant acknowledged, when questioned by the Tribunal, that part of the audit work for the two firms would have involved verification and reconciliation of the year end client account balances. When auditing, Wilkins Kennedy had not done a specific client money audit, but as part of their audit procedures the firm would have checked that the client balances were reasonable and within audit materiality limits. Generally, Mr Stephen Grant accepted, his firm did not focus on FSA requirements unless specifically asked to do so. He also acknowledged that there had been nothing during the course of the audits for 2002 and 2003 to indicate a concern about the client money accounting balances. The 2003 accounts were signed off in December 2004. At the time Mr Marriott made the Application for approved authorisation (on 20 April 2004) and answered "Yes" to Question 55 he could only have relied on the audit for the year to 31 October 2002, i.e. more than twelve months before making the Application.

34. Regarding Mr Marriott's reliance on the GISC checks, we were informed by the statement from Mr Trevor Newbery (who had been employed by Ernst & Young at the relevant time), that firms were required to submit "IBA" (insurance bank account) returns and that these might be followed by a monitoring visit and an overall solvency check involving IBA reconciliations and a review of outstanding debtors. But this did not amount to a formal audit.

35. We are satisfied that Mr Marriott cannot have reasonably believed that the GISC checks amounted to an audit of the client money accounts. We turn now to the Wilkins Kennedy audit. It was the formal audit that Wilkins Kennedy were engaged to carry out. The period to which Question 55 relates is prior to authorisation and therefore before CASS 5.5.63R (which requires a regular check on client money accounts every 25 days) applied to the present firms. Mr Stephen Grant accepted that Mr Marriott did not have "a thorough grasp of accounting knowledge". Nevertheless, having regard to his controlling position over all aspects of the firms' businesses and finances, and to his experience of the general insurance business, we think that Mr Marriott must have been aware of the regulatory requirements of having client money accounts and that their accuracy was essential to the protection of consumers. The question (Question 55) specifically relates to the audits of "client money accounts". In our view Mr Marriott chose to ignore the special focus of the question. He could and should have asked the auditors specifically whether they had audited or reconciled the client money accounts within the last twelve months. Instead, we think, he gave himself the benefit of the doubt and in doing so recklessly misled the Authority. This raises questions as to his integrity and to his honesty.

36. Relevant to this conclusion is the fact that on the basis of calculations made by Mr Stephen Page of the Authority (who gave evidence), the deficits on client money accounts for Target and PISL were some £181,000 on 31 October 2003, some £380,000 in November 2004, some £400,000 by 14 January 2005 (when authorisation was given) and some £571,000 on 31 October 2005. On any reckoning Mr Marriott

in his controlling position for both firms should have known of the relevant deficits when he made the application for authorisation. And bearing in mind that Mr Marriott and Ms Copp had loan accounts with the two companies showing £286,000 owing to the companies (representing amounts presumably used to meet their own expenditure), the risks posed by, and inappropriateness of, having deficits on the client money accounts should have been in the forefront of Mr Marriott's mind. His answer of "Yes" to Question 55 is all the more reckless having regard to this factor.

37. The next substantial item of conduct relied upon by the Authority in reaching the decision is Mr Marriott's response to a "Dear CEO" letter sent by the Authority on 20 July 2005.

38. Both Target's and PISL's Part IV authorisation permitted them to hold client money. Both were therefore subject to the detailed requirements for systems and controls set out in CASS regarding the oversight and control by the firms of any bank accounts holding clients' money. CASS 5.5.63R (see above) required a firm to check the accuracy of records at least every 25 business days and to ensure that any shortfall in the client money accounts is rectified by the close of business on the day the calculation is performed.

39. On 20 July 2005 the Authority sent to Mr Marriott the "Dear CEO" letter. This sought confirmation that a number of practices and measures had been put in place including steps to ensure that client money accounts were not in deficit, that the correct financial trust status was in place and that a resource calculation was being performed every 25 days and reconciled with bank statements (effectively mirroring the rules under CASS). The CEO, Mr Marriott, was required to reply to this by 31 August 2005.

40. Mr Marriott, through his PA, responded by e-mail on 14 September 2005 that "I can confirm that I've carried out an exercise to confirm that all of the points raised in the letter of 20 July 2005 have been adhered to and are in place." Mr Marriott accepted in interview with an investigator from the Authority that the response had been inaccurate save in one respect only, i.e. that the client money account having the necessary trusts status. Mr Marriott said in his Reply that he had been misquoted and that he had not deliberately attempted to mislead the Authority. While it is not clear precisely what instructions Mr Marriott had given to his PA, the fact is that the response to the CEO letter affirms that they had complied with all the points raised. It gives the clear impression that the client money arrangements were in order and that that response came from him.

41. The FSA rely on that letter as evidence of misconduct and lack of integrity post-authorisation and that Mr Marriott had thereby given misleading information to the Authority. Not only did he give a misleading answer to the Authority but also we find no evidence that he took any steps to ensure that the firms complied with the requirements set out in the CEO letter.

42. In October 2005, within a month of the CEO letter and while Mr Marriott was on holiday, Mr Simon Gowler, the other director, was contacted by insurance underwriters stating that they were owed £400,000 by Target and PISL. Mr Gowler did a client money calculation which revealed a client money deficit of some £600,000. Mr Gowler prompted Mr Marriott to seek advice from Wilkins Kennedy. Wilkins Kennedy performed a mini audit and on 23 November a report was produced that showed that the firm was trading while insolvent and that they should cease trading immediately. While Mr Grant of Wilkins Kennedy discussed ways of reducing the deficit he did not tell Mr Marriott to speak to the Authority.

43. How had the firms been allowed to reach that state of insolvency? Mr Marriott's reply states that he had relied upon his auditors as to the financial position and specifically to the client money position. He says that he assumed that Wilkins Kennedy were doing client money audits or at least doing CASS 25 day reconciliations. But these were not covered by any of the terms of engagement of the auditors. Mr Grant's evidence was that, when asked to advise, he had highlighted the concerns about its solvency but had not focused on the Authority's compliance requirements. Mr Marriott's assertion in his reply that he had been unaware of any deficits on client money accounts is undermined by the facts, first that the deficit increased from £380,000 in November 2004 to £570,000 when Mr Gowler raised the alarm in October 2005 and, second, that in the same period large transfers had been made from the Target client money account to Target's general office account.

44. In our view Mr Marriott in his controlling position must have known that throughout 2005 there was a continuing failure on his and the firms' parts to perform client money audits or reconciliations every 25 days. And he must have known that no related checks were being made. He must have known that Target was in breach of CASS 5.63R and that it had been his responsibility to have ensured compliance.

45. As just noted, the Authority rely, as further evidence of Mr Marriott's failure to rectify deficiencies in the client money accounts, on the substantial transfers made from those accounts to the firms' general accounts (i.e. £120,000 in the year ended 31 October 2005), and they rely on the fact that such withdrawals were made for Mr Marriott's own purposes. The Authority claim that the client money accounts were being used to finance expenditure and salaries and bonuses at a time of deteriorating trading (i.e. a fall in turnover by 47% over the years 2003-2005). The expenditure had been on salaries and bonuses, on cars for directors and to provide funds for the outside shareholders in Target (Mr Edwards and Mr Voak) as purchase monies for their shares. For example, £27,500 had been spent on a car for Mr Gowler and, in May 2005, £35,000 had been spent on a car for Mr Marriott. Mr Marriott had been paid a bonus of £29,500 in the year to 31 October 2005. Further payments by the firm to cover items of Mr Marriott's personal expenditure had been added to his loan accounts: (Mr Marriott said his intention had been to reduce his loan accounts by crediting them with further dividends.) The salary pay slips showed an increase in the rate of salary payments to Mr Marriott even after October/November 2005 when the insolvency alarms had been sounded. On 14 December 2004, just before authorisation, £72,500 had been transferred to each of Mr Edwards and Mr Voak: (Mr

Marriott had agreed in December 2003 that they should be paid £825,000 for their 60% shareholding over a five year period).

46. On the basis of the points briefly summarised above the Authority say that Mr Marriott must have been aware that he had been using client money account funds to finance the working capital of the firm and he must have been aware that he would have to rely on future income to pay for the costs of the businesses and to reimburse the client money accounts.

47. Much of Mr Marriott's response is that he was not aware of the worsening financial position of the firms. He accepts that he did discuss methods of putting things right. He said he had tried unsuccessfully to persuade Messrs Edwards and Voak to repay some of their share purchase monies. The agreement to buy in the shares from them had resulted from severe pressure on their parts; the payments to them should not therefore be blamed on him. The purchase of a car for Mr Gowler, Mr Marriott said, had likewise resulted from pressure (from Mr Gowler) and Mr Marriott's own car have been due for renewal anyway.

48. Our overall impression is that Mr Marriott's competence in managing the firm's financial affairs was low. He allowed them to trade into a state of insolvency and persisted in making use of client money accounts to prop up the firms' working capital. He failed to ensure that the firms met the obligation to maintain accuracy of records and to comply with the CASS requirements. Consequently the Authority were never notified of the deficiencies; and in so far as any information had been passed to the Authority (e.g. the "Yes" answer to Question 55 and the reassuring answer to the "Dear CEO" letter) these were misleading.

49. The Authority contend that the factors summarised above show that Mr Marriott does not possess the requisite standards of honesty, integrity and reputation. We think that the standards of integrity were not met by Mr Marriott in that he breached the standards and requirements of the regulatory system while holding significant controlling functions and acting as an approved person. By allowing the firms to enter into administration while he was responsible for their affairs his reputation fell below the required standard.

50. We recall in this connection that on 23 November 2005 Mr Marriott was advised by Mr Grant of Wilkins Kennedy that there was a danger that the firms might in effect be trading while insolvent. Nevertheless, as already noted, in January 2006 he increased his salary drawing to reach a level of £150,000. Mr Marriott's suggestion that he was not aware of the true position and that the necessary work had been done by professional people upon whom he relied is, we think, not credible and neither is his suggestion in his reply that he has never been a risk to the consumers and that he did not cause consumers to suffer any form of financial loss credible. Specifically, his account of the findings of the Insolvency Service (in his Reply) is inconsistent with the evidence; and the fact that he was disqualified for a period of eight years emphasised the gravity of his conduct as evidenced by his withdrawal of

large amounts of money from the two firms which eventually collapsed owing over £1m to creditors.

51. As to dishonesty we think that the Authority were justified in their conclusions. Mr Marriott allowed the firms to continue trading notwithstanding the clearest warnings of insolvency. His answers to Questions 55 in the authorisation application and to the CEO Letter were misleading; his conduct in making these was reckless as to the true position.

The Appropriate Action

52. With those conclusions in mind we turn now to address the question of what is the appropriate action for the Authority to take.

53. Mr Marriott, in an e-mail to the Tribunal of 5 July 2009, accepts that there have been breaches of rules by him. However, he says, to issue a full prohibition notice in relation to those breaches would be extremely disproportionate and inconsistent on the part of the Authority. He referred to Decision Notices in other cases (all relating to the circumstances of BPS Insure Limited) in support of that. He went on to point out that he is now a PII underwriter and claims that he has "no interface with client, client money handling or any controlled function or significant influence role". On that basis, he said that a partial prohibition would have been the right course. His understanding was that that had been the recommendation to the Authority of Mr Page (the investigating officer). Mr Marriott made a similar point in support of partial prohibition when asked to comment, after the hearing, on his involvement in 2009 in the launch of, and in services provided by, Tobell Underwriting Agencies: see our decision on postponement. That information had been put to Mr Marriott because of his claims to be unable to attend the hearing and that he was "currently unemployed".

54. We think that Mr Marriott's conduct has gone far beyond technical breaches of regulations. His standards of integrity have over a period of at least two years (2004-2006) fallen well short of those required in FIT. His reputation has been severely damaged by the facts of administration of the firms and his subsequent disqualification as a director for eight years.

55. We have already expressed a view as to Mr Marriott's honesty. We accept that he may believe and assert his honesty. We have taken into account six references to his character, all of which express positive testimonials as to Mr Marriott's professionalism and trustworthiness as an underwriter. The fact remains however that Mr Marriott demonstrated dishonesty and lack of integrity in allowing Target and PISL to misuse the client monies, to continue trading while insolvent and in his answers to the Authority.

56. Mr Marriott's evident failings regarding honesty, integrity and reputation came about while he was exercising comprehensive controlling functions. He controlled the finances of both firms to the point of holding blank cheques pre-signed

by his co-director. He was in all material respects the dominating influence on those two firms. Moreover his explanations of his activities with Tobell Underwriting Agencies had not emerged until he was asked to comment (in December 2009) on the information obtained from the Google search. Notwithstanding the Authority's decisions in the cases referred to in paragraph 53 above, we cannot see that a partial prohibition notice is appropriate. A total prohibition order is, we think, appropriate in the circumstances of this case.

57. We dismiss the Reference.

SIR STEPHEN OLIVER QC
CHAMBER PRESIDENT