



Neutral Citation: **[2024] UKUT 00265 (TCC)**

Case Number: UT-2023-000032

**UPPER TRIBUNAL
(Tax and Chancery Chamber)**

Hearing venue: The Rolls Building, London

FINANCIAL SERVICES – decision by the Authority not to authorise the Applicant to carry out regulated activities on the basis that the Applicant would not satisfy and continue to satisfy the threshold conditions for authorisation as required by section 55B(3) of the Financial Services and Markets Act 2000 – whether the decision one which was reasonably open to the Authority – yes – reference dismissed

**Heard on: 5, 6 and 17 June 2024
Judgment date: 02 September 2024**

Before

**JUDGE MARK BALDWIN
MR. CHARLES FARQUHARSON
MR. MARTIN FRAENKEL**

Between

ASHRAF WEALTH MANAGEMENT LIMITED

Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

Representation:

For the Appellant: Mr. Gareth Fatchett of FS Legal Solicitors LLP

For the Respondents: Mr. Simon Jones of counsel, instructed by the Financial Conduct Authority

DECISION

INTRODUCTION

1. On 10 April 2023 the Applicant referred (“the Reference”) to this Tribunal a decision (“the Decision”) of the Authority dated 14 March 2023 refusing the Applicant’s application (“the Application”) to carry out regulated activities.
2. The Authority refused the Application as it was not satisfied that the Applicant, if authorised, would satisfy and continue to satisfy the threshold conditions as required by section 55B(3) of the Financial Services and Markets Act 2000 (“FSMA”).
3. The core of the reasoning behind the Decision centres on Mr. Murtaza Imran Ashraf (“Mr. Ashraf”). Mr. Ashraf is, along with Mrs Saaima Tasleem Ashraf (“Mrs Ashraf”), one of two shareholders of the Applicant. Mr. Ashraf is additionally the only proposed advisor at the Applicant. In the Authority’s opinion, Mr. Ashraf has not demonstrated that he is a fit and proper person. Accordingly, in the view of the Authority, the Applicant does not satisfy the Threshold Conditions of appropriate resources and suitability.

LEGAL FRAMEWORK FOR THE REFERENCE

4. There is no dispute as to the legal framework relevant to the Application, the Decision or the Reference, which we summarise below.
5. By section 55A FSMA, an application to carry on regulated activities must be made to the appropriate regulator (here, the Authority).
6. By section 55B(3) FSMA, in giving permission to carry out regulated activities, the appropriate regulator “must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all regulated activities for which the person has or will have permission the threshold conditions...” .
7. The “threshold conditions” are (by section 55B(1) FSMA) those set out in Schedule 6 of FSMA. Relevant for these purposes are Threshold Conditions 2D (Appropriate Resources) and 2E (Suitability).
8. As regards Threshold Condition 2D, an applicant’s resources must be appropriate in relation to the regulated activities that the applicant carries out or intends to carry out. This specifically involves a consideration of non-financial resources. In particular:
 - “(4) The matters which are relevant in determining whether A has appropriate non-financial resources include—
 - (a) the skills and experience of those who manage A's affairs;
 - (b) whether A's non-financial resources are sufficient to enable A to comply with—
 - (i) requirements imposed or likely to be imposed on A by the FCA in the exercise of its functions, or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.”
9. In respect of Threshold Condition 2E, an applicant:
 - “...must be a fit and proper person having regard to all the circumstances, including—
 - (a) A's connection with any person;

- (b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
- (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;
- (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.”

10. By section 55Z3(1) FSMA, an applicant who is aggrieved by the regulator’s decision may refer the matter to the Tribunal.

11. Section 133 FSMA contains some general provisions regarding the proceedings before the Tribunal, notably:

(1) By section 133(4), on consideration of a reference the Tribunal may consider evidence relating to the subject matter of the reference whether or not such evidence was before the decision-maker at the time of the decision. In this context the “subject-matter” of the appeal has a broad meaning, encompassing the allegations before the Authority Decision Maker, and the circumstances, evidence and facts on which those allegations are based; see *Markou v FCA* [2023] UKUT 101 (TCC) at [136].

(2) By section 133(6) and (6A) FSMA, which applies in the current proceedings:

“(6) ... , the Tribunal must determine the reference or appeal by either—

- (a) dismissing it; or
- (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

(6A) The findings mentioned in subsection (6)(b) are limited to findings as to—

- (a) issues of fact or law;
- (b) the matters to be, or not to be, taken into account in making the decision; and
- (c) the procedural or other steps to be taken in connection with the making of the decision.”

12. The approach to be taken under section 133(6) and (6A) FSMA is set out in *Carrimjee v FCA* (No.2), [2016] UKUT 447 (TCC), at [37]-[38]. The question for the Tribunal is whether the decision reached by the Authority is one that falls within the range of reasonable decisions that it was open to the Authority to make. In concluding on this point the Tribunal can consider developments after the relevant decision was made, as well as evidence which was not available to the Authority when it reached its decision. This is because, as the Tribunal explained in *Carrimjee v FCA* (No.1), [2015] UKUT 0079 (TCC) at [60], “... a

reference is not an appeal against the Authority’s decision, it is a determination of what is the appropriate action to take in the circumstances falling within the subject matter of the reference, that is the circumstances that have been the subject of the prior regulatory proceedings, rather than the particular outcome as found in the Decision Notice.”

13. If the Tribunal concludes, on an assessment of all the evidence and relevant findings of law, that the decision was reasonably open to the Authority, it must dismiss the Reference. If the Tribunal concludes that the decision was not reasonably open to the Authority, it must remit the matter to the Authority with a direction to reconsider its decision in the light of findings made by the Tribunal. What the Tribunal cannot do is substitute its decision for the Authority’s.

14. Whilst *Carrimjee* concerned a prohibition order made under section 56 FSMA, it was confirmed in *Lewis Alexander Limited v FCA* [2019] UKUT 49 (TCC) at [34] that this approach equally applies to questions of whether the Authority can be satisfied that, if the Application is granted, the Applicant would satisfy the Threshold Conditions.

15. On 30 November 2023 Judge Jones summarised the issue to be determined by us as follows:

“Was the decision that the Authority was not satisfied the Applicant was and would continue to be a fit and proper person with appropriate non-financial resources reasonably open to it?”

16. Turning to the burden and standard of proof (see *Köksal v FCA* [2016] UKUT 478 (TCC) at [37] and *Lewis Alexander* at [36]):

(1) The initial legal burden is on the Authority to show, on the balance of probabilities, why the Authority cannot ensure that the Applicant will not satisfy and continue to satisfy the Threshold Conditions. This is not to be equated with a requirement that the Authority proves positively that the Applicant does not satisfy those Conditions.

(2) Once this is established, the burden then switches to the Applicant, who must establish that there are matters that justify remitting the matter to the Authority for further consideration.

THE AUTHORITY’S REASONS FOR THE DECISION

17. The Decision is set out in a decision notice (the “Decision Notice”) dated 14 March 2023 and in it the Authority summarised its reasoning as follows:

“Since becoming an independent financial adviser in 2013, Mr. Ashraf has worked as an Appointed Representative (“AR”) under two Principal firms Both Principal firms terminated Mr. Ashraf’s AR agreements following internal investigations, which gave rise to concerns as to Mr. Ashraf’s competence and fitness and propriety.

The investigations identified breaches in relation to non-compliance with internal procedures. The Authority considers that the alleged findings indicate a pattern of non-compliance with procedures, and Mr. Ashraf has not demonstrated that he will be able to comply with all regulatory requirements should AWML’s application be approved.

Mr. Ashraf and his wife, Mrs Ashraf are the two directors of the firm. However, Mrs Ashraf has not previously worked in a financial services firm. Mr. Ashraf has worked in the financial services sector since 2006 and therefore has relevant professional experience. The business plan submitted with the application states that Mr. Ashraf will be the only adviser at the

firm. The Authority considers that given the concerns identified, Mr. Ashraf has not demonstrated that he satisfies the requirements of a fit and proper person. The refusal of Mr. Ashraf's application will therefore leave the firm without the requisite resources, including a qualified adviser, and therefore unable to meet the Appropriate Resources threshold condition."

18. The Applicant does not agree with the Authority's assessment. At a very high level, its position is that the circumstances around Mr. Ashraf's first termination are historic and little weight should be attached to them. As far as Mr. Ashraf's second termination is concerned, the Applicant's case is that little weight (if any) should be ascribed to that as the investigation by the second principal (and the findings which flowed from it) was flawed and littered with basic errors.

19. We will set out the evidence we heard and our findings of fact in relation to the two terminations and then move on to outline and discuss the parties' submissions and the reasons for our decision.

MR ASHRAF'S EMPLOYMENT BY HSBC

20. Before working for St James's Place Wealth Management plc ("SJP") Mr Ashraf worked for HSBC. In their statement of case the Authority referred to a reference for Mr Ashraf from HSBC, dated 17 April 2015. The HSBC reference states that, while Mr Ashraf had not been disciplined for a matter which required notification to the Authority, three "justified complaints" had been recorded against Mr Ashraf relating to "unsuitable/misleading advice".

MR. ASHRAF'S TERMINATION BY SJP IN 2015

21. From February 2013 to March 2015, Mr. Ashraf was a self-employed Partner representing SJP.

22. In March 2015 Mr Ashraf was terminated by SJP. Lisa Egan ("Ms Egan") of SJP gave evidence about Mr Ashraf's termination.

Lisa Egan

23. Ms Egan is currently Head of Risk, Compliance and Anti-Money Laundering for St. James's Place (Middle East) Limited, but at the time we are concerned with she was Senior Business Risk Manager and her responsibilities were to oversee the conduct of SJP's Partners. Ms Egan was cross-examined by Mr Fatchett, but her evidence was not challenged. We found Ms Egan to be a careful witness and have no hesitation in accepting her evidence.

24. On 30 January 2015, Ms Egan held a Partner Compliance Review meeting with Mr. Ashraf at his home (also his normal place of work). As part of her preparation for the meeting, she emailed Mr. Ashraf to confirm that she would review client files held centrally in advance but would require access to paper and electronic records during the face-to-face meeting. She reviewed a selection of pension transfer files in advance and identified that the circumstances of each client documented in the Confidential Financial Review (CFR) were practically identical. She extended the sample size and identified similar concerns on all files.

25. On 30 January 2015, on arrival at Mr. Ashraf's home, she requested access to his electronic and paper client files. However, he told her that he had left his laptop at his in-law's house. Ms Egan continued with the visit and asked Mr. Ashraf to clarify his understanding of the advice process, which he did. She also asked him specific questions about the files she had reviewed in advance. In response to her questions, on several occasions, Mr. Ashraf stated that a missing document may be in his upstairs office and went to retrieve it. On the third occasion, she accompanied him to his upstairs office and noted that his laptop was in his office. At this point, she asked Mr. Ashraf why he had said that his

laptop was not available; he suggested it was a misunderstanding. Ms Egan then asked Mr. Ashraf to provide her with some missing suitability letters. These are a regulatory requirement. They are used to document the advice given to clients in an easily understandable format. He was unable to locate them in the electronic client file, so she asked whether he had sent them to clients at all and told him that he should be open and honest with her. He confirmed that he had sent the letters and would find them on his hard drive. She asked why the clients' CFRs appeared to be identical and he was unable to provide an acceptable explanation. Ms Egan told Mr. Ashraf that she was terminating the meeting and would arrange a follow up meeting with him and his supervisor in the SJP Holborn office. She reiterated the importance of always being open and honest with her and his supervisor, and if he hadn't followed the correct procedures, he should say so.

26. On 31 January 2015, Ms Egan received an email with various attachments including documents that Mr. Ashraf suggested were the missing suitability letters which he had sent to his clients. Having reviewed the documents attached to Mr. Ashraf's email, Ms Egan formed the view that Mr. Ashraf had fabricated them, as the documents had been created after the meeting on 30 January 2015. On 2 February 2015, she produced a report which summarised all her findings and she exhibited this.

27. On 12 February 2015, Ms Egan met with Mr. Ashraf along with his supervisor and another colleague from SJP. During the meeting, Mr. Ashraf admitted that he had not followed the full advice process in around ten cases, as he had not waited for the suitability letter to be pre-approved and had instead presented a shorter summary of his recommendation to the clients and asked them to sign a standalone declaration page of a suitability letter.

28. When asked about the content of the CFRs being almost identical, Mr. Ashraf admitted that he had found a template which would be approved by the SJP Business Assurance Team and, to save time, he decided simply to change the clients' name and address. He acknowledged that the processes were put in place to ensure that clients' interests were protected and confirmed he would follow the agreed processes in future. He was asked if there were any other breaches of process he should share, and he confirmed there were none he could think of. He failed to admit that the suitability letters he had forwarded by email (on 31 January 2015) had been created after the meeting at his home until it was pointed out that the Word documents included a time stamp which showed when they were created and last edited. He subsequently admitted that there would be further examples of missing suitability letters and incomplete CFRs.

29. Ms Egan agreed to circulate the minutes of the meeting on 12 February. On 16 February 2015 she circulated the meeting minutes and received an email from Mr. Ashraf, in which he confirmed that the minutes were broadly accurate. He believed that ten (30%) of his clients had not received a suitability letter. The remainder had, although it was prior to Business Assurance approval, or they were issued later than required.

30. Ms Egan explained that, under normal circumstances, SJP would re-train advisers where concerns in respect of file quality were minor or administrative. However, the main concerns here related to Mr. Ashraf's integrity, as he only admitted errors when they were shared directly and/or evidence was presented to him, and so she considered that retraining was not appropriate.

31. Ms Egan reported all this to senior management, who took the decision to terminate Mr. Ashraf's contract with SJP.

32. The regulatory reference provided to the Authority by SJP commented that, "We identified during an internal investigation that Mr. Ashraf had failed to accurately complete

client confidential reviews and Suitability letters. We also felt that Mr. Ashraf was not transparent during our investigation.”

MR ASHRAF’S ENGAGEMENT WITH TENET

33. After leaving SJP, Mr. Ashraf went to work for a financial services business called Tenet. When Tenet applied to the Authority for permission to engage Mr Ashraf, his lack of transparency with SJP was mentioned by Tenet, and this was followed up by the Authority. It seems, from copies of email exchanges in the hearing bundle, that Mr Ashraf had not given Tenet all the papers relating to his termination by SJP. He said he was unable to access them as they were held in his account on the SJP system to which he no longer had access. The Authority obtained copies of all the documentation, and they were shared with Tenet. At the end of this process Tenet commented to the Authority that Mr Ashraf had “declared the issues discussed up front on his application to Tenet and we feel he has been honest and provided as much detail as possible”. Although Tenet acknowledged that the points that had been raised were serious, they felt that, given Mr Ashraf’s disclosure and history in financial services and with their controls, they could reduce the risk of these issues recurring. Mr Jones showed Mr Ashraf an attendance note by the Authority of a call with Tenet in which Tenet outlined the detailed monitoring Mr Ashraf would be subject to. Mr Jones commented to Mr Ashraf that the Authority was not saying that his behaviour at SJP was acceptable, only that they were content for him to work at Tenet based on the oversight Tenet had promised to provide.

34. Two issues arose during Mr Ashraf’s time with Tenet that were explored before us. First, Mr Jones asked Mr Ashraf about the termination of his DB licence. He showed Mr Ashraf a report Tenet made to the Authority indicating that Mr Ashraf’s licence had been withdrawn because of concerns around the standard of advice given and the use of the insistent client process. Mr Ashraf said that Tenet were withdrawing all DB licences.

35. Second, Mr Jones showed Mr Ashraf a Tenet note of their review of 17 cases of pension switches. In 66% of cases the cost to the client after the switch increased. 100% of cases gave poor customer service as the reason for the transfer without any provider being used to show improved service. The reviewer commented that “There is no evidence of thorough factfinding, and the advice being linked to clear aim and objectives or signposting likely shortfalls in retirement. Overall there was evidence of poor client outcomes resulting from the advice.” The reviewer identified as “Risks” that Mr Ashraf “failed to complete any level of holistic advice for a large number of new clients and has repeatedly done the same thing with each client with little evidence of how it benefits the clients’ circumstance. There is a repetition of this across his conduct in other areas and there is no evidence he acts in clients’ best interests.” When she was giving evidence Ms Ford had observed that Mr Ashraf had moved some clients into the same provider he was moving others out of. She agreed with Mr Jones that there was an obvious risk of client detriment if they incurred a fee on switching when there was no need to move. Mr Ashraf said that Tenet had not reported any of this to the Authority and, if there was a serious concern, they would have done that.

MR. ASHRAF’S TERMINATION BY TENET IN 2021

36. The circumstances of Mr. Ashraf’s leaving Tenet are more contested than those relating to his termination by SJP. We heard from two witnesses from Tenet in relation to Mr. Ashraf’s departure from Tenet. We had no difficulty in accepting the evidence of both witnesses, whom we considered to be frank and open in what they said to us.

Amanda Ford

37. Amanda Ford was employed as Managing Director (“MD”) for Tenet Financial Services (“TFS”) and Tenet & You. She joined Tenet in 2004 and has held various roles across the business.

38. Ms Ford explained that Mr. Ashraf was a self-employed registered individual for a Tenet appointed representative (“AR”), TFS, authorised to carry out a range of investment business including mortgage advice. Mr. Ashraf was dual authorised with another Tenet firm, Uniec Prestige, to conduct their defined benefit (“DB”) pension business as well as his own client DB business within TFS.

39. All DB business was pre-approved by the Advice Standards Team (“AST”) (Tenet’s file checking team) to identify and address any issues that could lead to poor quality advice before advice was given to clients, with a view to preventing client detriment. In February 2021, Ms Ford was made aware that Jon Forbes (who was responsible for oversight of Mr. Ashraf when working for TFS) had concerns regarding the standard of pension transfer cases submitted by Mr. Ashraf. As a result of these concerns, on 23 March 2021, the Tenet authorisations team was instructed to remove Mr. Ashraf’s DB licence. Ms Ford said that she was not part of the decision-making around Mr. Ashraf losing his DB licence. She knew that Tenet had been reviewing advisers with DB licences. Some people had their licences taken away and others had given their licences up as the compliance burden was becoming onerous. She was aware that Tenet had been in communication with the Authority about issues arising from people transferring out of the British Steel Pension Scheme, but she was not privy to the detail of that. In response to a question from Mr. Fatchett, Ms Ford said that, where advisers had their DB licences taken away, the decision was based on the quality of their work. She was not aware of how many advisers had their DB licences removed.

40. Mr. Ashraf was placed on enhanced monitoring for a period of time as a result of losing his DB licence. Ms Ford explained that anyone who lost their DB licence would be put on enhanced monitoring. A key aspect of enhanced monitoring was extra file checks on all types of advice, a monthly phone call and support plan. It was from these file checks that issues relating to the quality of due diligence being conducted by Mr. Ashraf were identified and referred to Michael Hancock

41. On 16 July 2021 concerns were raised after the AST raised a suspicious activity report for one case as a result of Mr. Ashraf not conducting sufficient financial crime due diligence. A further report was made of a similar nature. These reports highlighted concerns that Mr. Ashraf was not conducting sufficient due diligence on his clients.

42. During further engagement with Mr Forbes, concerns were raised around Mr. Ashraf’s conduct in several areas including: due diligence of mortgage clients, potentially dealing with clients overseas, use of unapproved introducers, pension transfers, and inconsistent charging.

43. On 1 September 2021 Mr. Forbes and Ms Ford held what Ms Ford described as an informal interview with Mr. Ashraf on a Microsoft Teams video call. Ms Ford commented that, during the interview, Mr. Ashraf offered limited and short responses to all questions and appeared not to understand why they were asking the questions they were asking or the implications of their questions. This resulted in concerns being escalated to Mr. Hancock to address as part of an investigation he was already conducting into Mr. Ashraf’s financial crime due diligence processes.

44. On 11 October 2021, Mr Hancock issued his investigation findings and recommended terminating Mr. Ashraf. On 18 October 2021 Mr Hancock was instructed to action the termination of Mr. Ashraf’s authorisation and contract.

45. All clients were written to and informed of Mr. Ashraf's departure from TFS and given a point of contact for the future. All clients paying an ongoing servicing fee were allocated a new adviser to pick up servicing commitments. During the re-engagement by the new advisers, further concerns were raised with Tenet in relation to Mr. Ashraf's client engagements. Some clients said that they had not had annual reviews with Mr. Ashraf, which are standard for all industry advisers. Tenet investigated any claims raised in relation to missing annual reviews. Where Tenet found no evidence of these on the file (for example a Suitability Report/Fact Find/Refreshed Attitude to Risk) and where the client had reported no review, the client ongoing servicing fee was refunded. In addition, four complaints were raised post termination, and these were settled by compensation. The full scope of these matters was not explored, but there was no challenge to Ms Ford's summary account of them.

46. Ms Ford described the meeting as informal, as neither she nor Mr. Forbes were decision makers as far as Mr. Ashraf was concerned. She wanted to give him an opportunity to reply before any investigation. She knew that monitoring or restrictions on his activities could be in point, but did not know before this meeting that termination was a possibility. Mr. Ashraf had not been told in advance that Tenet had concerns about him. She could see how this could be seen as ambushing Mr. Ashraf, but (as far as she was concerned) this was not the case at all. She just wanted to give him an opportunity to reply to the concerns raised. After this meeting she stepped back from dealing with Mr. Ashraf. Notes of the meeting were not shared with Mr. Ashraf and she accepted that she should have done this. She said that the opportunity to fill in gaps and provide further detail, would come in Mr. Hancock's investigation. She has seen Mr. Ashraf's Appeal Letter and agreed that Mr. Ashraf had given answers to the concerns in the cases Mr. Hancock reviewed that should have been considered. She said that she had not intervened as she would not have been able to affect the outcome. She agreed that she had not pointed out that Mr. Ashraf had provided more information than in the 16 September meeting.

47. Mr. Fatchett took Ms Ford to the list of training and competence meetings Mr. Ashraf attached to his Appeal Letter. This showed that he had received no training or competency support or reviews since January 2020. Ms Ford said that Mr. Ashraf's previous manager had left. She was surprised that Mr. Forbes had not been more involved. As well as oversight, Mr. Ashraf would be able to access group policies from the intranet and from the administration team. There was also a requirement for continuing personal development which included mandatory testing on understanding of financial crime issues.

48. Mr. Fatchett took Ms Ford to an Investigation and Financial Crime Review Summary document dated 5 October 2021. She believes this is a summary of the 16 September meeting, but she did not prepare or review it; this would have been done by Mr. Forbes. Mr. Fatchett ran through the issues noted in this document. One concern was around Mr. Ashraf using introducers who had not been approved by Tenet. Ms Ford said this would not have been a major issue as long as he stopped. The second issue was a mortgage charging issue. Here the issue was that Mr. Ashraf did not always charge people fees. This was not just a commercial issue, but engaged the regulatory duty to treat people fairly. Again, this would not be a major issue as long as Mr. Ashraf charged clients properly in the future.

49. Mr. Forbes had raised other issues in the form. Tenet had a policy of not allowing advice to be given to people outside the UK and there was a concern that Mr. Ashraf had done this. Ms Ford said that Mr. Ashraf would have been given an opportunity to satisfy Tenet that he believed the clients to be in the UK during the formal investigation. Mr. Fatchett asked whether it would be a problem if Mr. Ashraf could show that the client lived in the UK. Ms Ford said that, if this were the case, it would be a breach of Tenet policy which could be addressed by training.

50. There was an issue around pension transfer advice, in particular the volume of transfers. There were cases where clients were moved to one provider when others were being moved out of the same provider allegedly on service grounds. Tenet had a strict policy around pension switching as there would be a detriment to clients if they moved and incurred a fee when there was no need to move.

51. The form then summarised the financial crime interview on 30 September. Ms Ford confirmed that she had not been involved with that. She agreed that the issues covered in her 16 September meeting had all been minor ones, although she said that the cumulative effect of a number of minor issues could be significant. Ms Ford confirmed that the decision to terminate Mr. Ashraf had been based on Mr. Hancock's formal investigation, not her meeting.

52. Mr. Fatchett put it to Ms Ford that, if Mr. Ashraf's training record was correct, Tenet had not delivered any oversight or training. Ms Ford declined to answer that question. She said that Mr. Forbes must have been exercising some oversight or these issues would not have been picked up.

53. Ms Ford agreed that she was surprised that Mr. Hancock had used her notes to write this report and agreed that, if she had known he was going to do this, she would have warned Mr. Ashraf to reply carefully. She thought that Mr. Hancock would have discussed these issues with Mr. Ashraf. Nevertheless, she agreed that Mr. Hancock's summary of her 16 September meeting was correct.

Michael Hancock

54. Mr. Hancock was employed by Tenet as the Investigations and Financial Crime Manager. He held this position since April 2021. His previous job title (at the time of his investigation into Mr. Ashraf) was Investigations & Remediation Manager. However, his roles and responsibilities remained the same. Mr. Hancock left Tenet in December 2023 to take up a role with the Authority. Before joining Tenet he worked for The Royal Military Police. He had no previous experience of financial investigations, but he said that investigation approaches were the same in all cases.

55. On 16 July 2021 a suspicious activity report ("SAR") was raised following the AST's review, which identified that Mr. Ashraf had failed to evidence the source of funds and had provided advice to a client overseas. The case was reviewed in full and no specific financial crime concerns were identified. As a result, these concerns were discussed with Mr. Ashraf at an informal meeting between Ms Ford, Mr Forbes, and Mr. Ashraf. Mr. Hancock told Ms Ford that there were no financial crime issues here, but Mr. Ashraf would still have been asked for his comments in relation to Tenet policy on advising clients abroad.

56. Following a further meeting on 16 September 2021, Ms Ford placed Mr. Ashraf on enhanced monitoring, due to concerns relating to his file quality and his application of Tenet's standards and policies. Part of this enhanced oversight involved additional file checks to be completed by Tenet's AST.

57. On 27 September 2021, Mr. Hancock received further reports relating to Mr. Ashraf's cases which had been checked as part of the enhanced oversight. His team had also identified concerns with Mr. Ashraf as he had conducted an electronic verification check which had resulted in a 'fail' outcome. Mr. Hancock explained that an electronic verification check is a process of confirming an individual's identity utilising third party software, such as Experian or Equifax. This is a due diligence requirement in respect of financial crime and must be conducted on all parties involved in a transaction, including any associated donor. When a 'fail' outcome is generated via the screening software, the adviser must submit this to the

Tenet financial crime team for second line due diligence prior to proceeding with any application. In this particular case the customer deposit was being gifted and the 'giftor' had generated a 'fail' outcome. Mr. Ashraf did not submit this to the financial crime team as required by Tenet's process.

58. Mr. Hancock reviewed the concerns and investigated further. His exhibit MH1 sets out the detail which was provided by Tenet's AST and formed the basis of his investigation, as well as his findings as a result of his meeting with Mr. Ashraf on 30 September 2021. We will need to review MH1 and its contents in some detail, and so we have reproduced it in the Annex to this decision.

59. Mr Hancock explained that, having received these four suspicious activity reports, he would start the investigation by logging into the back office system where advisers lodge documents. He would look at the fact finds, other notes and supporting documents. He could then decide whether the concerns raised were valid and this would also give him what he needed to formulate his questions for the interview.

60. Mr Hancock said that, to summarise the investigation, he was concerned that Mr. Ashraf was providing advice to overseas clients which was against Tenet standards. Mr. Ashraf also demonstrated in the interview that he was not exercising sufficient due diligence with his mortgage applications. It appeared that Mr. Ashraf was taking clients' word for their income, expenditure and source of funds, and had failed to evidence the origin of these. Mr. Ashraf also demonstrated that he was unaware of the exact job roles of some of his clients, and whilst discussing the matters with Mr. Ashraf, he appeared 'blasé'. At the conclusion of the meeting on 30 September 2021, Mr Hancock said that Mr. Ashraf admitted that he had not been exercising sufficient due diligence.

61. Mr Fatchett showed Mr Hancock the transcript of the meeting made by Mr Ashraf. In answer to the question "Right ok. So you would say that you failed to act with diligence?", Mr Ashraf said, "Well, I thought I was doing everything fine and being compliant but obviously with these AST checks coming to light and they obviously had a few, fair points which a lot of them were similar kind of points." Mr Fatchett commented that Mr Ashraf was not, in terms, admitting failing to exercise due diligence in the way Mr Hancock suggested.

62. Where Tenet identify gaps in adviser knowledge relating to Financial Crime, Mr. Hancock said they would consider retraining, enhanced supervision and support. Because of the other issues being managed by Ms Ford relating to competency (including the removal of Mr. Ashraf's DB license) his recommendation was that Tenet terminate Mr. Ashraf's authorisation. His investigation report contained information relating to his findings along with information supplied by Ms Ford. This report was submitted to Tenet's Board of Directors for approval, on 11 October 2021.

63. Helen Ball, then Group MD, made the decision to terminate Mr. Ashraf together with Ms Ford. Mr Hancock received confirmation of this by email on 18 October 2021. Before having the opportunity to communicate Tenet's decision to terminate Mr. Ashraf's authorisation, Mr. Ashraf called him on 21 October 2021. Since Mr. Hancock knew that Tenet's decision was to terminate Mr. Ashraf, he informed him of this decision immediately on that telephone call.

64. On the same day, Mr. Ashraf sent Mr. Hancock an email with a "proposed way forward" suggesting that he would surrender his mortgage license, focus on pension and investments only, have regular individual review meetings and have all his cases pre-approved by Tenet. Mr. Ashraf also stated in the email that this proposed way forward would allow him time to become authorised with another network or directly authorised with the

FCA, in a managed way, by 31 May 2022. He forwarded this email for the attention of Helen Ball, Richard Fletcher, and Amanda Ford.

65. On 4 November 2021 Mr Ashraf wrote to Richard Fletcher at Tenet copying in Mr Hancock, Ms Ford and others. In this letter (the “Appeal Letter”) he said that he was following up on the conversation with Mr Hancock and expressed his disappointment at the outcome of what he described as a limited investigation and the way it was carried out. He provided comments on the four cases Mr Hancock had reported on. These are discussed below. Mr Ashraf complained that he had paid significant fees to Tenet expecting to receive support but had received nothing since the beginning of 2020. He also made similar proposals for working in the future to those he had suggested to Mr Hancock.

66. Mr Hancock said that he was not involved in dealing with Mr Ashraf’s appeal and he had not read Mr Ashraf’s transcript of their meeting. As far as Mr Ashraf’s criticism of the investigation were concerned, his response was to query why Mr Ashraf did not raise these points during the meeting, which he must have known was important. When cases are pulled for investigation, they are closed on the portal (so the adviser cannot take any actions on them) and so Mr Ashraf would know which files the AST team had looked at and he would expect an adviser to be familiar with them. He said that it would be perfectly fine for an adviser to produce information after the discussion.

67. As a general matter, Mr Hancock said that Tenet was supportive of advisers unless they posed a risk and were not worth keeping on. He did not think Tenet’s relationship with Mr Ashraf had broken down, but he did think that Mr Ashraf hadn’t done his job properly.

68. Mr Fatchett asked Mr Hancock about the production of his witness statement and exhibit MH1 in particular. This was produced in the Autumn of 2023. In contrast to Ms Egan’s witness statement, no contemporaneous notes had been exhibited. Mr Hancock said that a “CRM”, “Back Office” system was used to record the details and notes of the investigation. Mr Fatchett explained that the Applicant had made an application for third party disclosure from Tenet and the Tribunal had made an order requiring all documents which relate to the investigation into Mr Ashraf which led to his termination to be disclosed. None of the papers now referred to by Mr Hancock had been disclosed.

69. Mr Fatchett asked us to adjourn the hearing and make an order that Tenet disclose all information held on their data management (CRM) system whether in electronic or paper form from the period July 2021 – October 2021 relating to the investigation into Mr Imran Ashraf. Having heard representations from Mr Fatchett and Mr Jones, we decided not to grant Mr Fatchett’s application. In brief, our reasons for this were that:

- (1) The application was being made at a very late stage in proceedings and granting it would significantly disrupt them, particularly as we were told that Tenet had just gone into administration. The balance of convenience was clearly against allowing the application;
- (2) It was clear from looking at the material Tenet provided that there was nothing with a date before 11 October 2021 and so the absence of materials relating to the investigation should have been apparent to the Applicant and its advisers for some time;
- (3) Given that we have Mr Ashraf’s transcript of the meeting with Mr Hancock (which the Authority does not dispute) and given Mr Hancock’s narrative of how investigations are managed, it is not clear what (if anything) of value this exercise would produce that we do not already know. Whilst we could understand why Mr Fatchett would want to review any contemporaneous materials, ultimately the question we are concerned with is whether, based on the evidence currently available, the

Authority's decision not to authorise the Applicant is one which was reasonably open to it and we can deal with that without seeing the CRM records or further evidence of what Tenet thought.

For these reasons (in particular the last one) we considered that it would not be unfair or unjust to the Applicant to refuse this request. Subsequently, as we shall see, in cross-examination Mr Ashraf essentially agreed with Mr Hancock's factual observations in MH1 and, to our mind, that and our ability to reach a conclusion on Tenet's investigation vindicate our conclusion that a further disclosure order (and the delay and disruption that would have caused to these proceedings) would have been unjustified.

70. The regulatory reference provided to the Authority by Tenet reads (so far as relevant) as follows:

“An investigation was initiated after Tenet Advice Standards Team identified some Financial Crime concerns with mortgage files submitted to lenders.

Following a review the investigation identified that MIA had submitted one mortgage application with a deposit disclosed to the lender as a loan repayment from a number of family relatives. MIA later submitted gifted deposit letters from the family donors however, remains insistent that the deposit was a loan repayment. The customer on this case was also a relative of MIA. Tenet have suspicions MIA attempted to conceal the gifted deposit.

MIA on another case submitted a mortgage application suggestive of the clients having permanent residence within the UK however did not evidence the relevant VISA documentation stipulating this fact. MIA proceeded to submit this application as a FTB mortgage application. The clients also owned a property in France. This was not disclosed in detail on the mortgage application however, was documented in the fact find.

On one file, MIA also appears to have provided advice to a customer within the United Arab Emirates which is against Tenet policy.

When we discussed these matters with MIA it appeared that in these cases he failed to challenge the origin of deposits and savings, accepting information customers provided without challenge or evidence. Tenet deem that MIA has failed to act with due skill, care and diligence in the process of mortgage applications and poses a Financial Crime risk to the Network.”

Mr. Ashraf

71. We found Mr Ashraf generally to be a straightforward witness, who answered the questions put to him with a degree of candour which does him credit. The one exception relates to his termination by SJP. He told us, in answer to a question from Mr Fatchett, that he had been terminated for not following internal processes, but Mr Jones put it to him that a key reason for his termination was his fabricating documents. Mr Ashraf said that this was “what they called transparency”. Mr. Ashraf told us that he was completely shocked and very disappointed with Tenet's decision to terminate him. He felt a lot of loyalty towards Tenet, especially as they had been happy to appoint him despite knowing that he had been terminated from SJP. However, he felt that Tenet used this information against him, knowing that it would be extremely difficult for him to continue in his career having been terminated from his last two appointments. Mr. Ashraf says that a lot of what he outlined in his Appeal Letter to Tenet was completely ignored. He considers that Tenet dealt with him unfairly throughout the entire investigation Mr. Ashraf gave us his thoughts on the four cases discussed in MH1:

(1) Client 1 – Mr. Ashraf says that he questioned the client during the meeting to ensure the client was in the UK. He could see that it was daylight outside, leading him to assume that the client was in the UK rather than the UAE. Given the time in the UK, it would have been dark in the UAE. In cross-examination, Mr Jones suggested to Mr Ashraf that, given the time of year (April – when days are lengthening and there is a 3-hour time difference with the UAE) that was a rather weak basis for proceeding. The Suitability Letter states that the client was in the UK at time of meeting and this was signed by the client. The AST’s query about the credit card transaction was addressed and no evidence had been produced to suggest why the transaction might be problematic. Mr Ashraf disputed Mr Hancock’s note (in MH1) that the case had not been submitted for second line checks and exhibited a Tenet Watch List Reporting Form which showed the transaction being referred.

(2) Client 2 - The lender and the conveyancer both had their own stringent tests on the source of funds from the client and were satisfied with the source of funds for the deposit. The mortgage was approved and completed in June 2021. Mr. Ashraf exhibited the Supporting Notes document, which was sent to the lender a day after submission of the application and prior to approval. This outlines the situation with the deposit and also had 2 signed gifted deposit letters attached. The document explains that the deposit was funded in part by family members repaying loans (which were not formally arranged and had no specified repayment or interest terms) the clients had made to them. The “gifted deposit” letters were signed to confirm that the person repaying the money would have no claim on the property. Mr Ashraf disputes the suggestion in MH1 that the “gifted letters” were removed from the system. He says that, as an adviser, he cannot do this. He did not say that he got the gifted letters to satisfy Tenet’s requirements; in lay terms (as he put it) these transactions could be seen as gifts and, as he said in his Appeal Letter, the deposit came from a mixture of funds gifted and savings. In his Appeal Letter he attached bank statements to show the source of funds for the deposit.

(3) Client 3 - Both clients’ visas were held on the file and were submitted to the lenders (Barclays and Clydesdale). If a client is not a British Passport holder, there is a requirement as part of the mortgage application to send proof of identification as well as the client's visa. In the Barclays application it was incorrectly recorded that the clients were UK permanent residents. However, an email from Barclays confirmed that they received the Visa prior to approval and there is also a record of visa information being sent to Clydesdale. Mr Ashraf says that the note that suspicions remained (the penultimate bullet) is an assertion by Mr Hancock. The documents show that the lenders had copies of the visas.

(4) Client 4 - There were notes at the end of the application confirming the client residency status. Mr Ashraf says that the fact find shows that the clients were resident in the UK, not France (as stated on MH1). This was already on the client's file and submitted as part of the application. Mr. Ashraf exhibited the HSBC Application Summary which recorded that both clients held Indefinite Leave to Remain status in the UK. The lender was fully informed about the clients’ residence history. Mr Ashraf explained that the standard HSBC lending criteria requires a client to have been UK resident for at least 12 months. There is an exception for HSBC Premier clients, but the HSBC system does not accommodate this. Mr Ashraf had been told by a HSBC executive to complete the form on the basis that the clients had been UK resident for 12 months and then explain the position in the notes at the end of the form. Mr Ashraf (in his Appeal Letter) said that mortgage lenders’ usual classification for a first-time buyer

is someone who has not owned a UK property in the last 6 months. The clients met that test as they owned a French buy to let property and did not own any UK property. In any event notes submitted as part of the HSBC application explained this. Mr Hancock had pulled this up in the meeting and was satisfied. Both the lender and the conveyancer were satisfied, and the mortgage went ahead. Nevertheless, Mr Jones suggested to Mr Ashraf that “first-time buyer” is not a difficult concept and put to Mr Ashraf that, at best, he guessed what it meant. Mr Ashraf said that this was his understanding, although he agreed that he had not taken any steps to confirm his understanding.

72. In cross-examination, Mr Jones took Mr Ashraf through the factual bullets in MH1 and Mr Ashraf agreed that they were correct, although he still felt that the note did not reflect the points he made to support his position. His Appeal Letter (when he was better prepared) gave his best explanation. It explains (with documents to support the assertion) that lenders were fully informed. He thinks Tenet approached him with their minds made up and he does not think his Appeal Letter was properly reviewed. As far as the meeting with Ms Ford is concerned, he does not think he was seriously in breach of Tenet policies. They were more concerned with recouping lost fees, where he had not made a full charge.

73. Mr Ashraf was dual authorised. All these issues arose from TFS. He showed us two references. One was from the Managing Director of Unieq Prestige. It was addressed “To whom it may concern” and said that:

“In the time he worked with us we found Imran to be honest, hardworking and diligent.

Imran is a very experienced Financial Adviser and built up a good rapport with our clients working with them in a professional and helpful manner.”

The second reference (again given generally) from Mr Nigel Love of Love Financial Services says:

“I have been asked to provide a reference for Mr Ashraf, as his former employer. I have found the work completed by Mr Ashraf to be of high quality. He is a knowledgeable and conscientious (sic) advisor that always puts his clients first.

Whilst Mr Ashraf is no longer linked to the business at the time of leaving, there was no issues in terms of compliance, client satisfaction or any reason to doubt the professionalism of this advisor.”

MR. ASHRAF’S ACTIONS AFTER TERMINATION BY TENET

74. After leaving Tenet Mr Ashraf said that he spoke to a total of 14 different regulated firms and the first meeting always went really well. He fully disclosed what had happened with the investigation with Tenet and was told that it should not be an issue, but that “we will just need to see what the regulatory reference says”. The next working day Mr Ashraf would get a call telling him that the compliance officer was unable to sign his engagement off, as they did not know how they could justify the appointment to the Authority.

75. Mr Ashraf said that the only option left to him to ensure that he could carry on in the profession, in which he had invested over 16 years of his time, was to submit an application to be directly authorised by the Authority. He felt confident that a case officer would take a thorough look at his application, look past the word termination (which the other network firms seemed unable to do) and review his case on its own merits.

76. In cross examination, Mr Ashraf was taken to the Authority’s note of an engagement and competency interview with Mr Ashraf on 17 June 2022. He was asked what his

contingency plans were if the Applicant's authorisation application was not approved. Mr Ashraf said that he had some contacts in the industry and would speak to them to see if there was a way for him to be authorised through a network or different advisory firm. Mr Jones put it to Mr Ashraf that his account in his witness statement does not square with what he told the Authority. Mr Ashraf said that he did not want to look desperate in front of the Authority and what he told them was a "white lie".

77. In the same meeting Mr Ashraf was asked about his termination at SJP. He said they were "unhappy with the process I was following in regards to providing advice to my clients", but made no mention of SJP's concerns about his lack of transparency.

78. Mr Ashraf was also taken to a supplementary information form (FCA Form A) dated 2 April 2022, where he made a statement about his termination by SJP. Again, he gave the reason as failing to comply with internal procedures but did not mention SJP's transparency concerns.

THE APPLICANT'S SUBMISSIONS

79. Mr. Fatchett said that the Applicant does not dispute any of the facts around Mr Ashraf's termination at SJP. However, the Authority's own guidance admits of the possibility of rehabilitation and for matters to be reviewed in context. The 2021 termination by Tenet is the primary issue here.

80. As far as the Tenet termination is concerned, there are two parts to this. The first was the meeting on 16 September 2021 (with Ms Ford / Mr Forbes). The second relates to Mr Hancock's investigation and the meeting on 30 September 2021.

81. Ms Ford in her own evidence stated that the issues raised by her were individually minor and in the main commercial matters. Mr Fatchett submits that on no sensible analysis would these be regulatory-based termination reasons.

82. The second half of the termination recommendation is based on Mr Hancock's recollection. It is not contemporaneous. The only contemporaneous note was produced by Mr Ashraf, who transcribed what was said in the Teams meeting. This transcript has never been challenged. The "admissions" referred to by Mr Hancock do not appear in the transcript. During the authorisation application process the Authority should have obtained further information from Tenet. The Authority acted unreasonably in failing to do so. The SUP15 and the regulatory reference do not make it clear to the reader that much of what Tenet said was disputed.

83. The reasons Mr Hancock gave for recommending termination of Mr Ashraf have been disputed throughout. The Authority knew of Mr Ashraf's appeal to Tenet in November 2021. The Appeal Letter contains all the information rebutting the termination reasons. The Authority should have been aware of the "dispute" and addressed their minds to the evidence. Their approach seems to have been simply to rely on the Tenet SUP15 and reference and then double down. This approach is unreasonable as it does not discharge the basic need to investigate matters properly. The Authority approached the Tenet witnesses and, as part of that process, should have looked into the evidence which it is said supported "MH1". The lack of a probing investigation by the Authority means that they effectively relied on what Tenet said without properly looking into all the evidence provided by Mr Ashraf.

84. The statements of Mr Ashraf's future intention in his written statement (in February 2024) and in interview to the Authority (in June 2022) were both true when made. Mr Ashraf has exhibited two positive references and it was reasonable to think that he could get a position with another firm. It was only after trying and failing with 14 firms that Mr Ashraf decided to change tact and look to be authorised on his own account.

85. The Authority should have considered the evidence which explains why the mortgage cases (in MH1) should not be a concern.

86. Mr Fatchett submits that, taking the evidence in context, looking at the lack of depth in the investigation of the documentation provided by Mr Ashraf, the partial disclosure by Tenet and the lack of contemporaneous evidence provided by them, the Authority acted unreasonably. There could be no reason for the Authority not properly to look into the heavily contested investigation by Tenet. The Authority appear to have simply relied on the Tenet investigation and termination without properly testing it. In these circumstances, the Authority acted unreasonably in not properly investigating. If it had, then the contemporaneous notes and documentary evidence of compliance in the mortgage cases would have resulted in a different decision.

THE AUTHORITY'S SUBMISSIONS

87. Mr. Jones says that the Authority clearly satisfies the first stage test in *Köksal*. Its reasons are well explained and well-reasoned in the Decision Notice. That Decision Notice is founded on two regulatory references from Mr. Ashraf's two previous principals. This was reinforced by the competency interview with Mr. Ashraf, from which the Authority formed the view that Mr. Ashraf did not appreciate the seriousness of the issues identified and the potential for resulting consumer harm. The Decision Notice considered the commonality in the issues raised about Mr. Ashraf by the two principals and properly considered, and responded to, representations made on behalf of the Applicant. Mr Fatchett did not raise any argument that the Authority failed the first stage test, and we agree with Mr Jones on this point.

88. As regards the second stage in the analysis, whether there are there matters justifying remittance to the Authority for reconsideration, Mr. Jones says that the Applicant has not come anywhere near identifying any such matter.

89. As far as the SJP reference is concerned, the evidence received little challenge from Mr. Ashraf. It was not put to Ms Egan that her findings were incorrect. Indeed, under cross examination, Mr. Ashraf, accepted that the findings made by Ms Egan concerning (i) virtually identical client fact-finds; and (ii) breach of SJP's processes in completing client declarations were correct. Mr. Ashraf also admitted that he had fabricated missing suitability letters, to give to Ms Egan, albeit that he maintained he was merely creating letters he thought he had already sent.

90. It is wrong to say that the SJP reference is too old to be considered, or to be given much weight at all. That may be a relevant factor, but it is not determinative. Mr. Jones points to three matters here:

(1) In this application for Authorisation, Mr. Ashraf omitted all reference to the fabrication of suitability letters as a reason for his dismissal. Mr. Ashraf was not transparent about concerns over his lack of transparency. The SJP regulatory reference accordingly remains current, evidencing a concern that appears in the application for Authorisation.

(2) This lack of transparency was also apparent from Mr. Ashraf's oral evidence. Under cross-examination the contrast between (i) Mr. Ashraf's witness statement, where he said repeated failures to secure an alternative appointment prompted the application for authorisation and (ii) the Competency Interview, where it was suggested that a failure to secure authorisation would result in Mr. Ashraf seeking authorisation as an AR under a third principal was explored. When challenged that both could not be

true Mr. Ashraf admitted that what he told to the Authority was a “white lie” because he did not want to appear desperate in his application.

(3) Third, the contention that the SJP regulatory reference is of limited importance because the Authority was prepared to authorise Mr. Ashraf as an AR under Tenet in 2015 is misplaced. As discussed during the cross-examination of Mr. Ashraf, the Authority was concerned about the matters in the SJP regulatory reference. The Authority was concerned about the regulatory reference, but was comforted by the regulatory oversight Tenet promised. The absence of this ongoing oversight was a key factor in the decision to refuse authorisation.

91. As regards the Tenet termination, Mr. Ashraf has multiple criticisms of how Tenet dealt with him. However, so far as the factors discussed in MH1 are concerned, it is striking how few of the factual points Mr. Ashraf disagreed with when taken through MH1 in cross-examination. The factual narrative in Tenet’s reference is borne out. The reference contains value judgments (most importantly, that “Tenet deem that [Mr. Ashraf] has failed to act with due skill, care and diligence in the process of mortgage applications and poses a Financial Crime risk to the Network.”) but these are all judgments open to Tenet based on the facts they explored.

92. Mr. Ashraf says that the Tenet regulatory reference makes a series of minor points and inflates them to an unwarranted and unjustified degree. Mr. Jones does not agree that deliberately completing forms for mortgage applications incorrectly, or with at best wholly confusing information as to the source of the deposit, are minor points. Even if the Tribunal and/or the Authority were to accept that the points relied upon by Tenet were minor, the concerns are still of a severity to lead to this reference and this Decision Notice; one minor point is a minor point, a multitude of points is an issue.

93. Mr. Jones says that, considering the two regulatory references, there can be no serious contention that the Authority did not properly balance the evidence before it in reaching a decision. The references indicate significant and serious failures. Furthermore, there is a commonality in the failures identified by SJP and Tenet. Mr. Ashraf failed, at both principals, to follow proper procedure. This is accordingly a pattern of conduct. Patterns of conduct from an advisor who had been engaged in the industry since 2006 are concerning and rightly taken into account. The two rather limited positive references (at [73] above) do not alter the important and determinative effect of the two regulatory references.

94. He also says there is a commonality in the lack of transparency demonstrated by Mr. Ashraf during the SJP investigation and this Application.

95. Finally, there is nothing in Mr. Ashraf’s contention that certain failures can be put to one side as they relate to mortgages, which will not form part of the Applicant’s business. Proper process, proper fact-find, proper steps to avoid and mitigate the risks of financial crime apply across the spectrum of providing financial advice. The failures identified are clearly relevant.

DISCUSSION

96. Before turning to make our findings of fact and reach our conclusions, we should remind ourselves of three important points. Firstly, the scope of the matter referred. As set out at [15], the matter which has been referred to us is the question whether it was reasonable for the Authority to conclude that the Applicant did not meet the threshold conditions for authorisation. Mr Fatchett made a great deal of what he said were shortcomings in the investigation by Tenet and of the Authority’s failure to follow up on Mr Ashraf’s criticisms of Tenet’s investigation. However, as we observed at [12], this is not an appeal against the

Authority's Decision, still less is it some form of judicial review of the process the Authority went through to reach its Decision. The matter we are concerned with is the question whether it is open to the Authority to conclude that the Applicant did not meet the threshold conditions for authorisation. That question is to be considered in the light of all the evidence and arguments before the Tribunal, potentially including new material, which is why the matter referred is not limited to being an appeal against or a review of the Decision. We should also note that Mr Ashraf is clearly very aggrieved by Tenet's treatment of him. It is no part of our role to consider whether he is right to feel aggrieved, or whether he has any claims against Tenet arising out of the way they dealt with him. It does not, however, follow that any shortcomings in, or valid criticisms of, Tenet's investigation or the Authority's processes are irrelevant, as they may impact on how we evaluate the evidence we have in front of us. But they are neither the matter before us nor, of themselves, determinative of that matter.

97. Secondly, the question is whether the Decision was one which was reasonably open to the Authority. The question is not whether we agree with the Decision or whether, still acting reasonably, we or the Authority could have reached a different decision.

98. Finally, we remind ourselves of what it was that the Authority decided. The Authority decided that it was not satisfied that the Applicant, if authorised, would satisfy and continue to satisfy the threshold conditions in section 55B(3) FSMA. The Authority did not decide in terms that Mr Ashraf was not a fit and proper person to carry on any regulated activities in any circumstances at all and impose a prohibition order on him. Essentially, the Authority's decision was that it was not appropriate for Mr Ashraf to carry on regulated activities effectively unsupervised.

Matters other than those covered by Tenet's investigation

99. Before examining the more contentious issues, which arose out of the Tenet termination, we summarise the other issues relevant to the Application in relation to which there is less controversy.

100. Firstly, Mr Ashraf will be the only proposed adviser at the Applicant. Mrs Ashraf will be employed by the Applicant, but she has no qualifications or experience in this field, and it was not established either that she would be an alternative source of regulated advice for clients or that she would represent a robust counterweight to or check and balance on Mr Ashraf.

101. Dealing with identified issues of concern in chronological order, we start with the reference from HSBC in April 2015. This reported to the Authority that, although it had not been necessary to discipline Mr Ashraf, there had been three justified complaints against Mr Ashraf relating to unsuitable or misleading advice. It was suggested that one of these incidents may have been "double reported", so that in fact there are only two justified complaints. Subject to this point, the accuracy of the HSBC reference was not disputed by the Applicant.

102. In March 2015 Mr Ashraf was terminated by SJP. As reported by SJP to the Authority, Mr Ashraf had not completed client reviews and suitability letters before proceeding to give advice. He had also not been transparent. What not being transparent means here is that Mr Ashraf had, as he admitted at the time, fabricated documents provided to Ms Egan as part of her internal investigation. Although Mr Ashraf claimed that he had simply been recreating documents he was sure existed, it is nevertheless the case that, without admitting this until confronted with the evidence of what he had done, he deliberately falsified documents during an investigation. Ms Egan's evidence was that SJP is prepared to retain and retrain advisers

where file quality is the concern. However, with Mr Ashraf there was the additional concern around his honesty.

103. We do not accept that very serious matters such as this will ever cease to need to be considered when dealing with an authorisation application, although we do accept that an individual's subsequent behaviour may lessen or even completely purge the impact of past failings. Here, however, we have an individual who has fabricated documents seeking effectively to be allowed to operate without oversight. Not only that, we also see the same individual continuing to be less than transparent with the Authority, both in writing and in interview, in relation to this behaviour.

104. Whilst at Tenet Mr Ashraf's DB licence was withdrawn. Mr Ashraf suggested that Tenet were withdrawing all DB licences from advisers, but the evidence from Ms Ford is that decisions to take away advisers' DB licences were based on the quality of their work. We found Ms Ford to be a fair and balanced witness, as can be seen from some of her comments (for example at [53]). For that reason and because she would be more likely than Mr Ashraf to know why Tenet withdrew DB licences from advisers, we prefer her evidence and find as a fact that Mr Ashraf's DB licence was withdrawn from him because of the quality of his work.

105. In addition, we have the pension switching cases. The reviewer's comments, set out at [35], are scathing. We accept Mr Ashraf's point that Tenet had not reported any of this to the Authority (which is something we are troubled by, as this seems to us to be a potentially very serious allegation involving actual or potential customer detriment), but we are not prepared to ignore it on that basis. The evidence, at [35] and [50], suggests that Mr Ashraf was switching clients from one pension provider to another for no good reason, potentially risking poor client outcomes, when the only effect of the switch would be to generate a fee.

106. We should note the other points identified by Ms Ford. Although Mr Fatchett suggested that her meeting with Mr Ashraf might have been something of an ambush, there was no serious dispute around the concerns Ms Ford identified. These were the pension transfers we have just discussed, Mr Ashraf's inconsistent charging policy and use of unapproved introducers. With the exception of the pension switching cases (which seem to us to at least have the potential of being quite serious), we accept, as Ms Ford herself did, that these are relatively minor issues which could be addressed by training, although the inconsistent charging point does engage the regulatory duty to deal with clients fairly. At [45] we have noted the shortcomings in Mr Ashraf's engagement with clients and compliance with process requirements which became apparent after he left Tenet.

107. Finally, we have the narrative given by Mr Ashraf to the Authority in relation to his plans. We accept Mr Fatchett's submission that the statement in Mr Ashraf's witness statement was correct when it was given. We do not accept that the statement that Mr Ashraf made to the Authority in his competency interview was correct when it was made. The narrative in Mr Ashraf's witness statement makes it abundantly clear that, when the Applicant applied for authorisation, it did so because of difficulties Mr Ashraf was encountering in finding employment in this sector. His regulatory history was, to put the point colloquially, making him too hot to handle. Mr Ashraf was asked a direct question by the case officer about what his plans would be if the Application were turned down. In order not to look desperate in front of the Authority (as Mr Ashraf put it), he suggested to the Authority that he had lots of alternative avenues open to him, whereas the truth of the matter was that none of the other regulated businesses he had approached were prepared to employ him once they understood his regulatory history and every avenue he explored turned into a cul-de-sac. The attitude of the wider financial services community to Mr Ashraf was

something the Authority would have an obvious interest in understanding, but Mr Ashraf hid that from the Authority.

108. If we pause here and take stock of the evidence we have just reviewed, we can see why the Authority might be concerned with the idea of Mr Ashraf conducting regulated business effectively on his own and unsupervised. He has a history, evidenced by the terms of his departure from SJP and what Ms Ford told us Tenet had discovered after he left, of not documenting advice in the way required or following procedures established to secure good outcomes for clients. He also has a history, evidenced by HSBC's reference, the withdrawal of his DB licence by Tenet and their findings in relation to his pension switching advice, of giving advice of a doubtful quality. These features of Mr Ashraf's record would justify the Authority being concerned about features (b), (c) and (g) of Threshold Condition 2E. In addition, we have the evidence of his lack of transparency during the SJP investigation and (much more recently) in the way he disclosed to the Authority the circumstances around his departure from SJP and his plans were the Application to be unsuccessful. These features would justify the Authority being concerned about feature (b) of Threshold Condition 2D and features (d) and (e) (and in consequence (a)) of Threshold Condition 2E.

109. We can see, based on these factors alone, why the Authority would be concerned by the idea of allowing Mr Ashraf to work effectively unsupervised. They harboured a similar concern in 2015, but in that case their worries were allayed by Tenet's promise to exercise appropriate supervision of Mr Ashraf. Concerns about advice quality, compliance with required processes and transparency remain, but no equivalent oversight to that promised by Tenet in 2015 is available here. Based on these considerations alone, we would be satisfied that the Decision was one which was reasonably open to the Authority.

Matters covered by Tenet's investigation

110. Turning now to the disputed Tenet investigation, Mr Hancock reviewed Mr Ashraf's work in relation to four clients. As we have already noted, Mr Hancock's factual findings were set out in MH1 and Mr Ashraf was broadly content with Mr Hancock's statements of fact set out in MH1. Where Mr Ashraf parted company with Mr Hancock is in his failure to record his explanations. In his Appeal Letter he explained what he had done in relation to each of these clients. We note that Ms Ford accepted that Mr Ashraf had provided valuable additional material, which ought to have been considered.

111. As far as Client 1 is concerned, Mr Ashraf disputes Mr Hancock's note that the case had not been submitted for second line checking and exhibited a document which showed the transaction being referred. On that basis, we find that the transaction was submitted to Tenet for second line checks and the purported finding of fact in the penultimate bullet under the heading "Client 1" in MH1 is not correct. As far as the location of the client at the time of the conversation is concerned, MH1 refers to credit card transactions, but no detail is given about this. Mr Ashraf says that the query about the indications given by the credit card transaction had been satisfactorily resolved with the AST, although he does not say on what basis. He does, however, say that no evidence had been put forward to indicate why the credit card transaction should be a problem. In any event, he had stressed to the client the importance of being in the UK at the time, the suitability letter signed by the client confirms that this was the case and, as far as Mr Ashraf could tell, it looked as if the client was in the UK at the time. The balance of the evidence, such as it is, points towards the client being in the UK at the time (there is certainly no evidence to suggest that they were not) and we find as a fact that the client was in the UK at the time of the conversation with Mr Ashraf. On that basis, we find that there is nothing in the criticisms made by Mr Hancock of Mr Ashraf in relation to his dealings with Client 1.

112. Turning to Client 2, although the Halifax mortgage application stated that the deposit came from savings, it would seem that, at least in part, some of the funding came from transactions which took the form of repayments of informal loans between family members. Mr Ashraf himself accepted that he could see how in lay terms these transactions could be regarded as gifts. However, in supporting notes sent to Halifax on the day after the mortgage application was sent in, Mr Ashraf explained the sources of the deposit money and these notes make it clear that the loans were not formally arranged and had no repayment terms. Neither the Halifax itself nor its advisers were concerned by these disclosures and the mortgage application was approved. Mr Ashraf does seem to have failed to carry out verification checks on one of the individuals who was a source of funds and he also failed to obtain and review bank statements as required.

113. Turning to Client 3, it was incorrectly stated in the Barclays mortgage application that the clients were UK permanent residents. However, there is an email from Barclays confirming that they received the visa prior to approval and there is also evidence that the visa information was sent to Clydesdale. So, although the form may have been incorrectly completed, information giving the full picture and correcting the error was sent to Barclays before they approved the mortgage.

114. Finally, turning to Client 4, it seems to be the case here that the clients had not been UK resident for at least 12 months. Mr Ashraf completed the “front end” of the mortgage application on the basis that they had been UK resident for longer than was the case. However, the mortgage application makes the true position very clear, and Mr Ashraf says that this was how HSBC themselves told him to fill the form in, so that it was not arbitrarily rejected at the first stage. Mr Ashraf’s second error in relation to this client was to certify that they were a first-time buyer, whereas they already owned a buy to let property in France. He was clearly mistaken in his understanding of what a first-time buyer is and seems to have taken no steps to check that. However, our understanding is that no advantage accrued to Mr Ashraf’s clients from being characterised as a first-time buyer and therefore nothing really turns on this point.

115. The upshot of all this is that the only real failing on Mr Ashraf’s part, once his explanations and additional evidence are considered, was his failure to carry out the required identity checks on all those involved in the Client 2 transaction and not to collect supporting financial data (bank statements) in time. A failure to do this clearly creates some exposure to the risk of financial crime.

116. Mr Ashraf says, and it is not disputed, that this was his first mortgage application at Tenet including a gifted deposit, but this does not excuse his failure to obtain the required evidence of identity or obtain copy bank statements, so that he could check the money movements behind the original loans.

117. If the failings summarised at [115] were Mr Ashraf’s only shortcomings, we would have held that the Authority’s Decision was not one which was reasonably open to it. However, this is not the only instance of Mr Ashraf failing to follow proper procedures, nor is his failure to follow due process the only reason why the Authority’s might reasonably be concerned by the idea of authorising the Applicant.

OUR OVERALL CONCLUSION

118. Whilst we do not consider that Tenet’s investigation into Mr Ashraf justified the reference they provided to the Authority, there is, as we concluded at [109], more than sufficient other evidence before us to place the Decision well within the spectrum of regulatory responses open to the Authority.

DISPOSITION

119. For the reasons set out above, we are satisfied that the Decision was one which was reasonably open to the Authority.

120. The Reference is dismissed.

**MARK BALDWIN
UPPER TRIBUNAL JUDGE**

Release date: 02 September 2024

ANNEX
(verbatim copy of MH1)

MH1 Summary of the information provided by the Advice Standards Team (AST) which formed the basis of my investigation, the further information gathered during my investigation, interactions with Mr. Ashraf and findings.¹

Client 1

- Client meeting was held via a video call.
- Tenet identified transactions on the client's credit card were made in the UAE on and around the date of the meeting.
- When questioned Mr. Ashraf stated that the client was in the UK and that he had asked the client on the call although, the calls were not recorded.
- There appeared to be a link with [a particular firm of] solicitors ... – one letter has been signed by an individual with the same surname as the client's brother and sister-in law however, Mr. Ashraf stated that this was a family friend and had been involved in a number of his cases.
- The ID on file had been certified by a solicitor in the UAE. This case had failed EVI checks which had not been submitted to Tenet for 2nd line checks.
- In interview, Mr. Ashraf explained that he understood Tenet's policy in respect of providing advice overseas.

Client 2

- This was a case for a family relative.
- The adviser has stated in the FF that the deposit was from the client's own bank account – savings
- The Halifax application form dated 12th May 2021 also says that the deposit is from savings
- On querying the large credits to the clients account which has formed most of the deposit monies the adviser has stated that the money originated from:
 - o £1,400 her mother owed her some money -paid back
 - o £3,000 and £20,000 and £10,000 brother owed her some money
 - o £15,000 - Dad paid back loan
 - o £20,000 - Mum paid back loan
 - o Parents spent £40,000 on home improvements and client helped them out and now they have repaid.
- Mr. Ashraf stated that these funds are not gifts - but repayment of money lent to family members. Which have been called in to facilitate purchasing the property.
- Further evidence was requested however, Mr. Ashraf only provided the following explanations:
 - o Mrs lent brother funds to purchase property in 2018 (£33,000)
 - o Mr. lent parents £40,000 in 2014 to complete home improvements. No statements from these dates.
 - o Technically the deposit monies are from savings, from their income. Both Mr. & Mrs saved money, they didn't need the funds in 2014 and 2018 but their family did so they lent out these funds and have since re-couped their own savings back from family.

¹ This is the text of MH1 as exhibited by Mr. Hancock, subject to minor redactions to protect the identity of the underlying clients.

- Mr. Ashraf stated that the lender is aware of these credit and even got giftors to sign gifted deposit letters. These were attached to iO.
- Following on from AST feedback, the gifted letter was on iO between 8th August and the 18th August however, these were removed.
- Mr. Ashraf confirmed in interview that he simply got the gifter letter to satisfy lender and Tenet requirements confirming again that the funds were not gifts.
- Mr. Ashraf did not verify the source of these funds from the initial 'family loans' dating back to 2014 and 2018.
- There was no proof of ID&V checks being completed on the second gifter. In interview Mr. Ashraf stated that he had forgot.
- Mr. Ashraf did state that he added this detail into the supporting notes of the mortgage application
- Mr. Ashraf also stated that he has now retrospectively obtained the bank statements
- Tenet were concerned that the payments from the family loans did not amount to the values input on the gifted deposit letter and the payments were sporadic.
- There were also transactions of £20,000 from the clients account made to the gifter earlier in the year which related to the parents paying off their mortgage. Mr. Ashraf had also completed this case which he states took a considerable amount of time due to this relating to an Islamic mortgage.

Client 3

- Both clients are from South Korea
- Mr is a senior manager for XXX (Mrs not working) his earned income is stated as £107,681.52 gross pa (£5112.57 net pm)
- The case related to a let 2 buy in order to release funds to purchase a main residence
- The client's bank statements show income and expenditure are far in excess of the client's earned income or stated expenditure and appear to show a lot of online trading (Jan £20458 in and £22038 out, Dec £22589 in and £23494 out, Oct £34768 in and £33948 out).
- When questioned the adviser explained that the client had an interest in investing and when a buying opportunity arises, he invests smallish sums to cover his buy in for that certain investment. Also when he cashes out of his investments, as he has a number of different investments he has to sell down each share individually and so receives lots of credits into his account due to this.
- The adviser also stated that when he has spare cash in his account he looks at investing, this is why smallish sums are invested on a regular basis.
- In the interview, Mr. Ashraf explained that this client also had significant bonuses and would have receiving funds for moving to the UK as part of the relocation package.
- The Barclays application form has been completed to say that the UK is the clients Country of Permanent residence, but the residence permits are only valid until 2024
- When questioned, the adviser stated that UK is the client's country of residence. The adviser stated that both Barclays and I are aware that the clients are on a Visa that is why I have a copy of their Visa on file
- Suspicions remained that this was inaccurately disclosed to the lender due to the right to remain only valid until 2024.
- Mr. Ashraf had disclosed to the lender that the clients were 'permanent resident'

Client 4

- The FF states that the clients are French nationals and that their Country of residence is France

- An address of YYY was provided in the FF for both clients as their current address and ZZZ provided as a previous address for Ms
- The application form shows ZZZ as BOTH clients address with a move in date of 1/12/19
- Application form dated 15/1/21
- Client's address is in the UK. He works for a Singapore based company, gets paid in SGD but has relocated to the UK to live in the property he is purchasing with his wife.
- It was confirmed on the employed reference that the client is relocating to the UK
- The mortgage application has been completed that the clients are FTB but the FF shows that the clients own a property in France with a mortgage and different addresses disclosed on the Fact Find located in the UK.
- When questioned Mr. Ashraf stated that normally for the purposes of mortgage applications in the UK a first time buyer is classed as someone who has never owned a UK property or hasn't in the past 6 months. Mr. Ashraf stated These clients fit this criteria however according to HMRC, FTB are classed as a first-time buyer, you "must not, either alone or with others, have previously acquired a major interest in a dwelling or an equivalent interest in land situated anywhere in the world".
- In the interview, Mr. Ashraf could not describe the employment role of the female client.
- Mr. Ashraf stated that he was told by HSBC to input the applications like this to ensure that they are picked up by an underwriter to manually underwrite however, given the answers provided it is suspected that the questions were answered in a way that manual underwriting would not be required.
- Suspicions remained as to whether the client was in the UK at the time of the advice