



**Unauthorised person – prohibition order – not to perform any function in relation to regulated activities – prohibition order should be issued**

**Case No: FS/2011/0008**

**IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)**

**FINANCIAL SERVICES**

**BETWEEN**

**DEREK WILLIAM WRIGHT**

**The Applicant**

**- and -**

**THE FINANCIAL SERVICES AUTHORITY**

**The Respondent**

**Tribunal: Terence Mowschenson Q.C. (Chairman)  
Terence Carter  
Nicholas Douch**

**Sitting in London in public on 9 February 2012  
The Applicant in person  
Sarah Clarke instructed by, and for, the Respondent**

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## DECISION

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### **The Reference**

1. On 23 February 2011, the Financial Services Authority (“the Authority”) gave Derek William Wright (“Mr Wright”) a Decision Notice informing him that the Authority had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (“FSMA”), to make a prohibition order in respect of him, on the grounds that he is not a fit and proper person to perform any functions in relation to any regulated activities carried out by any authorised person, exempt person or exempt professional firm (“full prohibition”). The basis for this Decision is that the Authority considered that Mr Wright lacks the requisite honesty, integrity, competence and capability to perform any such functions.
  
2. On 22 March 2011 Mr Wright referred the Decision to the Tribunal stating that:
  - 2.1. The Authority’s decision was neither fair nor proportionate;
  - 2.2. He was not “a fundamentally dishonest man”;
  - 2.3. In his “very limited role” as an Introducer Appointed Representative he poses a minimal risk to the financial system; and

- 2.4. He accepts that he lacks the competence and capability to perform a governing controlled function for an authorised firm, and accordingly would have accepted an order that he be prohibited from performing such a governing controlled function.
3. Mr Wright conducted the reference himself and did not give evidence. No oral evidence was heard. The facts of the reference were in large measure agreed and the matter proceeded by reference to the documentary evidence placed before the Tribunal.
4. The issues for the Tribunal at the hearing were:
- 4.1. Whether Mr Wright is fit and proper.
  - 4.2. Whether a prohibition order should be made; and if so,
  - 4.3. The terms of any prohibition order.
5. As noted above, Mr Wright accepted that he was not competent and capable to perform a governing controlled function for an authorised firm and would have accepted a limited prohibition. However the Authority contended that Mr Wright was not fit and proper, in addition to lack of competence, due to his lack of honesty and integrity. As a result of the Authority's determination that Mr Wright lacked the requisite degree of honesty and integrity it determined to impose a prohibition order in the broad terms set out above and not restricted to the carrying on of controlled functions or regulated activities.
6. The power of the Authority to make a prohibition order in the terms set out above was not challenged. The basis upon which the Authority acted in determining to make the order was to have regard to its published guidance contained in the Enforcement Guide ("EG"), and in the Enforcement Manual ("ENF") which is no longer in force but applied prior to 28 August 2007, and in the Decision Procedure and Penalties Manual ("DEPP") which came into effect on 28 August 2007. The Authority will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms and may exercise those powers where it

considers it necessary to do so to achieve any of its statutory objectives which include the protection of consumers and financial stability: section 2 (2) of the Financial Services and Markets Act 2000.

7. ENF 8.8 provides guidance on the Authority's exercise of its powers to make a prohibition order against an individual who is not an approved person. It will consider doing so where the individual has shown himself to be unfit to carry out functions in relation to regulated activities. The Authority will consider the individual's fitness and propriety where it considers that the individual has been involved in conduct which calls into question his honesty, integrity or competence or where he appears likely to pose a serious risk to consumers or confidence in the financial system in the future. Amongst the factors taken into account when assessing honesty and integrity are the individual's openness and honesty in dealing with regulators ( ENF 8.8.3) and the criteria for assessing the fitness and propriety of approved persons contained in FIT 2.1 (honesty, integrity and reputation) FIT 2.2 and (competence and capability).

### **The Background**

8. Mr Wright, who will be 68 in March 2012, was the controller of a small insurance broker Moorgate Insurance Agencies Limited ("Moorgate"). Mr Wright has never been an approved person. Moorgate's only director and approved person was Mr Wright's wife Mary Dorothy Wright ("Mrs Wright"). However Mr Wright was in reality the sole controller of Moorgate. Mr Wright accepts that this was the case.
9. Moorgate traded from 1997 without the need of authorisation, but in 2004, changes in the regulatory background mean that authorisation was then required.
10. On 31 October 2004, Moorgate was authorised pursuant to section 31 of the Financial Services and Markets Act 2000 ("FSMA") to sell regulated mortgage contracts and on 14 January 2005 to sell regulated insurance policies.

11. On 9 June 2008, Moorgate voluntarily varied its permissions so that it was no longer able to conduct regulated activities.
12. On 10 June 2008, Moorgate's business was transferred at Mr Wright's instigation, to another insurance broker, Broker Firm B.
13. On 20 August 2008 the Authority cancelled Moorgate's Part IV permissions upon Moorgate's application.
14. The Authority relied upon a number of matters to demonstrate Mr Wright's lack of fitness.

**Mr Wright was disciplined for Misconduct by the Lloyd's Disciplinary Tribunal**

15. On 6 September 2001 Mr Wright was disciplined for misconduct by the Lloyd's Disciplinary Tribunal ("LDT") having been found guilty of four charges of conducting insurance business in a discreditable manner in relation to his former employment as a director of another insurance broker ("Broker Firm A").
16. The LDT found as follows:
  - 16.1. While Mr Wright was a director of Broker Firm A, he arranged for certain premiums to be paid by cheques drawn to himself personally rather than to Broker Firm A. Mr Wright paid the cheques into his own account but caused Broker Firm A to issue cover notes and pay the premiums to insurers. Mr Wright thereby dishonestly kept more than £60,000 for his own benefit, which should have been accounted for to Broker Firm A.

16.2. From 1994-1996 Mr Wright used Broker Firm A's client account to pay more than £15,000 of personal expenses without the knowledge or consent of his co-director or the company secretary.

16.3. In August 1996, Mr Wright approached one of Broker Firm A's computer operators and dishonestly asked her to erase entries for monies owed by a third party to Broker Firm A. This amount totalled more than £8,000. In return for reducing this debt, Mr Wright dishonestly arranged for his own debts to that third party to be reduced by the same amount.

17. The LDT found the above to be misconduct over a long period of time. The fact that no insured suffered loss resulting from his conduct was merely fortuitous.

18. As a result of this misconduct, Mr Wright was:

18.1. Permanently suspended from the trading room of Lloyd's and all other parts of the premises of Lloyd's.

18.2. Permanently suspended from transacting or being concerned or interested in the transaction of the business of insurance at Lloyd's or any class or classes of such business.

18.3. Publicly censured.

19. In relation to these matters, Mr Wright claimed in his written representations to the Regulatory Decisions Committee dated 22 December 2010 ("the written representations"), prepared at a time when Mr Wright was represented, that they arose out of a breakdown in commercial relations between himself and a fellow director and he did not consider that he was being fairly remunerated. Accordingly he decided to

redress the balance. The written representation claimed that the events occurred over 15 years ago, and Mr Wright is now rehabilitated.

20. Albeit these matters occurred 15 years ago they are relevant when assessing Mr Wright's attitude to regulation. He had experience of the severe consequences which could flow from dishonesty in a regulated environment and the question arises whether Mr Wright learned the importance of acting honestly and with integrity from his experience at Lloyds. To put the matter shortly: Had he learned his lesson?

#### **Mr Wright performed Controlled Functions without approval**

21. Mr Wright performed controlled functions at Moorgate despite not having been approved to do so by the Authority as between July 2004 and June 2008, Mr Wright was in effect the sole controlling mind of Moorgate and was operating as a de facto or shadow director.
22. The function of "director" is designated by the Authority as a controlled function and it should only be performed by a person approved by the Authority as fit and proper. This applies to any person who occupies the position of director within a firm or who issues instructions or directions within the firm, regardless of whether he is registered as a director of the firm with Companies House.
23. Mr Wright is not, and has never been, an approved person.
24. Mr Wright applied for approval in July 2004 when Moorgate was first required to apply for it. On 10 July 2004, Mr and Mrs Wright submitted separate applications to the Authority for approval to perform controlled functions at Moorgate; Mr Wright must have been aware that Mrs Wright had no experience of performing controlled functions which includes compliance with regulations created by the Authority. Mr Wright

disclosed the Notice of Censure from the LDT and also disclosed that he had been the subject of bankruptcy and civil proceedings.

25. Mr Wright withdrew his application. He claimed he was told that an investigation by the Authority of the LDT censure would have delayed approval for Mrs Wright and Moorgate.

26. . Mrs Wright's applications for CF1 and CF8 controlled functions were approved in January 2005 and she became the sole director and approved person at Moorgate. She did not have the capability to carry out such functions nor did she purport to do so. She very rarely attended Moorgate's offices.

27. Mr Wright was in fact in control of Moorgate and all negotiations with insurers and underwriters. It is to be inferred from the history above, that Mr Wright did this in the full knowledge that he would thereby be in breach of the requirements and standards of the Authority's approved persons regime.

28. Mr Wright himself agreed that this was the case during a telephone conversation with the Authority on 9 May 2008 and in a subsequent interview conducted on 11 February 2009. He contended that Mrs Wright had delegated the greater part of her functions to him, he had withdrawn his application because he suspected he might be turned down and that if he had been a director it might have made the securement of agencies "more problematical". He also admitted that in the light of the functions he carried on, he should have become authorised but "because the business was functioning, in my opinion, correctly, I did not go that further step to become authorised". Mrs Wright's role was limited to signing cheques and various accounting functions and her role was more of a "figure head".

29. In his oral representations to the RDC (1 February 2011), Mr Wright stated that Mrs Wright was put forward to the Authority for approval because he realised that he



himself may have a problem in this regard due to his previous disciplinary matters, but the intention was that he would always be running Moorgate.

30. Mr Wright contends that there was no intention to mislead the Authority about whether he was running Moorgate. He accepted however, that he did not have sufficient competence and capability to perform a governing controlled function.

31. As the Authority granted authorisation to Moorgate, and granted Mrs Wright the approvals she sought, it is clear that the Authority was misled as to who was carrying out the controlled functions in Moorgate, and that Mr Wright (whether alone or with Mrs Wright) was responsible for misleading it. In misleading the Authority in the way he did Mr Wright acted dishonestly and with a lack of integrity. He was also not open with the Authority.

**Mr Wright reported Moorgate's Capital Resources Reserves as below the minimum level and submitted inaccurate RMAR Returns to the Authority**

32. Between August 2005 and February 2008, Moorgate reported on five occasions in its Retail Mediation Activities Returns ("RMAR") that its capital resources were materially below the required level for a firm holding client money in either a statutory or non statutory trust.

33. Mr Wright submitted RMAR's containing elementary errors in respect of matters such as whether Moorgate operated a statutory or non-statutory trust for the firm's client account and whether Moorgate had acquired professional indemnity insurance.

34. Mr Wright therefore failed to carry out the responsibility to submit accurate RMARs, and to ensure that Moorgate operated with adequate capital resources, in a competent or capable manner.

35. Mr Wright accepted that the errors in respect of the reporting of capital resources were made without a full understanding or comprehension of regulatory requirements in his written representations.

36. Accordingly these errors demonstrated a lack of competence on the part of Mr Wright. If he did not understand how the RMAR's should be completed he should have had the sense to ensure he obtained competent professional advice.

**Mr Wright Misled the Authority in relation to an increase in Moorgate's capital**

37. On 19 February 2007 Mr Wright contacted the Authority by email and stated that he would rectify Moorgate's capital resources deficit of £14,909 by issuing 15,000 ordinary £1 shares. The Authority sought confirmation of this and wrote to Mrs Wright on 2 May 2007 and to Mr Wright on 31 May 2007, requesting, on each occasion, a copy of Companies House Form 88(2) ("Return of Allotment of Shares").

38. The Form 88(2) that Moorgate filed at Companies House was signed by Mrs Wright on 5 June 2007 and purports to show a share allocation to Mr Wright of 15,000 ordinary £1 shares on or around 1 June 2007). The form is stamped as having been received by Companies House on 9 June 2007. However, the annual returns submitted by Moorgate to Companies House on 11 October 2007 (signed by Moorgate's company secretary) did not show any new shareholding in the name of Mr Wright. Contrary to Mr Wright's representations to the Authority, it appears that these shares were never issued.

39. At no stage did Mr Wright inform the Authority that the share issue had not proceeded and would not do so. Mr Wright therefore misled the Authority as to the true position – which was that these new shares had never been issued and that Moorgate's capital resources deficit remained.

40. Mr Wright admitted that this was the case in an interview with the Authority on 11 February 2009). He explained that the reason the share issue did not proceed was because they had been unable to raise the necessary funding from the bank. Mr Wright states that at the time of his interview with the Authority, it was intended that the share issue would occur and that the shares would be issued to Mrs Wright, and not to him, and therefore the Authority had not been misled.
41. In his Reply to the Authority's Statement of Case he avers that he relied on Moorgate's Accountant to guide him; "through increasing the Capitalisation of the firm I was severely let down which I put down to a spate of misunderstandings and misdirections and incorrect advice which resulted in the increase in shares not taking place although again every reasonable step was being taken to do this and I totally refute the allegation that I was misleading".
42. The indisputable fact is that the Authority was told that Moorgate would increase its capital and was sent a Form 88 (2) to evidence the issue. The form showed the shares as issued on 1 June 2006 to Mr Wright. Somewhat curiously the form provides that the shares are to be treated as 100 per cent paid up under the section of the form applying to shares to be treated as fully or partially paid up "otherwise than in cash".
43. When Mr Wright realised that monies to pay up the shares could not be raised he did not inform the Authority to that effect. In not doing so he allowed the Authority to be misled and was not open with it. The proposed increase in capital was in response to a letter dated 6 February 2007 from the Authority seeking information by 21 February 2007 as to how Moorgate intended to remedy Moorgate's capital resources deficit and the importance of the matter cannot have been lost on Mr Wright. On 19 February 2007 he wrote to the Authority stating that the deficit would be remedied "by making a further investment in the company of £15,000 which will be "reflected by the issue of 15,000 Ordinary £1 shares" and then sent it a form 88 (2) recording the shares as issued after the letters from the Authority dated 3 May and 31 May 2007 requesting a copy of it.

44. The failure to inform the Authority that the shares had not been issued or that no capital had been raised by Moorgate demonstrated a lack of honesty by Mr Wright in his dealings with the Authority and a cavalier attitude to the Authority and compliance with the regulation. In the light of the correspondence from the Authority he cannot have failed to understand the importance attached by the Authority to the increased capitalisation of Moorgate.

**Mr Wright failed to properly and fully disclose his employment status when specifically asked about it by the Authority in June 2009**

45. On 12 June 2009, the Authority received a telephone call from Broker Firm B informing them that Mr Wright was still working within the insurance sector and had been introducing business to another insurance broker.

46. On 12 June 2009 the Authority telephoned Mr Wright and asked where he was currently working. Mr Wright stated that he was, “not working as such” and claimed that he was not working in insurance.

47. In fact, Mr Wright was working for an insurance broker, Broker Firm C as an Introducer Appointed Representative (“IAR”). Broker Firm C had submitted a notification to the Authority on 16 April 2009 to add Mr Wright as an IAR, the “commencement of agreement” date being 1 May 2009.

48. On 18 December 2009, the Authority telephoned Broker Firm C in order to speak to Mr Wright. A representative of Broker Firm C confirmed that he was working as an IAR and passed on Mr Wright’s contact details.

49. Mr Wright claimed in his written representations that he did not intend to deceive the Authority in this regard as he was self-employed and not employed. In the telephone call of 12 June 2009 he was asked where he was “currently working” and replied that he

was not “working as such” and when questioned further stated he was not working in insurance.

50. In his Reply to the Authority’s Statement of Case, he avers that, “it is blatantly obvious that the FSA knew where I was as far back as 16/04/09, this by their own admission.....this leads me to believe that the FSA are going to extraordinary lengths to discredit me.”

51. The Tribunal are satisfied that Mr Wright deliberately attempted to mislead the Authority. In doing so he acted dishonestly and again showed his disregard of the importance of being honest with the Authority and of regulation.

**Mr Wright failed to co-operate with the Authority regarding the provision of information**

52. Mr Wright failed to take any, or any adequate, notice of instructions given to him by the Authority regarding reconciliation of Moorgate’s client account and failed to provide all the documentary evidence requested by the Authority to demonstrate that Moorgate’s creditors had been paid and money had been collected from Moorgate’s debtors.

53. On 13 June 2008, at a meeting, the Authority asked Mr Wright to produce a client money calculation to establish whether any money was owed to Moorgate’s clients. Mr Wright was informed that if the client account contained sufficient funds to meet the sums due to its creditors, then the Authority would allow Moorgate to pay out the funds due to creditors, resulting in Moorgate’s client account having a nil balance.

54. On 13 June 2008, the Authority informed Mr Wright by email that he was expected to provide a client money calculation and a schedule of transactions to the Authority no later than 17 June 2008.

55. On 27 June 2008, Moorgate’s accountants provided a client money calculation to the Authority.

56. On 1 July 2008, the Authority specifically told Mr Wright that once it could be satisfied that Moorgate's client account had sufficient funds to meet its liabilities, it would authorise Moorgate to pay out the balance of the account.
57. Despite the above, on 8 July 2008, Mr Wright informed the Authority by email that Broker Firm B had paid off all but one of Moorgate's creditors. Mr Wright requested permission to use the money left in Moorgate's client account to pay off the one remaining creditor.
58. On 9 July 2008 by email and telephone, the Authority informed Mr Wright that it still required a breakdown of amounts owed to and by Moorgate so that it could be satisfied that the client account had been properly administered. The Authority also stated that until this information had been provided, Moorgate was not permitted to make any payments from its client account.
59. On 10 July 2008, the Authority informed Mr Wright by email that Moorgate's arrangement for Broker Firm B to meet Moorgate's liabilities was unsatisfactory. The Authority also stated that it required documentary proof that Moorgate's creditors had been paid that money had been collected from Moorgate's debtors.
60. Mr Wright failed to provide this proof. Instead, on 18 July 2008, Mr Wright emailed the Authority stating that Broker Firm B had taken over responsibility for the collection and payment of premiums for Moorgate and that he had no further information regarding payments.
61. Once again Mr Wright demonstrated a failure to have regard to the importance of regulation. He failed to cooperate with the regulator in dealing with the issue of client accounts and failed to provide an adequate explanation at the time to explain his failure to cooperate.

62. The explanation that the matter was being handled by the purchaser of Moorgate and, accordingly, Mr Wright could not provide any further information was unacceptable. The Authority was rightly concerned to ensure that the client accounts were being properly handled and that clients' money had not gone astray.

### **Conclusion**

63. Mr Wright contends that the prohibition should not extend to prevent him acting as an Introducer Appointed Representative of Broker Firm C as he poses no threat to the consumer, has no direct contact with consumers, has no access to client money and cannot issue any form of documentation.

64. The Tribunal considers that Mr Wright's conduct in regard to Moorgate and the Authority demonstrate that Mr Wright will act dishonestly and with a lack of integrity if it suits his purpose and that he has a reckless attitude to compliance with regulation. The evidence strongly suggests that he learned little from his experience with the LDC as to the importance of acting with integrity. Furthermore he has also demonstrated a lack of competence in various aspects of regulatory activity. The Authority cannot be expected to supervise Mr Wright on a day to day basis to ensure that he does not stray beyond his remit as an Introducer Authorised Representative – and the Authority can have no confidence that he will not stray. Rather the appropriate course for the Authority to take is to issue a prohibition notice in the form originally proposed by the Authority.

65. We have taken into account the matters placed before the Tribunal by Mr Wright at the hearing relating to the personal circumstances of Mr Wright and his family but the Tribunal do not consider they can outweigh the public interest in a prohibition order.

**Ruling**

66. Accordingly the Tribunal (acting unanimously) dismisses the Reference and directs the Authority to issue a prohibition notice in the form originally proposed by the Authority.

Deleted:

Terence Mowschenson Q.C  
Judge of the Upper Tribunal (Financial Services)

Release Date: 24 February 2012