

THIS DECISION NOTICE WAS SUPERSEDED BY A [FINAL NOTICE DATED 27 JANUARY 2014](#)

DECISION NOTICE

To: Mr Anthony Verrier

Date of Birth: 24 February 1964

Date: 28 March 2012

1. ACTION

- 1.1. The FSA has decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Verrier from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm, because it appears to the FSA that Mr Verrier is not a fit and proper person due to concerns over his honesty, integrity and reputation.

2. SUMMARY OF REASONS

- 2.1. The facts and matters set out in this Notice are based on the findings of the High Court in its judgment in the case of Tullett Prebon plc (and two others) v BGC Brokers LP (and 13 others including Mr Verrier) [2010] EWHC 484 (QB). As the Court of Appeal stated in Tullett Prebon Plc & Ors v BGC Brokers LP & Ors [2011] EWCA Civ 131:

“Mr Verrier was found to have participated in an unlawful means conspiracy, the unlawful means including the inducement of the broker defendants to breach their contracts of employment with Tullett by leaving early without lawful justification.”

- 2.2. In the course of his judgment in the High Court, Jack J said :

“I found that in his evidence Mr Verrier stuck to the truth where he was able to, but departed from it with equanimity and adroitness where the truth was inconvenient.”

- 2.3. Having regard to the FSA’s regulatory objectives, including the severity of the risk that Mr Verrier poses to the confidence in the financial system, the FSA considers it necessary and proportionate to exercise its powers to make the prohibition order in the terms set out above.

3. DEFINITIONS

- 3.1. The definitions below are used in this Decision Notice:

“the Act”	the Financial Services and Markets Act 2000
“BGC”	BGC Brokers LP (including the BGC Group as the context requires)
“EG”	the Enforcement Guide
“FSA”	the Financial Services Authority
“Tullett”	Tullett Prebon Plc
“Mr Verrier”	Mr Anthony Verrier

4. FACTS AND MATTERS

- 4.1. Tullett and BGC are rival companies in the business of inter-dealer broking. Mr Verrier was formerly employed by Tullett as the company’s second most senior executive. On 26 August 2008, he informed Tullett that he was leaving to join BGC and, on 3 September, he informed Tullett that he considered that he had been constructively dismissed.

Tullett commences proceedings against Mr Verrier

- 4.2. On 12 September 2008, Tullett commenced proceedings against Mr Verrier seeking injunctions to prevent him from working for BGC until 1 July 2009. Mr Verrier undertook that he would not until trial commence employment with, or carry out work for, or assist the business of, BGC. On 24 September, a representative of BGC had a dinner with Mr Verrier and someone from Tullett. As Jack J put it:

“It is plain that, whatever else the three men had to talk about, the object of the dinner was a step in the recruitment of [the person from Tullett] by BGC and that Mr Verrier and [the person from Tullett] were in close communication as to that.”

- 4.3. On 10 November 2008 (the day the trial was due to commence), an agreed order was made to stay the action on terms, Mr Verrier undertaking, among other things, not to commence employment or assist the business of BGC until 2 January 2009. On 29 December 2008, Mr Verrier arranged to have dinner with someone from Tullett. Jack J stated:

“In a witness statement Mr Verrier stated that he had intended the meeting to be a social one. That was untrue. It was plainly part of the recruitment exercise.”

Mr Verrier joins BGC

- 4.4. Mr Verrier joined BGC on 5 January 2009 as ‘executive managing director and general manager responsible for the BGC London and European offices’ and such other business as might be assigned to him. He was number two in the company in London with responsibilities which included, but which were much wider than, recruitment. He intended a substantial recruiting exercise from Tullett which “was in part revenge for the way he felt he had been treated by Tullett”. He had “considerable animosity” for someone in Tullett. Jack J quoted, or referred to, several “unwise” and “casual” statements made by Mr Verrier which the judge said:

“are consistent with lawful intentions on Mr Verrier’s part. Nonetheless they offer an insight into his mind.”

- 4.5. To avoid the problem that potential recruits had long-term contracts with Tullett with disparate termination dates, Jack J stated that:

“Mr Verrier decided that, come what may, that is, whether or not the recruits and each of them had good grounds, weak grounds, or no grounds, to claim constructive dismissal, within a short period of their signing with BGC he would instruct his recruits to leave Tullett en masse. ... It was Mr Verrier’s plan to do what he could to induce Tullett to ‘foul up’ and to give grounds for alleging constructive dismissal.”

Tullett commences further proceedings

- 4.6. By the end of February 2009, 13 Tullett employees notified Tullett that they had signed contracts to work at BGC when their contracts with Tullett permitted. It is unclear precisely how many employees Mr Verrier approached because, in part, Mr Verrier had lost, or disposed of, the mobile telephones and BlackBerries used to coordinate their departure.
- 4.7. On 25 March 2009, Tullett served proceedings against BGC seeking, among other things, an injunction to prevent BGC from inducing any employee of Tullett to breach his contract or to cease working before the expiry of the term of his contract with Tullett. In the proceedings, Tullett alleged that Mr Verrier had led a conspiracy to induce Tullett employees to breach their employment contracts and join BGC and use Tullett desk heads to assist in recruiting other desk members to join BGC.
- 4.8. Shortly after the proceedings began, 10 of the 13 Tullett employees informed Tullett that, on the basis of Tullett’s actions and what it had told them during meetings to discuss Mr Verrier’s recruitment efforts, they believed that Tullett had constructively dismissed them and therefore they would be joining BGC as soon as possible.

The trial stemming from the March 2009 proceedings

- 4.9. The hearing of the proceedings commenced in March 2009 and lasted from 14 October 2009 to 5 February 2010. Mr Verrier gave evidence before Jack J over five days. Jack J held that the claim that Mr Verrier, and others, conspired to induce breaches of contract was made out. He also held that Mr Verrier, and others, conspired to use three ‘desk heads’ to assist in recruiting their desks in breach of duty to Tullett. In acting as

he did, Mr Verrier, and one other, considered that the commercial gain to BGC from their conduct would outweigh the damages and costs for which BGC would be liable.

4.10. In considering one aspect of the proceedings (related to three brokers who changed their minds about going to BGC), Jack J said that in looking at BGC's conduct for that purpose he should concentrate mainly on illegal and dishonest conduct. He summarised the relevant matters as:

- (1) The use of one of the desk heads by Mr Verrier.
- (2) The attempt by Mr Verrier to get the brokers to write letters of complaint containing matters which the brokers thought, and were, untrue.
- (3) The intention of Mr Verrier to 'blow the whistle' and have all the brokers leave Tullett regardless of whether they had honest claims for constructive dismissal.
- (4) The use by Mr Verrier of a legal adviser as the adviser to the brokers when that person's loyalties were divided and in some respects he was assisting Mr Verrier rather than representing the interests of his clients.

4.11. The judge enlarged on the intention to 'blow the whistle' which he said may have been the most important matter. One of the brokers gave evidence at the trial, in the context of one of the recruitment dinners, that it was clear there was an early exit strategy and that he had no intention of harming Tullett by walking out on his contract. In the words of the judgment:

"He also said that it was becoming clear that Mr Verrier was looking to lift a large number of brokers from Tullett, to try and cripple the company and upset [someone from Tullett]. I accept the evidence I have referred to in the paragraph as generally accurate."

4.12. The judge made a number of findings or comments which were not favourable to Mr Verrier of which the following are further examples:

- (1) *"Further [after the judge had described a number of events] the names were written onto restaurant bills and then obscured. This is somewhat 'cloak and dagger', but I do not think that in the end it assists me as to whether Mr Verrier's conduct towards Tullett was unlawful. But the concealment by Mr Verrier [and one other] of the dinner itself is more significant."*
- (2) *"In an affidavit sworn on 7 April 2009 Mr Verrier had stated that [someone from Tullett] had not provided him with any confidential information after 1 January 2009. That was not so."*
- (3) *"It is inconceivable that Mr Verrier would have done this [suggested to brokers that they should be advised by a legal adviser] without asking [that legal adviser] if he would be prepared to advise the brokers. That would involve him telling [the legal adviser] at least something of the circumstances in which he was to act. Mr Verrier said he had not discussed the prospect with [the legal adviser]. That cannot be true."*

- (4) *“I am very conscious here that the note is a very brief record of a longer conversation, and that there is a risk of reading too much into it and misconstruing it. But if the conversation had been as Mr Verrier suggests, the note would hardly have taken the form it did: it would not have referred to being too dangerous to put in writing. The note suggests that [the employee] was effectively asking for a guarantee that he would be moving from Tullett to BGC in the near future, and that Mr Verrier gave him an assurance that, one way or another, he would be out in 6 weeks from his resignation: but he was not prepared to put that in writing. The reference to lying in court must have come up because [the employee] said that he would not lie to support a trumped up constructive dismissal claim. The note does not have to be considered on its own and it is supported by other documents and by what happened.”*
- (5) *“I found this evidence [to do with a conversation to be had with Mr Verrier] unconvincing. Mr Verrier said that he had no recollection about the idea at this time that BLP might act in place of [a legal adviser] [reference to the court bundle]. I cannot accept that. I deduce that both [someone from BLP] and Mr Verrier did not wish to state the true reason why this was being considered.”*
- (6) *“Mr Verrier said that as far as he could recall ‘I have never used that phrase.’ [court reference]. That was untrue. ‘Whistle blowing costs’ can only refer to the costs which BGC might incur if the brokers walked out on Tullett on BGC’s instructions and BGC became liable to indemnify them against their losses incurred in consequence.”*
- (7) *“Mr Verrier said that they did not discuss forthcoming events. That cannot be right.”*

4.13. In connection with the loss of the mobile phones or BlackBerries (see paragraph 4.6), Jack J said:

“Between April 2008 and April 2009 Mr Verrier lost or disposed of eight blackberries. His last blackberry was found to be locked by password. Mr Verrier could not explain how that had happened and said he never used a password. Tullett assert that all this happened deliberately so that text messages which might reveal something about Mr Verrier’s activities and intentions and those of the desk heads should be irrecoverable. Mr Verrier’s response was that he has a history of frequently losing blackberries ... It is however inconceivable that all these items went missing or became unavailable as they did, when they did, without an improper intention in at least some of the cases. I am satisfied that it was Mr Verrier’s gambit to ‘lose’ blackberries whenever he thought they might contain inconvenient material, and that his instructions were the cause of at least some of the mobiles being lost. I am satisfied that the inaccessibility of the contents of his last blackberry due to a missing password was a deliberate ploy.”

4.14. In connection with the loss of a report, Jack J said:

“On 4 February Mr Verrier sent [someone at BGC] an e-mail referring to [the recruitment effort]. That e-mail further stated: ‘I will be producing a more detailed

report . . . covering revenue cost and business plan going forward. . . . Mr Verrier said [Court reference], that no reports had been produced because . . . unlike Tullett, BGC did not require such paperwork but dealt with such matters orally. . . . But on 15 December BGC disclosed a copy of a report headed 'Project Toscana'. The single copy had been found filed in BGC's legal department [Court reference]. No other copies were located. It would have been typed by [Mr Verrier's assistant] from Mr Verrier's manuscript. There was no copy to be found kept by her as a hard copy or saved electronically on BGC's computer system. I do not find it credible that she would have typed up the report and handed it to Mr Verrier without saving it on the computer system. I conclude that the other copies and copies of any further reports as foreseen by the e-mail were destroyed. They were also deleted from BGC's computer system."

- 4.15. An appeal against the High Court's findings was dismissed by the Court of Appeal in a judgment given on 22 February 2011 (*Tullett Prebon Plc & Ors v. BGC Brokers LP & Ors* [2011] EWCA Civ 131).

5. THE STATUTORY AND HANDBOOK PROVISIONS

- 5.1. The FSA has the power, pursuant to section 56 of the Act, to prohibit an individual from performing any function in relation to any regulated activity where it appears to the FSA that that individual is not a fit and proper person.
- 5.2. The FSA's Fit and Proper Test for Approved Persons ("FIT") outlines the main criteria for assessing the fitness and propriety of a candidate for a controlled function. As FIT 2.1.3G states, in determining a person's honesty, integrity and reputation, the FSA will have regard to:

"(2) whether the *person* has been the subject of any adverse finding . . . in civil proceedings, particularly in connection with investment or other financial business, misconduct, . . . or management of a *body corporate*;

...

"(10) whether the *person*, or any business with which the *person* has been involved, has been . . . criticised by a . . . court . . ., whether publicly or privately;"

6. REPRESENTATIONS

- 6.1. Mr Verrier made written representations on 3 February 2012 and oral representations on 1 March 2012. This section contains a brief summary of the key representations.

The nature and purpose of prohibition proceedings

- 6.2. A prohibition order is discretionary protective measure and not a means of discipline. It should be used only when it is proportionate and necessary to do so. Mr Verrier will not be employed by the UK regulated firm, he will not be in any senior management position in a UK regulated firm and he will not be an approved person. He would not exert influence on the BGC activities in the UK. As Mr Verrier posed no risk to market confidence, the protective justification for a prohibition order falls away. It would serve no purpose.

- 6.3. Risk has to be assessed by reference to the market in which a person operates. Mr Verrier had no desire to work in a retail environment. If he changed his mind, the approval process would make the appropriate determination.

An extension of precedent

- 6.4. The conduct which formed the basis of the High Court Proceedings related to a civil tort which gave rise to no detriment to consumers. It was not criminal and was not related to regulated activities. It represented a significant expansion of FSA's reach.

The absence of investigation

- 6.5. By relying solely on the High Court Proceedings, without conducting an investigation itself, the FSA had not considered the findings in context or heard Mr Verrier's explanation for the matters causing concern. The FSA had delegated its statutory responsibility to assess fitness and propriety to a High Court judge.

The High Court Proceedings

- 6.6. An assessment of fitness should be based on the actual findings made. The FSA should exercise a degree of caution before placing undue reliance on the findings, especially where they are peripheral to the issues pleaded. The finding that Mr Verrier departed from the truth 'with equanimity and adroitness where the truth was inconvenient' (see paragraph 2.2) was a statement made about an ancillary issue.
- 6.7. It could reasonably be inferred from the absence of any reference to the Director of Public Prosecutions that the judge felt that there was insufficient evidence to do so. The conduct of Mr Verrier was not unlawful in the criminal sense.
- 6.8. Until the High Court Proceedings, there was considerable uncertainty where the boundaries of acceptable conduct in the recruitment and attempted recruitment of brokers lay. In the prevailing market practice, most disputes were settled. BGC had taken legal advice in connection with the conduct which formed the basis of the High Court Proceedings and passed it on to Mr Verrier. Mr Verrier understood that the strategy he was implementing had been considered with BGC's internal and external legal advisers and, in general terms, had their endorsement. He believed his actions were lawful.
- 6.9. The unlawful acts and the conspiracy on which the prohibition proceedings are based amounted to nothing more than a business decision where the gain outweighed the costs.
- 6.10. Without attempting to mount a collateral attack on the judgment in the High Court Proceedings, the court was wrong to reach the conclusions that it did on destruction and concealment. The findings were not supported by the evidence of the witnesses.
- 6.11. Mr Verrier denied that he had breached any undertakings given to the court.

6.12. It would be unsafe, unfair and unjust to base an order on the impression of the judge.

Fitness and propriety

6.13. As is apparent from Mr Verrier's overseas role, BGC continued to support Mr Verrier. Their assessment of his fitness and propriety should carry more weight with the FSA than the narrow issues arising out of a bitter commercial dispute. Mr Verrier had worked for 30 years in the industry at a very senior level without any hint of impropriety. BGC's support showed their faith and confidence in him and spoke volumes for his ability and calibre.

6.14. Mr Verrier felt he had done nothing to justify a prohibition order being made against him. It would have a devastating effect on him and his reputation.

Conclusion

6.15. Based on what the FSA did know about Mr Verrier, it would be fundamentally unfair and a disproportionate response to the High Court Proceedings to prohibit him.

7. FINDINGS

7.1. The present intentions of Mr Verrier do not prevent the FSA from making a prohibition order. In Regina (Davies and others) v Financial Services Authority [2003] EWCA Civ 1128, the Court of Appeal said:

"23 The authority's proposal to make use of section 56 was not barred by the claimant's protestations that they do not intend to carry out the functions, which the prohibition order might forbid. The fact that the claimants appeared to the authority to be unfit persons was sufficient to justify the giving of the warning notice setting out the proposed prohibition order. There was no requirement that, in order to be legally entitled to give a warning notice, the authority had to satisfy itself that the claimants had a present or a future intention to work in the financial services industry. The claimant's assertions that they have no present plans is not an adequate substitute for or alternative to a prohibition order."

7.2. It is clear that the power to make a prohibition order under section 56 (Prohibition orders) exists independently of the power to take disciplinary proceedings under section 66 of the Act (Disciplinary proceedings) whether or not the effect of making it is, or is in part, punitive. The question is whether it appears to the FSA that Mr Verrier is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person given the very damaging remarks made about him in the High Court.

7.3. The FSA was urged to exercise caution in relying on the findings of the judge for the reasons given in the representations. In considering the findings and comments of Jack J, the FSA noted all the circumstances of the lengthy trial including that Mr Verrier had given evidence before Jack J over a period of five days (paragraph 4.9).

7.4. The FSA also took into account that Kay LJ, who gave the leading judgment in the Court of Appeal, had said:

“I pay tribute to the Judge who produced a meticulous judgment in a relatively short space of time.”

7.5. The FSA noted in particular the following statements and observations of the Court of Appeal in relation to Mr Verrier:

- (1) *“The conspiracy and the ruthless implementation of it were the subject of a vast quantity of evidence.”*
- (2) *“No doubt more would have been preserved if Mr Verrier had not orchestrated the ‘disappearance’ of a number of mobile phones and Blackberries.”*
- (3) *“I have no hesitation in rejecting this wholly unmeritorious ground of appeal. The short answer to it is that it is based on a selective and blinkered representation of the evidence. However cunning and cautious Mr Verrier had been in his choice of words at the Bleeding Heart, it is clear from the Judge’s findings that then and afterwards he succeeded in communicating the reality that he and BGC were set upon bringing about a mass early departure, whether or not lawful grounds existed.”*
- (4) *“In the context of a catalogue of ‘illegal and dishonest conduct’, that is an exercise in cherry-picking, albeit of a somewhat putrid cherry, which goes nowhere. ... For the same reasons to which I referred when addressing the earlier issue of the relevance of the Tullett hierarchy to the question of constructive dismissal, Mr Verrier’s intentions (in this case to overstep legal boundaries to the extent necessary to achieve his conspiratorial aim) were relevant to the issue of his repudiatory breaches ...”*

7.6. It is suggested that this would be an extension of the FSA’s reach by basing a decision on conduct which was not itself a regulated activity. The matters to be taken into account by the FSA in assessing whether a person is fit and proper extend beyond regulated activities as is apparent from FIT 2.1.1G:

“In determining a person’s honesty, integrity and reputation, the FSA will have regard to all relevant matters ... conviction for a criminal offence will not automatically mean an application will be rejected.” [It is not suggested that the findings of the High Court amounted to a conviction]

7.7. Given the lengthy proceedings in the High Court, the very carefully considered and detailed judgment and the comments made by the Court of Appeal, the FSA is satisfied that a further investigation would not have been an efficient use of its resources. Mr Verrier has had the opportunity to respond in writing before the investigation report was finalised and the opportunity to make representations to the FSA – and has taken both opportunities.

7.8. The FSA notes that Mr Verrier believes that he has done nothing to justify an order being made against him. In the light of all the very damaging findings made by the High Court, the FSA finds this surprising.

- 7.9. The FSA accepts that there may be matters in the findings of Jack J which Mr Verrier challenges. However, the totality of the picture is difficult to dislodge. Mr Verrier in his representations to the FSA has failed to do so.
- 7.10. For the reasons given in this notice, the FSA is satisfied that it is an appropriate use of the power given to it in section 56 to make an order in the terms of paragraph 1.1.

8. SANCTION

- 8.1. In deciding whether to issue a prohibition order in relation to Mr Verrier under section 56 of the Act, the FSA has regard to its policies published in Chapter 9 of EG.
- 8.2. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system, contributing to the UK's financial stability and reducing financial crime (see EG 9.1).
- 8.3. The relevant matters set out in EG 9.9 for the FSA to consider in this case are as follows:
- (1) the criteria for assessing the fitness and propriety of an individual to perform functions in relation to regulated activities (see EG 9.9(2), particularly that relating to honesty, integrity and reputation); and
 - (2) the relevance and materiality of any matters indicating unfitness (see EG 9.9(5)).
- 8.4. In having regard to confidence in the UK's financial industry, it is essential that confidence is maintained in the honesty, integrity and reputation of persons occupying senior positions within the management of UK authorised financial institutions.

9. PROCEDURAL MATTERS

Decision makers

- 9.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

Important

- 9.2. This Decision Notice is given under section 57 of the Act and in accordance with section 388 of the Act.

The Upper Tribunal

- 9.3. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal. The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the FSA. Under

paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Upper Tribunal.

- 9.4. A reference to the Upper Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Notice. The Upper Tribunal's contact details are The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email:

financeandtaxappeals@tribunals.gsi.gov.uk).

- 9.5. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 9.6. A copy of Form FTC3 must also be sent to Patrick Meaney at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Upper Tribunal.

Access to evidence

- 9.7. Section 394 of the Act applies to this Decision Notice. In accordance with section 394 of the Act, Mr Verrier is entitled to have access to:

- (1) the material upon which the FSA has relied on in deciding to give this Decision Notice; and
- (2) any secondary material which, in the opinion of the FSA, might undermine that decision.

- 9.8. There is no such secondary material.

Third party rights

- 9.9. There are no third party rights.

Confidentiality and publicity

- 9.10. You should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither you nor a person to whom this notice is copied may publish it or any details concerning it unless the FSA has published the notice or those details. The FSA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. You should be aware, therefore, that the facts and matters contained in this notice may be made public.

FSA contacts

- 9.11. For more information concerning this matter, please contact either Patrick Meaney (direct line: 020 7066 7420 or fax: 020 7066 7421) or Harsh Trivedi (direct line: 020 7066 4798 or fax: 020 7066 4799) at the FSA.

Andrew Long
Acting Chairman, Regulatory Decisions Committee