

***THIS DECISION NOTICE HAS BEEN REFERRED TO THE
UPPER TRIBUNAL IN ORDER TO DETERMINE THE
APPROPRIATE ACTION FOR THE FSA TO TAKE***

DECISION NOTICE

**Scott Briscoe Limited
66 Knowle Lane
Sheffield
S11 9SH**

Date: 20 January 2012

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") has decided to take the following action

1. ACTION

1.1. For the reasons set out below and pursuant to section 52(9) of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to refuse the application received from Scott Briscoe Limited ("Scott Briscoe") on 9 March 2011 and completed by the provision of further information on 13 May 2011 ("the Application") under section 40 of the Act for Part IV permission to carry on the regulated activities of:

- Advising on investments (except pension transfers and opt outs);
- Arranging (bringing about) deals in investments;
- Making arrangements with a view to transactions in investments;
- Advising on regulated mortgage contracts;
- Arranging regulated mortgage contracts;

- Making arrangements with a view to regulated mortgage contracts; and
- Agreeing to carry on a regulated activity.

2. REASONS FOR THE ACTION

2.1. The FSA has concluded that it cannot ensure that Scott Briscoe satisfies and will continue to satisfy the threshold conditions set out in Schedule 6 to the Act ("the threshold conditions") in that:

- (1) Scott Briscoe's resources will not, in the opinion of the FSA, be adequate in relation to the regulated activities it seeks to carry on given that the FSA has decided to refuse Scott Briscoe's application for Mr Sidney Cordle to be approved to perform key controlled functions.
- (2) Scott Briscoe has not satisfied the FSA that it is a fit and proper person having regard to all the circumstances including its connection with Mr Sidney Cordle, the nature of the regulated activity it seeks to carry on and the need to ensure that its affairs are conducted soundly and prudently.

3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE

3.1. The statutory and regulatory provisions relevant to this Decision Notice are set out in Annex A.

4. FACTS AND MATTERS RELIED ON

The investigation carried out by Network A

- 4.1. Scott Briscoe was incorporated on 24 September 1997. Since incorporation, Mr Cordle has been the sole Director of Scott Briscoe. From 1 August 2003 to 26 July 2011, Scott Briscoe was an appointed representative of a network ("Network A").
- 4.2. Between August 2008 and January 2011, Network A conducted an investigation following an allegation of misconduct against Mr Cordle in relation to the work practices of one of Scott Briscoe's introducers.
- 4.3. It was alleged that Mr Cordle knowingly permitted an introducer to provide mortgage advice without having the necessary qualifications or authority to do so.
- 4.4. Visits to Scott Briscoe's premises were carried out by Network A on 2 June 2009, 19 October 2010 and 24 November 2010.

- 4.5. Network A undertook a review of the business list it maintained in relation to Scott Briscoe, a sample of 10 client files and issued questionnaires to those clients. It also reviewed entries from Scott Briscoe's New Business Register.
- 4.6. On 16 November 2010, Network A informed Mr Cordle of the allegation and Network A's investigation.
- 4.7. Following the investigation, Network A concluded that the introducer had been providing advice to customers with Mr Cordle's knowledge and gave notice of its intent to terminate its business relationship with Scott Briscoe on 28 January 2011.
- 4.8. On 22 February 2011, Mr Cordle wrote to the introducer concerned terminating his arrangement with Scott Briscoe. This letter cited Network A's concern that the introducer was providing advice to customers and referred to an instance where the signatures on the verification of identify documents provided by the introducer were fraudulent.
- 4.9. An appeal by Mr Cordle followed whereby Network A carried out a series of scripted telephone calls to clients on cases involving the introducer. The findings resulted in Mr Cordle's appeal being unsuccessful and a Notice of Member Termination was issued to Scott Briscoe on 26 April 2011.

The Application and Mr Cordle's non-disclosure

- 4.10. Question 5.09 of the Approved Person's Form A requires applicants to make disclosures if they have ever been the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity. The guidance notes to the Form A explain that the question covers internal investigation by an authorised firm in addition to investigations by a regulatory body at any time. Mr Cordle answered 'no' to question 5.09.
- 4.11. Question 1.13 of the Disclosure of significant events appendix to the application for Part IV permission, relevant for firms that have previously been trading, asks if the applicant firm has ever been found guilty of carrying on any unauthorised regulated activities or been investigated for the possible carrying on of unauthorised regulated activities. Similarly question 1.14 asks if such investigations have yet to be determined. Mr Cordle, on behalf of Scott Briscoe, answered 'no' to both questions.
- 4.12. The Notice of Member Termination issued to Scott Briscoe was revealed to the FSA through receipt of a regulatory reference. On 13 May 2011, the FSA invited Mr Cordle to explain the circumstances of the termination, and the reasons for not disclosing that information.
- 4.13. Mr Cordle's response, also of 13 May 2011, stated that he had submitted a draft application to his compliance consultant who had altered some of the information that was originally included as part of the application. Mr Cordle stated that he discussed the full details of the investigation, prior to any

application being submitted, with the compliance consultant whose view was that Network A would take no action.

- 4.14. Mr Cordle did not accept that he was the subject of an investigation into misconduct or malpractice, stating that *“The allegation against me was one of omission not commission (that I knew but took no action).”*
- 4.15. However, Mr Cordle also stated that whilst the compliance consultant had sent him a copy of the application to be checked and signed before submission, he *“didn’t pay as much attention as I should have to the detailed questions”*.
- 4.16. In a subsequent email of 12 August 2011 Mr Cordle states that he:

“was preparing to run the London Marathon as well as working very hard on my business and other issues. That is why I paid [a compliance consultant] to do this application for me and believed they had completed it correctly and I did not need to examine it before I signed it which I did not.”
- 4.17. By email of 22 August 2011, Mr Cordle stated that he thought both questions (5.09 on the *Long Form A* and 1.13 of the *Disclosure of significant events appendix*) referred to an FSA investigation. The Notes to the Form A state *“This question covers internal investigations by an authorised firm in addition to investigations by a regulatory body at any time.”*
- 4.18. On 26 August 2011, Mr Cordle provided a detailed outline of the dates of meetings and correspondence with the compliance consultant but stated that, *“At no point did anyone tell me that the form was crucial. I was under the impression that my record as a financial adviser was what would be under scrutiny.”*
- 4.19. Mr Cordle further stated that the absence of the disclosure should have been queried by the compliance consultant when he submitted a draft application for review.
- 4.20. Owing to the matters set out above, the FSA issued a Warning Notice to Mr Cordle as it was not satisfied that he is a fit and proper person to perform controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money Laundering Reporting Officer) and CF30 (Customer).

5. REPRESENTATIONS, FINDINGS & CONCLUSIONS

Representations

- 5.1. Below is a summary of the key representations made by Mr Cordle and so far as relevant, on behalf of Scott Briscoe, in this matter and how they have been dealt with.
- 5.2. Mr Cordle asserts that his past financial services experience has not been adequately taken into account by the FSA in its consideration of his fitness and propriety.

- 5.3. Mr Cordle accepts that he failed to disclose (to the FSA) Network A's investigation into the allegation of misconduct or malpractice made against him. However, Mr Cordle contends that he:
- (a) discussed the full details of Network A's investigation, prior to the Application being submitted, with his compliance consultant whose view was that Network A would take no action;
 - (b) sent a draft of the Application to his compliance consultant and delegated responsibility to his compliance consultant to complete and submit the Application on his behalf;
 - (c) signed the completed the Application without paying it much attention, on the basis that when he completed the draft of the Application he did read the questions and it was entirely appropriate for him to rely on his compliance consultant to complete the Application correctly; and
 - (d) received verbal assurances that his compliance consultant accepted responsibility for the Application.
- 5.4. Mr Cordle submits that the FSA should take the circumstances set out above into account when considering whether he is a fit and proper person in light of his non-disclosure in the Application.
- 5.5. Mr Cordle also submits that since 13 May 2011 (when his non-disclosure came to light), he has corresponded directly with the FSA in relation to the Application and conducted industry training in order to increase his knowledge in matters with which he was not previously familiar.
- 5.6. Finally, during his oral representations meeting, Mr Cordle admitted that he lied during Network A's investigation. In particular, Mr Cordle admitted he knew that the introducer of business to Scott Briscoe, was advising on mortgage and life protection without authorisation but nevertheless he lied to Network A's investigator.

Findings

- 5.7. The FSA considers that it has had adequate regard to Mr Cordle's past financial services experience in its consideration of the Application but notes that Mr Cordle's non-disclosure of Network A's investigation which led to the termination of Scott Briscoe from the network is both highly relevant to and indicative of, his readiness and willingness to comply with regulatory requirements and therefore his fitness and propriety.
- 5.8. The FSA notes Mr Cordle's explanation for his non-disclosure in the Application. However, the FSA finds that the accurate completion of the Application was Mr Cordle's sole responsibility and cannot be delegated. The FSA considers that despite the assistance sought from his compliance consultant in relation to the Application, the onus was on Mr Cordle to ensure that the Application was accurate and complete. In taking all the circumstances into account, the FSA further considers that Mr Cordle's non-disclosure is

particularly serious given nature of the matters which are the subject of the non disclosure, namely the Network A investigation and the termination of Scott Briscoe as an appointed representative of Network A.

The FSA finds that Mr Cordle's failure to disclose Network A's investigation into his knowledge that the introducer was advising clients without being authorised to do so is aggravated by the fact that Mr Cordle:

- (a) did in fact know that the introducer of business to Scott Briscoe, was advising on mortgage and life protection without authorisation but nevertheless he lied to Network A's investigator; and
- (b) has been an appointed representative for a significant period of time and therefore ought to have been aware of the standard of conduct expected of him by the FSA.

5.9. In light of the matters set out above, the FSA cannot be satisfied that Mr Cordle is a fit and proper person to perform the controlled functions to which the application relates as he lacks honesty and integrity and the FSA has decided to refuse Mr Cordle's application.

5.10. The FSA's decision to refuse Mr Cordle's application means that Scott Briscoe's resources will not, in the opinion of the FSA, be adequate in relation to the regulated activities it seeks to carry on, or suitable to carry on those regulated activities soundly and prudently. Scott Briscoe has not made any other applications for persons to perform controlled functions.

Conclusions

5.11. The FSA has concluded that Scott Briscoe cannot meet the requirement of section 41(2) of the Act in that it will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which it would have permission if the Application was granted because:

- (a) the FSA has found that Mr Cordle is not a fit and proper person in terms of honesty and integrity and therefore Scott Briscoe's connection with him leads the FSA to conclude that Scott Briscoe is not suitable and does not and will not satisfy Threshold Condition 5;
- (b) by reason of the Decision Notice given to Mr Cordle refusing the application for controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money Laundering Reporting Officer) and CF30 (Customer), Scott Briscoe will not have adequate human resources therefore failing to satisfy Threshold Condition 4.

6. PROCEDURAL MATTERS

Decision Maker

6.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee ("RDC").

- 6.2. This Decision Notice is given to Scott Briscoe under section 52(9) of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Upper Tribunal

- 6.3. Scott Briscoe has 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, Scott Briscoe has 28 days from the date on which this Decision Notice is given to refer the matter to the Upper Tribunal.
- 6.4. A reference to the Upper Tribunal is made by way of a reference notice (Form FTC3) signed by Scott Briscoe (or on Scott Briscoe's behalf) and filed with a copy of this Decision 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).
- 6.5. 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>

- 6.6. A copy of Form FTC3 must also be sent to Francesca Harte 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

- 6.7. Section 394 of the Act (access to FSA material) does not apply to this Decision Notice.

Confidentiality and publicity

- 6.8. Scott Briscoe 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). Section 391 of the Act provides that neither the FSA, nor a person to whom a Decision Notice is given or copied may publish the notice 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 matter to which a Decision Notice or Final Notice relates as it considers appropriate. Scott Briscoe should be aware, therefore, that the facts and matters contained in this notice may be made public.

FSA contacts

6.9. For more information concerning this matter generally, you should contact Francesca Harte, Manager, Permissions at the FSA (direct line 020 7066 1482 / email:francesca.harte@fsa.gov.uk).

Tim Herrington
Chairman of the Regulatory Decisions Committee

Relevant Statutory Provisions

- 1.1. Section 41(2) of the Act requires the FSA, in giving a Part IV permission, to ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he will have permission.
- 1.2. In exercising its powers in relation to the granting of a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook, including the part titled Threshold Conditions ("COND"). The main considerations in relation to the action specified are set out below.

1.1 *Threshold condition 4: Adequate Resources*

- 1.3. COND 1.3.2G states that in relation to threshold conditions 4 and 5, the FSA will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part IV permission.
- 1.4. COND 2.4.2G states that threshold condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity which it seeks to carry on. In this context, the FSA will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non financial resources and means of managing its resources.

Threshold condition 5: Suitability

- 1.5. COND 2.5.2G(1) states that threshold condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its proposed regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 1.6. COND 2.5.3G(1) states that the emphasis of this threshold condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 1.7. COND 2.5.4G allows the FSA to have regard to all relevant matters, including whether the firm will conduct its business with integrity and in compliance with proper standards, will have a competent and prudent management and can demonstrate that it will conduct its affairs with the exercise of due skill, care and diligence.
- 1.8. COND 2.5.6G allows the FSA, in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business

with integrity and in compliance with proper standards, to have regard to relevant matters including whether:

1.2 (5) the firm, or a person connected with the firm, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the FSA considers such a refusal relevant will depend on the circumstances.

1.9. COND 2.5.7G allows the FSA, in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, to have regard to relevant matters including whether:

(4) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents) act with due skill, care and diligence in carrying out their controlled function.