

FSMT (Upper Tribunal – Tax and Chancery Chamber) Decisions

Firm/Individual	Short Summary	Links
<p>Agarwala, Virendra Rai (t/a Abbex Insurance) (5 February 2007)</p>	<p>The Applicant, a sole trader insurance intermediary, had referred a First Supervisory Notice of 1 November 2006 by which FSA varied his Part IV permission by removing all regulated activities with immediate effect and a Decision Notice of 7 December 2006 by which FSA decided to cancel his Part IV permission. It had come to FSA's notice that the Applicant had failed to disclose certain matters in his application for authorisation (and related approval) dated 12 June 2004 or at any later stage. These were: the erasure of the Applicant's name from the Register of Insurance Brokers in 1993; the issue of an Intervention Notice to the Applicant in 1996 by the PIA prohibiting him from conducting any investment business because he had failed to co-operate with the PIA and the subsequent revocation of the Applicant's PIA authorisation in 1997; the notification to the Applicant by FOS in 2003 that a complaint made in 2003 in connection with inappropriate pension advice given to one of his clients should succeed and the making of a final award by FOS against the Applicant in 2004. A further concern of FSA was that, so far as it was aware, the Applicant had not complied with the FOS Award. Paragraphs 22-24 discuss the issue of whether the FOS Award should have been disclosed to FSA. FSMT dismissed the reference, saying that the Applicant's failure to disclose the material information, taken as a whole, showed that he was not a fit and proper person, failed to conduct his business with integrity and in compliance with proper standards, failed to treat customers fairly (by failing to make good the FOS Award) and had failed to be open and co-operative with FSA.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/052_agarwalaReasons_for_directions.pdf</p> <p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/0018_VirendraRaiAgarwalaOliver.pdf</p>
<p>Ahmet, Bashir/ Barket Financial Management Ltd (14/15 October 2008, publicised 25 November 2008)</p>	<p>In December 2007, FSA issued two Decision Notices refusing applications for the individual and the firm on the grounds FSA concluded that it could not ensure that Bashir Ahmed is a fit and proper person to perform the controlled function to which his application related. The firm's application was also refused as he was the only director of the firm with the experience to perform the controlled functions on its behalf. FSMT did not agree with the grounds put forward by FSA for its refusal to authorise the individual and the firm, and was satisfied that Bashir Ahmed is a fit and proper person for the purpose of his application. It directed that the Decision Notice in relation to him and to the firm should be withdrawn.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/065_BarketFinancialManagementLtd_BashirAhmed.pdf</p>
<p>Allen, Stephen (27 July 2011, publicised 2 September 2011))</p>	<p>The applicant applied to revoke a prohibition order on the grounds that FSA had failed to follow the correct statutory procedure for making the prohibition order; that FSA had made the prohibition order for reasons not given by the Tribunal and as such had not acted consistently with the Tribunal's determination for the purposes of s133(10) FSMA and that a member of the RDCA panel which had heard the applicant's case February 2011 had also been on the panel in 2008 which had made the original decision to impose a prohibition order on him. The Tribunal concluded that in all the circumstances there was no reasonable prospect of the applicant's case succeeding and exercised its strike-out power under Rule 8(3)(c) of Procedure (Upper Tribunal) Rules 2008/2698.</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/StephenAllen_v_FSA_2011.pdf</p>

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Allen, Stephen Robert (25 November 2009, publicised 14 December 2009)	FSA had decided to prohibit this individual from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. It was of the view that Stephen Robert Allen, who was a director of a firm of insurance brokers called Fabien Risk Services Limited (the firm), knew, or was reckless, that between 6 September 2004 and 19 September 2005 the firm had used clients' money improperly and, in permitting that to continue, had acted without honesty and integrity. He denied that he had known, or had been reckless, that the firm had used clients' money improperly. FSMT concluded that he did not know, nor was he reckless, that the firm had used clients' money improperly and that he did not act without honesty and integrity, but because he failed in his duties as a director of the firm he should be prohibited from performing any management or controlled functions and ordered FSA to make a partial prohibition order accordingly.	http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/StephenRobertAllen.pdf
<i>Atlantic Law LLP – see under Greystoke, Andrew</i>		
Baldwin/Timothy Edward/WRT Investments Ltd (24 January 2006) Costs decision (5 April 2006)	FSA had alleged that Timothy Baldwin, through his investment vehicle WRT Investments Limited, engaged in market abuse as defined by s118 FSMA. FSA had imposed a penalty of £25,000 on Mr Baldwin and £24,000 on WRT. FSA alleged that on 28 or 29 July 2003, the CEO of Minmet PLC received a telephone call from Mr Baldwin. It was said that during the alleged conversation Mr Nolan gave Mr Baldwin information about the positive July performance of Minmet's principal asset, a gold mine in Sweden, relevant information that was not generally available to the market. WRT purchased shares in reliance on this information. The positive information was notified to the market in an announcement on 6 August 2003. This announcement caused Minmet's share price to increase by more than 100%. Not long after, WRT sold the shares and reaped a profit. Mr Baldwin and WRT contested this allegation on various grounds. The principal ground was that no such telephone conversation took place. FSMT held that, on consideration of the evidence, the telephone call had not taken place and that no finding should be made against the applicants. FSMT also made a comment re receipt of price sensitive information (para 77): " Mr Baldwin at one point in his evidence stated that as an equity salesman it was his practice, unless expressly made an insider, to assume that information given to him was in the public domain and was information that he could use. In our view such a practice is too broad. There may be circumstances where an equity salesman should realise, from the nature of information given and the circumstances in which it is imparted to him, that it is confidential price sensitive information which he is not free to use or disseminate". With regard to the costs decision, FSMT noted that it "has no general power to award costs to exonerated parties. The hardship suffered by Mr Baldwin might impel us towards exercising our discretion in his favour, but the discretion only arises if we first find that there was unreasonableness in the relevant sense" - but concluded that FSA had not been unreasonable.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/baldwin_decision_catchwords.pdf http://www.financeandtaxtribunals.gov.uk/decisions/documents/FinancialServicesMarketsTribunal/Baldwin_costs_decision.pdf

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Bedford, David (25 July 2011, publicised October 2011)	<p>FSA had intended to issue a prohibition order against the applicant, an insurance broker responsible for managing the Financial Risk Division of ESR Insurance Services Limited, as well as a fine of £100,000. The applicant did not dispute the substance of the decision, but argued that the prohibition was excessive in its scope and the financial penalty too large. It was noted that the applicant was responsible for establishing links to insurance markets into which he could place ESR's clients' risks. He had increasingly placed business with a US national whom he gradually became aware was committing fraud and had continued to place clients' premiums with him. The applicant had forged documents in respect of the reinsurance of a contract in order to conceal the US national's fraudulent behaviour. He issued insurance bonds purporting to provide cover with Gramercy Insurance Company but without obtaining their authority to do so. Gramercy informed ESR, which led to the uncovering of the facts. It was noted that although no client in fact suffered loss, the discovery of the frauds and the resulting potential claims against ESR led to its being placed into administration in February 2008, followed by insolvent liquidation. The applicant had cautioned by the City of London Police, been prohibited by what is now the Department for Business, Innovation and Skills from acting as a director of a company for a period of nine years, and was a party to various civil actions designed to recover damages from him which he said had cost him, in all, about £200,000. The Tribunal concluded that "in this case ... it is impossible to see how ... [FSA] could properly have taken any action short of prohibition" and, after some deliberation over the financial penalty, decided to direct FSA to reduce the fine to £10,000, adding "it is inevitable that the imposition of only a modest penalty because of the personal circumstances of the offender will diminish the deterrent effect, since the amount finally determined becomes the 'headline' figure. For that reason, though we recognise it is not for us to determine prosecution policy, we repeat our surprise that Mr Bedford was not prosecuted, and emphasise our own view that a starting point of £200,000 in a case of this gravity is appropriate. However, the need to deter others does not justify the imposition of a penalty of that magnitude in the particular circumstances of this case."</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/DavidJohnBedford_v_FSA.pdf</p>
Betton, Graham (July/September 2010)	<p>Graham Betton was director of agency-only stockbroker SP Bell (together with Simon Eagle who was banned and fined by FSA in May 2010). In 2003, Simon Eagle bought 85% of FEI and acquired SP Bell in order to sell FEI stock to its clients, generating demand for the stock and pushing its price up. Graham Betton instructed SP Bell staff to sell FEI shares to clients, many of whom were unaware that the shares were being bought and sold on their behalf. In order to defer clients having to pay for the shares, many of the trades were rolled over from client to client without being settled. Graham Betton was aware that the purpose of the scheme was to defer payment for the shares indefinitely and he personally executed at least 75 rollover trades of in excess of 340 million shares in FEI. It is noted that, unlike Simon Eagle, Graham Betton was authorised to conduct these trades for SP Bell clients. He worked closely with the market maker Winterflood to carry out the rollover trades and increase Winterflood's bid/offer quote. FSMT is considering the fine that is appropriate for his actions and will announce this at a later date</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/0011_GrahamBetton_v_FSA.pdf</p> <p>See also FSA Notices</p>
Betton, Graham (1 March 2011)	<p>Further to the above, this Decision now considers the fine that is appropriate for his actions. In January 2011, FSA submitted that, that in the light of the fact that Graham Betton has not provided full disclosure of his assets; no deduction should be made to the headline financial penalty figure of £500,000. FSMT agrees that £500,000 is the correct penalty to be imposed in the circumstances; that is without regard to the financial hardship likely to be suffered by Graham Betton and sets out details it requires before it can take account of such financial hardship.</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/GrahamBetton.pdf</p>

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Betton, Graham (25 May 2011, publicized June 2011)	Further to earlier hearings, this Decision deals with the level of financial penalty in the Graham Betton market abuse case. In its earlier hearing, the Tribunal had already indicated that it thought £500,000 to be the correct penalty to be imposed in the circumstances; that is without regard to the financial hardship likely to be suffered by Graham Betton. The Tribunal has considered further evidence on Graham Betton's financial circumstances. It concludes: "Mr Betton was not (aside from the £4,500 profit) unjustly enriched from his participation in the scheme. He was driven by fear rather than greed ... the facts that Mr Betton made nothing out of the share-ramping exercise and that he is now not at all well-off in no way excuse him for the market abuse. He did, after all, spend more than thirty years of his previous career in the financial services industry and he must have been aware of the implications of what he was doing. The seriousness of the behaviour demands a penalty. An amount of penalty that forces him into bankruptcy would, we think, be disproportionate and totally unproductive. A penalty of £25,000 would leave Mr Betton, who is approaching 60, with virtually nothing. Because of the seriousness of the 'offence', a lesser amount would give a completely wrong message to other market users. For those reasons we think that the appropriate course for the FSA to take is to impose a £25,000 penalty". See Notices .	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/GrahamBetton_v_FSA.pdf
Bi, Nazia /Mohammed, Qadeem (2 June 2011, publicised September 2011)	FSA had withdrawn the permissions of the applicants to perform controlled functions, issued prohibition orders and imposed financial penalties for breaches of APER 6, stemming from a mortgage fraud investigation by the regulator. The sole ground contested by the two applicants was the level of the financial penalties. The Tribunal directed that appropriate financial penalty for the APER 6 breach should be £25,000 for the latter and £45,000 for the former, but noted "we are satisfied that both Applicants misled the FSA (through their statements to the RDC) about their financial means" and .that the evidence "was nowhere near verifiable enough for us to make reductions of the penalties determined above on account of financial hardship. It will now be a matter between them and the FSA as to whether they can demonstrate sufficient financial hardship to enable 'time-to-pay' arrangements to be made"	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/NaziaBi_and_Qadeem_Mohammed_v_FSA.pdf
Blackwell, Sean Michael (see <i>Hoodless, Geoffrey Alan</i>)		
Britton, Jonathan (see <i>NDI Insurance</i>)		

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Chhabra, Robin/Patel, Sameer Patel (26-30 October 2009, publicised December 2009)	The applicants had referred to FSMT an FSA Decision Notice which had decided to impose penalties for market abuse and to prohibit them from performing any function in relation to any regulated activity carried on by any authorised person on the grounds of fitness. FSMT had directed that the issue of liability in both references be heard first as a separate issue and that any issues as to penalty be heard at a later date. This Decision therefore deals only with the issue of liability (namely, whether the applicants engaged in market abuse) and not with other issues arising under s123 (the penalties) or s56 (the prohibition orders). On three occasions between May and July 2004 Mr Patel placed a series of spread bets on listed companies. In respect of each occasion FSA argued that Mr Patel placed his bets in reliance on relevant information not generally available which had been disclosed to him by Mr Chhabra from which it followed that Mr Chhabra and Mr Patel had engaged in market abuse as defined in s118(2)(a). Alternatively FSA argued that Mr Patel had engaged in market abuse and that Mr Chhabra had taken action which encouraged Mr Patel to engage in market abuse within the meaning of s123(1)(b). FSMT determined this issue in the reference as that Mr Patel did place his bets in reliance on restricted information not generally available which had been disclosed to him by Mr Chhabra and that both Mr Chhabra and Mr Patel did engage in market abuse and directed that any party has liberty to apply to FSMT, within three months from the date of the release of this Decision, for directions leading to a hearing of any issues relating to the penalties and the prohibition orders. If no such application is made the reference may then be determined and the matter remitted to FSA.	http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/072_Chhabra_Patel.pdf
Cox, Ian Douglas (12 May 2003)	Mr Cox had been refused approval to perform the controlled function of investment adviser with George Baker (Life) on fitness and propriety grounds. His application to FSMT was dismissed, but it was noted the FSMT "will generally disapprove strongly of the FSA disclosing documents to an applicant late, and in this case the evening before the hearing. Late disclosure makes it difficult for an applicant, particularly one who is representing himself, to deal with a matter satisfactorily and adds unnecessarily to what must inevitably be the stress of a hearing. It is particularly unsatisfactory for the FSA to serve material late because of shortcomings in its own file retrieval systems. The Tribunal may well refuse applications for late disclosure in future as it would have done on this occasion had it felt that the material would in reality prejudice the applicant's position. We emphasise however that we have no criticism of the FSA team conducting the case who seemed as concerned as we were by the late arrival of documents".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/003.pdf
Curren, Alistair /B-Assured Financial Services Ltd (31 March 2011, publicized April 2011)	FSA had sought to impose on the individual: a penalty of £100,000 (reduced from £150,000) for his failure to comply with Statements of Principle 1, 4 and 7 of APER in his controlled function roles, while undertaking those roles at the firm;; to withdraw the approvals granted to the firm for the individual on the grounds that he lacked integrity and was not fit and proper to undertake those functions; to issue a prohibition order against the individual; to cancel the firm's Part IV permission. FSMT noted that it was unclear which of those decisions was the subject of a challenge. The individual argued that he had not acted dishonestly, but that he and his firm had been the victims of his clients' dishonesty. He also argued that the prohibition imposed on him was severe and the penalty disproportionate to the gravity of his failings and his means. FSMT upheld the prohibition order and discussed the financial penalty in some detail, having given the individual additional time to produce further evidence to support his claim that the penalty was beyond his means. FSMT concluded "we find ourselves unable to say that a starting point of £150,000 for failings of the gravity we have described is too severe; left entirely to ourselves we might well have arrived at a higher figure ... however, recognise that it is undesirable that applicants to this tribunal should be deterred by the risk that the penalty will be increased, save in a clear case, and we do not consider that this case is so clear that we should adopt that course. We have decided, therefore, that the penalty should not be adjusted".	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Documents/decisions/Curren_v_FSA.pdf See FSA's subsequently announced Final Notices: http://www.fsa.gov.uk/pubs/final/b-assured_curren.pdf http://www.fsa.gov.uk/pubs/final/b-assured.pdf

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Davidson, Paul (30 July 2004)	<p>The Applicant referred to the Tribunal a decision of the Respondent to impose a penalty of £750,000 for market abuse. The Applicant wished the following issues to be considered: the circumstances in which the spread bets were placed on the share price of Cyprotex including the related hedging arrangements; the applicant's involvement in the placing of the spread bets and whether that involvement constituted market abuse; the level of penalty that the FSA has decided to impose. The application for a costs order in respect of the previous hearing was allowed in part; the application for a direction that certain questions be determined at a preliminary hearing was allowed in part and the application for directions requiring FSA to provide further information and to file further documents and for associated directions was dismissed.</p>	<p>http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/010.pdf</p>
Davidson, Paul/Tatham, Ashley (18-20, 23-27 and 30-31 January 2006; 1, 13-16, 21, 22, 24, 27 and 28 February 2006; and 2, 6 and 7 March 2006)	<p>Paul Davidson was the majority shareholder of Cyprotex PLC, which was to be admitted to trading on AIM. The take up of shares in the placing was slow and the idea emerged that, if a spread bet were placed in respect of shares in Cyprotex, then the spread betting firm would hedge the bet through a contract for differences with a counterparty, who would then hedge the contract for differences by purchasing shares in the placing, thus completing the placing. A few days before the flotation, on the account of Paul Davidson, Nigel Howe placed a large spread bet with City Index Limited of which Ashley Tatham was the executive director of trading. City Index hedged the bet by a CFD, the counterparty of which was Dresdner Kleinwort Wasserstein Securities Limited, which hedged its exposure by purchasing shares in Cyprotex in the placing. By this means the placing was filled. FSA decided to impose a penalty of £750,000 on Paul Davidson; a penalty of £300,000 reduced to £50,000 on Nigel Howe (who did not apply to FSMT); and a penalty of £100,000 on Mr Tatham. The penalties were imposed because FSA believed these gave a false and misleading impression as to the demand for, or the value of, the shares in Cyprotex and so amounted to market abuse within the meaning of s118 FSMA. FSMT found in favour of the applicants.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/davidson_and_tatham.pdf</p>
Costs Decision (6 September 2006)	<p>FSMT ordered FSA to pay the costs or expenses incurred by Mr Davidson and Mr Tatham in connection with proceedings before FSMT. Under paragraph 13 of Schedule 13 FSMA, FSMT may make a costs order where it considers that a decision of FSA, which was the subject of a reference to FSMT, was unreasonable or where it considers that a party to proceedings on a reference has acted vexatiously, frivolously or unreasonably.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/CostdecisionforDavidsonTatham.pdf</p>
Deakin, Norman (<i>see Ridings GB</i>)		

Firm/Individual	Short Summary	Links
Edwards, Stephen John/White Horse Group (publicized December 2007)	<p>FSA had refused an application by White Knight for approval under s16 FSMA of Stephen Edwards to perform the controlled function of investment adviser on the grounds that it was not satisfied that he was a fit and proper person to perform the controlled function (CF 21) for which approval had been sought. White Knight's application form specifically drew attention to the circumstances of the termination of Mr Edwards' engagement with another firm (The Financial Practice (UK) Ltd - "FPUK"). FSA had conducted its own investigation and refused the application for reasons that arose from the use by Mr Edwards of his own personal bank account details in three applications on behalf of FPUK for mortgage agencies with mortgage providers. FSA's concerns related to Mr Edwards' honesty and integrity rather than his competence and capability. FSMT said "the conclusion of two of us is that we are satisfied that despite Mr Edwards' shortcomings and the errors committed in connection with the registration applications, he is nonetheless a fit a proper person to perform the controlled functions. We all accept that White Knight, which has a good reputation with the Regulator, want to engage Mr Edwards to perform the controlled functions and that his role with White Knight will not involve him with the responsibility of making applications for registration with mortgage providers and handling commissions. We all recognise that the errors were committed within a very short period and were, as just observed, put right in each case soon after the matter was drawn to Mr Edwards' attention. Mr Edwards' behaviour did not have the effect of putting at risk the properties and funds of individual customers. The majority of us took this feature into consideration in assessing how relevant and how important this had been for purposes of the criterion set out in FIT 1.3.4G. 54. The other member of the Tribunal takes the view that Mr Edwards' behaviour at the time when the errors were committed and in the course of the subsequent investigations renders him unfit to carry out the controlled functions. The controlled functions require the highest standards of the individual in question and conduct of the present sort (including Mr Edwards' evasiveness and answers under cross-examination) show him to be an unacceptable risk". FSMT therefore decided in favour of the applicants by a majority (as permitted in Schedule 14 paragraph 12(1) FSMA) and directed FSA to allow White Knight's application under s60 FSMA</p>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/50_StephenEdwardsOliver.pdf

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<p>Elliott, Allen Phillip (July 2005-December 2005)</p>	<p><u>11 July 2005</u>: FSMT was asked to give a decision on a preliminary issue concerning the admissibility and status of a Findings and Order of the Solicitors Disciplinary Tribunal. In 2001 that tribunal found the applicant guilty of conduct unbecoming a solicitor and ordered that he be struck off the roll of solicitors. In 2003, FSA decided to prohibit the applicant from performing any function in relation to regulated activities because it appeared to the FSA that he was not a fit and proper person to perform any such function. The applicant referred that matter to the FSMT. A preliminary issue in that reference was whether the Findings and Order of the Solicitors Disciplinary Tribunal were admissible evidence of the applicant's lack of fitness and propriety and whether FSA could rely upon the Findings and Order without the need to re-prove each and every allegation which the Solicitors Disciplinary Tribunal found to be proved. FSMT's conclusion on the preliminary issue is that the Findings and Order of the Solicitors Disciplinary Tribunal were admissible evidence of the Applicant's lack of fitness and propriety and FSA could rely upon the Findings and Order without the need to re-prove each and every allegation which the Solicitors Disciplinary Tribunal found to be proved. However, FSMT will also consider any other evidence which either party wishes to put before it after which it will make its own decision as to whether the applicant is a fit and proper person within the meaning of s56.</p> <p><u>(20 and 21 October 2005 and 19 December 2005)</u>: This hearing is further to the July 2005 hearing (see above) at which FSMT had been asked to give a decision on a preliminary issue concerning the admissibility and status of a Findings and Order of the Solicitors Disciplinary Tribunal. FSMT had also said it would consider any other evidence which either party wished to put before it as to whether the applicant was a fit and proper person within the meaning of s56 FSMA. At a very late stage, the applicant sought to raise another issue, whether FSA had exceeded its powers by the issue of the prohibition order. This issue had not been raised in the reference notice nor in the applicant's reply to FSA's statement of case, but was also dealt with at this hearing. It was held that the applicant was not a fit and proper person within the meaning of s56 and that FSA did not exceed its powers by the issue of the prohibition order. In a press release, FSA stated that this is the first FSA case in which FSMT has based its decision on the findings of another disciplinary tribunal and sets a precedent for FSA by which it may rely on the conclusions of other courts and tribunals when considering whether individuals are fit and proper to undertake regulated activities.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/017.pdf</p> <p>http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/027.pdf</p>

Firm/Individual	Short Summary	Links
<p data-bbox="96 252 293 328">Eurolife Assurance Company Ltd (23 May 2002)</p> <p data-bbox="96 826 293 852">(4 September 2002)</p>	<p data-bbox="392 252 1597 724"><u>23 May 2002</u>: On 24 August 2001, FSA had served on the firm a notice under s12A of the Insurance Companies Act 1982 directing that the firm ceased to be authorized to effect contracts of insurance on the grounds that it appeared to the FSA that the firm had not fulfilled the criteria of sound and prudent management required by the Act. The firm, through its solicitors, objected to the procedure laid down by the Act in that, amongst other things, there was no provision for a review of the merits of the FSA's decision before an independent and impartial tribunal. In the light of that objection it was agreed that the notices issued pursuant to the Act would remain in place until the new regulatory regime for insurance companies under FSMA was introduced with effect from 1 December 2001. Accordingly, on 29 November 2001, the FSA issued a supervisory notice pursuant to s53(4) FSMA. This withdrew the firm's authorization to conduct new insurance business with effect from 1 December 2001. It also required assets sufficient to meet the firm's liabilities within the EC to be held by an approved trustee. The firm applied, pursuant to rule 17(3) of the Rules, for the hearing of that reference to be in private. FSMT concluded that it was "in principle against the firm's application for the hearing to be in private and decline to make the direction that is sought. We do not therefore have to address the "interests of justice" condition summarized in paragraphs 39-43 above. However, to mitigate the possible risks we will make two Directions as follows- (i) that a statement (the terms of which shall be submitted for our approval at least 21 days before the hearing date) be released on the FSA's website immediately before the start of the main hearing that explains the regulatory actions taken by the FSA in relation to the firm and the purpose of those actions, i.e. to protect the interests of the policyholders and (ii) that the firm has the opportunity to make a statement in rebuttal of the allegations made by the FSA on the first day of the full hearing".</p> <p data-bbox="392 813 1597 890"><u>4 September 2002</u>: This procedural point arose from the purported withdrawal by the firm of its reference to FSMT. The question was whether the firm, as applicant, could withdraw without the permission of FSMT. It was decided that the application for withdrawal was valid without FSMT having to give permission and that no direction was required.</p>	<p data-bbox="1619 252 2103 328">http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/001.pdf</p> <p data-bbox="1619 798 2103 874">http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/002.pdf</p>
<p data-bbox="96 928 293 1005">Eurosire Investment Services Ltd (10 September 2003)</p>	<p data-bbox="392 928 1597 1187">FSA had removed Eurosire's Part IV permission by removing all regulated activities with effect from 9 September 2003 because it had failed to effect and maintain adequate PII. Both parties agreed that the question as to whether the Applicant did or did not have adequate resources to meet threshold condition 4 was a matter for the substantive hearing of the reference. The firm argued that the Tribunal should apply the principles in HPA Services v Financial Services Authority Tribunal Decision of 30 July 2003. It was concluded that the giving of a direction under Rule 10(1)(e) would prejudice the interests of consumers who are the persons intended to be protected by the Notice; that conclusion means that the application must be dismissed. FSMT went on to state that it was necessary for the Notice to take effect on 9 September 2003 within the meaning of s53(3) FSMA, that the removal of all the Applicant's Part IV permissions from 9 September 2003 was proportionate within the meaning of ENF 3.5.2G(2) and (9) and that the application of the principles in HPA Services would not lead to a suspension of the Notice.</p>	<p data-bbox="1619 928 2103 1005">http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/006.pdf</p>
<p data-bbox="96 1225 293 1350">Eversure Financial Services Limited/Young, Frederick George (27 April 2006, publicised May 2006)</p>	<p data-bbox="392 1225 1597 1324">The applicants (a firm which arranges motor insurance and its principal shareholder and MD) were refused Part IV permission to carry on regulated activities relating to non-investment and approval for performance the controlled function of Apportionment and Oversight respectively. FSMT ruled that neither applicant satisfied fitness and properness tests.</p>	<p data-bbox="1619 1225 2103 1324">http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/032_00270028_EversureFinancialServicesLtdOliver.pdf</p>

Firm/Individual	Short Summary	Links
Fagbulu, Oluwole Modupe	<i>See under Visser, Michiel Weiger</i>	
Faulkner, William t/a Policylink and Apsley Homes Estate Agency (13 September 2006)	<p>The Applicant, a sole trader who conducted mortgage and general insurance activities, referred to the FSMT a First Supervisory Notice dated 17 March 2006, by which FSA varied his permission by removing all regulated activities with immediate effect. It appeared to FSA that he was not a fit and proper person, on the grounds that he had a large number of previous convictions and a bankruptcy order recorded against him, which he had not disclosed to FSA at any stage, and had not provided an adequate explanation for those failures. The Applicant stated in essence that the action taken against him by FSA had been similar to that taken by OFT, arguing that his success in his appeal against OFT's decision should be taken as establishing that he is a fit and proper person to hold an Estate Agents' Licence and a Consumer Credit Licence and on this basis he should be considered fit to hold the permission originally granted. FSMT concluded it had "a different test to apply". Dismissing the reference, FSMT instructed FSA to issue a Second Supervisory Notice confirming the decision to maintain the variation of permission as set out in the First Supervisory Notice.</p>	http://www.financeandtaxtribunals.gov.uk/decisions/documents/FinancialServicesMarketsTribunal/FaulknerOliver.pdf
<p>Fox Hayes (24 September 2007, publicised 10 October 2007) – <i>see also second and third decision and Court of Appeal Reversal below</i>)</p>	<p>Between February 2003 and June 2004, Fox Hayes LLP, a firm of solicitors based in Leeds (the "Applicant"), had approved a number of financial promotions for unauthorised overseas companies which took the form of letters approved by the Applicant and sent by the overseas companies to private investors in the UK. Each letter offered a free research report into a company in which the investor already held shares. The Applicant also approved the research reports which were later sent by the overseas companies to the investors who requested them. FSA was of the view that the Applicant had not taken reasonable steps to ensure that the financial promotions were clear, fair and not misleading and was also of the view that the Applicant had reason to doubt that the overseas companies would deal with customers in the UK in an honest and reliable way. A Decision Notice, imposing a penalty of £150,000, had been given on 29 September 2006 and the Applicant subsequently referred it to FSMT. FSA then argued that the Applicant had not arranged for the confirmation exercises (that the financial promotions complied with the rules) to be carried out by an individual with appropriate expertise and that the Applicant had not conducted its business with due skill, care and diligence. The Applicant accepted that, following the Philippe Jabre decision, FSMT had jurisdiction to consider these matters even though they had not been mentioned in the Decision Notice. FSMT ruled that:</p> <ul style="list-style-type: none"> - the Applicant did take reasonable steps to ensure that the promotions were clear, fair and not misleading; - the Applicant initially did not have reason to doubt that the overseas persons would deal with customers in the UK in an honest and reliable way; but viewed that by mid-November 2003 the Applicant did have reason to doubt and should then have ceased to act until the doubts had been removed; - the Applicant did arrange for the confirmation exercises (that the promotions complied with the rules) to be carried out by an individual with appropriate expertise; - the Applicant did conduct its business with due skill, care and diligence. - further submissions are invited on the subject of whether "secret commissions" paid to Robert Manning, a partner in the firm, should be treated as profits of the Applicant for the purpose of determining the amount of the penalty, which should be sent to the Secretary of FSMT within 30 days of the date of the release of this Decision and FSMT will then consider whether a further hearing should be arranged. If no submissions are received then FSMT will determine the reference on the basis that the penalty is reduced to £70,000. 	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/FoxHayesFinalamended.pdf

Firm/Individual	Short Summary	Links
<p>Fox Hayes (4 February 2008; publicized 7 April 2008)</p>	<p>This is the second Decision in respect of this firm. Fox Hayes, a firm of solicitors based in Leeds (the "Applicant"), had approved a number of financial promotions for unauthorised overseas companies which took the form of letters approved by the Applicant and sent by the overseas companies to private investors in the UK. Each letter offered a free research report into a company in which the investor already held shares. The Applicant also approved the research reports which were later sent by the overseas companies to the investors who requested them. FSA was of the view that the Applicant had not taken reasonable steps to ensure that the financial promotions were clear, fair and not misleading and was also of the view that the Applicant had reason to doubt that the overseas companies would deal with customers in the UK in an honest and reliable way. A Decision Notice, imposing a penalty of £150,000, had been given on 29 September 2006 and the Applicant subsequently referred it to FSMT. FSA then argued that the Applicant had not arranged for the confirmation exercises (that the financial promotions complied with the rules) to be carried out by an individual with appropriate expertise and that the Applicant had not conducted its business with due skill, care and diligence. The Applicant accepted that, following the Philippe Jabre decision, FSMT had jurisdiction to consider these matters even though they had not been mentioned in the Decision Notice. FSMT ruled that the Applicant did take reasonable steps to ensure that the promotions were clear, fair and not misleading; the Applicant initially did not have reason to doubt that the overseas persons would deal with customers in the UK in an honest and reliable way; but viewed that by mid-November 2003 the Applicant did have reason to doubt and should then have ceased to act until the doubts had been removed; -the Applicant did arrange for the confirmation exercises (that the promotions complied with the rules) to be carried out by an individual with appropriate expertise; the Applicant did conduct its business with due skill, care and diligence. Further submissions had been invited on the subject of whether "secret commissions" paid to Robert Manning, a partner in the firm, should be treated as profits of the Applicant for the purpose of determining the amount of the penalty and FSMT said that if no submissions were received then it would determine the reference on the basis that the penalty be reduced to £70,000. At this second Decision, FSMT ruled that the amount of commission received by Robert Manning was relevant in considering the amount of the firm's penalty ("whatever may have been the arrangements between the partners it is clear that the other partners were entitled to ask Mr Manning to account for the commissions he received and the fact that they chose not do so is not relevant. It is the Applicant which was the person authorized to undertake the business of financial promotions and the Applicant on whom the penalty is imposed. There should be no incentive for an authorised person to seek to reduce a penalty by making arrangements not to receive money that is otherwise due"). FSMT concluded that the amount of the firm's penalty should be reduced to £146,000, and has directed FSA to reduce the penalty accordingly.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/FoxHayesPenalty.pdf</p>

Firm/Individual	Short Summary	Links
<p>Fox Hayes (23 April 2008, publicised 29 May 2008)</p>	<p>On 31 March 2008, FSA applied for permission to appeal to the Court of Appeal from the FSMT decision disposing of this reference. There have been two previous FSMT Decisions (October 2007, 6 March 2008 - see above for more details). FSMT has granted FSA limited permission to appeal to the Court of Appeal on the following points of law: (1) whether FSMT erred in law in deciding that the promotions approved by Fox Hayes were “clear, fair and not misleading” within the meaning of COB 3.8.4R1; (2) whether FSMT erred in law in deciding that before mid-November 2003 Fox Hayes had no reason to doubt that the overseas companies would deal with investors in the UK in an honest and reliable way within the meaning of COB 3.12.6R(2) or, alternatively, whether the finding that the reason to doubt arose in mid-November 2003 was unsupported by the evidence; and (3) whether FSMT finding that Fox Hayes conducted its business with due skill, care and diligence was unsupported by the evidence. FSA had to appeal within 14 days of the date of the release of this Decision.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/058_FoxHayesPermissionToAppeal.pdf</p>
<p>Court of Appeal reversal – 17 February 2009</p>	<p>FSA wins appeal against solicitors firm that aided boiler room scammers (Fox Hayes)</p> <p>FSA notes that it has won an appeal against Fox Hayes, a firm of solicitors that used its status as an FSA-authorized firm to approve promotional material used by overseas boiler room operations to defraud UK consumers, with the overturn of an original FSMT ruling. The firm had approved 34 financial promotions for five unauthorised, unregulated overseas companies between 2003 and 2004. Using the approved promotional material as the first point of contact, the overseas companies were able to illegally sell shares worth about US \$21 million to 670 UK investors. As well as finding that Fox Hayes broke FSA rules by approving material that allowed boiler room fraudsters to target UK investors, the Court of Appeal also increased the level of penalty imposed by FSMT against the firm from £146,000 to £954,770. The revised penalty includes a £454,770 commission made by former senior partner at Fox Hayes. The final penalty will be determined by FSMT at a later date. FSA notes that it decided to appeal the FSMT decisions on points of law, as part of its fight against overseas boiler room fraudsters and to further deter other regulated individuals and companies from assisting them.</p>	<p>FSA Statement: FSA wins appeal against solicitors firm that aided boiler room scammers</p> <p>Financial Services Authority v Hayes [2009] EWCA Civ 76 (17 February 2009)</p>
<p>Fox Hayes (29/30 March 2010, publicised 14 May 2010)</p>	<p>The Decision deals with the first question remitted to FSMT by CoA as a consequence of its judgment in <i>FSA v Fox Hayes [2009] EWCA Civ 76</i>. CoA, having found that Fox Hayes had breached FAS rules in respect of certain financial promotions approved by Fox Hayes, at a time when it was a partnership, declared the appropriate penalty to be £954,770. (FSA had determined the penalty as £150,000.) The Decision considers which of the partners were, as a matter of law, liable for the £954,770 penalty - during the period to which the penalty related there had been a 10 sequence of partnerships, each composed of different partners..</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/0015_FoxHayes.pdf</p>

Firm/Individual	Short Summary	Links
Fox Hayes (12 May 2011)	<p>This Decision deals with the second and third questions remitted to FSMT by CoA as a consequence of its judgment in FSA v Fox Hayes [2009] EWCA Civ 76. CoA, having found that the firm had breached COBS rules in respect of certain financial promotions approved by Fox Hayes, at a time when it was a partnership, determined the appropriate penalty to be £954,770. The Decision rules on whether the penalty should be diminished by reason of the financial circumstances of the relevant partners who would be liable to pay it; and what that penalty should be. The Tribunal noted that the amount "should not in our view be less than the secret profits obtained by Mr Manning which are, as just mentioned, to be regarded as assets of the partnership. Those were received because Mr Manning had arranged for Fox Hayes to approve and to undertake the work done in connection with the financial promotions. In doing so Fox Hayes, through its partners, acted deliberately and recklessly over a long period of time and investors spent over \$20 million on shares that lost most of their value. To impose a penalty that contains no punitive element is, in the particular circumstances of these enforcement proceedings, understandable. To impose a penalty that failed to reflect what the partnerships obtained would be wrong. The breach was so severe that it would be inappropriate to reduce the penalty to below the figure of £454,770". It directed FSA to impose on the firm penalties of £68,215.50 in respect of the three financial promotions approved in February to May 2003 and of £386,554.50 in respect of the seventeen financial promotions approved from August 2003 to June 2004.</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/FoxHayes_v_FSA.pdf</p>
Fryett, Stephen (22 July/30 September 2008, publicised 18 November 2008)	<p>FSA issued a prohibition order against Stephen Fryett in November 2007. Stephen Fryett is the owner and sole director of a company known as FEL Asset which acted as a consultant between accredited firms and insurance and reinsurance carriers globally until it ceased trading in or about 2005. He has never been an approved person for the purposes of FSMA. The reference relates to the writing, or purported writing, of contracts of insurance in the UK during 2003 by companies known as CIC Greece and CIC Costa Rica. Neither of those companies have ever been authorised to carry on any regulated activity in the UK nor were they passported.. FSA alleged that Stephen Fryett was intimately involved in all of those activities. At all material times he had held himself out as a director of CIC Greece and had actively encouraged underwriting agents in the UK to enter into contracts of insurance in the UK on behalf of either or both of CIC Greece and CIC Costa Rica. Despite knowing that both those companies had entered or purported to enter into contracts of insurance in breach of the general prohibition, he had failed to take any steps to inform FSA or in any other way to remedy the irregularities. FSA noted that he had received at least £80,000 (and possibly up to £100,000) by way of commission payments in relation to the writing (or purported writing) of insurance business in the UK by those two companies. Stephen Fryett argued that, throughout, he had been an intermediary and not a decision maker. To the extent that he had participated he had proceeded on misleading information provided by, among others, Greek lawyers and that he had not been knowingly concerned in any regulatory breach. FSMT dismissed the reference, noting that "the scale of the unauthorised writing of risks was considerable" and agreeing with FSA that he posed "serious risk to consumers and to confidence in the financial system".</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/0021_StephenFryett.pdf</p>

Firm/Individual	Short Summary	Links
<p>FT Insurance Services (Theophilus Folagbade Sonaïke) (13 July 2005)</p> <p>(19 October 2005)</p>	<p>Theophilus Folagbade Sonaïke was a sole trader carrying on business in the name of “FT Insurance Services” and had Part IV permission to carry on various regulated activities, in advising on and arranging investments and mortgages. A Supervisory Notice was given which removed these following his conviction on false accounting charges. Mr Sonaïke’s case was that this did not impact on his ability to give financial advice. The FSMT had to decide whether Mr Sonaïke’s time for making the reference should be extended; whether the effect of the Supervisory Notice should be suspended pending the final determination of the reference; and whether the register should include no particulars about the reference. The extension was granted, the other applications were refused.</p> <p>The second hearing confirmed that “interests of consumer confidence and consumer protection can only be protected by the actions taken by [FSA]. For those reasons we dismiss the References and direct the Authority to issue Final Notices in the same terms as the notices referred to this Tribunal”.</p>	<p>http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/019.pdf</p> <p>http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/024.pdf</p>
<p>Geddis, Jason (26 August 2011, publicised September 2011)</p>	<p>The reference concerns the sanctions imposed by FSA on Jason Geddis, in relation to market abuse committed by him during trading on the London Metal Exchange on 21 November 2008. In its Decision Notice dated 11 June 2010 the Authority decided to impose a penalty of £25,000, and made a prohibition order preventing him from performing any function in relation to any regulated activities. Jason Geddis referred the matter to the Tribunal, arguing that the sanctions were excessive and that he should have been subject to no more than a public statement that he had engaged in the market abuse. The Tribunal concluded that it was not appropriate to levy a fine on Jason Geddis, saying it accepted that “FSA “misjudged the facts of the case and misjudged Mr Geddis” and agreed with the applicant that a public censure was more appropriate. It has directed FSA to issue a statement pursuant to s205 FSMA. The Tribunal also disagreed with FSA’s intention to impose a prohibition order, noting “he demonstrated a lack of care resulting in a disorderly market on a single occasion, in a manner which we are sure he will never repeat. He has learned his lesson. In our view he is fit and proper, and no prohibition order is justified”. The Tribunal outlined (in s53) a number of factors which led to its decision. FSA has now published its censure and Final Notice – see Notices.</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/JasonGeddis_v_FSA.pdf</p>
<p>Glenbow Financial Management Ltd (<i>see Ridings GB</i>)</p>		
<p>Greenfields Financial Management Ltd (3 October 2005)</p>	<p>FSA had refused the firm’s application of 7 December 2004 for Part IV permission to add general insurance regulated activities. FSA had asked FSMT to determine the reference without an oral hearing. FSMT concluded that “there is nothing which would lead me to conclude, in the words of Rule 16(2), that there are circumstances making it undesirable to make a public pronouncement of this Decision. Rather the interests of justice generally require openness” and determined that the appropriate action for FSA to take in relation to the reference was set aside its refusal and to process the firm’s application of 7 December 2004 in the normal way.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/022.pdf</p>
<p>Greengrass, Peter Ivan (<i>see NDI Insurance</i>)</p>		

Firm/Individual	Short Summary	Links
<p>Greystoke, Andrew/Atlantic Law LLP (1 March 2010, publicised 13 May 2010)</p>	<p>FSA reports that FSMT has upheld its decision to issue a prohibition order against the individual and fining him and the FSA-regulated law firm of which he is senior partner, a total of £400,000. It is noted that he "recklessly" signed off the firm's approval of 50 UK investment advertisements, between December 2005 and March 2007, issued by four unregulated Spanish stockbroking firms. He did so without taking reasonable steps to ensure that the advertisements were clear, fair and not misleading and despite having reason to doubt that the Spanish firms would deal with UK consumers in an honest and reliable way. It was accepted before FSMT that these Spanish firms were boiler room share scam operators. 130 UK consumers have complained to FSA that they invested a total of over £3 million. FSMT noted "we recognise that there is a possibility that imposition of financial penalties of the range fixed by the RDC may result in the insolvency of the Applicants and in Atlantic Law going out of business The fact that the purpose of imposing a financial penalty is not to bring about insolvency does not mean that the Tribunal cannot and should not fix a penalty which may have that unfortunate result. Victims of boiler room schemes have to take the financial consequences of the losses perpetrated upon them. Those who help cause those losses do not deserve special protection".</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/atlanticLaw.pdf</p> <p>FSA prohibition of Andrew Greystoke and £400,000 fine on him and Atlantic Law LLP for aiding multi-million pound boiler room share scam upheld</p>
<p>Harrison, Ivan (<i>see Ridings GB</i>)</p>		
<p>Haworth, Neil (28 March 2007)</p>	<p>In January 2002, a former client of the Applicant, a Mrs Bevan, referred a complaint she had in respect of the Applicant to the FOS. Her complaint arose out of advice given to her by the Applicant in 1990 (the Applicant had been grandfathered into FSA authorisation) not to join the BAe pension scheme but to invest in a personal pension scheme with Standard Life. In September 2003 the FOS issued the FOS Award in favour of Mrs Bevan. FOS considered that Mr Haworth should have advised Mrs Bevan to join the BAe scheme in 1990 and that the Applicant should establish whether Mrs Bevan had suffered a loss as a result of the decision to contribute towards a personal pension scheme rather than joining and contributing to the BAe scheme from 1st March 1990 to 13th April 1996. FOS also found that the Applicant had contributed to the delay in dealing with the complaint by prevarication. Accordingly the Ombudsman directed that the Applicant (i) without further delay carry out a loss assessment in accordance with certain regulatory guidelines and (ii) pay Mrs Bevan £300 to compensate for the delay, distress and inconvenience caused. This had not been complied with. FSMT dismissed the reference, noting that the Applicant had failed to treat his customer fairly and was not a fit and proper person. FSA has been instructed to cancel his Part IV permissions.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/045_Haworthfinaldecision28thMarch20071.pdf</p>
<p>Heather, Moor & Edgecomb Limited (19 May 2008, publicised June 2008)</p>	<p>The applicant had referred a decision notice dated 2 October 2007 informing it that, on the basis that it had failed to conform with an award made by FOS dated 13 October 2003 in favour of a Mr and a Mrs Crofts, FSA had decided to cancel its Part IV permission. The applicant said that nothing about its conduct in respect of the Crofts' FOS Award rendered it not fit and proper in the relevant sense. FSMT directed that FSA cancel the applicant's Part IV permission unless within 28 days from the release of this Decision, or, if an application be made for permission to appeal, the final disposal of any appeal from it, the applicant shall have paid to Mr and Mrs Crofts the amount of £6,349.61 (the original FOS award was for £5,352.84 to be paid by 11 November 2004 - FSMT directed that interest of 5% for the period November 2004 until May 2008 be imposed). The issue of the existence (or not) of a FOS register is discussed. [See also news update of 12 June 2008 for details of the relevant Court of Appeal judgments]</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/059_HeatherMoorAndEdgecombLtdOliver.pdf</p>

Firm/Individual	Short Summary	Links
Heather, Moor & Edgecomb Limited (1 July, publicised August 2008)	This is the second published Decision further to the 19 May 2008 hearing. In the earlier hearing, on 5 June 2008, FSMT held that unless the applicant paid a FOS award due to a Mr & Mrs Crofts (plus interest) within 28 days, its Part IV Permission should be cancelled. On 17 June 2008, the applicant appealed to CoA under s137(1) FSMA. FSMT refused leave to appeal, concluding that the appeal had no real prospect of success and there was no other compelling reason why the appeal should be heard. The applicant can seek permission from CoA to appeal within 14 days of the release of the Decision.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/062_Heather_Moor_Oliver.pdf
Henton, Christopher Reginald Colin (15 November 2007, publicised 14 December 2007) (Includes Preliminary Decision)	Christopher Henton was one of four individuals prohibited by FSA for their dishonest involvement in reinsurance business that funnelled "very significant" losses into Sphere Drake Insurance Limited. Mr Henton was an underwriter. Working together in the 1990s they wrote reinsurance business under a binding authority granted by Sphere Drake. They deliberately did not disclose that the business being passed to Sphere Drake was "gross loss making business" that would inevitably result in losses for Sphere Drake. Sphere Drake received claims in excess of \$250m as a result of 112 contracts passed to it via the firms for which the four men worked. All four were defendants in a court case brought by Sphere Drake in 2003. Findings of dishonesty were made against the four and it was also found that they had given untruthful evidence during the course of the trial. It is noted that FSA launched this enforcement action after it took on the regulation of insurance brokers in January 2005. Mr Henton took his case to FSMT who rejected his application. Although it was the unanimous decision of the FSMT that he was not a fit and proper person, it noted: "we are conscious of the fact that a general prohibition would cover activities that are not regulated by the Authority at present, but which might become so in future. A prohibition order covering all possible future regulated activities moves from being protective to becoming punitive and would, in our view, be disproportionate in this case. It is possible to envisage circumstances where the Applicant's present unregulated activity as an estate agent could become imperilled by a wide ranging prohibition order. For this reason we are of the view that the prohibition order should be restricted to activities which are currently regulated. If in future further activities become regulated it will still be open to the Authority to prohibit the Applicant from performing any function in relation to such a regulated activity but the Applicant would then have a further right of appeal to the Tribunal".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/48_Henton.pdf http://www.financeandtaxtribunals.gov.uk/decisions/documents/FinancialServicesMarketsTribunal/048_Hentonfinal_revised.pdf
Hobbs, David (2 September 2011, publicised 15 September 2011)	David Hobbs appealed to the Upper Tribunal for two Witness Summonses directed at Olivia Dickson (a voting member of the RDC panel) and Andrew Fenlon (LIFFE's Head of Audit, Investigation and Membership). The application states that both of those individuals have indicated their opposition to the applications for them to attend and give evidence at the Hearing of the reference. The Tribunal noted that FSA had argued that it would be unfair on the individuals of "being required to give expert evidence and then subsequently having a claim asserted against them by the Applicant that they had breached a duty of care owed by virtue of their appointment". It was concluded that the terms of Rule 16 of the Tribunal Procedure (Upper Tribunal) Rules 2008 "go nowhere near enabling the Upper Tribunal to issue a summons to a person requiring him to attend and give expert evidence ... even if there were any merit in Mr Hobbs's application, I would disallow it on the grounds that it is long overdue and no reason has been advanced as to why I should give him extended time to apply".	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/David_Hobbs_FSA.pdf

Firm/Individual	Short Summary	Links
Hoodless, Geoffrey Alan/Blackwell, Sean Michael (3 October 2003)	<p>The applicants had been directors and shareholders of Hoodless, Brennan and Partners Plc (“HBP”), stockbrokers. Among other duties, they each performed the controlled function of investment adviser, and Mr Hoodless performed additionally the controlled function of investment management. After a lengthy investigation into HBP’s placing of shares in PrimeEnt Plc in March-April 2000, FSA decided to withdraw the applicants’ approvals to perform those functions on the grounds that they were not fit and proper persons to perform the functions to which the approvals related. On 17 January 2003 the applicants referred the matter to this Tribunal pursuant to FSMA s63(5). The references were ordered to be heard together. FSMT noted that “it did seem to us that the allegations made in the Decision Notices went substantially beyond what was justified by the evidence that we had heard”. With regard to Mr Hoodless, FSMT concluded “that he is fit and proper to perform the controlled functions of investment adviser and investment management. We direct that any application by him for approvals be determined by FSA in the light of that conclusion and that the relevant Decision Notice be read in the light of our findings, which substantially contradict most of the matters relied on by FSA in it”. With regard to Mr Blackwell, “in view of the attempted share support we uphold the conclusion of the Decision Notice that he is not fit and proper to perform the controlled function of investment adviser. But we direct that the relevant Decision Notice be read in the light of our findings, which uphold only certain of the matters relied on by FSA in the notice”.</p>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/007.pdf
HPA Services (5 March 2003)	<p>The applicant was a sole trader operating as an IFA whose PII expired, but he continued to trade without PII cover for a period of several years. FSA had removed his Part IV permissions by Supervisory Notice, but the main issue of the case was “directed solely at the question of the immediate effect of the Notice served on the Applicant”. FSMT concluded “there is no indication that suspending the effect of the Supervisory Notice will change the Applicant’s position for the better or the worse with regard to the reference” and dismissed the application.</p>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/005.pdf
Hussain, Qamar t/a Radiant Technological Services (publicized December 2007 and January 2008 respectively!)	<p><u>November 2007</u>: The applicant conducted mortgage and general insurance activities as a sole trader. FSA had sent Mr Hussain a First Supervisory Notice, withdrawing the permissions which had been granted in 2004 with immediate effect on the grounds that he had failed to disclose, in each of the applications for permission he had submitted, that he had convictions of theft and various other offences on several occasions between 1985 and 2006 (including after his authorisation had been granted). In addition, in his correspondence with FSA re the First Supervisory Notice, he made a number of threats and was abusive towards FSA staff. FSA also relied on his refusal to complete his RMAR, for the period to 31 March 2007, and pay the prescribed fee, and on his failure to comply with the terms of the First Supervisory Notice. FSMT dismissed the reference.</p> <p><u>June 2007</u>: In January 2008, FSMT published the Decision from its earlier hearing in June 2007. The applicant asked for the immediate effect of the decision contained in the First Supervisory Notice to be suspended and that FSMT’s register should contain no particulars of the reference on the grounds that it was disproportionate in all the circumstances to suspend with immediate effect and that, to the extent that FSA’s decision was based on information of a third party, he asked that the third party’s name be revealed so as to afford him a just hearing of the present application. FSMT dismissed the application.</p>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/051_Hussain.pdf http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/053_6_Hussain_Oliver.pdf

Firm/Individual	Short Summary	Links
Jabre, Philippe (10 July 2006)	The first Decision details a preliminary hearing held "to determine whether FSMT had jurisdiction to entertain the matters raised in FSA's Statement of Case". FSMT concluded that it did. The second Decision details the preliminary hearing held to determine whether the investments to which the allegation of market abuse relates were at the relevant time "traded on a market to which this section applies" for the purposes of s118(1)(a) FSMA and concluded that it did. It is noted that both parties could apply for a Directions hearing to be made not earlier than 21 days after the release of this Decision and not later than 48 days from that date.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/036_Philippe_Jabre_Mkt_abuse_Oliver.pdf http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/035_Philippe_Jabre_Oliver.pdf
Karim, Mohammed t/a MK Insurance Services (15 March 2011, publicized May 2011)	FSA had refused the individual's application under s40 FSMA to carry on certain regulated activities in relation to insurance broking on the grounds that he would not be able to satisfy Threshold Conditions 4 and 5. The reference was dismissed. The Tribunal commented that "we think the FSA was right Having said that, we think that with experience and advice as to the practicalities of the regulatory system, so far as it relates to his line of business, Mr Karim may become better able to claim Part IV Permission. He is a person of integrity. But he has done himself no favours by pursuing his quest for permission entirely on his own and without the help of an employer, partner, referee or adviser". FSA subsequently published its Final Notice confirming the refusal, together with a covering letter [see FSA Notices 2011].	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Documents/decisions/FS0012_MohammedKarimOliver.pdf
Khan, Sabz Ali (21 May 2009)	The applicant referred to FSMT a Decision Notice issued to him on 7 February 2008 by FSA, the effect of which was to refuse him Part IV permission on the grounds of fitness and propriety. FSMT dismissed the reference, noting that "we think the Authority was right ... to be sceptical about Mr Khan's claims of extensive experience. Second, none of the qualifications Mr Khan stated that he and his team possessed (for which he produced no documentary support) were relevant to the undertaking of mortgage business. For himself, he claimed qualification as a chartered management accountant, and that he had "qualified as a barrister and obtained direct access to the Bar in England and Wales". That internally inconsistent statement was checked by the Authority with the Bar Council, which stated that Mr Khan had never been a barrister in England and Wales. It did, however, emerge that he had been, but no longer was, a member of the International Bar Association and the Association of Personal Injury Lawyers. Neither of those memberships, self-evidently, confers any qualification to give mortgage advice or act as a mortgage or insurance intermediary, the regulated activities for which Mr Khan was seeking permission ... We bear in mind that we have not heard from Mr Khan, but it is nevertheless clear to us not only that Mr Khan has failed to discharge the burden on him, but that the Authority was right to refuse his application". It is noted that the applicant did not attend the hearing on the grounds of illness and FSA's counsel proposed to strike out the reference or dismiss it, but FSMT decided not to do this, but was unprepared to postpone the hearing until he could attend., noting that "we did not hear any oral evidence, but had the statements of Peter Rooke ... [of FSA], which dealt with the relevant qualification requirements, and of Warren Radloff ... , [formerly of FSA] ... We also had a bundle of relevant documents, including the extensive correspondence between Mr Khan and the Authority, and notes of telephone conversations between him and Mr Radloff. We have also considered Mr Khan's skeleton argument, as well as one provided by [FSA's counsel]. Mr Khan's skeleton indicated that he did not accept some of what Mr Radloff said, but he did not identify the parts of his statement with which he took issue and, in the absence of a statement from Mr Khan, we have drawn what we take to be his case from his reference notice, his response, his skeleton, and the correspondence. We deduce, from the absence of any comment to the contrary, that Mr Khan does not take issue with Mr Rooke's evidence, which is purely formal".	http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/68_SAKhan_APPLICATION_FOR_PERMISSION.pdf

Firm/Individual	Short Summary	Links
<p>Khan, Salman t/a Salman A Khan (18 January 2008, publicised 1 May 2008)</p>	<p>This is a reference by the applicant of the decision by FSA dated 19 September 2007 cancelling the permission given to Salman A Khan. The reason given for the withdrawal was given as failures, described by FSA as "repeated failures", to submit at the due time a RMAR. FSA had given the applicant a number of warnings as to the importance of the timely submission and a number of warnings as to the potential consequences of the failure to submit the RMAR, but the applicant had twice allowed matters to progress to a stage where FSA issued a Warning Notice that it proposed to cancel his permission before submitting the RMAR. FSA has discontinued its proposal to cancel the applicant's permission on two separate occasions. FSMT discussed in some detail the penalties available in the case of firms' failure to submit RMARs and said it had "heard evidence that a financial penalty could have been imposed instead of purported withdrawal, then as a matter of general principle the most draconian punishment should be reserved for the most serious cases ... the Tribunal by the following decision is not intending to undermine the general policy adopted by the Authority in such matters or to devalue the importance of proper reporting to provide an economical method of checking-up on small firms. On the other hand simply because it is difficult for the Authority to keep track of the many firms it has to regulate should not mean that a particular reporting requirement requires to be enforced without regard to individual circumstances. It will usually be the case that the appropriate progression of sanction would be warning, financial penalty, withdrawal of permission and to skip from one to three may not be appropriate". FSMT ruled that FSA should impose a financial penalty upon the applicant of £2,000, in addition to the £250 administration fee he is bound to pay when late in submitting returns and that the applicant satisfy FSA that his capital resource position is in good order and all that within 28 days of the issue of the Decision. Failing such implementation, FSA is directed to withdraw the applicant's Part IV Permission.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/057_SalmanKhan.pdf</p>
<p>Kuun, Simon John Graham/MFP Group Plc (21, 22, 23, 24 September and 13 October 2009)</p>	<p>FSA has fined Simon Kuun, the director of MFP Group Plc, a financial planning firm, for lying repeatedly to the regulator and issued a prohibition order against him (with effect from 16 December 2009). An FSA investigation in 2008 found that he lacked the honesty and integrity expected of an approved person. He was fined £50,000. The case was then referred to FSMT who have now upheld FSA's original findings, but increased the fine to £75,000 as the individual also lied to FSMT when giving evidence ("the Tribunal takes into account that there is no allegation of mis selling by MFP by the FSA but considers that the manner and extent to which Mr Kuun misled the FSA was very serious and were others to adopt such behaviour it would be very detrimental to the system of regulation adopted by the FSA"). It is noted that in 2005 the individual told FSA that his business had stopped using unapproved and unqualified staff to visit customers, but he had in fact transferred their contracts to a company called Membership Services Limited (MSL), which was registered in the West Indies. He then denied any involvement with the firm, maintaining that MSL was owned and run in Switzerland by an acquaintance called John Graham. An investigation found that the individual himself was the subscriber who paid for MSL's mailbox address in Switzerland, and that any post addressed to MSL was forwarded back to MFP's office in Bromsgrove. MFP's Part IV permission has also been withdrawn.</p>	<p>http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/Kuun_and_MFPGroupPlc0020.pdf – see separate FSA Notices document for links to these</p>
<p>Laury, Jan (18 July 2007)</p>	<p>This decision concerns whether a third party is entitled to pursue a reference to FSMT in order to challenge the contents of a notice issued to a firm of which he was formerly an employee. This related to FSA's Final Notice which had been issued to W Deb MVL Plc (formerly Williams de Broe Plc) in January 2007. The applicant had been head of compliance at the firm up to 20 June 2002 and had heard about the FSA investigation while it was in progress and contacted FSA to advise he was available for interview if required. FSA did not take up his offer. He took exception to the Final Notice on the basis that it contained implied criticism of him, which was unjustified, and which he had had no opportunity to contest or correct. He complained to FSA and, after some correspondence which did not satisfy him, he referred the matter to FSMT. FSA contended that he was not identified in the Final Notice, and that he was neither explicitly nor implicitly criticised in it and FSMT held that the application must be dismissed.</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/0005_JanLauryBartlett.pdf</p>

Firm/Individual	Short Summary	Links
<p>Legal & General (<i>see also FSA Final Notices 2005</i>) (18 January 2005) (27 May 2005)</p>	<p><u>18 January 2005</u>: FSMT upheld FSA's case that L&G's sales procedures were defective and found that "these procedural defects will have caused or contributed to mis-sales". It also heard oral evidence from 13 L&G customers and concludes that, in these specific cases, 8 had been mis-sold. FSMT noted that: "this represented potential mis-sales of 62% in this group of customers". FSMT found that FSA was not justified in this case to extrapolate from a sample to reflect a pattern of general mis-selling, but went on to state that "common sense indicates that there will have been a fair number of mis-sales beyond the 8 that have been established". FSMT also commented on aspects of FSA's enforcement procedures, noting that: "if L&G was not co-operating in securing a review which could be used effectively for enforcement, it was for the FSA to impose a suitable exercise". FSA accepted this analysis and said it intended to use its powers in comparable circumstances in the future to avoid such difficulties arising.</p> <p><u>27 May 2005</u>: This further hearing considered what penalty should be imposed on L&G for the rule breaches identified; should either party pay all or part of the other's legal costs and whether FSMT should we make statutory recommendations to the FSA. FSMT directed that FSA fined L&G £575,000; there would be no order for costs and that FSMT would make no recommendations under FSMA s133(8).</p>	<p>http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/011.pdf</p> <p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/061_0022LegalGenAssur_PEN_FurtherDec.pdf</p>
<p>Litaid Limited (10 January 2008)</p>	<p>The Applicant, who had been authorised to carry on general insurance business, referred a First Supervisory Notice dated 21 March 2007 removing all regulated activities with immediate effect; and a Decision Notice dated 2 May 2007, cancelling the Applicant's Part IV permission, to FSMT. It had previously applied for the suspension of the Supervisory Notice which was refused in a Decision delivered on 17 October 2007 (this Decision has not been published). The First Supervisory Notice came about because the Applicant had failed to obtain PII and failed to submit RMAR forms or submitted them late. As a result of the variation of the Applicant's Part IV permission and the removal of all regulated activities, FSA issued the Decision Notice. The Applicant submitted that it did not file the RMARs as FSA had returned the RMARs to the Applicant with the request that it complete the RMAR with details of the PII and thus the RMAR could not be properly completed without details of the PII; that it could not obtain PII because of the nature of its business; and that it was not given the opportunity to make submissions on the Warning Notice that gave rise to the giving of the Decision Notice. FSMT dismissed the application</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/055_Litaid_Ltd.pdf</p>

Firm/Individual	Short Summary	Links
Lloyd, Philip Graham (April 2009 – publicized July 2009)	On 3 September 2008, the Applicant referred to FSMT a Decision Notice issued by FSA on 30 July 2008. The Decision Notice was issued to MWM Investments Limited and to the Applicant and stated that FSA had decided to refuse the application for the approval of the Applicant to perform controlled function CF30 because it not satisfied that the Applicant was a fit and proper person to perform that controlled function. The Applicant had formerly worked for Lloyds TSB/Scottish Widows and had been subject to disciplinary action relating to the selling of investment products - he had resigned from the bank during these proceedings. He had not disclosed the disciplinary action in his long-form application submitted with MWM, saying that he had left LTSB before the proceedings were concluded. However, LTSB had informed MWB that the investigation had continued after the Applicant's resignation and 38 customers who had apparently cancelled investments had been paid compensation totalling £27,762.19. FSMT dismissed the reference, but said "we accept the evidence ... that if the approval were granted ... the Applicant [would be] closely supervised and monitored for his first year. However, we also bear in mind that the Applicant would be a self-employed independent financial adviser giving advice directly to customers, making their investment arrangements, and being remunerated by fees paid by them and by commissions on the investment products sold. In the light of all the evidence we are not satisfied that the Applicant is a fit and proper person to perform the controlled function to which the application relates. ... In relation to the matters which we have considered we are of the view that it would not be appropriate for the Applicant to be barred forever from approval and he should not be discouraged from re-applying for approval at some future stage especially if he were to be monitored and supervised by Mr Parkinson [an MD of MWM]".	http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/LloydPhilipGraham_as_amended.pdf
McIntosh, Norman/LA Mortgage Services (6/7 November 2007; publicized January 2008)	Norman McIntosh referred to FSMT a Decision Notice given by FSA on 26 April 2007. The Decision Notice stated that, pursuant to s63 FSMA, FSA had decided to withdraw his approval on the grounds of fitness and properness. LA Mortgage Services Limited referred to FSMT a Decision Notice given on the same date which proposed to cancel the firm's permissions because Norman McIntosh was the only person approved by FSA to perform controlled functions for the firm, meaning that it would not be able to satisfy FSA on the grounds of fitness and properness. Norman McIntosh had been suspended by FIMBRA in 1995 (which he had not disclosed to FSA), had been declared bankrupt (which he did disclose to FSA) and there was also an issue over witnessing signatures on a Land Registry document where the signatories were not present (which FSMT concluded was "a serious failing not only of honesty and integrity but also of competence". FSMT unanimously concluded that he was not a fit and proper person to perform controlled functions, but also noted "we are of the view that it would not be appropriate for Mr McIntosh to be barred forever from approval and he should not be discouraged from re-applying for approval at some future stage". In addition, the following procedural point was made: "we consider what weight we should give to the statements made by Mr McIntosh at the compelled interview [with FSA]. We accept that it was a long interview as it lasted for three and a half hours. We also accept that Mr McIntosh was not accompanied by any legal representative, and that he was speaking from memory without the benefit of documents. For these reasons we have preferred to base our decision on the documentary and oral evidence before us and we have not relied upon the transcript of the interview in any way".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/054_McIntosh.pdf

Firm/Individual	Short Summary	Links
<p>Manchanda, Ravi (15 May 2006)</p>	<p>The Applicant had proposed to buy a controlling interest in a regulated firm, Diamond Lifestyle Ltd, a mortgage broker. On 9 November 2004 Mr Manchanda applied for two approvals which the Regulatory Decisions Committee and its Regulatory Transactions Committee, refused on 31 March and 1 April 2005. The case turned on the Applicant's role at RBG Resources Plc a metal and minerals trading company which suffered losses of over US \$400 million as a result of extensive frauds. FSMT held in favour of the Applicant, noting that "it is perfectly understandable that the FSA may make a decision on the available material which is appropriate and correct at the time but which, following more detailed evidence and subsequent developments, results in a different decision from this Tribunal. That is no criticism of the FSA or of its performance of its important duty to protect the public ...It is not necessary for our Decision for us to determine how far the FSA must be able to prove the existence of particular a fact before having regard to a suspicion. But where it is for an applicant to show his fitness and there are wider considerations to evaluate, the burden on the FSA must be less than it would be where, for example, it is considering imposing a penalty for wrongdoing".</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/034_Ravi_Manchanda.pdf</p>
<p>Marriott, David Oliver (2 December 2009, publicised 16 February 2010)</p>	<p>The individual had been CEO of Target Underwriting Ltd and Professional Insurance Select Ltd (PISL) from the time they started to trade in 1996 until both went into administration on 2 February 2006. Both firms were insurance intermediaries. They were in effect run as a single firm from the same premises. He had referred an FSA Decision Notice imposing a prohibition order on him on the grounds of fitness and propriety to FSMT. In an email to FSMT, the individual had accepted that there have been breaches of rules by him, but that "to issue a full prohibition notice in relation to those breaches would be extremely disproportionate and inconsistent on the part of [FSA]". He referred to Decision Notices in other cases in support of that. He went on to point out that he is now a PII underwriter and said that he has no interface with client, client money handling or any controlled function or significant influence role (he later claimed to be unable to attend the hearing on the grounds of ill health and said he was currently unemployed). FSMT dismissed the reference and concluded that his "conduct has gone far beyond technical breaches of regulations. His standards of integrity have over a period of at least two years (2004-2006) fallen well short of those required in FIT. His reputation has been severely damaged by the facts of administration of the firms and his subsequent disqualification as a director for eight years. We have taken into account six references to his character, all of which express positive testimonials as to Mr Marriott; s professionalism and trustworthiness as an underwriter. The fact remains however that Mr Marriott demonstrated dishonesty and lack of integrity in allowing Target and PISL to misuse the client monies, to continue trading while insolvent and in his answers to [FSA] ... A total prohibition order is, we think, appropriate in the circumstances of this case". (NB: FSMT said it would publish a separate decision explaining why it had decided to go ahead with the hearing in spite of the individual's illness). [NB: on 12 February 2010, David Marriott applied to the Court of Appeal for permission to appeal the decision, which was refused on the grounds of being "totally without merit" on 9 August 2010. On 2 September 2010, FSA published the Final Notice against the individual].</p>	<p>http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/0008_DavidMarriottOliver.pdf</p>

Firm/Individual	Short Summary	Links
Massey, David (2 February 2011, publicised 7 February 2011)	Following a referral to FSMT, which was not upheld, FSMT has directed FSA to fine David Massey £150,000 and prohibit him from performing any role in regulated financial services for engaging in market abuse. On 1 November 2007, the individual, who then worked at Zimmerman Adams International, short sold 2.5million shares of Eicom, the then AIM-listed digital broadcaster, at 8p per share on the basis of the inside information that Eicom was intending to issue new shares at 3.5p per share. Within a matter of minutes he accepted an offer to subscribe for 2.6million newly issued Eicom shares at 3.5p and used the shares he obtained to close his short position, making a net profit of over £100,000. It is noted that he had occasionally acted as a financial PR consultant for Eicom for approximately five years, sometimes receiving payment from Eicom for his services. In and after June 2007 Eicom was in discussion with david Massey about its need for further funds for a possible acquisition. At the time of his short sale of Eicom shares, he knew that Eicom was prepared to issue up to 3million shares to him at a substantial discount. Following the trading, hey initially tried to book the transaction to the account of an associate and, when questioned about the deal by Zimmerman Adams International and its compliance advisors, he gave the impression that he hardly knew Eicom. A link to an FSA press release and to the FMST Decision follows. [See also FSA Notices]	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/DavidMassey_v_FSA.pdf
Mohammed, Arif (29 March 2005)	FSMT directed that FSA fines Arif Mohammed, a former PwC audit manager, £10,000 for committing market abuse. This was the first time the market abuse provisions in FSMA have been the subject of a FSMT decision. Arif Mohammed bought shares in Delta plc, based on his knowledge that the company intended to sell its electrical division, which was a client of PwC, and he worked on the company's audit. FSA/FSMT announced this on 6 April 2005.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/012.pdf
Mohammed, Qadeem (see Bi, Nazia)		

Firm/Individual	Short Summary	Links
NDI Insurance Brokers Limited/ Peter Ivan Greengrass/ Jonathan Britton (21/2 December 2005, 12 January 2006)	<p>NDI has, or at the material time had, three directors: the second applicant, Peter Greengrass, the third applicant Jonathan Britton and Nathan Parke. In May 2004 NDI applied to FSA for permission to carry out various regulated activities relevant to its insurance broking business in accordance with s40 FSMA and at the same time it applied, in accordance with ss59 and 60f FSMA, for the approval of Mr Greengrass and Mr Britton. On 14 January 2005, FSA, acting through the RDC, issued Warning Notices, informing the applicants that it proposed to refuse each of the applications, but that they might make representations. Written submissions were made in February, and in March 2005 Mr Greengrass and Mr Britton appeared before the RDC to make oral submissions and answer questions. However, FSA decided to refuse all applications, and issued Decision Notices to that effect on 16 March 2005. The applicants referred the Decision Notices to the Tribunal on 29 March 2005 and was heard on 21/22 on 21 and 22 December 2005. FSMT reached preliminary conclusions, but this hearing was to hear further submissions by the parties, in particular about the extent of FSMT's jurisdiction and, if possible, to make a direction which would come into effect before the interim authorisation expired. FSMT ruled that it was "satisfied from that evidence that [Mr Britton] is fit and proper, and that, albeit with assistance from others (not including Mr Greengrass), he is capable of managing NDI and of ensuring that its affairs are conducted in accordance with the requirements of FSMA and the regulatory regime. Mr Greengrass undertook to resign from his position as director and to dispose of sufficient of his shares in NDI to reduce his holding to less than ten per cent by 4 pm on the following day. We accordingly directed that if appropriate evidence, satisfactory to the Authority, of his having done so were produced to it by that time, the Authority should grant NDI s applications in respect of itself and Mr Britton. If the evidence should not be produced, or should be deficient or late, the reference must fail. We later learnt that satisfactory evidence was produced before the expiry of the time limit we set". In addition, FSMT noted "problems could more readily have been dealt with if we had the power to extend the period of interim authorisation but, whether by accident or design we do not know, FSMA contains no mechanism by which the Authority or the Tribunal may extend it, in any circumstances".</p>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/030_ndi_insurance.pdf
<i>Oceans Mortgages – see under Singh, Tarlochan t</i>		
<i>Olutola, Stanley - see PS Mortgages Limited</i>		

Firm/Individual	Short Summary	Links
Panesar, Mandeep (13/14 September 2010)	<p>This reference concerned the refusal of FSA to approve the applicant to perform the controlled function of director of Burlington Associates Ltd on the grounds that he lacked the competence and capability to understand and comply with the requirements and standards of the regulatory system. He had acted as MD of the firm without tFSA's prior approval of FSA and in breach of its rules, during the period when his application was under consideration. FSA had also questioned his integrity and pursued two allegations of misconduct which the Regulatory Decisions Committee did not accept, and which relate to an earlier time when he had been director of Lamensdorf IFA Ltd, a firm which had gone into liquidation. FSA also alleged that Mr Panesar's actions during his time as operations manager at Burlington Associates, prior to his appointment as MD, were such that he acted as a shadow director and was therefore carrying out controlled functions without approval. FSMT ruled that: that there were no real grounds for criticising his conduct as a director of Lamesdorf; that he did not act as a shadow director and noted concerns with the process of the Long Form A completed, noting "we would comment that the form seems poorly designed in asking for a date to be filled in, when the notes contain the somewhat contradictory and Delphic comment, which we have already cited, indicating that ordinarily a date should not be filled in". FSMT also commented "obvious inaccuracies" contained in FSA's supervision report. FSMT concluded: "in all the circumstances we consider it right to characterise his errors of signing the declaration without personally reading the notes, and not appreciating that he should not commence his new duties prior to approval, as unfortunate instances of carelessness rather than indications of any lack of honesty or integrity, or of the appropriate competence and capability to perform the function of a director. We think it extremely unlikely that he will make a similar mistake again" and directed FSA to be approved to perform the controlled function of director.</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/MandeepPanesar v FSA_0025.pdf</p>
Parker, James (24 to 28 April, 2 to 5 May and 8 to 11 May 2006)	<p>The transcript of this Decision appeared on FSMT's website today. FSA's case was that the applicant had engaged in market abuse between 27 February and 4 March 2002 when dealing in and spread betting on shares in his employer, LSE-listed Pace Micro Technology plc and was to impose a penalty of £300,000. The applicant denied that he had been guilty of market abuse and contended that the penalty was excessive and that the RDC had dealt with him in an unfair manner which had been inconsistent with its approach to the failings of Pace itself. FSMT's unanimous conclusions were that he had engaged in market abuse and had made an abusive profit of £121,742. However, it reduced the penalty to £250,000 (paragraph 178 details how FSMT came to this figure). In addition, FSMT noted that the applicant had made it clear in advance of the hearing that he intended to ask FSMT to make a direction for costs in his favour, on the grounds that FSA's penalty and the manner in which it had reached that decision were unreasonable, citing paragraph 13(2) of Schedule 13 FSMA. FSMT said that "we indicated at the conclusion of the hearing that we would entertain a costs application, if Mr Parker wished to make one, after this decision was released. It might help if we make it clear that, although we do not agree with [FSA] in every respect, we will require some persuasion that it has acted unreasonably to the extent that a largely unsuccessful applicant should receive an award of costs. Mr Dutton [FSA's QC] indicated that [FSA] was unlikely to seek a direction in its favour".</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/037_JamesParker.pdf</p>

Firm/Individual	Short Summary	Links
James Perman & Company (14 July 2011, publicised September 2011 and costs Decision publicised January 2012))	<p>The applicant, James Perman & Company, is an unlimited company authorised to carry on designated investment business and conduct mortgage mediation business. By a Decision Notice dated 29 June 2010, FSA decided to cancel the Applicant's permission to carry on regulated activities. The Tribunal dismissed the application, noting that "the Applicant has failed to deal with the FSA in an open and co-operative manner over a period in excess of seven months the Applicant failed to permit the FSA to conduct a supervisory visit on terms set out by the FSA .. throughout that period the Applicant had sought to dictate the process by which the FSA was to supervise the Applicant".</p> <p>The second Decision relates to costs and expense and notes FSA's efforts in trying to agree a "without prejudice save as to costs" letter to the applicant. The Tribunal concluded: "we think that the Applicant acted unreasonably in continuing to pursue the reference proceedings. From 19 November 2011 its actions in conducting the proceedings were 'unreasonable. The Applicant should therefore bear the FSA's costs / expenses of £8,665.60 as itemised in their schedule ... its rejection of what in our view was a reasonable offer on the part of the FSA amounted to unreasonable conduct on the Applicant's part and caused the FSA to incur the costs/expenses".</p>	<p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/JamesPerman_v_FSA.pdf</p> <p>http://www.tribunals.gov.uk/financeandtax/Documents/decisions/James_Perman_and_Co_v_FSA%20_costs.pdf</p>
Petkar, Rafiq Ahmed (6 September 2006)	<p>In 1999, under Financial Services Act 1986, FSA had disqualified the applicant for 10 years from being employed in connection with investment business of any kind whatsoever by any authorized or exempted person or by any European Institution or European investment firm carrying on home-regulated invested business in the UK without the written consent of FSA. In 2001, the disqualification direction was effectively novated into a prohibition order under s56 FSMA. In 2002, Mr Petkar was sentenced to five years imprisonment (reduced by the Court of Appeal by six months). The applicant served 2¼ years in prison and completed a probation period of 13 months; he remains on licence until December 2006. In 2005, the applicant made a formal application to FSA to revoke or vary the prohibition order placed against him, and FSA reached the view that it would not be appropriate to vary or revoke the prohibition order. The applicant subsequently referred the matter to FSMT arguing that "FSA being unfair – not prepared to vary order even after 'my offer of full supervision of all activities' directly to FSA". FSMT dismissed the application, saying that "in essence, all of the information presented to us indicates an overwhelming basis for considerable concern as to Mr Petkar's honesty and integrity". FSMT further noted that "bringing a potential applicant to a state of fitness and propriety is the applicant's business, not the Authority's responsibility. For that reason we do not think that we could properly determine the present reference by directing the Authority to place Mr Petkar under supervision or on probation for a six month period".</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/0007RAPetkarOliver.pdf</p>
Piggott, George Robert (2 January 2007)	<p>FSA had prohibited the applicant from performing any function in relation to any regulated activity carried on by any authorised person due to a series of acts by the applicant over a period of time in his dealings with consumers, FSA and FOS, among others. It was alleged that he sought to intimidate those with whom he disagreed, provided conflicting, inadequate responses to FSA enquiries and knowingly resorted to reliance on forged documents. FSMT's unanimous decision was that Mr Piggott was not a fit and proper person and that the prohibition order was the appropriate action for FSA to take. The reference raised a legal issue concerning whether it is an abuse of process for FSA and FSMT to go behind earlier court decisions in which forged documents were accepted as valid (addressed in paragraph 43 of the Decision).</p>	<p>http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/043_gr_piggott.pdf</p>

Firm/Individual	Short Summary	Links
Piggott, Gordon (25 March 2003)	This concerned the amount of a financial penalty imposed on the applicant by an Interim Tribunal in 2002. As varied by the Tribunal, the penalty was in the sum of £40,000. Mr Piggott referred the matter to FSMT on the ground that his personal financial circumstances were not adequately taken into account in fixing that penalty and that it should be reduced to nil. It was noted that because the disciplinary procedures concerned in this reference straddled the coming into force of FSMA, FSMT's powers were prescribed by certain transitional provisions. FSMT concluded that the appropriate financial penalty was £10,000, but noted that "as already mentioned, this reference is made under transitional provisions, under which the powers of FSMT are considerably narrower than under FSMA. However we make it clear that where ability to pay a financial penalty is in issue, the party raising the issue will be expected to provide detailed evidence as to means, verified where appropriate, bearing in mind that these issues arise in the context of the financial services industry, in which proper attention to such detail is to be expected."	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/004.pdf
Prominence Technology Ltd (12 July 2005)	The firm sought permission in accordance with s40 FSMA to perform various regulated activities in the course of its proposed mortgage and insurance business, and at the same time sought approval in accordance with s60 FSMA of its sole director and shareholder, Samson Sonibare, as the person who was to perform the relevant five controlled functions: director; chief executive officer; apportionment and oversight; money laundering and reporting officer; and finance. By a Decision Notice, FSA refused the application for approval of Mr Sonibare's undertaking the controlled functions, on fitness and propriety grounds, and that since no application had been made for approval of anyone else to perform the controlled functions for the firm, FSA also concluded that the firm could not satisfy threshold conditions and refused permission. FSMT considered the fitness and propriety of Mr Sonibare and upheld FSA's decision	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/021.pdf
PS Mortgages Limited/Stanley Olutola (8 November 2006, publicised 20 December 2006)	PS Mortgages Limited is a company owned and controlled by Stanley Olutola and his wife. In 2001, Stanley Olutola, whilst running another firm, had been disciplined by the Association of Chartered Disciplinary Committee on the grounds that he had held himself out to be in public practice and that he had misled ACCA. In 2005, when applying to FSA for permission to perform certain regulated functions and activities he initially failed to disclose this and later said he had "forgotten" the discipline and had not thought it relevant to disclose on his application. In the meantime, the firm itself had also applied for permission to carry on regulated activities in the mortgage and insurance field and whilst this application was pending it came to FSA's attention that the firm had used headed paper which included the FSA logo and the words "regulated by the Financial Services Authority". FSMT dismissed the application, agreeing with FSA that he was not a fit and proper person. FSMT said it could not accept he had forgotten about the ACCA action within a few years and that "it difficult to accept that the use of notepaper which claimed that PSML was regulated by the Authority was only for the limited purpose described by Mr Olutola. However, we accept his evidence that the letterhead was not sent to customers or used in any way which could have misled the public".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/042.pdf
Rajah, Shafquat (t/a Heritage Personal Finance Consultants) (17 May 2005)	FSMT dismissed a reference of a Decision Notice issued by FSA on the grounds that it considered that the Applicant did not satisfy Threshold Condition 4 (adequate resources) and Threshold Condition 5 (suitability).	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/013.pdf

Firm/Individual	Short Summary	Links
Ravjani, Asgar Ali t/a Astrad Finance (12 August 2008, publicised 10 September 2008))	In January 2008, FSA had decided to vary the permission of the Applicant by removing from the scope of the permission all regulated activities with immediate effect on the grounds that he had failed, when applying to FSA authorisation, to disclose that he had been declared bankrupt in 1995. His reference notice of 1 February 2008 included an application for a direction suspending the effect of the Supervisory Notice. At a Directions Hearing on 5 June, FSMT decided that the issues, as regards the Supervisory Notice, were whether FSA had been correct to remove the permission with immediate effect and had FSA been correct in removing the permission in any event. The reference was dismissed, following FSMT's conclusion that FSA had been correct to remove the permission with immediate effect.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/063_AsgarRavjaniOliver.pdf
Rayner, Ernest Thomas/Townsend, John Robert (14-20 July 2004)	The Applicants were financial advisers. FSA contended that the sale of their business in 2000 was in deliberate disregard of their obligations under the Pension Review, the burden of proof being on the FSA. The Applicants on the other hand contend that the sale was a proper one, and that they had no reason to suppose that it would be likely to lead to a failure to comply with the Review. Two decisions of the RDC both dated 17 October 2003 were referred to FSMT. By the first, a prohibition order was made against Mr Rayner, by which he was prohibited from performing any controlled function relating to any regulated activity carried on by any authorized person. A financial penalty of £128,000 was also imposed on him. By the second, a prohibition order and financial penalty in identical terms were imposed on Mr Townsend, and in addition his approval to perform the investment adviser function with a firm called Croesus Financial Services Ltd was withdrawn. The Applicants contended in their References that these decisions were inappropriate and disproportionate. FSMT ruled that it was satisfied that the RDC decisions were correct.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/009.pdf
Ridings GB Limited/ Glenbow Financial Management Ltd/Norman Deakin/ Ivan Harrison/ Gwynneth Roe (8 February 2005)	FSMT upheld a decision by RDC to refuse an application for authorisation to carry out regulated activity by a firm and three individuals. FSMT was not satisfied that the firm met the threshold conditions to carry out regulated business under FSMA and held that the three individuals did not satisfy the 'fit and proper' test. It is stated that this is the first instance of a firm as well as individuals being refused authorisation by FSMT. FSA/FSMT announced this on 16 February 2005.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/014.pdf
Roe, Gwyneth (<i>see Ridings GB</i>)		
Rotton Park and Winson Green Credit Union Ltd (11 April 2006)	FSA alleged the firm had failed to maintain positive capital in breach of FSA Rule CRED 8.3.1 R, which required the credit union to make no new loans, redemptions of shares or repayments of deposits and the firm asked to have the immediate effect of a Supervisory Notice issued by FSA suspended. At the hearing, a new Quarterly Return to 31 March 2006 was also considered "which had been sent to the Authority but had not yet apparently been received by the individual officers responsible for the issuing of the Supervisory Notice" and which FSMT also looked at. However, the application was dismissed - "subject to the outcome of a full hearing of the substantial reference, it is reasonable and proportionate for the Authority to impose the requirements set out in the Supervisory Notice and the variation of permission upon the Credit Union in pursuance of the Authority's statutory objectives and, particularly, in order to protect the consumers. No doubt the Authority will pay close attention to the financial position of the Credit Union and, if the trend continues, will reconsider the necessity of imposing the restrictions contained in the Supervisory Notice".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/029_rotton_park_winson.pdf

Firm/Individual	Short Summary	Links
Rotton Park and Winson Green Credit Union Ltd (24 July 2006)	This is the second FSMT Decision in respect of this firm (see above). By Supervisory Notice, FSA had removed the firm's permissions to accept deposits and ability to make new loans, redeem members' shares or repay any deposits. The firm had applied to the RDC which amounted in effect to the seeking of a waiver on the basis that the restrictions would probably result in the firm's closure and proposed financial plans to maximise income and reduce expenditure. FSMT noted that the firm had continued to accept deposits from members and allowed withdrawals of savings and that it had taken into account an element of non-compliance by the firm, but that "those features would not require us to determine this matter against the Credit Union". However, FSMT dismissed the application and concluded that FSA's Supervisory Notice was "reasonable and proportionate", although if remedial action by the firm rectified its capital position then FSA acknowledged that it would review its position.	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/038_RottonPark2Oliver.pdf
Scerri, Andre Jean (21 May/25 August 2010 – publicised October 2010)	The individual was a private investor in Amerisur Resources Plc (then known as Chaco Resources Plc). On the morning of 23 May 2007, he placed an order to increase his existing position in Amerisur. Subsequent to placing that order, another private investor contacted him and informed him of a placing of Amerisur shares to be announced the following day at a substantial discount to the market price. As a result, he cancelled his buy order and began to sell his existing position. He was subsequently contacted by Amerisur's broker who formally made him an insider and invited him to participate in the placing. He subsequently sold the remainder of his existing Amerisur position prior to the public announcement of the placement. He then rebuilt the majority of his position in Amerisur by subscribing for discounted shares in the placing. FSA originally decided not to impose the penalty of £20,000 on the grounds that it would cause serious financial hardship. However, it presented evidence to FSMT that: (i) the information that he had provided in connection with his financial hardship claim was incomplete and misleading; and (ii) after being notified of the proposed penalty by FSA he had invested and lost substantial funds through hundreds of trades in indices and currencies. FSMT decided that it was appropriate to impose a financial penalty of £66,062.50 for market abuse. The fine represents disgorgement of profits made through the use of inside information and a penalty of £20,000 for engaging in market abuse. FSMT's decision increases the penalty of £46,062.50 originally imposed by FSA.	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/AndrewScerriOliver_v_FSA_0016.pdf http://www.tribunals.gov.uk/financeandtax/Documents/decisions/AJScerriOliver_v_FSA_0016.pdf <i>See also FSA Notices for details of FSA's press release on this matter</i>
Sharma, Vijay Kumar (2 September/22 November 2010, publicised December 2010)	FSA had applied to strike out the case without a hearing on the grounds that it had no real prospect of succeeding, describing it as "a collateral challenge by Mr Sharma in respect of his criminal convictions, which is an abuse of process" (he had been convicted of failing to comply with the duty to notify FSA that he had acquired control of a firm and knowingly or recklessly giving FSA information which was false or misleading in a material particular). FSMT concluded: "by seeking to bring a collateral civil challenge to his criminal convictions via the Tribunal, Mr Sharma is, I think, abusing the process. The leading case on the application of the power to dismiss proceedings on this ground as an abuse of process of the court is <i>Hunter v Chief Constable of the West Midlands Police [1982] AC 529</i> . That and subsequent authority explain that the decision of a court of competent jurisdiction should not be relitigated. On that basis Mr Sharma should not, in my view, be permitted to relitigate the matters behind his criminal convictions before this Tribunal. Nor should he be permitted to go behind these convictions. The right course would have been to have initiated a formal appeal in the criminal courts. I therefore conclude that Mr Sharma's Reference constitutes an abuse of process and should be struck out for that reason (as a component of the wider strike out jurisdiction), as well as on the basis that he has no prospect of success.. For all those reasons I direct that Mr Sharma's Reference should be struck out".	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/010_VijayKumarSharma.pdf

Firm/Individual	Short Summary	Links
Shevlin, John (12 June 2008)	FSA had issued a decision notice in September 2007 to impose a financial penalty for behaviour constituting market abuse and the applicant had referred the matter to FSMT in October 2007. The applicant had been granted two extensions for reply to FSA's statement of case and FSMT had threatened to consider dismissing the reference without a hearing before the applicant had filed a reply at the end of March, but then asked for further extensions. FSMT had directed that the hearing start on 17 July 2008 and by this Decision dismissed his reference, saying "overall, my view is that the track record of non-compliance on Mr Shevlin's part indicates that compliance will not improve, and certainly not improve to enable the 6 day hearing in July to take place". <i>[See Final Notices 2008 for more details on the case]</i>	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/060_ShevlinOliver.pdf
Sime, David John/ Elmswood EU Limited (10 January 2012)	David Sime had applied on his own behalf for approval as an individual to carry out certain controlled functions at the firm and as an approved person at the firm, of which he is currently the sole director and shareholder, for authorisation to carry on a number of regulated activities. FSA refused the applications on the grounds of fitness and properness, on the grounds that he had not shown himself to be open and cooperative with FSA and took into account a number of allegations made against him by other persons. The Tribunal did not uphold the complaint, but emphasised that "this conclusion is not a decision that Mr Sime is not fit and proper for work in the financial services industry. In a well-controlled environment with proper support and supervision he could again be successful, as he was when he worked for insurance companies. What he is not suitable for is an environment where he works without effective supervision and support". The Tribunal criticised FSA for not providing a chronology in 1,200 pages of evidence presented, and noted problems with regard to the legibility of copies of Form A and Notes used in the evidence.	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/sime_v_fsa_decision.pdf
Singh, Tarlochan t/a Oceans Mortgages (8 April 2010, publicised 14 May 2010)	The individual is a sole trader whose business included advising on and arranging regulated mortgage contracts. On 15 July 2008, FSA cancelled his Part IV permission on account of his failure to file RMARs and late payment of fees. On 31 July 2008 he re-applied for authorisation seeking to carry on the regulated activities as a mortgage and general insurance intermediary (i.e. as previously). FSMT dismissed the application, noting "we are satisfied that the threshold for compliance has to be high ... Failure to submit RMARs on time (or at all) deprives the FSA of its ability to discharge its risk-based supervisory functions and its statutory consumer protection objectives. The FSA cannot afford to drop its guard".	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/0010_TarlochanSingh.pdf
Sodha, Vrajlal Laxmidas (16 May 2006)	The applicant (who had been a tied agent with St James's Place and Barclays) had applied for Part IV permission as a sole trader to carry on the regulated activities of advising on and/or arranging mortgages and general insurance products. FSA refused the application on the grounds that he did not satisfy threshold conditions. The FSMT found for the FSA, saying that the applicant "has an insufficient appreciation of the need, and an insufficient determination to comply with the requirements and standards of the regulatory system which will apply to him. The evidence shows that he has manifested a consistent disregard of the need to comply with requirements to maintain fact files or issue client advice letters, is prepared to disregard a requirement if it is inconvenient such as the requirement not to handle clients monies, and will not adhere to a proper system for handling complaints if it suits him. His failure to disclose the SJP warning [see "past complaints" section of the Decision Notice] was consistent with a failure to appreciate the importance of the purpose of regulation set up under FSMA".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/033_Vrajlal_Laxmidas_Sodha.pdf

Firm/Individual	Short Summary	Links
Suter, John Associates (19 October 2005)	John Andrew Suter, a sole trader trading as John Suter Associates, had applied under s40 FSMA for Part IV permission to carry on the following regulated activities: advising customers on non-investment insurance contracts; arranging (bringing about) deals in non-investment insurance contracts; making arrangements with a view to non-investment insurance contracts and agreeing to carry on a regulated activity. FSA concluded that Mr Suter did not satisfy and would not continue to satisfy Threshold Condition 5. He had not disclosed convictions relating to financial services and the fact that he had been the subject of several disciplinary actions and had failed to respond to FSA correspondence on a number of occasions. FSMT highlighted "Mr Suter's comprehensive failure to inform the Authority of matters relevant to the questions in HSF 2 [and] Mr Suter's persistent noncooperation with the relevant regulator when asked for explanations" and dismissed the reference on the grounds that he failed to satisfy and would continue not to satisfy Threshold Conditions, but mentioned it had misgivings re an email FSA put forward with regard to his employment by Norwich Union as "inadequate to form the basis of any decision as to Mr Suter's ability to satisfy the threshold conditions and to evidence 'dismissal' of Mr Suter from a 'position of trust'".	http://www.financeandtaxtribunals.gov.uk/Documents/decisions/FinancialServicesMarketsTribunal/023.pdf
7722656 Canada Inc (formerly carrying on business as Swift Trade Inc)/Peter Beck (2 August 2011)	Following references to the Upper Tribunal of a Decision Notice issued by FSA in May 2011, the applicants applied pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 for a direction prohibiting the disclosure and/or publication of the Decision Notice. In this Decision Notice, FSA intended to impose on "Swift Trade" (being the name under which the first Applicant carried on business) a financial penalty pursuant to s23(1) FSMA for engaging in market abuse. The primary reason given for FSA's action is that during the period 1 January 2007 until 4 January 2008 Swift Trade "systematically and deliberately engaged in manipulative trading activity known as layering." In June 2011 the applicants applied to the High Court for permission to apply for judicial review of the decision of FSA, taken under s391 FSMA, to publish the Decision Notice. The High Court granted to the applicants permission to bring judicial review proceedings on condition that, by 23 June 2011, they applied to the Upper Tribunal for such a direction. The applicants applied to the Upper Tribunal on 15 June 2011 pursuant to rule 14(1)(a) for the direction prohibiting disclosure and/or publication of the Decision Notice – initially, they applied for a direction that no details regarding the case be contained within the Tribunal's register, which they later withdrew. However, they submitted that the Tribunal should follow the judgment of the High Court and restrain publication on grounds that publication by FSA would be contrary to the decision of the Court which had ruled that publication was "prima facie unlawful" and argued that publication of the Decision Notice was not necessary of fair and that publication would violate their rights under Article 8 (respect for privacy) and Article 1 of the First Protocol (protection of property) of ECHR. With regard to the latter point, the Tribunal judge noted: "I am not satisfied from the evidence available to me that the rights of peaceful enjoyment and of non-deprivation of possessions of either Applicant (or of BRMS Holdings [the majority shareholder in Swift Trade]) will in fact be violated should the FSA decide to publish the Decision Notice. The Applicants have not specified what possessions they are referring to. Substantial "damage" has already been done through the publication by the [Ontario Securities Commission] of its own detailed allegations against Mr Beck". The Tribunal rejected the application for prohibition of publication of the Decision Notice, concluding "it is now back into the hands of the FSA to decide on publication".	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/CanadaInc_PeterBeck_v_FSA.pdf
Tatham, Ashley (<i>see Davidson, Paul</i>)		

Firm/Individual	Short Summary	Links
Townrow, Jonathan Milroy (12 January 2006)	FSA had prohibited the applicant from performing any function in relation to any regulated activity carried on by an authorised person under s56 FSMA on the ground that it appeared to FSA he was not a fit and proper person to perform those functions. FSA made allegations with regard to his "inability and apparent unwillingness to complete [his firm's] pensions review, his dealings with his clients, his repeated inconsistencies amounting to lies to the regulator, his failure to comply with decisions of the Financial Ombudsman Service, and his trading while unauthorised and uninsured". FSMT's unanimous decision was that "a prohibition order in the terms issued was and is the correct action for [FSA] to take". In addition, FSMT criticised the form of chronology manner in which bundles had been prepared and offered suggestions on how this could have been improved. It also put on record that the provision of a verbatim daily transcript of the hearing had been "invaluable" in that it speeded up the hearing process and had assisted when evidence was being reviewed.	http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/025.pdf
Townsend, John Robert (see Rayner, Ernest Thomas)		
Visser, Michiel Weiger/ Fagbulu, Oluwole Modupe (February/March 2011, publicised 15 August 2011)	The Tribunal has directed FSA to fine Michiel Weiger Visser £2 million and Oluwole Modupe Fagbulu £100,000 and ban them both from performing any role in regulated financial services for breaching Principle 1 of the FSA's Statements of Principle for Approved Persons and for engaging in market abuse. The Tribunal determined that Mr Fagbulu's behaviour merited a fine of £350,000, but reduced the amount payable because this level of fine would cause serious financial hardship. FSA's accompanying press release notes that Mr Visser has applied to have the Tribunal's decision set aside. Mr Visser was the CEO and Mr Fagbulu CFO and compliance officer of Mercurius Capital Management Limited which managed the hedge fund Mercurius International Fund which collapsed and was placed in voluntary liquidation in early 2008. Investors have, so far, recovered nothing. It was found that Mr Visser's investment decisions, in breach of the restrictions under which he was supposed to operate, placed the Fund in a precarious position. The individuals' various deceptions concealed this from investors for over a year and enabled the Fund to raise €8 million of new capital in the three months prior to its collapse. During the period Mr Visser deliberately misled investors by various means, including by engaging in market manipulation, to disguise the performance of the Fund and to secure continued and increased investment in the Fund and twice instructing Mr Fagbulu to commit market abuse in illiquid securities held by the Fund. It is noted that Mr.Fagbulu was not involved in making investment decisions, but had been responsible for compliance oversight at the firm and had assisted Mr Visser in manipulating the NAV of the Fund and committing market abuse and by entering into financing transactions which were detrimental to the Fund.	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/VisserandFagbulu_v_FSA.pdf Tribunal upholds FSA decision to ban and fine hedge fund CEO and CFO £2.1m for deceiving investors and market abuse
Vukelic, Milan (7-8 December 2008, 13 April 2009)	The applicant challenged an FSA prohibition order. FSMT found that Mr Vukelic's actions whilst CEO of Alternative Solutions (AltSol) lacked integrity. The AltSol business unit was established by the General Reinsurance Corporation to develop and market financial reinsurance products. Mr Vukelic was CEO from August 1997 until October 2002. During that time Mr Vukelic was responsible for overseeing and structuring three different transactions that were designed to allow the client insurance companies to hide very significant losses in their accounts. Mr Vukelic knew that the deals were not genuine reinsurance transactions and that they could be used to mislead the clients' auditors. Two of the three client insurance companies subsequently collapsed with wide-ranging consequences. FSMT found that Mr Vukelic had "turned a blind eye" to the true nature of the contracts and was "reckless as to whether they were intended to mislead auditors and others". Mr Vukelic was an FSA approved person at General Reinsurance Life UK Limited from September 2002 and from November 2002 as chief executive of Faraday Reinsurance Co Limited and later Faraday Underwriting Limited. Mr Vukelic ceased to be an approved person in July 2005.	http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/067_MilanVukelic.pdf FSA wins case to ban former chief executive of Gen Re business unit

Firm/Individual	Short Summary	Links
Waite, Dr Albert Alphonso Carlyle (25/27 July 2005)	Further to a Decision Notice by FSA, FSMT concluded that Dr Waite, previously Chairman of the London Adventist Credit Union, is not a fit and proper person to perform any function in relation to any regulated activity carried on by a Credit Union and that FSA should proceed to make the order prohibiting him Dr Waite from performing any function in relation to any regulated activity carried on by a Credit Union.	http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/018.pdf
Watts, Sir Philip (25 July 2005 – publicised 13 September 2005)	The preliminary hearing was held under rule 13 of FSMT and raised an important point as regards the rights of third parties in market abuse cases brought by FSA. Specifically, the issue depended on the meaning of s393 FSMA (the section giving rights to third parties when action under the “notice procedure” applicable in market abuse cases is taken by FSA). The relevant notice is the Decision Notice issued by FSA on 13 August 2004 against two companies belonging to the Royal Dutch/Shell group. The issue in the case was whether the Applicant had been identified or not. FSA argued that the notice did not identify him at all, so he was not entitled to invoke the s393 rights and that the allegations of corporate wrongdoing were made against Shell, not against the Applicant personally. The Applicant argued that, properly construed, s393 required one to look to matters outside the terms of the notice, and that he had clearly been identified for the purposes of s393, and should have been accorded the rights given to a third party. FSMT concluded that s393(4) FSMA did not require FSA to provide to the Applicant a copy of the Decision Notice dated 13 August 2004 addressed to Shell. The FSMT notes: “we emphasise that though we have found against the Applicant on the construction of the statute, our decision involves no criticism of any kind against him. This hearing has not been about whether the factual basis upon which the market abuse allegations were settled with Shell was justified or not. It simply holds that the third party procedure in s393 FSMA does not apply to the Applicant. The Reference is dismissed. Since we have dismissed rather than determined the Reference, we do not think that any further direction are required under s133 FSMA, but doubtless the parties will tell us if they think differently”.	http://www.financeandtaxtribunals.gov.uk/decisions/documents/Fin_serv/020.pdf
Williams, Barry (25 October 2010, publicised December 2110)	By a Decision Notice dated 26 February 2010, FSA had informed Barry Williams of its decision to: impose a financial penalty of £50,000 for failing to comply with Principle 1; withdraw his approvals and issue a prohibition order on the grounds of fitness and properness. The matter was referred to FSMT in March 2010. It is noted that Decision was based on findings of dishonesty made by Mr Justice Teare against Barry Williams in his judgment of 3 June 2008 in the case of Markel International Insurance Company Limited and others v Surety Guarantee Consultants Ltd and others [2008] EWHC 1135 (Comm) in which Barry Williams was the third defendant. In those proceedings Mr Justice Teare found that three of his co-defendants had conspired to defraud the claimants, and that Barry Williams, while not a conspirator, ignored concerns about the business, lied to the claimants on some occasions, and did not act honestly or in the claimants’ best interests. Barry Williams argued that FSA had relied solely on the High Court judgment and had failed to take into account the fact that he had been granted permission to appeal that judgment (which appeal he subsequently abandoned), and that FSA relied on some findings from the High Court judgment which he disputes. FSMT dismissed the referral, noting that FSA was right to impose a fine, but in the light of Barry Williams’ age, the fact that he has not worked four years, and that save for approximately £190,000 of equity in his house and a pension fund worth approximately £220, 000 he has no assets, FSMT considered that the fine (which had already been reduced from £150,000) should further be reduced to £25,000. <i>See also FSA Notices 2010.</i>	http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Documents/decisions/0006_BarryWilliams.pdf

Firm/Individual	Short Summary	Links
Winterflood Securities Limited, Stephen Sotiriou & Jason Robins (11 March 2009, publicised 2 April 2009)	<p>FSA has published a press release announcing that it has won its market abuse case at FSMT) against Winterflood and two of its traders. In June 2008, FSA found that Winterflood and its traders had played a pivotal role in an illegal share ramping scheme relating to Fundamental-E Investments Plc (FEI), an AIM listed company. In particular, the market maker had misused rollovers and delayed rollovers thereby creating a distortion in the market for FEI shares and misleading the market for about six months in 2004. The FEI share trades executed by Winterflood had a series of unusual features which should have alerted the market maker to the clear and substantial risks of market manipulation it continued to trade. Winterflood made about £900,000 from trading in FEI shares, its single most profitable stock at the time. As a result of their conduct, FSA decided to impose fines of £4 million, £200,000 and £50,000 on Winterflood, Mr Sotiriou and Mr Robins respectively. Winterflood did not challenge the findings of the FSA investigation at FSMT, but referred the matter on the interpretation of MAR 1.6.4E under the heading "Element of the test", which it said was "framed in unambiguous and unqualified terms". The parties are now seeking permission to appeal the decision at the Court of Appeal. FSA notes that other parties involved in the scheme have referred their cases to FSMT.</p>	<p>http://www.tribunals.gov.uk/Finance/Documents/decisions/FinancialServicesMarketsTribunal/066_WinterfloodSecuritiesLimitedStephenSotiriouJasonRobins.pdf</p> <p>FSA wins market abuse case against Winterflood</p> <p>http://www.fsa.gov.uk/pubs/press/winterflood.pdf</p>
WRT Investments Ltd (<i>see Baldwin, Timothy Wilson</i>)		