



**In the First-tier Tribunal**

**General Regulatory Chamber**

**(Consumer Credit)**

**Case Nos. CCA/2011/0014**

**CCA/2011/0015, CCA/2011/0016**

**CCA/2011/0017, CCA/2011/0018**

**On appeal from:**

**The Office of Fair  
Trading's Decision  
references:**

**ADJ/2335-474281, ADJ/2336-628975, ADJ/2337-629609,  
ADJ/2338-630187 and ADJ/2339-630096**

**Dated: 13 December 2011**

**Appellants:**

- (1) Bridging Loans Limited**
- (2) Commercial Loans Limited**
- (3) Residential Loans Limited**
- (4) Development Finance Limited**
- (5) Deaconsbank Limited**

**Respondent: The Office of Fair Trading**

**Heard at: Field House, 15 Bream's Building, London EC4A 1DZ**

**Date of Hearing: 10 December 2012 (sitting in public)**

**Date of this Decision: 12 May 2013**

**Before: Keith Rowley Q.C., Tribunal Judge  
Neil Pardoe Esq.  
Christopher Perrett Esq.**

**Appearances:**

**The Appellant: Mr. Nicholas Bard, instructed by Richards Solicitors**

- The Respondent:** Mr. Nicholas Gibson, instructed by the Office of Fair Trading
- Subject matter:** Appeals against determinations by the Office of Fair Trading under section 32 of the Consumer Credit Act 1974 that the licences held by each of the Appellants under that Act be revoked; relevance and effect of previous findings made by the Financial Services Authority
- Authorities referred to:** *North Wales Motor Auctions Ltd v. Secretary of State for Trade* [1981] C.C.L.R. 1
- European Environmental Controls Ltd. v. OFT* CCA/2009/0002 UKFTT 274
- Koning v. OFT* CCA/2012/0012
- Logbook Loans Ltd. and Nine Regions Ltd. v. OFT* CCA/2009/0010 & 0011
- Qsolvency Ltd. v. OFT* CCA/2009/0004
- Legislation referred to:** Companies Act 2006 Chapter 2
- Consumer Credit Act 1974 sections 1, 25, 29, 32, 33A, 34A, 36, 41ZB, 184 and 189
- Financial Services and Markets Act 2000 sections 44, 45, 63 and 166

## DECISION OF THE FIRST-TIER TRIBUNAL

The unanimous decision of the Tribunal is that the appeal be dismissed.

## REASONS FOR THE DECISION

### **A. Introduction**

1. This is the unanimous decision of the above-mentioned Tribunal (“the Tribunal”).
2. This decision adopts the expressions and definitions set out in the Appendix 1 hereto.

3. The Tribunal has before it five separate appeals, brought on behalf of BLL, CLL, RLL, DFL and DBL respectively, against five separate determinations made by the Adjudicator, all of which were dated 13 December 2011. By those determinations, which we are informed were identical in their terms in all material respects,<sup>1</sup> the Adjudicator determined to revoke the licences held by each of the Appellants under the 1974 Act, she having concluded that none of them was a fit person to hold a licence.
4. Although separate Notices of Appeal each dated 31 January 2012 were served on behalf of each of the Appellants, those Notices were accompanied by a single composite document setting out the Grounds of Appeal.
5. We heard all five appeals at a single hearing, on 10 December 2012, it having been directed by His Honour Judge Wulwik on 5 March 2012 that, given the substantial amount of common ground between them, the appeals be heard together.
6. At the hearing Mr. Nicholas Gibson of counsel appeared for the OFT and Mr. Nicholas Bard of counsel appeared for the Appellants. Both provided us with helpful skeleton arguments prior to the hearing and we were also considerably assisted by their oral submissions.
7. The appeal proceeded in accordance with the provisions of the 2009 Rules and, as provided for by section 41ZB(1) of the 1974 Act, was by way of rehearing against the revocations.
8. The Determinations were based in large measure (though not entirely) on certain findings which were the result of regulatory action that had been taken by the FSA in 2009 against BLL, Mr. J. Cummings, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus. We shall consider these findings, which are fundamental to all five appeals, in more detail later in this decision.

---

<sup>1</sup> On this footing the hearing bundles included a copy of the BLL Determination only.

9. Likewise before us the FSA's findings formed the sheet-anchor of the OFT's case, it arguing in essence that although there may have been some changes made to the Appellants' businesses as a result of the actions of the FSA, those changes are not sufficient to establish that any of the Appellants is a fit person to hold a licence under the 1974 Act.
10. The Appellants invited us to look at the matter rather differently, submitting instead (in a nutshell) that the FSA's findings were primarily attributable to the acts and omissions of Mr. J. Cummings; that, however, he was no longer active in the lending side of any of the Appellants' businesses;<sup>2</sup> and that those activities (and, indeed, all five Appellants) are now under the control of Mr. Levitus, who is a chartered accountant of many years experience and against whom no criticisms were made in any of the FSA's findings.
11. It was also correctly pointed out to us on behalf of the Appellants that although the appeals have been dealt with in the manner to which we have referred above, it is by no means the case that all five appeals stand or fall together. No regulatory action has been taken by the FSA (or any other body) against any of CLL, RLL, DFL, DBL or Mr. Levitus. There are, it was submitted, a number of potentially important factual distinctions that may be drawn between the Appellants *inter se* which means that it would be open to us, were we so minded, to allow one or more of the appeals whilst dismissing the others.
12. Subsidiary to the principal arguments that we have mentioned above, we were also addressed by the parties, albeit rather more shortly, on the possible application to one or more of the appeals of sections 33A and 34A of the 1974 Act, which respectively deal with (i) the imposition of requirements on a licensee by the OFT where (*inter alia*) it (the OFT) is dissatisfied with the manner in which the licensee has carried on business and (ii) authorising a licensee, as part of an adverse determination, to carry on specified activities for a specified period (i.e., effectively to continue trading) for

---

<sup>2</sup> In saying this we recognise, as explained below, that it is common ground that both CLL and DFL have never engaged in any lending as part of their respective businesses.

the purposes of enabling all or part of the licensee's business to be transferred or wound up.

13. Before we consider the substance of the respective arguments, we need first to set out the relevant factual background

## **B. The Appellants**

### **BLL**

14. BLL was incorporated in Scotland on 4 September 1975 under the name Emriclands Limited. It changed its name in about October 1982 to Emriclands (Investments) Limited and again on 22 August 2007 to become Bridging Loans Limited. It appears that it, BLL, swapped names with another company on the latter date, and that this other company itself then became Emriclands (Investments) Limited (we recite this merely as a statement of fact and for no other reason).
15. BLL's board of directors presently comprises Mr. J. Cummings (appointed on 31 December 1988), Mrs. Levitus<sup>3</sup> (also appointed on 31 December 1988), Ms. L. Cummings (appointed on 10 January 1990), Mrs. M. Cummings (appointed on 29 June 1998), Mr. Levitus (appointed on 7 May 2009) and Mrs. Fleming (appointed on 11 October 2011).
16. BLL has joint company secretaries, being Mr. J. Cummings (appointed on 3 December 1988) and Mr. Levitus (appointed on 24 January 2011).
17. BLL's issued share capital is held as to 40% each by Ms. L. Cummings and Mrs. Levitus and as to 20% by Mr. J. Cummings. We observe in passing that it was not suggested to us that there is, or ever has been, any legal or other obstacle to Ms. L. Cummings and Mrs. Levitus exercising their control of BLL in general meeting to remove Mr. J. Cummings as a director were they so minded. By the same reasoning it would be open to Mr. J. Cummings and one of the other shareholders in BLL to

---

<sup>3</sup> We observe that in certain instances, and her directorship of BLL is one such, Mrs. Levitus is referred to by her maiden name in documentation filed at Companies House; nothing turns on this.

remove any of the other directors of BLL, including Mr. Levitus.

18. We are informed that BLL carries on business as a provider of (usually secured) bridging loans to investors purchasing either buy to let or development properties or who are raising finance by way of a second charge on an existing property to fund the development of another property or properties.
19. With effect from 31 October 2004:
  - 19.1 BLL was authorised by the FSA to carry on a number of specified activities involving or related to regulated mortgage lending, and
  - 19.2 Mr. J. Cummings, Ms. L Cummings, Mrs. M. Cummings and Mrs. Levitus all became approved persons under FSMA (we note here that it was Mr. Levitus's evidence before us that this was because Mr. J. Cummings wrongly believed that the effect of BLL's authorisation was that it was necessary for all of BLL's directors to be approved by the FSA).

(We add in parentheses that none of the other Appellants has ever been regulated by the FSA.)

20. BLL has always operated with a fairly small staff. Prior to the FSA's investigation into BLL's business it is common ground that Mr. J. Cummings effectively ran BLL and that all five Appellants operated from a single office at 65, Bath Street, Glasgow.<sup>4</sup> In addition Mr. J. Cummings had the assistance of (*inter alios*) two long-standing members of staff, namely Mrs. Fleming (also a director since January 2011), who acted as an accounts and underwriting manager for approximately 17 years, and Mrs. Reid, who had dealt with the production of accounts and repayment records for approximately 15 years. Both Mrs. Fleming and Mrs. Reid are still employed by BLL.

---

<sup>4</sup> Mr. Levitus told the Adjudicator that it comprised four rooms and that everyone tended to know on which cases everyone else was working; however he told us that this arrangement had changed and that the businesses now operated from two separate offices, one being across a hallway from the other.

21. In his skeleton argument on behalf of the Appellants Mr. Bard said that Mr. Levitus now has *de facto* control of BLL's business. When giving evidence before us and in answer to a question from the Tribunal as to how BLL's business currently functions, Mr. Levitus said that BLL did not hold formal board meetings<sup>5</sup> but that he and Mrs. Fleming would together "discuss the issues of the day".
22. A licence under the 1974 Act, number 0474281, was granted to BLL (under its then name) on 10 September 1999, and renewed in September 2004 and again in September 2009. As to that renewal we note the following points:
- 22.1 The application form identified Mr. J. Cummings as the controller of BLL.
- 22.2 The only individual it identified as being authorised or approved under FSMA was Mr. J. Cummings; it made no reference in this context to Ms. L Cummings, Mrs. M. Cummings or Mrs. Levitus.
- 22.3 The accompanying declaration was signed by Mr. J. Cummings.
- 22.4 The application was accompanied by a letter dated 3 September 2009, expressed to be from Mr. J. Cummings but signed on his behalf by Mr. Levitus, which belatedly informed the OFT of the change the name of the licence holder that had occurred in August 2007, more than two years earlier.<sup>6</sup>
- 22.5 This very belated compliance by BLL with the requirements of section 36(1) of the 1974 Act was one of the additional matters relied on before us by the OFT. We note that this omission to inform the OFT, which was not (and could not be) factually disputed by BLL, was remedied shortly after Mr. Levitus first became involved in BLL. It is, we think, the correct inference to draw that had BLL's licence not fallen due for renewal in September 2009 but at some later date instead, the correction would not have been made until that later date.

---

<sup>5</sup> As to which notice of the same would need to be given to all of BLL's directors who would each have the right to attend the meeting and to vote on any business there transacted.

<sup>6</sup> See paragraph 14 above.

## CLL

23. CLL was incorporated in England on 10 August 1998.
24. CLL's board of directors presently comprises Mrs. Levitus (who was appointed on 10 August 1998, the day on which CLL was incorporated), Mr. Levitus (appointed on 18 September 2007<sup>7</sup>) and Mr. J. Cummings (appointed on 15 July 2009). Ms. L. Cummings was a director from 27 July 2000 until 15 July 2009.
25. CLL's company secretary is Mr. Levitus (appointed on the day of incorporation, 10 August 1998).
26. CLL's issued share capital is held as to 50% each by Mr. and Mrs. Levitus.<sup>8</sup> We observe in passing that it was not suggested to us that there is, or ever has been, any legal or other obstacle to Mr. and Mrs. Levitus exercising their control of CLL in general meeting to remove Mr. J. Cummings as a director were they so minded.
27. We are informed that CLL carries on business as a marketing company, being used a broker for BLL, RLL and DBL.
28. A licence under the 1974 Act, number 488495, was granted to CLL on 22 June 2000, That licence lapsed on 21 June 2005 in circumstances not explained to us and which we therefore infer are not relevant to the appeals.
29. An application for (we assume) a replacement licence was submitted CLL in 2007: that application was dated 20 September 2007 and is date-stamped as having been received by the OFT apparently on the same day, and it was completed by Mr. Levitus on CLL's behalf. Mr. Gibson briefly cross-examined Mr. Levitus about this application because it appears that it may have led to CLL holding concurrent licences.

---

<sup>7</sup> At this date Mr. Levitus was still practising full-time as a chartered accountant: see paragraph 85 below.

<sup>8</sup> It appears from CLL's Annual Return submitted to Companies House on 24 October 2010 that Mr. J. Cummings and Ms. L. Cummings may have been CLL's previous shareholders, but the date(s) on which they disposed of their shares is not apparent to us.



30. The licence which the Adjudicator determined should be revoked, licence number 0630096, was granted to CLL on 14 August 2009. The application for that licence, which was dated 6 July 2009 and was completed by Mr. Levitus on CLL's behalf,<sup>9</sup> stated (*inter alia*) that Mr. J. Cummings was a director of CLL and that he ran that company with Mr. and Mrs. Levitus. Strictly, though, Mr. J. Cummings does not appear to have been appointed a director of CLL until 15 July 2009.

### **RLL**

31. RLL was also incorporated in England on 10 August 1998.

32. RLL's board of directors presently comprises Mrs. Levitus (who was appointed on 15 November 2004), Mrs. Fleming (appointed on 18 November 2005) and Mr. Levitus (appointed on 2 October 2009).

33. RLL's company secretary is Mr. Levitus (appointed on 21 July 2008).

34. We understand that the entirety of RLL's issued share capital is held under a trust or trusts, the registered holders being Mrs. Levitus, the Miriam Cummings Trust and a Mr. R. Swindell. Save that the Grounds of Appeal assert that neither Mr. J. Cummings nor Mrs. M. Cummings is a trustee, no evidence was led as to the nature of those trusts. It would appear from the transcript of the oral hearing before the Adjudicator held on 7 November 2011 that Mr. Swindell is a solicitor who acts for the Levitus family.<sup>10</sup>

35. We are informed that RLL carries on business in the same areas as BLL, albeit on a smaller scale and also that its (RLL's) business is primarily related to buy to lets or refinancing rather than residential development.

---

<sup>9</sup> We observe that in paragraph 39 of the Response criticism was made of Mr. Levitus for failing to disclose the application made by CLL for a licence in 2007, but that point was not pursued before us by Mr. Gibson either orally or in his skeleton argument.

<sup>10</sup> And possibly for the Cummings family as well; the transcript (which incorrectly refers to him as "Robert Sindell") is not clear on this point.

36. A licence under the 1974 Act, number 0455163, was granted to RLL on 1 October 1998. That licence lapsed on 10 January 2009. Correspondence relating to that licence passing between Mr. Levitus and the OFT in June 2009 showed that there had been a failure to notify the OFT in a change in the address of RLL's registered office; this, in turn, led to the renewal documentation being sent to RLL's old registered office and not being forwarded, due to the insolvency of the company which previously provided corporate administration services to RLL.
37. The licence which the Adjudicator determined should be revoked, licence number 0628975, was granted to RLL on 30 June 2009. The application for that licence was submitted in June 2009 by Mr. Levitus on RLL's behalf; it identified Mr. Levitus as RLL's controller; and also identified Mr. Newsham as a person who could influence the running of RLL's business.

#### **DFL**

38. DFL was incorporated in Scotland on 28 July 2009.
39. Mr. and Mrs. Levitus were both appointed directors of DFL on 27 April 2010. Mrs. Levitus resigned on 30 November 2011, on which date Mrs. Fleming was appointed a director of this company.
40. Mrs. Levitus was DFL's company secretary from 27 April 2010 until 30 November 2011; she resigned on the latter date to be succeeded by Mr. Levitus.
41. DFL's issued share capital is held as to 50% each by Mr. and Mrs. Levitus.
42. We are informed that DFL carries on a marketing business of the same type as CLL.
43. A licence under the 1974 Act, number 0630187, was granted to DFL on 8 August 2009. The application for that licence was submitted in July 2009 by Mr. Levitus on DFL's behalf and it identified Mr. Levitus as DFL's controller.

#### **DBL**

44. DBL was incorporated in Scotland on 11 October 2004, initially under the name Greenhill Property Developments Limited.
45. Mr. and Mrs. Levitus were both appointed directors of DBL on 7 April 2005. We were informed that, although not shown in any of the documents before us, Mrs. Levitus had resigned on 5 January 2012 and we proceed on that basis.
46. Mr. Levitus is also DBL's company secretary, having been appointed to that office also on 7 April 2005.
47. DBL's issued share capital is held as to 50% each by Mr. and Mrs. Levitus.
48. We are informed that DBL carries on business in the same areas as BLL and RLL, but on a yet smaller scale again.
49. A licence under the 1974 Act, number 0629609, was granted to DBL on 23 July 2009. The application for that licence was submitted in July 2009 by Mr. Levitus on DBL's behalf and it identified Mr. Levitus as DBL's controller.

**C. The FSA's investigation and findings**

50. As mentioned above, the regulatory action taken by the FSA was against only one of the Appellants, BLL, and four individuals, Mr. J. Cummings, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus. None of the other four Appellants nor Mr. Levitus himself was the subject of that action.
51. We do not understand that the FSA's investigation of BLL was prompted by any complaints made by its (BLL's) customers. Rather, it was instead part of a much wider programme under which the FSA took steps, following the financial crisis which began in late 2007/early 2008, to satisfy itself as to the propriety of the conduct of firms such as BLL that were engaged in regulated mortgage lending.
52. The FSA carried out its first inspection of BLL on 2 June 2009. Mr. Levitus, who had

only become involved in BLL's business relatively recently,<sup>11</sup> told us that he was involved in the FSA's investigation into BLL's from the outset. The investigation did not extend to any transactions that were regulated under the 1974 Act as opposed to FSMA.

53. Clearly, what the FSA discovered about the manner in which BLL's business had been conducted revealed a very unhappy state of affairs and we can summarise the FSA's findings and the steps it took fairly briefly.

53.1 By a Requirement Notice dated 20 August 2009 the FSA required BLL to provide it with a report by a skilled person under section 166 of FSMA relating to BLL's regulated activity and its compliance with the Mortgage Conduct Business Rules, to provide recommendations as to improvements to BLL's systems and controls to enable it to meet regulatory standards and to assess and monitor BLL's implementation of those recommendations.

53.2 Shortly thereafter, on 25 August 2009, BLL agreed a Voluntary Variation of Permission under section 44 of FSMA, which significantly limited BLL's future regulated activities (and, in particular, which precluded BLL from entering into any new regulated transactions).

53.3 A further Requirement Notice was issued by the FSA on 9 December 2009 and then an Updated Requirement Notice was issued on 31 December 2009 which (as its title implies) updated the two previous Notices by (*inter alia*) extending their scope; it is not necessary for us to condescend to detail in this regard.

53.4 Mr. Atkins was appointed as the skilled person on a date that is not readily apparent from the documents before us, but we understand that his review commenced on 16 February 2010.

53.5 On 13 August 2010 the FSA imposed an Own Initiative Variation of

---

<sup>11</sup> We return to this point in more detail at paragraphs 90 to 93 below.

Permission under section 45 of FSMA which further restricted the conduct of BLL's regulated activities (again, for the purposes of this decision no further detail is required).

54. The FSA's investigation concluded with five Settlement Agreements dated 6 October 2010 being entered into between the FSA and the various parties thereto, five Decision Notices dated 12 October 2010 and Final Notices dated 20 October 2010 being issued by FSMA in respect of BLL, Mr. J. Cummings and Mrs. M. Cummings and dated 1 November 2010 in respect of Ms. L. Cummings and Mrs. Levitus.<sup>12</sup> As expressly recorded in each of the Settlement Agreements and the Decision and Final Notices, these were all in terms that had been agreed by the person concerned. We understand that all five persons had the benefit of legal advice from the solicitors acting for the Appellants in these proceedings before agreeing to the terms of those various documents.

55. As regards BLL, the Final Notice (*inter alia*) recorded that BLL had:

55.1 failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems, to pay due regard to the interests of its customers and treat them fairly, and to deal with the FSA in an open and cooperative way during its investigation (paragraph 2.2);

55.2 failed in all substantive aspects of its dealings with customers (paragraph 2.3);

55.3 persisted in these failings for a period of approximately five years, namely 31 October 2004 to 25 August 2009 (paragraphs 1.1 and 6.5);

55.4 delegated responsibility for underwriting to a third party (being Mr. Newsham) who also acted as a customer facing broker and had faced a conflict of interest between his responsibility to underwrite and the financial benefit he stood to receive from recommending to the customer that he should enter into the loan, and that BLL had acted recklessly in delegating this

---

<sup>12</sup> We note that Mrs. Levitus was referred to in the FSA documentation by her maiden name.

function to Mr. Newsham without making a proper assessment of his capability (paragraphs 4.6 and 4.7);

55.5 acted recklessly in the manner in which it dealt with its customers over the above-mentioned near five year period (paragraph 6.6); and

55.6 agreed to settle the FSA's investigation at an early stage, resulting in what would otherwise have been a financial penalty of £60,000 being discounted to £42,000 (paragraphs 1.3 and 1.4); we note also that (at paragraph 2.4) the FSA took into account as a mitigating factor that BLL was committed to ensuring that its senior management was replaced and new systems and controls introduced before conducting any new regulated business, and also that BLL had co-operated with the FSA in agreeing to ensure the redress was paid to customers in a timely manner.

56. As regards Mr. J. Cummings, whom we believe to have been aged 68 at the time, the Final Notice (*inter alia*) recorded that:

56.1 the FSA had decided to withdraw his approval to perform controlled functions pursuant to section 63 of FSMA and to prohibit him from performing any function in relation to any regulated activity on the grounds that he was not a fit and proper person (paragraphs 1.2 and 1.4);

56.2 he had failed to act with integrity by knowingly misleading a customer, to exercise due skill, care and diligence in managing BLL's business by not paying due regard to his regulatory responsibilities as an approved person or BLL's as an authorised person in relation to regulated mortgage contracts, and to take reasonable steps to ensure that BLL's business complied with the relevant requirements and standards of the regulatory system (paragraph 2.2);

56.3 he had persisted in these failings for a period of approximately five years, namely 31 October 2004 to 25 August 2009 (paragraphs 1.1 and 6.5);

- 56.4 his relatives became directors of BLL for inheritance tax planning purposes;
- 56.5 he had acted recklessly in the manner in which he dealt with BLL's customers over that near five year period, including acting deliberately to mislead a customer (paragraphs 6.6 and 6.7);
- 56.6 he was for all practical purposes the sole person in control of BLL and who took most material decisions in relation to FSA regulated business; and
- 56.7 he had agreed to settle the FSA's investigation at an early stage, resulting in what would otherwise have been a financial penalty of £100,000 being discounted to £70,000 (paragraphs 1.4 and 1.5).
57. As regards Ms. L. Cummings, the Final Notice (*inter alia*) recorded that:
- 57.1 the FSA had decided to withdraw her approval to perform controlled functions pursuant to section 63 of FSMA and to prohibit her from performing any significant influence functions in relation to any regulated activity carried on by any authorised person on the grounds that she was not a fit and proper person (paragraph 1.3);
- 57.2 she had failed to take reasonable steps to inform herself about the affairs of BLL or to ensure that its business complied with relevant requirements (paragraph 2.2);
- 57.3 the FSA considered that she became an approved person solely because she was told to by her father, Mr. J. Cummings (paragraph 2.3);
- 57.4 her conduct was serious because her failings meant that she was effectively detached from the business of the firm, BLL, that she was approved by the FSA to run (paragraph 2.5);
- 57.5 during an interview with the FSA she had admitted that

57.5.1 although she could not specifically recall, she believed that she signed the application to be an approved person at the suggestion of her father, Mr. J. Cummings;

57.5.2 she played no active role at BLL;

57.5.3 she was unaware that she was an approved person;

57.5.4 she was unaware of her responsibilities as an approved person or the responsibilities of BLL as an authorised person (paragraph 4.6);

57.6 her conduct demonstrated a lack of competence and capability (paragraph 5.2); and

57.7 the FSA recognised as mitigating factors that she did not seek deliberately to mislead the FSA in signing the approved persons application form but only did so at the request of Mr. J. Cummings, she did not receive any remuneration from her role as a director of BLL and she had been open and co-operative with the FSA's investigation (paragraph 2.6).

58. As regards Mrs. M. Cummings, the Final Notice (*inter alia*) recorded that:

58.1 the FSA had decided to withdraw her approval to perform controlled functions pursuant to section 63 of FSMA and to prohibit her from performing any function in relation to any regulated activity carried on by any authorised person on the grounds that she was not a fit and proper person (paragraph 1.3);

58.2 she had failed to take reasonable steps to inform herself about the affairs of BLL or to ensure that its business complied with relevant requirements (paragraph 2.2);

58.3 the FSA considered that she became an approved person solely because she



was told to by her husband, Mr. J. Cummings (paragraph 2.3);

58.4 her conduct was serious because her failings meant that she was effectively detached from the business of the firm, BLL, that she was approved by the FSA to run (paragraph 2.5);

58.5 during an interview with the FSA she had admitted that

58.5.1 although she could not specifically recall, she believed that she signed the application to be an approved person at the suggestion of her husband, Mr. J. Cummings;

58.5.2 she had no understanding of BLL's business;

58.5.3 she had no understanding of the roles and responsibilities of a director;

58.5.4 she played no active role at BLL;

58.5.5 she was unaware that she was an approved person;

58.5.6 she was unaware of her responsibilities as an approved person or the responsibilities of BLL as an authorised person (paragraph 4.6);

58.6 despite the above admissions, she had told the FSA that she intended to continue as a director of BLL (paragraph 4.7);

58.7 her conduct demonstrated a lack of competence and capability (paragraph 5.2).

59. As regards Mrs. Levitus, the Final Notice (*inter alia*) recorded that:

59.1 the FSA had decided to withdraw her approval to perform controlled functions pursuant to section 63 of FSMA and to prohibit her from performing any significant influence functions in relation to any regulated activity on the

grounds that she was not a fit and proper person (paragraph 1.3);

59.2 she had failed to take reasonable steps to inform herself about the affairs of BLL or to ensure that its business complied with relevant requirements (paragraph 2.2);

59.3 the FSA considered that she became an approved person solely because she was told to by her father, Mr. J. Cummings (paragraph 2.3);

59.4 her conduct was serious because her failings meant that she was effectively detached from the business of the firm, BLL, that she was approved by the FSA to run (paragraph 2.5);

59.5 during an interview with the FSA she had admitted that

59.5.1 although she could not specifically recall, she believed that she signed the application to be an approved person at the suggestion of her father, Mr. J. Cummings;

59.5.2 she had no understanding of the roles and responsibilities of a director;

59.5.3 she played no active role in BLL's regulated business;

59.5.4 she had received a salary of £40,000 from BLL for undertaking property assessments on behalf of BLL;

59.5.5 she was unaware that she was an approved person;

59.5.6 she was unaware of her responsibilities as an approved person or the responsibilities of BLL as an authorised person;

59.5.7 despite the above admissions, she had told the FSA that she intended to continue as a director of BLL (paragraph 4.6);

- 59.6 her conduct demonstrated a lack of competence and capability (paragraph 5.2);
- 59.7 the FSA recognised as mitigating factors that she did not seek deliberately to mislead the FSA in signing the approved persons application form but only did so at the request of Mr. J. Cummings and she had been open and co-operative with the FSA's investigation.
60. Paragraphs 55 to 59 above are intended to do no more reflect, in summary form, the key points as we see them from each of the Final Notices; we would emphasise, though, that in view of their importance to the appeals we have read and carefully considered those Notices in their entirety.
61. By the BLL Final Notice Mr. Atkins was appointed as an independent person to BLL under FSMA to ensure that existing regulated business was conducted in a compliant manner as, following the Final Notices, BLL no longer had any directors who were approved persons.
62. There are a number of comments that we should make about the terms of the Final Notices.
- 62.1 The only findings of recklessness, including one specific instance of a customer being deliberately misled (in relation to, we should note, the customer's intention to complain to the Financial Ombudsman Service: we refer to paragraph 4.22 and 6.7 of the Final Notice relating to Mr. J. Cummings), were against BLL and Mr. J. Cummings.
- 62.2 As regards Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus, the findings against them were essentially, as Mr. Gibson put it in his opening, sins of omission.
- 62.3 It appears from the Final Notice issued in relation to her that the FSA did not

find any mitigating circumstances as regards Mrs. M. Cummings comparable to those it found in relation to Ms. L. Cummings and Mrs. Levitus.

62.4 We note that although Mrs. M. Cummings admitted to having no understanding of BLL's business, no such admissions were made by either Ms. L. Cummings or Mrs. Levitus.

62.5 Finally and before leaving the Final Notices we should repeat that, as was emphasised to us by Mr. Bard, none of the Final Notices (nor any other documents emanating from the FSA to which our attention was drawn), made any criticism of Mr. Levitus nor did any them relate to CLL, RLL, DFL or DBL. The point has particular force as regards DFL and DBL which, we accept, can effectively be treated as businesses belonging to Mr. and Mrs. Levitus and in which none of Mr. J. Cummings, Mrs. M. Cummings and Ms. L. Cummings either has nor ever has had any interest. We accept also that there is no evidence before us of any complaints being made to the FSA in relation to BLL since the conclusion of its investigation.

#### **D. The statutory requirement of fitness**

63. We now turn to the 1974 Act. The statutory requirement of fitness is to be found in section 25 of the Act and (so far as material) is in the following terms:

- “(1) If an applicant for a standard licence –
- (a) makes an application within section 24A(1)(a) in relation to a type of business, and
  - (b) satisfies the OFT that he is a fit person to carry on that type of business with no limitation, he shall be entitled to be issued with a standard licence covering the carrying on of that type of business with no limitation.
- (2) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)

- (a) the applicant's skill, knowledge and experience in relation to consumer credit businesses, consumer hire businesses and ancillary credit businesses;
- (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;
- (c) practices and procedures that the applicant proposes to implement in connection with any such business;
- (d) evidence of the kind mentioned in subsection (2A).

(2A) That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has –

- (a) committed any offence involving fraud or other dishonesty or violence;

...

or

- (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).

(2B) For the purposes of subsection (2A)(e) the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

(3) In subsection (2A), "associate", in addition to the persons specified in section 184, includes a business associate."

64. That test applies both when an application is first made for a licence and, also by virtue of section 29(3) of the 1974 Act, when an existing licensee makes an application under section 29(1) of that Act for the renewal his licence.

65. The appeals all concern the revocation of existing licences, whether original or renewed. In such a case section 32(1) of the 1974 Act provides as follows

“Where at a time during the currency of a licence the OFT is of the opinion that if the licence had expired at that time it would have been minded not to renew it, and that therefore it should be revoked or suspended, it shall proceed as follows.”

66. The remaining sub-sections of section 29 then set out the procedure to be followed in this eventuality, and which was followed in relation to each of the Appellants here.
67. We have been referred by the OFT to a number of well known decisions concerning the fitness test, both from the High Court and also at tribunal level. None of these was put in issue by the Appellants at the hearing, hence we can summarise quite briefly those to which we have had specific regard in reaching our decision.
- 67.1 As is expressly stated in its long title, the 1974 Act is a legislative measure which has as its purpose the protection of consumers.
- 67.2 The exercise of that protective function is given primarily to the OFT by section 1 of the 1974 Act.
- 67.3 In exercising that function the OFT (and, on an appeal from a decision of the OFT, the tribunal) should have regard to whether there is a material risk of consumer harm if a licence is granted, renewed or not revoked, as the case may be, it not being necessary that the occurrence of actual harm to consumers must be demonstrated: *Logbook Loans Ltd. and Nine Regions Ltd. v. OFT* CCA/2009/0010 & 0011 at para. 10.
- 67.4 Past conduct is clearly capable of being relevant to the question of fitness, the Tribunal being required to have regard to what has been called “the entire history of the matter”: *European Environmental Controls Ltd. v. OFT* CCA/2009/0002 UKFTT 274 at para. 179; and see also the reference in section 25(2A) of the 1974 Act to “... employees, agents or associates (whether past or present) ...” of the applicant. We accept, though, that the significance of past conduct will diminish (or even disappear altogether) if the person(s) responsible for it no longer have any effective connection with or

involvement in the business of the licensee.

67.5 It is the obligation of an applicant for a licence or an existing licensee, as the case may be, to familiarise himself with the requirements imposed on a licensee under the 1974 Act, not for the OFT to act as a tutor or guide in this respect: *Qsolvency Ltd. v. OFT* CCA/2009/0004 at paras. 35-36.

67.6 The grant (or, here, retention) of a consumer credit licence is a privilege and not a right: *North Wales Motor Auctions Ltd. v. Secretary of State for Trade* [1981] C.C.L.R. 1.

68. Further, each of the Appellants here is a limited company which can, therefore, only act through its officers, employees or other agents. To refer in the abstract to the fitness of the company itself is thus of little utility; its fitness can only be determined by reference to the persons through whom it has acted in the past, presently acts or proposes to act in future when undertaking activities regulated under the 1974 Act. Moreover and as one would expect, that concept finds specific statutory expression in section 25(2)(b) and 25(2A) of that Act. In the case of the present appeals this approach necessarily requires us to give careful consideration to each of Mr. J. Cummings, Mrs. M. Cummings, Ms. L. Cummings and Mr. and Mrs. Levitus.

#### **E. The statutory definition of associate**

69. The term “associate” is defined in section 184 of the 1974 Act as follows:

- “(1) A person is an associate of an individual if that person is–
- (a) the individual's husband or wife or civil partner,
  - (b) a relative of–
    - (i) the individual, or
    - (ii) the individual's husband or wife or civil partner, or
  - (c) the husband or wife or civil partner of a relative of–

- (i) the individual, or
  - (ii) the individual's husband or wife or civil partner.
- (2) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership.
- (3) A body corporate is an associate of another body corporate—
- (a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or
  - (b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (4) A body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.
- (5) In this section “relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant ...”

70. To complete this part of the statutory framework we need also to refer to the definition of the term “controller” in section 189(1) of the 1974 Act, which term is defined as meaning in relation to a body corporate:

“... a person -

- (a) in accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act, or
- (b) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller;”.

71. We did not receive any oral submissions on the application of those definitions to the facts of these appeals. The various associations contended for by the OFT were



conceded in paragraphs 1 and 30 of the Grounds of Appeal, that concession being repeated in the Appellants' skeleton argument (at paragraph 3 of that document) in this way:

“It is not disputed that – given the statutory definitions – the five companies are “*associated*” within the meaning of ss. 25(3), 184 and 189 of the Act, by virtue of sharing “*controllers*” and place of business<sup>13</sup>.”

72. For completeness, however, we include as Appendix 2 hereto the OFT's case on this issue as it was set out in the comprehensive Annex to the Response. The only parts of the analysis in that Appendix that we do not accept are the following.

72.1 Paragraph 14 is incorrect in stating that Mr. J. Cummings holds 400 out of BLL's 1,000 issued shares; the correct figure is 200.<sup>14</sup> However he still falls treated as being a controller of BLL having regard to the statutory definitions to which we referred at paragraphs 69 and 70 above, given that he is the father of its two other shareholders (viz., Ms. L. Cummings and Mrs. Levitus).

72.2 As later appears,<sup>15</sup> in our view the evidence does not establish the unqualified assertion at the same paragraph that Mr. J. Cummings is a person in accordance with whose directions or instructions the directors of BLL (or any of the other Appellants) are accustomed to act.

## **F. The Determinations**

73. Minded to revoke notices (“MTRs”) under section 32(2) of the 1974 Act were served by the OFT on each of the Appellants on 13 October 2011 which, we are informed were identical in their terms in all material respects.<sup>16</sup>

---

<sup>13</sup> Although the point was not explored in either the oral or written submissions we received, we take this reference to the Appellants' shared place of business to refer to the undefined term “business associate” used in section 25(3) of the 1974 Act; however nothing turns on this.

<sup>14</sup> See paragraph 17 above.

<sup>15</sup> See paragraph 97 below.

<sup>16</sup> On this footing the hearing bundles included a copy of the BLL MTR only.

74. Mr. Levitus responded to the MTRs on behalf of the Appellants by a detailed composite letter to the Adjudicator dated 13 October 2011; the Appellants also exercised their right to have an oral hearing before the Adjudicator, which took place on 7 November 2011.

75. At that hearing Mr. Levitus presented detailed oral arguments on behalf of the Appellants and also produced three written references to the Adjudicator (and also further written representation dated 16 November 2011), as follows:

75.1 From D.M. McNaught & Co. chartered accountants of Glasgow.<sup>17</sup> This (*inter alia*) confirmed that Mr. J. Cummings

“... is no longer involved in the regulated business, but is still involved to a small extent in the unregulated business, albeit that he is now semi-retired and no longer takes an active part in the day-to-day running of the business.

The lending companies are now run by Mr. David Levitus, Director, whom I have known for a number of years, and can verify that David Levitus was a partner of a well established accountancy firm before joining Bridging Loans Limited in 2008, and I believe David has the knowledge and expertise to take Bridging Loans Ltd and its associated companies forward in a positive manner.”

75.2 From the Institute of Chartered Accountants of Scotland dated 2 November 2011, which certified that Mr. Levitus was a member of good standing who had joined the Institute in 1991 and confirming his professional career down to leaving Fisher on 30 June 2008 and thereafter joining BLL.

75.3 From Richards Solicitors<sup>18</sup> dated 4 November 2011, which confirmed that this firm acted for BLL, RLL and DBL. It said that due to the FSA investigation into BLL there had been “many positive changes in our clients’ procedures” and its concluding paragraph said as follows:

“The above named companies are now being run on a day-to-day

---

<sup>17</sup> The auditors of BLL.

<sup>18</sup> Richards act for the Appellants in these proceedings and have been BLL’s solicitors since February 2000 (paragraph 34 of Mr. Levitus’s witness statement).

basis by Mr. David Levitus, a Director who has brought in new members of staff to assist him in the running of the loan business to ensure that the companies lend responsibly and the customers, both existing and potential, are given a fair and efficient service. Following the FSA investigation, our clients have also taken steps to ensure that their existing administrative staff are fully aware of their responsibilities to treat customers fairly.

We believe that Mr. Levitus and his personnel possess the necessary skill and knowledge to ensure that the companies are being run in a competent and proper manner.”

76. Subsequent to the hearing the Adjudicator was provided with a copy of an email dated 6 December 2011 from Mr. Atkins which (*inter alia*) said as follows:

“When I arrived at BLL in February 2010 the original directors had gone<sup>19</sup> and Mr David Levitus was in charge. At all times BLL and Mr Levitus complied with the FSA enquiry and were professional in their work with me. I was also aware that the internal business process was being improved. BLL were made subject to a programme of customer redress and I am pleased to confirm that they complied in a very professional manner.

The staff and directors at BLL today are very different to the position at my investigation and I trust you will consider that when making your decision.”

77. In her admirably succinct and clearly expressed Determination the Adjudicator found that

77.1 As was conceded before us, BLL, CLL, RLL, DFL and DBL were present or past associates of each other, and Mr. J. Cummings, Ms. L Cummings, Mrs. M. Cumming, Mrs. Levitus and Mr. Levitus were also associates due to their family and business relationships.

77.2 The FSA’s findings tended to show that BLL and Mr. J. Cummings had engaged in business practices appearing to the OFT to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not) within the meaning of section 25(2A) of the 1974 Act.

---

<sup>19</sup> We note that this was factually incorrect, there being no change in the composition of BLL’s board of directors at this time.

- 77.3 Ms. L Cummings, Mrs. M. Cummings and Mrs. Levitus lacked the skills, knowledge and experience necessary to engage in regulated consumer credit business within the meaning of section 25(2)(b) of the 1974 Act, she (the Adjudicator) also being satisfied that they lacked the integrity which the Act requires.
- 77.4 The involvement of Mr. J. Cummings, Ms. L Cummings, Mrs. M. Cummings and Mrs. Levitus in the running of BLL was incompatible with its fitness to hold a licence under the 1974 Act.
- 77.5 Mr. J. Cummings remained a controller of BLL within the meaning of section 189(1) of the 1974 Act, there had been no substantive change in the shareholdings and directorships of BLL since October 2010 and there had been no attempt by BLL or Mr. Levitus to demonstrate any change in the business practices of BLL by making any changes in the officers of the business or the controllership of the business
- 77.6 The evidence as to Mr. J. Cummings' continued involvement in the business suggested that he remained a controlling force in the associated businesses.
- 77.7 The changes Mr. Levitus had sought to make to BLL's practices and procedures needed to be balanced against the continuing involvement of Mr. J. Cummings and the continued employment of a number of long-serving staff who worked for Mr. J. Cummings throughout the period covered by the FSA investigation.
- 77.8 Mr. Levitus had not denied that BLL, Mr. J. Cummings, Ms. L Cummings and Mrs. Levitus contravened provisions under FSMA as established by the FSA.
- 77.9 It was also not denied that BLL failed to notify the OFT of its change of name for two years prior to its renewal application. Whilst the Adjudicator considered this reflected badly on BLL and its directors, she placed less

weight on this than the matters we have referred to at paragraphs 77.1 to 77.8 above.

78. It was based on the above findings that the Adjudicator determined that each of the Appellants' licences should be revoked; she also declined to grant authorisation to any of the Appellants under section 34A of the 1974 Act.

### **G. The appeals before us**

79. The Grounds of Appeal served on behalf of the Appellants were extensive, running to some 15 pages. We think we have probably said enough above to explain the scope of the arguments presented to us on these appeals, which cover much of the same ground that was considered by the Adjudicator. In essence, we need to consider whether (i) there have been sufficient changes to BLL's personnel (within which term we include officers and shareholders), processes and the manner in which it carries on business such that we should regard it as fit to hold a licence and (ii) if we were to answer that first question in the negative, whether the particular circumstances of all or any of the other four Appellants are such that we should nevertheless conclude that they (or one or more of them) are fit persons. It could not, we think, be seriously argued that if our conclusion in relation to BLL's appeal was favourable, there would nevertheless be grounds for us to dismiss any or all of the other appeals.
80. On the Appellants' behalf the submissions advanced rested not just on the proposition that Mr. Levitus had taken control in place of Mr. J. Cummings but also that new members of staff and new processes had been put in place. The most important new member was, we understand, Mr. Smith who joined as an underwriter<sup>20</sup> in May 2009 at Mr. Levitus's instigation in order to reduce BLL's dependence on Mr. Newsham, and Mr. Levitus told us that a new bookkeeper had also been employed. The new processes, Mr. Levitus said, included new software and voluntarily applying regulatory guidelines under the 1974 Act to non-regulated lending. As against this, Mr. Gibson correctly pointed out that all the Appellants continued to trade from the

---

<sup>20</sup> At the hearing before the Adjudicator Mr. Levitus referred to Mr. Smith as "Chief Underwriter, Case Manager". We have seen a copy of Mr. Smith's curriculum vitae which shows that before joining BLL he had been active in the area of mortgages since 2000 for a variety of previous employers.

same premises, even if there had been some change in the physical configuration,<sup>21</sup> and that key senior members of staff (Mrs. Fleming and Mrs. Reid) and professional advisers remained the same.

81. In addition to the FSA's findings, which we have already described as fundamental, the following additional matters were also canvassed before us.

81.1 In both his skeleton argument and oral submissions Mr. Gibson forcefully submitted that BLL and the four individuals concerned having agreed the terms of the Settlement Agreements, Decision Notices and Final Notices, the manner in which these appeals were conducted involved, in some respects, an impermissible attempt to go behind those documents and challenge their contents. He drew attention, for example, to the comments that Mr. Levitus made to the Adjudicator at the oral hearing to the effect that there were "lots of inaccuracies" in those documents produced by the FSA and Mr. Levitus's then assertion that the FSA's press release stating that BLL had refused access to its (BLL's) offices was "a blatant lie". Conversely before us Mr. Levitus accepted that the FSA's findings were (as he put it) 99% accurate. Mr. Levitus's witness statement was also critical of the FSA, variously describing it as "aggressive and confrontational" and as having pursued the investigation in an "aggressive manner" (at paragraphs 10 and 12 respectively).

81.2 Related to the point discussed at paragraph 81.1 above, the Grounds of Appeal set out in full a press statement released by BLL on 8 November 2010 in response to that of the FSA dated 4 November 2010 following publication of the Final Notices. At the hearing Mr. Levitus did not disavow responsibility for that statement. It included (*inter alia*) the following text, as to which we should say that we regard the first quoted paragraph below as a very considerable misdescription of the relevant part of the FSA's findings and gravely to understate the serious nature of the FSA's findings against Mr. J. Cummings:

---

<sup>21</sup> See footnote 4 above.

“One of the main problems was that Mr Cummings was “Old School” and he didn’t put the right ticks in the right boxes. At the time of our initial approval in 2004, the Regulations were designed for the protection of long term mortgage customers and were not clear in relation to many aspects of short term bridging finance, which is the sole market in which we operate.

Mr Cummings is no longer part of the regulated business, which is now run by David Levitus with appropriate input from our FSA approved consultant.”

- 81.3 We heard both oral evidence and argument, as well as receiving a considerable amount of documentation, concerning a loan made by BLL to a Mr. and Mrs. Burchett (the first-named of whom attended the hearing before the Tribunal as an observer) which, in circumstances not fully explained to us, resulted in both a complaint to the Financial Ombudsman Service and legal proceedings being brought by BLL against Mr. and Mrs. Burchett. We do not think it helpful for us to attempt to get into the detail of what was clearly a protracted dispute and would make two comments only. First, we accept Mr. Gibson’s submission that the manner in which BLL dealt with Mr. and Mrs. Burchett did form a part of the findings made by the FSA against both BLL and Mr. J. Cummings, namely that it and he did not deal fairly with their complaint (paragraph 4.17(2) of the Final Notice issued against BLL and paragraph 4.22 of the Final Notice issued against Mr. J. Cummings). Secondly, Mr. Gibson sought to rely on this material to show that Mrs. Fleming had herself been involved in this unfair treatment. Whilst we can understand why Mr. Gibson advanced this latter submission, for reasons that will appear below we do not propose to consider in detail the specific position of Mrs. Fleming.
- 81.4 Mr. Gibson spent some time cross-examining Mr. Levitus about the precise form of the current lending documentation used by BLL. We intend no disrespect to Mr. Gibson when we say, having regard to the other issues which arise on this appeal, we did not find that part of his cross-examination particularly helpful when arriving at our decision.

81.5 We have referred, at paragraphs 22.4 and 22.5 above to BLL's failure to inform the OFT of its August 2007 change of name and on which Mr. Gibson placed reliance. Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus were directors throughout the relevant period and Mr. Levitus for the last few months.

81.6 We have also referred, at paragraph 36 above, to failures to (i) renew RLL's former licence and (ii) notify the OFT of a change in that company's registered office. Mr. Levitus was RLL's company secretary at that time.

## **H. The evidence called before us**

82. As is conventionally the case in appeals of this character, the OFT did not call any oral evidence at the hearing.

83. On behalf of the Appellants we heard evidence from two witnesses, Mr. Levitus and Mr. Atkins (in that order). Both had also provided witness statements. We deal with them each in turn.

### **Mr. Levitus**

84. We had the benefit of a 22 page witness statement from Mr. Levitus, and he was also cross-examined in some detail by Mr. Gibson and briefly both examined in chief and re-examined by Mr. Bard, as well as answering questions from all three members of the Tribunal. In view of Mr. Levitus's importance to all the appeals, we found it extremely valuable to hear his oral evidence over a period of nearly three hours.

85. As a practising chartered accountant Mr. Levitus, who was admitted to membership of the Institute of Chartered Accountants of Scotland in November 1991,<sup>22</sup> was employed by two of the giants of the accountancy profession, Coopers & Lybrand and Deloitte (as they both then were) before joining and later becoming a partner in Fisher. He ceased to practice as an accountant when Fisher was sold to another firm in June 2008.

---

<sup>22</sup> See further paragraph 75.2 above.



86. In addition to his long experience of accountancy, Mr. Levitus also became a director of a company called Harry Smith Limited in 1998. We understand that this is a company owned and controlled by Mr. Levitus's family and is itself engaged in lending, including lending which is regulated under the 1974 Act. This apart, though, we know little about that company or the extent to which Mr. Levitus may have been active in it since becoming a director. Indeed the evidence before us, and the fact that after the hearing Mr. Levitus felt it appropriate to undertake a one day training course on 16 January 2013 with BPP Professional Education on the 1974 Act<sup>23</sup> which, he said, led to him being "better placed to understand and comply with the regulations",<sup>24</sup> is consistent with his having had no real knowledge or experience of this area of activity.
87. The thrust of Mr. Levitus's written and oral evidence was to the effect that Mr. J. Cummings is no longer active, at least in the lending side of BLL's and CLL's businesses; that he (Mr. Levitus) now has control over those activities, and all the other Appellants; that new systems and processes have been put in place to ensure that lending activities are carried out in a manner which is compliant and fair to customers;<sup>25</sup> and that Mr. J. Cummings has no involvement in the businesses of RLL, DBL and DLL.
88. We should immediately say that, subject only to a reservation about the manner in which he gave his evidence, we regard Mr. Levitus as an honest witness; indeed Mr. Gibson, by whom Mr. Levitus was carefully cross-examined, did not seek to suggest otherwise in his closing submissions. The reservation is that we do accept Mr. Gibson's observation that the manner in which Mr. Levitus gave his evidence was less than satisfactory; as Mr. Gibson said, it was difficult to get Mr. Levitus to give a straightforward answer to a question. Mr. Levitus is an experienced and intelligent

---

<sup>23</sup> His having been asked by a member of the Tribunal, Mr. Perrett, whether he (Mr. Levitus) had ever received any training on the 1974 Act and replied in the negative.

<sup>24</sup> Letter dated 6 February 2013 to the Tribunal. Mr. Levitus also referred in this context to "comments and advice from the Tribunal". That is a serious misconception of the Tribunal's role: we did not offer either comments or advice, and do not understand how a professional man such as Mr. Levitus could have laboured under this misapprehension.

<sup>25</sup> He gave the particular example of a computer programme called "Mortgage Keeper" which was adopted by BLL in 2011, albeit that it does not relate to lending or other activities covered by the 1974 Act.

professional man and we were left with the clear impression that, as and when it suited the Appellants' case, his evidence to us was tailored accordingly.

89. Two prime examples of this feature of Mr. Levitus's evidence concerned (i) how and when he became involved in BLL's business and (ii) the extent to which Mr. J. Cummings remains involved in that business.
90. Taking those points in turn, we did not find Mr. Levitus's evidence as to precisely how and when he became involved in BLL at all clear.
91. Under cross-examination he explained that it was at some unspecified time in 2007 that Mr. J. Cummings expressed a desire to retire from "the business" (Mr. Levitus's own expression in his evidence) and asked Mr. Levitus whether he would like to take over because he (Mr. Levitus) "had a lot of experience". This led, Mr. Levitus told us, to him taking "a small unpaid part-time role" in BLL in that year, 2007. He said that he became a full-time employee of BLL engaged in underwriting in July or August 2008,<sup>26</sup> at which point he started to take control of BLL.
92. However both whilst Mr. Levitus was giving this part of his evidence during the hearing and when later reviewing it for the purposes of this decision, we have found it hard to avoid the conclusion that Mr. Levitus was being less than open and frank in his evidence in order to establish some measure of distance between his involvement with BLL and BLL's own non-FSMA compliant activities prior to June 2009.
93. In expressing ourselves in this way we do not intend to suggest that Mr. Levitus was personally responsible for those non-compliant activities, as the evidence before us simply does not support such a conclusion. We were not, though, given any satisfactory explanation of why Mr. Levitus did not discover or even suspect that something was amiss prior to the FSA's investigation.
94. As regards the extent of Mr. J. Cummings' continued involvement, again Mr.

---

<sup>26</sup> This would have been shortly after the sale of Fisher: see paragraph 85 above.

Levitus's evidence did not leave us with a very clear picture on this front.

95. For example:

95.1 In his written representations to the Adjudicator dated 13 October 2011 Mr. Levitus described Mr. J. Cummings as "semi-retired", that he was "mainly involved in the property investment side of the business" and took "a limited administrative role in the non-regulated lending business of [BLL]".

95.2 In the course of the oral hearing before the Adjudicator Mr. Levitus said that:

when Mr. J. Cummings visited the office he (Mr. Levitus)

"would fill him in on the loans side just to let him know how the business is doing",

that Mr. J. Cummings was

"very sensible and switched on, we do ask him for assistance",

that

"if we want some property advice on a particular case, so that we can see whether we're going to lend on it or not. By all means I'm going to use him, I'm going to make use of that resource, so we will run cases past him",

and that

"He comes into the office a couple of times a week for an hour to later (*sic*) after his property interest, and see if we require any assistance in the commercial and problem cases".

95.3 The Grounds of Appeal asserted, at paragraph 7(d), that since the FSA's findings Mr. J. Cummings had taken no material part in the control of the lending business.

95.4 The Appellants' skeleton argument referred variously to the "substantial withdrawal" or "withdrawal" of Mr. J. Cummings from the business

(paragraphs 5(a) and 16(a) respectively).

- 95.5 In his witness statement Mr. Levitus said, rather baldly and without further explanation, that Mr. J. Cummings “does not have any involvement or influence in relation to regulated activity” (paragraph 51).
- 95.6 Before us Mr. Levitus said that the position had changed between the hearing before the Adjudicator and the hearing of the appeals, saying that Mr. J. Cummings was now “completely out of the lending side of things”.
96. In his skeleton argument Mr. Gibson referred to the Appellants; “inability to describe candidly and accurately why and how [Mr. J. Cummings] is still involved in BLL’s business”, which we accept as a fair description of Mr. Levitus’s evidence on this point. We did not find either the above imprecision or late change of stance particularly helpful and we share the Adjudicator’s view that, on the material before us, there is clearly a significant risk that Mr. J. Cummings will continue to be involved in the running of BLL’s business and also influence the running of the businesses of the four other Appellants. In a situation in which Mr. J. Cummings remains a director of and holder of 20% of the issued share capital in BLL, as well as being a director of CLL, as well as being closely related to Ms. L. Cummings, Mrs. M. Cummings and Mr. and Mrs. Levitus, we do not find that a remotely surprising conclusion.
97. Conversely we do not think the evidence goes so far as to support the concerns articulated by the OFT in the Response that Mr. J. Cummings remains in control of BLL or exercises control over any of the other Appellants in the sense in which the term “control” is used in the 1974 Act.<sup>27</sup> We accept Mr. Bard’s submission that Mr. Levitus is not merely Mr. J. Cummings’ “glove puppet”.
98. A further point we would mention at this stage is that we were perturbed by what we would describe as the exceedingly relaxed manner in which Mr. Levitus appeared to view the failings of Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus as set

---

<sup>27</sup> See paragraph 70 above.

out in the Final Notices relating to each of them. In his witness statement served in support of the appeals Mr. Levitus even went so far as to describe all three of them as having “minimal culpability” for the events at BLL that triggered the FSA’s intervention. That is not an expression used in the relevant Final Notices nor, in our view, is it an accurate description of the FSA’s findings.

99. So far as we are aware, none of those individuals has any professional (or at least relevant professional) qualifications, which might perhaps be regarded in a loose sense as explaining (if not excusing) their complete failure to discharge the duties to which they were each subject as directors of BLL, let alone their duties as approved persons under FSMA. However they were each directors for significant periods of time and whether judged by reference to the fiduciary and other duties of a company director in equity, at common law or as now codified in Chapter 2 of the Companies Act 2006, they all failed lamentably to appreciate, let alone discharge, those duties. In the context of a company which was engaged in activities that were regulated under either FSMA or the 1974 Act, it was not, we think, sufficient for Mr. Levitus to seek to shrug this off by commenting, as he did when being cross-examined, that there are “plenty of family businesses with directors who play no role at all”. As a factual statement that may be correct but, and as is readily apparent from the FSA’s findings, in the field of regulated financial activity it is not a permissible position to adopt.
100. Indeed during this part of his evidence Mr. Levitus made the surprising observation (or at least surprising to us) that he did not know why Mrs. M. Cummings was still a director of BLL. Against the background of the manner in which BLL’s business was formerly conducted, that on the Appellants’ own case he (Mr. Levitus) now had *de facto* control of BLL and that Mrs. M. Cummings is his mother in law and married to the person (Mr. J. Cummings) whose reckless conduct led to the FSA imposing the sanctions we have above described, this too suggested to us an excessively *laissez-faire* attitude on the part of Mr. Levitus to the office and duties of a company director.
101. The position is even more remarkable as regards Mr. J. Cummings, whose continued directorship of BLL appeared also not to be a matter of any concern to Mr. Levitus. This may have been at least attributable in part to Mr. Levitus feeling able to say in

his witness statement (at paragraph 18) that Mr. J. Cummings' failures under FSMA had been "innocent".

102. We have considered carefully whether it would be correct to describe Mr. Levitus's attitude to these matters as "cavalier"; on balance, it is probably sufficient for us to say that in our view this important part of his evidence showed a disturbing unwillingness or inability to accept the clear previous failings on the part of each of Ms. L Cummings, Mrs. M. Cummings and Mrs. Levitus, and a complete blind spot as regards Mr. J. Cummings.
103. In assessing Mr. Levitus's evidence we should also express our concern that it was only during the course of the hearing and as a result of questions put by the Tribunal that the extent of Mr. J. Cummings' continued substantial financial interest in BLL emerged.
104. The nature of that financial interest emerges from an analysis of BLL's audited accounts for the year ended 31 July 2011. We note that those accounts described BLL's principal activity as being that of bridging lending and the Report of the Directors was signed on their behalf by Mr. J. Cummings as BLL's then sole company secretary.<sup>28</sup> As regards the content of those accounts:
  - 104.1 The balance sheet showed debtors of £14.375 million, creditors of £8.768 million and, after provisions for liabilities, net assets of £5.928m.
  - 104.2 Note 10 to those accounts disclosed a debit balance on directors' current accounts of £1.109 million (2010 figure £1.213 million).
  - 104.3 In his evidence Mr. Levitus told us that this sum was owed by BLL to Mr. J. Cummings.
  - 104.4 Note 17 to those accounts disclosed that £1.684 million (2010 figure £2.218

---

<sup>28</sup> Mr. Levitus said in evidence, somewhat defensively we thought, that as Mr. J. Cummings was still a director and the (then sole) company secretary of BLL he (Mr. J. Cummings) was entitled to sign this report. By the same token as a director Mr. J. Cummings is also entitled to participate in the conduct of BLL's business.

million) was owed to related parties in the form of companies under the

control of Mr. J. Cummings.

104.5 It therefore follows that, as at 31 July 2011, BLL owed Mr. J. Cummings and companies controlled by him no less than £2.793 million.

105. Without wishing unduly to labour the point, we received no explanation as to why this was not disclosed in Mr. Levitus's witness statement, or any other material submitted to us on behalf of the Appellants, nor in our view did the Appellants' case afford any proper recognition of the significance of this additional connection between Mr. J. Cummings and BLL. This goes significantly to reinforce our concerns about Mr. J. Cummings' continued involvement in BLL.

### **Mr. Atkins**

106. Mr. Atkins was a transparently honest witness who did his best to assist us in all the evidence he gave.

107. Mr. Atkins provided a short witness statement which (i) explained the nature of his involvement in BLL as skilled (and subsequently independent) person under FSMA and (ii) largely repeated the contents of the reference previously provided by him.<sup>29</sup>

108. As we understood it, the Appellants called Mr. Atkins for three reasons:

108.1 to support Mr. Levitus's evidence that Mr. J. Cummings was no longer involved in BLL's lending activities;

108.2 to support Mr. Levitus's evidence as to the improved manner in which those lending activities were conducted following Mr. J. Cummings ceasing to be involved in them; and

108.3 to demonstrate his (Mr. Atkins') willingness and ability to continue to participate in the Appellants' businesses so as to provide additional reassurance that these businesses would be conducted in a compliant manner.

---

<sup>29</sup> See paragraph 76 above.



109. The third of those intended purposes effectively fell away having regard to Mr. Gibson's cross-examination of Mr. Atkins, and later submissions, which demonstrated that Mr. Atkins' infrequent involvement<sup>30</sup> since he became an independent person following the BLL Final Notice and the geographical distance between his (Mr. Atkins') offices, situate in Maidstone, Kent, and the Appellants' offices, which are situate in Glasgow.
110. The manifest impracticality of this suggestion led to a post-hearing change of tack by the Appellants on this issue, Mr. Levitus suggesting in a letter to the Tribunal dated 6 February 2013 that what he described as a "compliance company based in Glasgow, Compliance First, who also have a UK-wide coverage" would instead be able to offer assistance. We are surprised that it required the OFT to point out to the Appellants the obvious deficiencies in their original proposal; we regard the amount of detail provided in relation to this alternative to be inadequate; and we would endorse the approach taken in *Koning v. OFT CCA/2012/0012* that we need to be satisfied that the applicant or licensee is fit to hold a licence, not that he has entered into some arrangement with a third party who might be.
111. As regards the first and second points to which we referred at paragraphs 108.1 and 108.2 above, we accept Mr. Atkins' evidence that when acting as either a skilled or an independent person he has dealt with Mr. Levitus, not Mr. J. Cummings, his only having met Mr. J. Cummings twice. We accept also that (as Mr. Atkins said in his witness statement, his not being cross-examined on this part of that statement by Mr. Gibson), that (i) BLL and Mr. Levitus dealt with Mr. Atkins and their customer redress obligations in a professional manner and (ii) that in his (Mr. Atkins' opinion) BLL is in a very different position now to that when the FSA started its investigation.
112. We do, though, have to recognise the limits of Mr. Atkins' evidence: he himself told us, when being examined in chief by Mr. Bard, that he (Mr. Atkins) had no way of telling if Mr. J. Cummings was still involved in BLL's business.

---

<sup>30</sup> He said that he had visited BLL about six times since being appointed an independent person in October 2010, for between one and three days on each occasion. Conversely Mr. Atkins said he visited about six to eight times, for periods of about four to five days, whilst acting as a skilled person.

**Other witnesses who might have been, but were not, called**

113. It is of course a matter for a litigant and his advisers as to which witnesses should be called, and it would be wrong for us to speculate why the Appellants limited themselves to Mr. Levitus and Mr. Atkins. It is also likely that further witnesses would have entailed a hearing longer than the one day that it took us to hear the appeals.

114. We are nevertheless left in the position of having heard no evidence from, and therefore not as well able as we otherwise might be to evaluate (in the language of section 25(2) of the 1974 Act) the skills, knowledge and experience of, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus. Again, in our view it is not sufficient to say that Mr. Levitus has *de facto* control and that they will play no part in any of the Appellants' businesses, or any part of those businesses regulated under the 1974 Act, in circumstances in which:

114.1 Ms. L. Cummings is a director of and holder of 40% of the issued share capital in BLL.

114.2 Mrs. M. Cummings is a director of BLL.

114.3 Mrs. Levitus is a director of and holder of 40% of the issued share capital in BLL; a director and holder of 50% of the issued share capital in CLL; a director of RLL; and the holder of 50% of the issued share capital in DFL and DBL respectively.

**I. Conclusions**

115. As we mentioned at paragraph 68 above, given that we are concerned with five corporate Appellants, it is necessary for us to have careful regard to the individuals to those persons who are officers of or shareholders in each of those companies, and we shall now say something about each of them in turn.

### **Mr. J. Cummings**

116. It barely requires us to say that, having regard to the findings of the FSA, were we considering whether Mr. J. Cummings himself was a fit person to hold licence, the answer would emphatically and unequivocally be in the negative. We agree entirely with the Adjudicator's assessment of Mr. J. Cummings.<sup>31</sup>

### **Ms. L. Cummings**

117. Although we have accepted that, in relation to BLL, Ms. L. Cummings' "sins" were ones of omission and did fall some way short of those of Mr. J. Cummings, in our view those omissions were nevertheless serious, even grievous, in character. Having regard to the guiding criteria to which we referred at paragraph 67 above, we have no doubt that we would also find that Ms. L. Cummings was not a fit person to hold a licence. We agree with the Adjudicator that the evidence discloses she does not possess the necessary skills, knowledge and experience required under the 1974 Act.

118. Mr. Bard specifically asked us not to adopt the Adjudicator's conclusion that Ms. L. Cummings (and also Mrs. M. Cummings and Mrs. Levitus) were lacking in integrity; see paragraph 77.3 above. As we understood Mr. Gibson's submissions, he did not seek to sustain that finding. In our view, Ms. L. Cummings' serious dereliction of her duties as both a director and an approved person do not require us to make the same further finding as the Adjudicator, and we do not do so; we accept her conduct was a result of ignorance and incompetence, not dishonesty.

### **Mrs. M. Cummings**

119. As regards Mrs. M. Cummings, the points we made at paragraphs 117 and 118 above in relation to Ms. L. Cummings apply with equal force. We note also that in the relevant Final Notice the FSA expressed its concern that Mrs. M. Cummings intended to remain a director of BLL (see paragraph 58.6 above), yet she still continues to occupy that office.

### **Mrs. Levitus**

120. As regards Mrs. Levitus, the points we made at paragraphs 117 and 118 above in

---

<sup>31</sup> See in particular paragraph 77.2 above.

relation to Ms. L. Cummings also apply with equal force. We again note that in the relevant Final Notice the FSA expressed its concern that Mrs. Levitus also intended to remain a director of BLL (see paragraph 59.5.7 above), yet she too still continues to occupy that office.

**Mr. Levitus**

121. We accept that Mr. Levitus requires separate and careful consideration, primarily (though by no means exclusively) by reason of his having become involved in BLL relatively recently; his not having been the subject of any findings or adverse comment from the FSA; his undoubtedly having instigated changes to BLL's business model; the various references provided for him to which we have referred; and having regard to his long and unblemished record as a practising chartered accountant.

122. Even giving these matters all due weight, we have nevertheless reached the conclusion that he too does not possess the necessary skills, knowledge and experience required by the 1974 Act.

123. We can summarise our reasons for this conclusion as follows.

123.1 We have felt it necessary to approach Mr. Levitus's evidence with a degree of circumspection, as explained at paragraphs 88 to 105 above.

123.2 Given Mr. J. Cummings's continued connections with BLL, we are unconvinced by Mr. Levitus's assertions that Mr. J. Cummings will play no part nor exercise any significant influence over the businesses of either BLL or the other Appellants. Putting the matter at its lowest, there is clearly a material risk that he would do so and Mr. Levitus has not satisfied us to the contrary.

123.3 We consider that Mr. Levitus's lack of concern as to the various directorships that Mr. J. Cummings, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus continue to hold, despite the FSA's findings against each of them, shows a lack of comprehension of both the importance of the regulatory

regimes created by the 1974 Act and FSMA and of the duties of directors generally.

123.4 We were also concerned by Mr. Levitus's failure either to disclose or show any appreciation of the significance of Mr. J. Cummings' continued interest in BLL as a major creditor of that company.

123.5 We consider that the (in our view plainly erroneous) emphasis that Mr. Levitus placed on Mr. Atkins' ability to assist the Appellants in the discharge of their regulatory obligations also showed a lack of understanding of the importance of those regimes.

123.6 We were also not persuaded that, at the time of the hearing before us, Mr. Levitus was sufficiently knowledgeable about or experienced with the regulatory regime created by the 1974 Act, and we are equally not persuaded that the subsequent one day course he has attended will have adequately remedied that omission. We observe that our view here is supported by the fact that, as Mr. Levitus told us, the Appellants did not currently wish to engage in regulated lending under the 1974 Act; rather, he said the desire to retain their licences was because it was thought that there might be future changes in EU law that would require them each to have licences in order to carry on their (presently unregulated) activities.

123.7 The point was emphasised by Mr. Levitus's own witness statement in which, at paragraph 25, he expressed a willingness to "attend appropriate authorised courses so as to receive reasonable and adequate education in the Regulations on confirmation that BLL is authorised to undertake Regulated Activity".

123.8 We have also taken into account the matters referred to at paragraphs 81.1, 81.2, 81.5 and 81.6 above, of which paragraphs 81.2 and 81.6 in particular carried some weight as part of our decision-making process. The matters referred to at paragraph 81.2 were, as Mr. Gibson submitted in his skeleton argument, indicative of a failure on the part of Mr. Levitus to recognise the

seriousness of what occurred within BLL, there appearing to be an element of denial on his part in this respect;<sup>32</sup> the matters referred to at paragraph 81.6 were unfortunate, to say the least, as it would mean that, e.g., a customer would not know the correct address to which any formal documentation addressed to RLL should be sent.

124. It is for these reasons, therefore, that we do not accept the submission at the heart of the Appellants' case, viz., that because Mr. Levitus has *de facto* control of all five of them means that there is no material risk of consumer harm.

### **Mrs. Fleming**

125. We do not propose to deal in any detail with Mrs. Fleming. Even if we were able to reach a favourable conclusion in relation to her skills, knowledge and experience, in our view that would not tip the balance in favour of BLL, RLL or DFL, given the conclusions we have reached in relation to the other directors and shareholders of those companies.

### **Possibility of imposing requirements under section 33A of the 1974 Act**

126. This possibility was canvassed before us on the footing that Mr. J. Cummings, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus should all withdraw from the Appellants, leaving all five companies under the exclusive control of Mr. Levitus.
127. Having regard to the conclusion we have reached in relation to Mr. Levitus himself, this possibility falls away.
128. We would only add the following observations here:
- 128.1 We understand it to have been accepted by Mr. Bard in his post-hearing supplemental submission dated 18 December 2012 that the Tribunal itself has no power to impose requirements, but that the most we could do would be to remit the matter to the OFT for this purpose.

---

<sup>32</sup> See paragraphs 98 to 102 above.

128.2 We annex as Appendix 3 hereto the requirements suggested by the Appellants, again post-hearing. We would, though, foresee considerable difficulty as to how a regime such as is there suggested could be properly operated and policed.

128.3 We note that the suggested requirements would in fact leave the various directorships and shareholdings of Mr. J. Cummings, Ms. L. Cummings, Mrs. M. Cummings and Mrs. Levitus wholly unaffected.

129. The above are, though, matters of detail; in our view we simply do not get to the threshold stage of even considering whether any direction by us to the OFT under section 33A is appropriate.

### **Overall conclusion**

130. It necessarily follows from our conclusions in relation to each of the above individuals that none of the Appellants is a fit person to hold a licence under the 1974 Act and that all these appeals should be dismissed

### **Possible authorisation under section 34A of the 1974 Act**

131. This point was dealt with fairly briefly before us and we can deal with it in a similar manner.

132. The submission that authorisation should be granted under section 34A was made to us on behalf of the Appellants in a somewhat undifferentiated fashion. However this appeared to us to overlook the fact that (as we understood it) certainly CLL and DFL had never engaged in any lending regulated by the 1974 Act, hence it was difficult to see how either of them had entered into any transactions in respect of which authorisation under section 34A would be appropriate.

133. In relation to the three other Appellants:

133.1 The Grounds of Appeal, at paragraph 37(c), stated that the maximum period considered necessary to call in the existing loan book would be 18 months.

Given that those Grounds were dated 31 January 2012, that period has now very nearly expired.

133.2 This is consistent with what Mr. Bard told us in his oral submissions, namely that at the time of the hearing before us all agreements under the 1974 Act had run their course.<sup>33</sup>

133.3 More generally, the evidence before us did not establish any proper factual basis for authorisation.

134. It therefore appears to us that there is no need for any authorisation to be given by us under section 34A to any of BLL, RLL or DBL. Even if that were the case, however, we were not persuaded that we should grant the same.

## **J. Outcome**

135. All five appeals are therefore dismissed.

136. Under Rule 10 of the 2009 Rules, any application for costs must be made to the Tribunal not later than 14 days after the date on which the Tribunal sends this decision to the parties.

Keith Rowley Q.C.

Judge, First-tier Tribunal (Consumer Credit)

12 May 2013

---

<sup>33</sup> Though he did say that there were “one or two” FSMA regulated agreements that were still outstanding.



## APPENDIX 1

1974 Act, the:	the Consumer Credit Act 1974
2006 Act, the:	the Companies Act 2006
2009 Rules, the:	the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, S.I. No. 1976
Adjudicator, the:	Ms. Alison Spicer, acting on behalf of the Office of Fair Trading
Appellants, the:	collectively, BLL, CLL, DBL, DFL and RLL
Atkins Mr.:	Mr. Stephen Atkins of SA Compliance Management Limited,
BLL:	Bridging Loans Limited, company registration number SC058511, the appellant in appeal number CCA/2011/0014
CLL:	Commercial Loans Limited, company registration number 3612635, the appellant in appeal number CCA/2011/0015
Cummings, Mr. J.:	Mr. Joseph Cummings, husband of Mrs. M. Cummings, father of Ms. L Cummings and Mrs. Levitus and father in law of Mr. Levitus
Cummings, Ms. L.:	Ms. Laura Cummings, daughter of Mr. J. Cummings and Mrs. M. Cummings, sister of Mrs. Levitus and sister in law of Mr. Levitus
Cummings, Mrs. M.:	Mrs. Miriam Cummings, wife of Mr. J. Cummings, mother of Ms. L Cummings and Mrs. Levitus and mother in law of Mr. Levitus
DBL:	Deaconsbank, Limited, company registration number SC27459, the appellant in appeal number CCA/2011/0018
Determinations, the:	the five determinations each dated 13 December 2011 by which the Adjudicator determined that the licences held by each of the Appellants under the 1974 Act should be revoked
DFL:	Development Finance Limited, company registration number SC363204, the appellant in appeal number CCA/2011/0017
Fisher:	A.S. Fisher & Co., a firm of chartered accountants in which Mr. Levitus was partner until 30 June 2008

Fleming, Mrs.:	Mrs. Dorothy Fleming
FSA, the:	the Financial Services Authority; under the Financial Services Act 2012, with effect from 1 April 2013 the FSA was abolished and (so far as material) replaced by the Financial Conduct Authority
FSMA:	the Financial Services and Markets Act 2000
Levitus, Mr.:	Mr. David Levitus, husband of Mrs. Levitus, son in law of Mr. J. Cummings and Mrs. M. Cummings and brother in law of Ms. L Cummings
Levitus, Mrs.:	Mrs. Susan Levitus, wife of Mr. Levitus, daughter of Mr. J. Cummings and Mrs. M. Cummings and sister of Ms. L Cummings
Newsham, Mr.:	Mr. Paul Newsham, a mortgage underwriter trading on his own account under the names Richmond Securities and Richmond Financial Services
OFT:	the Office of Fair Trading, the respondent to the appeals of BLL, CLL, DBL, DFL and RLL respectively
Reid, Mrs.:	Mrs. Maureen (known as Mo) Reid
Response, the:	the OFT's Response dated 27 February 2012, which was a single Response to the Appellants' composite Grounds of Appeal
RLL:	Residential Loans Limited, company registration number 3612626, the appellant in appeal number CCA/2011/0016
Smith, Mr.:	Mr. Allan Smith, who has been employed by BLL as an underwriter since about May 2009.

## APPENDIX 2

### Associations between natural persons

1. Joseph Cummings and Miriam Cummings are associates of each other because they are husband and wife.
2. Joseph Cummings and Susan Levitus (née Cummings) are associates of each other because Joseph Cummings is Susan Levitus' father and therefore her lineal ancestor.
3. Joseph Cummings and Laura Cummings are associates of each other because Joseph Cummings is Laura Cummings' father and therefore her lineal ancestor.
4. Miriam Cummings and Susan Levitus (née Cummings) are associates of each other because Miriam Cummings is Susan Levitus' mother and therefore her lineal ancestor.
5. Miriam Cummings and Laura Cummings are associates of each other because Miriam Cummings is Laura Cummings' mother and therefore her lineal ancestor.
6. Susan Levitus (née Cummings) and Laura Cummings are associates of each other because they are sisters.
7. Susan Levitus (née Cummings) and David Levitus are associates of each other because they are husband and wife.
8. David Levitus and Joseph Cummings are associates of each other because Joseph Cummings is a relative (lineal ancestor/father) of his wife Susan Levitus.
9. David Levitus and Miriam Cummings are associates of each other because Miriam Cummings is a relative (lineal ancestor/mother) of his wife Susan Levitus.
10. David Levitus and Laura Cummings are associates of each other because Laura Cummings is a relative (sister) of his wife, Susan Levitus.

11. Dorothy Fleming is a business associate, and therefore an associate of Joseph Cummings, Miriam Cummings, Susan Levitus (née Cummings), Laura Cummings and David Levitus because she is a director with them of Bridging Loans Limited.

### **Associations between natural persons and bodies corporate**

#### **BLL**

12. Susan Levitus is an associate of BLL because she is one of its controllers. She holds 400 out of the 1,000 issued shares and therefore is entitled to exercise one-third or more of the voting power at any general meeting. She is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
13. Laura Cummings is an associate of BLL because she is one of its controllers. She holds 400 out of the 1,000 issued shares and therefore is entitled to exercise one-third or more of the voting power at any general meeting. She is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
14. Joseph Cummings is an associate of BLL because he is one of its controllers. He holds 400 out of the 1,000 issued shares and therefore is entitled to exercise one-third or more of the voting power at any general meeting. He is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act. However, the OFT considers that he is the person in accordance with whose directions or instructions the directors of BLL are accustomed to act.<sup>34</sup>
15. Miriam Cummings is one of the directors of BLL and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.

---

<sup>34</sup> As to the contentions here advanced, see paragraph 72 of our decision above.

16. David Levitus is one of the directors of BLL and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
17. Dorothy Fleming is one of the directors of BLL and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.

### **CLL**

18. David Levitus is an associate of CLL because he is one of its controllers. He holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. He is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
19. Susan Levitus is an associate of CLL because she is one of its controllers. She holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. She is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
20. Joseph Cummings is a director of CLL and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
21. Laura Cummings is a former business associate, and therefore former associate, of CLL having been one of its directors until 15 July 2009.

### **DBL**

22. David Levitus is an associate of DBL because he is one of its controllers. He holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. He is also one of its directors and

would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.

23. Susan Levitus is an associate of DBL because she is one of its controllers. She holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. She is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.

### **DFL**

24. David Levitus is an associate of DFL because he is one of its controllers. He holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. He is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
25. Susan Levitus is an associate of DFL because she is one of its controllers. She holds one (1) of the two (2) issued shares and is therefore entitled to exercise one-third or more of the voting power at any general meeting. She is also one of its directors and would therefore fall to be classed as a business associate, and therefore an associate, for the purposes of section 25(3) of the Act.
26. Dorothy Fleming is a business associate of DFL and therefore an associate for the purposes of section 25(3) because she is its manager.

### **RLL**

27. Susan Levitus is a controller of RLL because she holds 1 of the 3 issued shares in her capacity as a trustee of the trust in which the shares in RLL are held. She is also a business associate of RLL and therefore its associate for the purposes of section 25(3) of the Act because she is one of its directors.
28. David Levitus is a business associate of RLL and therefore its associate for the purposes of section 25(3) of the Act because he is one of its directors.

29. Dorothy Fleming is a business associate of RLL and therefore its associate for the purposes of section 25(3) of the Act because she is one of its directors.

**Associations between bodies corporate**

30. BLL is an associate of CLL, DBL, and DFL because Susan Levitus is one of the controllers of BLL whilst Susan Levitus and David Levitus are the controllers of the other companies.
31. BLL, CLL, DBL and DFL are associates of RLL because Susan Levitus is one of the controllers of those companies and is also a controller of RLL in her capacity as one of the trustees.

### **APPENDIX 3**

Quotation from an email dated 14 December 2012 from the Appellants' solicitors to Tribunal:

“The conditions which the Tribunal are requested to consider are as follows:-

- day to day control over regulated lending business to be only by David Levitus, Dorothy Fleming or Stephen Atkins (or some alternative "independent person" approved by the OFT).
  
- no control over, or participation in, any decision relating to any regulated loan or borrower by Joseph Cummings or any of his wife or his daughters.
  
- David Levitus to undergo training before commencement of any CCA regulated lending.”