IN THE FIRST-TIER TRIBUNAL **Case No. CCA/2011/0004 & 0005**
GENERAL REGULATORY CHAMBER
(CONSUMER CREDIT)

ON APPEAL FROM:

Office of Fair Trading's
Decision references: ADJ/2236 – 478145 & ADJ/2237 - 633126
Dated: 19 April 2011

Appellant: BARONS BRIDGING FINANCE 1 LIMITED

Respondent: OFFICE OF FAIR TRADING

AND BETWEEN:

Appellant: REDDY CORPORATION

Respondent: OFFICE OF FAIR TRADING

Date of Decision: 11 June 2012

JUDGMENT

1. General

1.1 This judgment which represents the unanimous view of the Tribunal members relates to two appeals. The first appeal is against a determination by the adjudicator at the Office of Fair Trading (OFT) to refuse to renew the standard licences to carrying on a consumer credit business of Reddy Corporation Limited (Reddy). The second appeal is against the adjudicator's determination to refuse the application of Barons Bridging Finance 1 Limited (Barons Bridging). The date of the determinations was 19 April 2011, the determination to refuse both applications being made under sections 27 and 29 respectively of the Consumer Credit Act 1974 (CCA). The relevant Notices of Appeal are dated 30 June 2011.

1.2 Reddy and Barons Bridging are effectively owned and controlled by a Mr Dharam Prakash Gopee (Mr Gopee). Mr Gopee also owns and controls a number of associated companies, details of which will be set out further below. For the moment it is sufficient to mention two of such associated entities being first the company formerly known as Ghana Commercial Bunks Limited (Ghana Bunks) now known as Ghana Commercial Finance Limited and Barons Finance Limited (BFL) as well as another entity which is also materially involved, namely Barons Bridging Finance Limited (BBF).

1.3 The relevant conduct alleged to be material in the adjudicator's decisions as against the Appellants also concerns the activities of the above corporate entities as well as the conduct of Mr Gopee himself.

1.4 Although fitness is to be assessed at the time of the hearing it is well established in the jurisprudence of this Tribunal and generally that historical practices remain highly relevant to that question. Any revision or change in unfair practice and/or any inappropriate behaviour as a result of or following upon regulatory intervention whether by the OFT or otherwise or any revisions that have been made since appeals have been lodged should be given some, albeit a somewhat reduced, credit. However, this Tribunal takes the view again as well established in the jurisprudence of this Tribunal that such revisions should not be allowed to diminish the relevance of consumer detriment which may have been caused in the past, especially given the duration and extent of the conduct that gives rise to any such detriment.

1.5 Overall the OFT alleges that the Appellants and their associates have committed a large number of breaches of the consumer protection provisions of the CCA. The OFT stresses as is common in such cases that consumer protection which is a clear legislative purpose of the CCA is undermined by traders and companies such as those presently in question who seek to treat obligations under the provisions of the Act as in effect optional. The Tribunal is highly conscious of the fact that in many cases, and certainly as seems to be the position from the facts of this case, the clientele of entities such as the Appellants are likely to be people who are in financial difficulties or those who are otherwise unable to obtain traditional credit resources from the usual outlets such as banks. It is all the more important, therefore, that the Appellants and their associates as well as their controller in the person of Mr Gopee properly adhere to the duties and obligations required of them under

the CCA. It necessarily follows that failure on those parties' part properly to structure their business from the outset or properly to ensure that the relevant procedures and rules are followed will bear heavily on the question of fitness.

1.6 In effect the contentions made against the parties mentioned above fall into two parts reflecting activities which are technically levelled against the Appellants themselves on the one hand and on the other contentions which are made against the associates, being principally the three corporate entities mentioned above. By and large these echo the matters which were considered by the adjudicator but as is well known and well established this Tribunal is not limited to the matters which were put before the adjudicator with regard to any prior determinations but is entitled and fully at liberty to investigate the question of fitness afresh.

1.7 The provisions regarding applications for a standard licence are set out in section 25 of the CCA. In section 25(2) the following provision appears, namely:

> "(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 skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or 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 sub section (2A)"

Section 25(2A) provides as follows:

"(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;

(b) contravened any provision made by or under -

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction and that Part;

(iii) any other enactment regulating the provision of credit to individuals.

***

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

1.8 The Tribunal pauses here to refer to the provisions regarding the term "associate" which are found at sections sections184 and 189(1) of the CCA. Without reciting these provisions in full the Tribunal is entirely satisfied that the entities which are mentioned above are technically associates of the Appellants in this case.

1.9 The main contentions levelled against the Appellants are four in number. First they failed to have in place any complaints procedure which complied with the Financial Services Ombudsman Service rules (the FOS rules). Based on this it is alleged that the Appellants therefore failed to have the necessary practices and procedures for the purposes of section 25(2)(c) of the CCA.

1.10 The second allegation is that a proposed credit agreement for Barons Bridging being an associate of Reddy as highlighted above does not comply and did not comply with sections 60 and 61 of the CCA and in particular the Consumer Credit (Agreements) Regulations 1983 (CCARs). The third allegation concerns the contravention of section 39(2) of the CCA by Reddy. This particular allegation is made by way of alternative on the basis of the

allegation which is made by the Appellants that at all material times BFL and Ghana Bunks were acting as agents for Reddy in entering into the relevant agreements in question. The OFT here contends that Reddy has carried out the regulated credit activities under names not specified in its licence contrary to section 39(2) of the CCA. The logical conclusion it is said is that Ghana Bunks and BFL engaged in unfair business practices and unlawful conduct. The fourth and final allegation made under this head is that the Appellants and those associated with them have failed to demonstrate the level of skills and competence required of a licensee or an applicant in the carrying on of businesses which are subject to the licensing system. Mr Gopee has at least 11 years' experience of engaging in licensable activities. The OFT therefore claims that given that degree of experience or alleged experience there is a failure to show a sufficient degree of fitness in the case of both Appellants given particular areas of incompetence which are highlighted by the OFT and which will be referred to below. By way of alternative with regard to this head of complaint should the Tribunal accept that at all material times BFL and Ghana Bunks were acting as agents for Reddy then the relevant matters going to alleged unfitness can be on this basis attributed to Reddy itself.

1.11 The second set of contentions are made as indicated above against the associates, namely BFL, Ghana Bunks and BBF. There are seven heads which are articulated in this respect. The first concerns unlicensed trading at the instance of the BFL, Ghana Bunks and BBF. It is alleged that these corporate entities entered into regulated agreements within the meaning of section 189(1) of the CCA. It is common ground that neither BFL nor Ghana Bunks nor BBF is or are licensed in engaging in consumer credit businesses. Further, none of these companies has applied for an order under section 40 of the CCA before seeking to enforce agreements entered into. Again the allegation of agency is material. The Appellants claim that in general terms these three companies were acting at all material times as agents for Reddy and therefore covered by Reddy's licence. The OFT counters this by claiming that not only were these companies engaged in unlicensed trading on their own account but nothing in the agreements and in the evidence before the Tribunal supports any argument based on agency.

1.12 It is perhaps material to set out the general ambit of this argument. Admittedly in the relevant agreements there can be found the following

language inserted by the three companies allegedly as agents for Reddy, namely:

". . . for and on behalf of Barons Finance Limited [or Ghana Bunks as the case may be] And or as Agent for Reddy Corporation Limited (Consumer Credit Licence No. 478145)."

1.13 The OFT contends that these words were included to create in effect a fiction that these three companies, ie Ghana Bunks, BBF and BFL were acting as agents for Reddy at least from 2003 if not before. As will be seen these matters were ventilated in court proceedings and in one notable instance in the Court of Appeal in relation to the said proceedings it was remarked upon and observed that the relevant agreement had been entered into by BFL and there was nothing on the face of the agreement which suggested an agency or any similar arrangement.

1.14 The next head of complaint concerns the engagement in business practices on the part of BFL, BBF and Ghana Bunks which practices appear to be deceitful or oppressive or at least otherwise unfair and improper whether lawful or not within the meaning of section 25(2A)(e) of the CCA and therefore manifesting an appropriate lack of integrity. The third head of complaint concerns the entering into agreements by BFL, BBF and Ghana Bunks which do not comply with sections 60 and 61 of the Act as well as with the CCARs. The fourth head of complaint concerns the engagement by the said three companies in unfair business practices by attempting to enforce agreements which fail to comply with section 60(1) of the CCA as well as with the CCARs without the previous obtaining of an enforcement order under section 65 of the CCA. The fifth head of complaint concerns an unfair relationship entered into between BFL and in particular a customer known as Ms Olubisi within the meaning of section 140A of the CCA. The sixth head of complaint concerns the engagement by BFL in unfair business practices within the meaning of section 25(2A) of the CCA by virtue of the fact that BFL entered into a regulated credit agreement when in fact the same was not regulated. The seventh and final head of complaint concerns the lack of transparency and contravention of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

1.15 The final three heads of complaint are in fact directed against Mr Gopee himself. They are the following: first it is claimed that Mr Gopee as the controlling mind and associate of Reddy and Barons Bridging committed an offence under section 49 by soliciting the entry of individuals into a debtor/creditor agreement during visits carried out in response to a request made on a previous occasion without the request being made in writing. Second it is said he exhibited a lack of competence being the person to whom the Appellants failure to demonstrate the level of skills and competence required should be properly attributed and thirdly, it is alleged that he engaged in unfair business practices within the meaning of section 25(2A)(e) of the CCA by claiming that a regulated credit agreement was not in fact regulated.

1.16 Finally and overall with regard to him the OFT claims that he exhibited a lack of personal integrity insofar as the same is not already covered by the aforementioned head of complaint.

2. <u>The law</u>

2.1 Apart from section 25 which has been set out above the other main provisions of the CCA which need to be considered are the following. First section 39(2) of the CCA provides that a licensee under a standard licence who carries on business in a manner not specified in the licence commits an offence. Sections 60 and 61 of the CCA, in the former case impose an obligation on the Secretary of State to make regulations as to the form and content of regulated agreements and amongst other matters as to a proper description of the amount and value of the total charges for credit in the case of consumer credit agreements; the latter provision addresses the formal requirements needed with regard to the proper execution of a regulated agreement, ie such an agreement is not “properly executed” unless it satisfies the specified criteria with regard to form, content, signature and legibility. The relevant regulations stipulated are those set out in the CCARs.

2.2 Section 140A of the CCA enables a court to make an appropriate order, eg such as to require repayment by the creditor of any sums paid by the debtor in connection with a credit agreement if the court determines that the relationship between the creditor and the debtor arising out of the agreement is “unfair” to the debtor on account of one or more of the matters more

particularly set out in section 140A(1), ie in effect any individual aspect of the agreement and/or relationship in question.

2.3 Section 49(2) of the CCA provides that it is an offence to solicit the entry of an individual as debtor into a debtor/creditor agreement during a visit carried out in response to a request made on a previous occasion where the request was not made in writing signed by or on behalf of the person making it and if no request for the visit had been made the soliciting would have constituted the canvassing of a debtor/creditor agreement "off trade premises."

The Appellants and their associates

2.4 Reddy is the holder of licence number 478145 with the OFT. The licence commenced on 25 May 2000. Barons Bridging applied for a licence on 4 December 2009. Reddy is a private company limited by shares. According to its annual return filed in February 2011, its registered office is at 169 Perry Vale, London SE23. Its sole director is Mr Gopee. The address attributed to him is the same as the one for the registered office. He is stated as being a British citizen born on 6 February 1954.

2.5 Reddy has 100 issued ordinary shares held as at 31 March 2011 by an entity described as Société Gopee Frères de Saint Pierre. The address given in respect of this entity is an address in Mauritius. This entity is formally described in the accounts as an unincorporated association.

2.6 Barons Bridging is a private company limited by shares. Its registered office is also 169 Perry Vale, London SE23. The sole individual director is Mr Gopee. The sole corporate director is the Mauritian unincorporated association referred to above. There is an issued share capital of 1 in number being held in the name of the corporate director.

2.7 According to its annual return dated 18 December 2010 Ghana Bunks is also a private limited company whose principal activities is expressly described as "non trading company". It has the same registered office as the previous two companies. The sole individual director is Mr Gopee. The sole corporate director is the same Mauritian unincorporated association already referred to. It has 2 paid up ordinary shares held in the name of the same Mauritian entity.

2.8 According to its annual return dated 15 August 2010 BFL is also a private company limited by shares with the same registered address as the previous companies. The sole director is Mr Gopee. It has 2 issued ordinary shares held by the same Mauritian unincorporated association as the one referred to above. That Mauritian entity is also the sole corporate director. The company secretary is shown as a Mr Rajiv Prakash Gopee. The Tribunal was informed that he is the son of Mr Gopee.

2.9 Reference will be made in connection with the allegation regarding Mr Gopee's integrity to a company called Halifax Repossessions Limited. According to its annual return dated January 2002 its then registered office was PO Box 5525, Gopee Business Centre, 19 St Vincent's Road, Westcliff-on-Sea, Essex, SS0 7BQ. The Tribunal pauses here to observe that although the point was not fully explored during the hearing of the appeal it appears to the Tribunal at least extremely doubtful that a company registered under the Companies Act can legitimately provide a PO Box No as its address for its registered office. This is because it is the statutory duty of a registered company to keep available for inspection at its registered office any required formal document: see generally Companies Act 2006, section 87(3)(a). The point is not without significance since certain credit agreements which have been produced to the Tribunal in particular those used purportedly as agent for Reddy by Ghana Bunks attribute to this last named company a PO Box Number, namely PO Box 5467, Southend-on-Sea, SS0 9GY albeit as "administrative agent" for Reddy. The same PO Box Number is given in respect of BFL with regard to a credit agreement entered into by it, again purportedly as " administrative agent" for Reddy. Reverting, however, to Halifax Repossessions it is perhaps fair to state that with regard to another related company which is relevant to the same issue, namely Halifax Business Finance Limited, a legitimate address is given, namely Gopee Business Centre, 9 St Vincent's Road, Westcliff-on-Sea, Essex, SS0 7 BP.

2.10 Apart from the above companies the Tribunal has also been shown formal documentation regarding another company which on any view is also "associated" with the Appellants. This is the company already referred to as BBF. According to the financial statements for the year ending 31 March 2009 BBF had as its former sole director one J P Gopee and as its secretary Mr R P Gopee, the individual mentioned above said to be the son of Mr

Gopee. Mr Rajiv Prakash Gopee has been referred to already. He is shown as living at the same address as Mr Gopee. The same Mr R P Gopee, is shown as a director of BBF having resigned as such on 31 December 2005 with the relevant entry showing that he had or has had an address in Mauritius, namely 59 LaPerousse Street, Cruepipe in Mauritius.

2.11 Of far greater significance, however, in the Tribunal's judgment are the financial and accounting details provided in respect of BBF. With regard to the year ending 31 March 2009 that company's accounts revealed a turnover of £348,530 a pre-tax profit of £116,522 and net tangible assets of £654,771. The balance sheet showed a current liability of £394,976 which when taken together with other liabilities yielded a figure of £578,021 shown as total assets less liabilities. The accounts stated that the company had an issued share capital of £105,000 or thereabouts. The directors were 2, the first being a corporate director described as Banque de Saint Pierre with the same address in Mauritius as the Mauritian unincorporated association already referred to. There was also a single individual director, namely Mr R P Gopee. The sole shareholder is the same said Mauritian unincorporated association.

2.12 The Tribunal was also shown accounts for Ghana Bunks. As indicated above the company is now known formally as Ghana Commercial Finance Limited. As at the date of its balance sheet for 31 December 2010 it showed total current assets of £93,919 a figure down from the previous year's figure of £106,687. The creditors for the year ended December 2010 amounted to £135,105 resulting in a negative net figure with regard to total assets less current liabilities of £39,967 an increase from the far more modest negative figure for the preceding year of £828. These were figures drawn from abbreviated accounts with no profit and loss account attached. The abbreviated accounts were signed by the sole corporate director of Ghana Bunks, namely Société Gopee Frères de Saint Pierre. With regard to an earlier year, namely the year ending 31 December 2008 current assets were substantially more amounting to a net figure of £59,107 with a surplus with regard to total assets, less current liabilities of £61,272. On any basis the fortunes of Ghana Bunks had declined in the period from 2008/9 to the latest abbreviated accounts referred to above, namely those for the period ending 31 December 2010, when a negative figure was shown. The notes to the

abbreviated accounts for that period referred to turnover, albeit in the absence of any disclosed profit and loss account ,with the description "turnover represents net invoiced sales of goods and services excluding value added tax."

2.13 In the wake of the appeal being heard the Appellants provided a set of further documentation which included an abbreviated balance sheet for Ghana Bunks as at 31 December 2011. Here the position had risen somewhat in that the net current liabilities figure was now shown for that period in the sum of £51,844, an increase of some £10,000 or so since the previous year. Again no profit and loss account was provided. The accounts are signed by Mr Gopee in his individual capacity as a director and on behalf of Société Gopee Frères de Saint Pierre as corporate director. The same note with regard to a description of turnover appears in the notes to the abbreviated accounts for this latest period as appeared with regard to the preceding year.

3. <u>The agency issue</u>

3.1 In a number of key instances Reddy purported to employ a number of its associates as agents. In particular it used BFL as its purported agent in order to enter into agreements whether regulated or not with its customers. In one instance by two documents signed and dated 26 November 2007 and 10 December 2007 BFL entered into an agreement with a Mr Meregini of Erith pursuant to which Mr Meregini granted a legal charge over his property in Erith to secure a loan described as "interest only repayment" in the sum of £1750 at the rate of 3 ½% with monthly payments of some £65.25 "commencing one month following the advance and on the same day of the month after" [sic].

3.2 Both documents are similar except that the later document contains a short section purporting to address "your right to withdraw" but both documents, however, contain the following rubric, namely:

"Signed for and on behalf of Barons Finance Ltd And or [sic] as agent for Reddy Corporation Limited (Consumer Credit Licence Number 471145)".

Similar agreements were shown to the Tribunal being entered into in the same way with other individuals whose names are Ms Sawyer, Mr and Mrs Odedra and Ms Olatunji. As will be seen in due course below possession

proceedings were subsequently issued against Ms Olatunji and a possession order was made in respect of her property dated 13 June 2007. Despite apparently formally characterised as an agent of Reddy, BFL was the first claimant in respect of and on the face of the said proceedings. A notice of issue for possession was also issued against Ms Sawyer and another person with Ghana Bunks being shown as first claimant in those proceedings save that it too purported to enter into similar agreements with those individuals as agent or as more particularly described therein as "administrative agent".

3.3 The CCA by section 22(3) provides that a licence must be obtained by each separate person who carries on any activity for which a consumer credit or analogous licence is required. Any licence so obtained would cover all related activities done in the course of that business by the licensee or by other persons on that person's behalf. Clearly certain agents would be and are covered by their principal's licence provided, of course, that such agent works solely for that principal. However, in the Tribunal's judgment there can be no justification for the licence of any activity which otherwise would have to be regulated purported to be used or relied on in any way by an agent which carries on business to buy or sell purely on his or its own account. Such an agent would need to obtain a licence in his or its own name.

3.4 The OFT therefore contends that BFL and Ghana Bunks have at all times acted in respect of licensable activities but have carried on such licensable credit activities in their own right. In support of this argument the OFT relies on a number of documents other than the documents referred to above. First the OFT relies on a legal charge dated 21 February 2007 between BFL as "lender" and Mr and Mrs Odedra, second a letter dated 22 October 2008 sent by BFL on its own account and on its own headed notepaper to Mr Meregini regarding missed payments, third particulars of claim dated 13 February 2009 for possession of Mr Meregini's property a matter referred to above and listing BFL as the First Claimant being the only claimant and signed in that respect by Mr Gopee, next a legal charge in respect of Ms Sawyer with regard to the properties and/or property of that lady and/or that of a Mr Mabo listing Ghana Bunks as the only lender, again a matter referred to above, fifth a possession order dated 13 June 2007 in respect of Ms Olatunji's property, again a matter mentioned above showing BFL as the only claimant, sixth a similar order dated 14 August 2008 in respect of Ms Sawyer's property, seventh a notice of

issue for a possession claim against Ms Sawyer and Mr Mabo showing Ghana Bunks as the only claimant and lastly, a letter of offer dated 21 August 2007 showing Ghana Bunks as the only lender but containing the words and rubric “And or as the agent for Reddy Corporation ...”.

3.5 The OFT further contends that the documents referred to in the previous paragraph demonstrate that BFL and Ghana Bunks have carried out activities for which a licence is required and have done so in breach of section 39(1) of the CCA. As indicated above section 39(1) provides that in doing so a party or person commits an offence. It is a requirement that the person otherwise committing an offence have engaged in any activity for which a licence is required. Such a person must in other words be shown to have been carrying on “a business”. In addition the penalties provided by section 167 and Schedule 1of the CCA are set out, there being similar consequences as to which see sections 40, 148 and 149. On any basis transgression of this sort strikes at the very heart of the regulatory regime set up by the CCA and in the Tribunal’s firm view is of itself sufficient to show that those connected with such unauthorised activities are clearly not fit and proper persons to hold or be associated with the holding of a licence.

3.6 The OFT puts its case in relation to these matters in two alternative ways. First, it contends that an offence has been committed by BFL and Ghana Bunks with the consent and active assistance of Mr Gopee or at the very least on account of Mr Gopee’s neglect. At all material times Mr Gopee has been a director of BFL and on his own admission and has been and is the owner and/or controller of both companies.

3.7 The Tribunal had the benefit of hearing the evidence of Mr Gopee during the course of the appeal. Having heard him give evidence the Tribunal has no hesitation in accepting the OFT’s primary submission. Even if the Tribunal had not heard and seen Mr Gopee give evidence the Tribunal would nevertheless have had no hesitation in finding that as a matter of fact BFL and Ghana Bunks had each entered into regulated agreements and/or carried out activities for which licenses were required either with the consent or the connivance of Mr Gopee on account of his involvement in the affairs of those companies, or at the very least as a result of his neglect.

3.8 In the alternative if the Tribunal were wrong in this last mentioned respect the only possible inference that can be drawn from the facts which have been set out above is that Reddy has carried out regulated credit activities under names not specified in its documentation, namely BFL and Ghana Bunks in breach of section 39(2) of the CCA which expressly provides that a licensee under a standard licence who carries on business under a name not specified in the licence commits an offence. That analysis also necessarily implicates Mr Gopee as the director and primary owner and controller of Reddy itself.

3.9 During the hearing of the appeal there was some examination of, and discussion between the Tribunal and counsel for the Appellants and/or Mr Gopee with regard to the Appellants' contentions that all matters which have been referred to were in some material way revised in the wake of the adjudicator's determinations. The Tribunal has been shown a number of documents which emerged on the eve of the hearing in which Mr Gopee wrote a letter to the OFT and to the Tribunal saying that he had revised his and/or the relevant companies' Credit Agreement Forms to include the wordings "secured on" for Reddy "acting through administrative agents [BFL] and [Ghana Bunks]" as well as two other companies whose names shortly are known as Moneylink and Barons Bridging Finance Plc.

3.10 Attached to the letter are 4 documents headed in fact "Credit Agreement regulated by the Consumer Credit Act 1974". It is enough to refer to one alone. In one of them the lender is shown as Ghana Bunks, albeit then subject to the description "(Being an Administrative Agent for Reddy Corporation Limited Consumer Credit Licence Number 478145)". The address of Ghana Bunks and indeed of BFL which is the subject of another such agreement is given as PO Box 5467, Southend-on-Sea, SS0 9GY.

3.11 The same letter of Mr Gopee also had attached to it a document again formally headed "See Credit Agreement Regulated by the Consumer Credit Act 1974" in which the lender is shown only as "Barons Bridging Finance 1 Limited ", i.e. one of the Appellants. The obvious observation to be made about this is that this company has not yet been afforded the right to carrying on licensable activities.

3.12 The Tribunal was also provided with a copy of a witness statement from Mr Gopee being a short witness statement of 20 April 2012. Mr Gopee confirms

at page 2 that not only was he a director of the Appellants but also a director of BFL, Ghana Bunks and Barons Bridging Finance Plc. He alleges that it was through the said companies that Reddy had been carrying on its business. At page 12 of the exhibit to this witness statement Mr Gopee exhibits a document which he describes in his contents list to the exhibit as being a copy of "complaint procedures". It is headed in the name of the company described in this judgment as BBF. It deals with complaints and invites complainants to send letters of complaint to that company alone. A similar letter can be found at page 13 in the name of Reddy alone.

3.13 During the hearing of the appeal the Tribunal enquired of Mr Gopee as to the formal basis of the alleged agency arrangements or agreements. It had been noted by the Tribunal not only in the evidence which was before it but also during the course of oral evidence provided by Mr Gopee that the Tribunal had not seen any formal documentation e.g. board minutes or resolutions or similar documents which in some way formally evidenced the existence of any of the alleged agency agreements or arrangements. It has already been seen from what has been said in this judgment already that the financial position of the various companies suggested that the fruits of the activities conducted by the companies owned and controlled by Mr Gopee did not show themselves on the face of the accounts of Reddy as the only licensed entity but rather on the face of the associated companies. Indeed Reddy had clearly been shown to have no real or material assets of any material worth at all during the course of 2009 and 2010 and that assets of any sizeable amounts were to be found at all in the accounts and financial statements of Ghana Bunks. Such statements therefore suggested if anything a position in which the true principal was not at any material time Reddy as the only authorised licensee but on the other hand the other associated companies who did not hold a licence.

3.14 Prior to the conclusion of the hearing the Tribunal was provided with three documents, two of which were headed in terms "Agency Contract", the third being a document headed with the phrase "This Agency Contract is made the 20th June 2000 ...". The first document is made allegedly on 28 December 2003 between Reddy and Ghana Bunks. It is in the same form as the second agreement which is entered into between Reddy and BBF. The material terms of the two agreements are as follows, namely:

"1. Reddy as from today appoints [Ghana Bunks/BBF] as its Administrative Agent for the purpose of promoting and expanding its money lending business and [Ghana/BBF] may enter into agreement in its own name as agent for and on behalf of Reddy.

2. Ghana shall retain all the net profits generated from the business but not any assets created during the course of the agency.

3. Reddy shall be entitled to terminate the agency at any time and take over any and all of the assets created by [Ghana/BBF] during the course of the agency after indemnifying or agreeing to indemnify [Ghana/BBF] of any debt or other liability due and owing by [Ghana/BBF] on the said assets.

4. Reddy may also at any time select to take over any debt due and owing by any customer to [Ghana/BBF] subject to indemnifying [Ghana/BBF] of any liability or debt due by Ghana on that debt which would have been created for the purpose of making the advance to the customer.

5. [Ghana/BBF] is not allowed at any time during the course of its agency to act as an agent for anyone else and is prohibited from engaging in any business of a similar nature except after the agency has been terminated by Reddy".

Reddy then has a signature attached to its name, the identity of which was not made entirely clear to the Tribunal but attached to the said signature is pp G R Smillie. In the case of Ghana and BBF respectively Mr Gopee's signature appears to be attached.

3.15 The third agency contract is between Reddy and BFL. The relevant terms are as follows, namely:

"1. Reddy shall as from today appoint Barons as an Administrative Agent in connection with its money lending business.

2. Barons shall be entitled to keep all of the net profits generated from the business.

3. Reddy shall be entitled at any time to terminate the agency and take over all or any of the assets created by Barons during the course of the agency subject to making payment or taking over the responsibility to make payment for any liability due and owing on the asset(s) by Barons.

4. Reddy may also at any time select to take over any debt due and owing by any customer from Barons subject to indemnifying Barons of [sic] any liability or debt due by Barons in respect of that debt.

5. Barons shall not act as an agent for anyone during the course of the agency and shall not engage in any business of any kind on its own during the agency period."

That agreement is signed on behalf of Reddy with the same signature as appears on the previous two agreements. The Tribunal pauses here to say that although it is not clear whose signature it is as to the person signing on behalf of Reddy, Mr Gopee, who was unable to enlighten the Tribunal in that respect, said that it was a person whose first name was Linda. The signature put in on behalf of BFL is that of Mr Gopee himself.

3.16 At this point the Tribunal refers to the financial position of BBF which as already been stated had as its stated principal activity, at least on the face of its 2009 accounts, the carrying on of borrowing and lending of funds, funds management and other related activities. There is simply no mention of an agency on the face of those accounts. Not only is there no mention of any agreement or agency let alone the allegedly exclusive agency claimed to exist on the face of each of the three agreements set out above, but there is nothing on the face of the agreements which are recited above which in any way grants any right or appears to give any entitlement to BBF to borrow any money to effect loans made on its own account according to its accounts.

3.17 The fact remains that clause 2 of all three agreements is set out above is effectively incomprehensible particularly in the light of the above matters. It is not clear what distinction, if any, is sought to be drawn between the term "net profits" on the one hand and "any assets" on the other. Even if there were any meaningful distinction such language at least suggests that Reddy would still hold some part of the overall business or some portion of the "assets"

which underlay the business of both companies. If nothing else the financial arrangements sought to be illustrated and described in clauses 2 of all three agreements would need to find some expression on the face of the accounts which expression the Tribunal finds totally absent. In fact as has been seen Reddy is a totally empty vessel . The matter is hardly helped by the additional confusion caused by the use of the word "assets" which finds expression in clause 3 of all three agreements. Again the Tribunal is completely at a loss to understand the sense and purpose of clause 3 quite apart from the overall sense of all three agreements as a whole. The absence of any economic substance on the part of Reddy effectively emasculates the purpose, worth and meaning of clauses 4 in each of the three agreements. No effective indemnity can be provided by the company which is in effect worthless.

3.18 In the circumstances the Tribunal has little hesitation in totally dismissing the suggestion that the agency agreements as purportedly existing at all material times had any genuine substance quite apart from any substance or genuineness which could be said to be attributed to the three agreements produced during the course of the appeals. In the wake of the appeal the Tribunal was provided under cover of exchanges sent by Mr Gopee to the Tribunal by an email dated 27 April 2012 with alleged minutes of a meeting of Reddy held at Westcliffe-on-Sea at which Ms Smillie whose full name is Gloria Rosemary Smillie was present together with members of the Gopee family including Mr Gopee in which "the matters discussed" were:

"Purchase of another Off the Shelf Company to carry on the business of the company as its agent."

The said exchanges also included two letters signed by Mr Gopee or by one of his family members on the part of Ghana Bunks and BBF respectively dated 29 December 2003 and 26 January 2004 no doubt in an effort to show that the agency agreements which have been described above with regard to those two companies were formally the subject of agreement and acceptance on the part of Ghana Bunks and BBF respectively. The Tribunal does not find those letters as adding anything to what has been said or in any way detracting from the Tribunal's conclusions.

4. <u>Alleged Agency: conclusion</u>

4.1 The Tribunal therefore, is of the firm view and duly finds with regard to the various purported agency agreements which have been said to be formally in existence and which apparently continue to be used in some form or other ,that no reliance can be placed on the existence of any claimed agency agreement or arrangement.

4.2 It necessarily follows that the conduct and carrying out of trading by BFL, Ghana Bunks and BBF which are all unlicensed business entities by entering into or otherwise engaging in the business of providing credit agreements with the four sets of individuals who have been referred to, namely Ms Sawyer, Mr Meregini, Miss Sawyer, Mr and Mrs Odedra and Ms Olatunji has to be regarded as the carrying of business by those companies on their own account . Although each of the said agents purported to act as agents for and on behalf of Reddy or "and or" as agent for Reddy for the reasons set out above the Tribunal is not satisfied on the balance of probabilities that any valid agency agreement was ever in place with regard to any of the alleged agents. The Tribunal arrives at that conclusion with regard to all similar agreements purportedly entered into as agent for Reddy by Ghana Bunks and so far as an agency is alleged with regard to it, the company known as Moneylink.

5. <u>Other contentions made against the Appellants.</u>

5.1 The first specific contention made against the Appellants concerns the allegation that the complaints procedure which the Appellants have or propose to have do not comply with the FOS Rules. The OFT claims that the Appellants have failed to demonstrate that they have complaints procedures complying with these Rules and therefore have failed to demonstrate that they have the necessary practices and procedures for the purposes of section 25(2)(c) of the CCA.

5.2 The background is important. Reddy has carried out licensable activities for 11 years and Mr Gopee has been involved throughout that time. The Tribunal respectfully agrees with the OFT that the length of time is a factor which can be legitimately be taken into account. It is therefore to be expected that Mr Gopee and Reddy should exhibit a sufficient degree of skill and knowledge as to the relevant provisions of the Act and exhibit a sufficient degree of knowledge as to what is required of a licensee in the carrying out of a

licensable business. Regretfully it seems that despite the 11 years' experience in this field Mr Gopee as the controller of these companies still demonstrates an undue degree of incompetence.

Mr Gopee as has been said above represents all the relevant parties in this matter. He appears to have prepared and signed documents on their behalf with numerous opportunities to ensure future compliance with the requirements of the CCA and thereby numerous opportunities to improve and demonstrate that he has the requisite skills and knowledge with regard to licensing activities.

5.3 It is sufficient only to refer to one major instance where Mr Gopee has in effect been warned of the failure to abide by the requisite requirements at the highest judicial level. In the case of Baron Finance Limited and Reddy Corporation Limited v Ul Haq [2003] WL 1823026 ("the Ul Haq case") the Court of Appeal refused permission to the claimants in that case to appeal against the decision of the Bradford County Court which had dismissed a claim by BFL for a sum of over £10,000 arrears under an agreement made in November 2000 between BFL and Mr Ul Haq. The Court of Appeal refused permission on the basis that there was no real prospect of success. This was because of the failure to follow the statutory requirements of the Act as to the setting up of the relevant agreements. It was in particular because BFL had entered into the relevant agreements whilst unlicensed and the OFT had not made an order in respect of the relevant agreement as was required in the circumstances of that case under section 40 of the CCA. The Court of Appeal remarked in particular that the agency point could not rescue the claimants' case. This is because the relevant agreements were plainly entered into by BFL on the face of the relevant documents.

5.4 As is clear from the earlier part of the present judgment despite the Ul Haq case and since that time Mr Gopee on behalf of BFL and Ghana Bunks has sought to enforce agreements made by BFL and Ghana Bunks whilst they were unlicensed by seeking possession orders against the customers whose names have been mentioned already, namely Meregini, Odedra, Olubisi and Sawyer with regard to BFL and Asemota and Joseph in relation to Ghana Bunks.

5.5 In the circumstances the Tribunal accepts the contention made by OFT that Mr Gopee, BFL and Ghana Bunks in seeking to enforce agreements made by unlicensed traders without an order from the OFT thereby exploited the lack of knowledge on the part of consumers and engaged in unfair and improper business practices. The question of agency has been dealt with.

5.6 It appears that the lack of compliance continued for at least 5 years after the 2003 Court of Appeal judgment because of the similar credit agreements which have been referred to above being entered into in 2006 and 2007.

5.7 As is said above this is by way of background only. Nonetheless this lack of knowledge and experience in the Tribunal's view relates closely, if not inextricably to the fact that neither Appellant has the necessary complaints procedures in place as required by the FOS Rules and to the failure to have agreements that comply with sections 60 and 61 as the CCA .

5.8 The Tribunal is mindful of the primary purpose of the Act which according to its preamble is clearly "to establish for the protection of consumers a new system ... of licensing and other control of traders concerned with the provision of credit, or the supply of goods ... and their transactions... and for related matters."

5.9 It necessarily follows from the above philosophy and the expressed intent of the statute that any failure to comply with the requirements of the CCA will mean that consumers are thereby deprived of important safeguards designed to reduce the prospect of their suffering serious financial consequences as a result of lack of awareness of their rights, obligations of lenders or of misconduct on the part of lenders.

5.10 In the judgment (reserved from 2010)relating to the claim by BFL against the borrower named Olubisi in the Mayor's and City of London Court under claim number 7 BB82089 entitled Barons Finance Limited v Olubisi, a copy of the judgment of which has been shown to the Tribunal, the court said the following, namely:

"I regret that it is necessary for me to say that although Mr Gopee was the commercial representative and prepared and signed the documents earlier referred to including the credit agreement he did not appear to have any technical knowledge of the provisions of the 1974 Act or the 1983

Regulations. I regret that he was [of] no assistance to me in my construction of the Act or regulations as applied to this Agreement."

5.11 At paragraph 47 of the same judgment the court added the following, namely that:

"I must regretfully say that Mr Gopee did not appear to be familiar with the provisions of the 1974 Act."

5.12 The Tribunal has no hesitation in saying that the position seems not to have improved in any material way since the date of that judgment. For over 10 years Reddy did not have a compliant complaints procedure in place and the complaints procedure which were submitted to the OFT during the adjudication process in March 2010 still failed to achieve the required standards and the OFT has so found.

5.13 Even if the latter point were not made out the Tribunal again would have no hesitation in saying that in the period covered by these observations(ie since 2010) there has been a continued inability and/or unwillingness to conduct business properly on the part of both Reddy and Mr Gopee which bears therefore necessarily upon the question of fitness of both Appellants.

5.14 The next issue which relates to the Appellants is and concerns the proposed credit agreement for BBF being an associate of Reddy not complying with sections 60 and 61 of the Act and the CCARs. This has already been touched on. In response to a request for information pursuant to section 6(3) of the CCA BBF provided a copy of its proposed credit agreement to the OFT on 24 March 2010. The Tribunal has seen this copy. It agrees with the OFT that the agreement provided does not comply with the necessary formal requirements . First, since the agreements deal with security on land, the words "secured on" should be followed by the address of the land inserted at the end of the heading as required by paragraph 1(5) of Schedule 1 to the CCARs. Second, information concerning charges payable under the agreement is required by paragraph 22 of Schedule 1 to the said CCARs and thirdly, information relating to amounts payable on early settlement are required by paragraph 24 of Schedule 1 to the CCARs.

5.15 The Tribunal accepts that the credit agreements relating to BFL, BBF and Ghana Bunks are not compliant with the relevant legislation. As indicated

above Parliament has introduced these safeguards to ensure consumers are fully informed about what they are signing up to. In particular customers who enter into second charge arrangements should understand the nature of the obligations and risk they take on. The Tribunal therefore has no hesitation in finding that it was unfair and it remains unfair and improper for Barons Bridging as an associate of Reddy, and BFL and Ghana Bunks, the latter two being in turn associates of the above Appellants, to treat these provisions as in effect discretionary.

5.16 The third complaint made against Reddy is the alleged contravention of section 39(2). This has been referred to above. This contention was made in the alternative in the event that the Tribunal accepted that BFL and Ghana Bunks were acting as agents. The Tribunal has not accepted that contention but even if it did it would accept the contention made by the OFT that Reddy had carried out regulated credit activities under the names not specified in its licence contrary to section 39(2). It therefore follows that Ghana Bunks and BFL in such cases had engaged in unfair business practices and unlawful conduct as agents as well as in their position as associates of Reddy.

5.17 The fourth area of complaint against the Appellants is that they exhibited and/or exhibit, a lack of knowledge of the relevant legislation and lack of competence.

5.18 This has been touched on already in this judgment and need not be unduly repeated here. This turns basically on the fact that Mr Gopee is the controlling mind of all the relevant businesses and has at least 11 years' experience in engaging in such activities. The Tribunal has already made it clear that it regards his actions and those of the Appellants and the associates as being totally incompatible with fitness.

Contentions made against the associates, namely, BFL, Ghana Bunks and BBF

5.19 The first such contention as set out in the above sub-heading concerns unlicensed trading. This has already been mentioned . The Tribunal has found that the agreements entered into with Ms Sawyer, Mr Meregini, Mr & Mrs Odedra and Ms Olatungi are regulated agreements within the meaning of section 189(1) of the CCA.

5.20 Neither BFL nor Ghana Bunks nor BBF is or was licensed to engage in consumer credit businesses. The Tribunal has found that they did enter into regulated agreements with the consumers. It has also been remarked on and the Tribunal duly repeats that none of the companies applied for an order under section 40 of the CCA before seeking to enforce agreements they entered into whilst unlicensed despite having been put on notice by the Ul Haq case referred to above.

5.21 The Appellants seek to claim that an agency agreement existed. The Tribunal has rejected this contention for the reasons set out above. The Tribunal here repeats the observations made with regard to the said decision. Mr Gopee had not raised on behalf of BFL or at all the agency point at the hearing before the District Judge . He sought to raise the issue on appeal before His Honour Judge Edwards in the Brentford County Court. In the Court of Appeal, Lord Justice Dyson (as he then was) concluded that the relevant agreement had been entered into by BFL and there was nothing on the face of the agreement which suggested otherwise.

5.22 The only inference which can be drawn as suggested by the OFT with which the Tribunal respectfully concurs is that the rubric referred to several times made in this judgment with the use of such expressions as "for and on behalf of" and "and/or as agent …" was no doubt inserted in future agreements to circumvent the requirements under section 21 of the CCA regarding the need for a licence. Lord Justice Dyson had made it quite clear in express terms that the agency agreement advanced very late in the day by Mr Gopee was advanced "only to meet the further difficulty placed in the way of a claim by BFL which is that BFL had no licence to make regulated agreements within the meaning of the 1974 Act …" (see para 11 of the

judgment). The Tribunal agrees with the OFT that the position has, in effect, remained unchanged.

5.23 In all the circumstances, as indicated above the Tribunal has no hesitation in rejecting any argument that there was any true agency agreement as alleged or at all. At all material times, in the Tribunal's clear conclusion, BFL and/or Ghana Bunks were the only lenders involved in the agreements to which they were party.

5.24 The Tribunal also refers to the dormant state attributable to Reddy's filing history and accounts since about 1999 and to the fact already observed in this judgment that the accounts in the relevant periods of Reddy are not reflective of a company engaged in active trading as compared with the trading position attributable on the face of the accounts to Ghana Bunks, BBF and BFL.

5.25 The next head of complaint against the associates concerns engagement by those entities in business practices appearing to be deceitful or oppressive or otherwise unfair and improper, whether lawful or not, within the meaning of section 25(2A)(e) of the CCA coupled with a due lack of integrity.

5.26 Enough has been said already to show that the continuation of activities by BFL, BBF and Ghana Bunks for a sizeable period of time whilst unlicensed demonstrates in the Tribunal's view a lack of integrity on the part of Mr Gopee and those companies. The Tribunal again refers to the fact that in its view, it is also unfair, improper and deceitful to enforce agreements which are unenforceable without having obtained an order from the OFT allowing such enforcement. The overall impression duly created by such arrangements on the part of BFL, BBF and Ghana Bunks, both to consumers and to the various county courts where actions have been instituted, is that those entities were entitled to enforce the relevant agreements although they had been told in no uncertain terms by the Court of Appeal in particular, that they were likely to, if not in fact, be trading whilst unlicensed.

5.27 The third head of complaint in this regard is that the agreements entered into by BFL, BBF and Ghana Bunks do not comply with sections 60 and 61 of the CCA and the CCARs. This issue too has been dealt with above. The agreements in question are those entered into between BFL and Ms Sawyer

dated 7 December 2007, the agreement between BFL, BFL and Mr Meregini dated 26 November 2007, the agreement entered into between BFL and Mr & Mrs Odedra dated 20 February 2007 and the agreement between BFL and Ms Olatunji dated 7 February 2006. Section 61 of the CCA provides that a regulated agreement should be in the prescribed form, whilst section 65(1) of the CCA states that an improperly executed agreement is enforceable against a debtor on an order of the court only. The form and content of regulated agreements are prescribed by the CCARs. The particular aspects which are non-compliant have been touched on above and they include the absence of the requisite details with regard to the words or phrase "secured on", the amount of credit, the duration or minimum duration of agreement, the total charge for credit, the total amount payable as required by paragraph 11 of Schedule 1 to the CCARs, the APR in accordance with paragraph 15 of Schedule 1 to the CCARs, a statement that the debtor has no right to cancel the agreement, information concerning charges payable as required by paragraph 22 of schedule 1 to the CCARs and finally information relating to amounts payable on early settlement as required by paragraph 24 of the same Schedule. There are similar discrepancies and omissions with regard to agreements entered into with BBF.

5.28 Again, the Tribunal has no hesitation in finding that there has been non-compliance in the way alleged by the OFT.

5.29 The fourth head of complaint in this connection concerns the engagement in unfair business practices by BFL, BBF and Ghana Bunks by attempting to enforce agreements not complying with section 60(1) of the CCA and the CCARs without first obtaining an enforcement order under section 65.

5.30 This too has already been dealt with. As is clear from what has been set out in this judgment already on a number of occasions, BFL and Ghana Bunks sought to enforce agreements in the absence of an order under section 65 of the CCA.

5.31 The fact of unenforceability was clearly brought to the attention of Mr Gopee in May 2002 in relation to the Ul Haq case but despite this, as has been pointed out, Mr Gopee, on behalf of those companies, continued to seek to enforce agreements not complying with the relevant legislation.

5.32 Again, the Tribunal has no hesitation in finding this allegation is more than amply made out by the OFT.

5.33 The next head of complaint concerns a finding as to an alleged unfair relationship within the meaning of section 140A of the CCA.

5.34 The basis for this complaint is the case of Barons Finance Ltd v Olubisi. As indicated above, a decision was made by the court in the Mayor's and City of London Court under claim number 7BB82089. The judgment was in respect of an appeal by Ms Olubisi from a judgment of a District Judge sitting at the Lambeth County Court on 17 July 2008. At that hearing, Ms Olubisi did not attend. At that hearing the District Judge made an order for possession in respect of a property owned or occupied by Ms Olubisi, together with a money sum judgment in the sum of £4,607.61 for rent arrears. The matter was then dealt with on appeal by the country court. At para 51 and following the court dealt with the provisions of section 140A of the CCA which entitles the court to make an order if it determines that the relationship between creditor and debtor arising out of a regulated agreement or a related agreement thereto is unfair because of the factors set out in the said section. At paragraph 56 the following passage appears, namely:

"I have no doubt at all in this case that there was an unfair relationship between the parties. First, the interest rate on the loan is 3½% per month calculated on a day to day basis of the balance outstanding each month: letter of offer paragraph 3 and credit agreement; appeal bundle pages 3-4. Second, I take into account the circumstances in which the loan was made, that is the desperate need of the Appellant to obtain a loan in order to stave off possession proceedings by Preferred Mortgages Ltd. The loan took place 2 days before the date fixed for the possession hearing in the county court. Third, I take into account the flagrant breaches of the 1974 Act and the 1983 Regulation which I have set out in my judgment."

5.35 The Tribunal is not minded to question this finding, nor indeed has it seen any evidence, or heard any contention, which in any way seriously or at all can be said to lessen its effect. In the circumstances, the Tribunal again has no hesitation in finding that there was a finding of an unfair relationship, at least on the facts of this case.

5.36 The next heading concerns the allegation that BFL engaged in unfair business practices within the meaning of section 25(2A) of the CCA by claiming that a regulated credit agreement was not regulated.

5.37 The agreement in question is that between Mr Meregini and BFL dated 26 November 2007.

5.38 In written submissions made to the Dartford County Court, it was averred, no doubt at the instance of Mr Gopee that Mr Meregini's loan fell "outside the strict requirements" of the Consumer Credit legislation on the basis that it was an "all monies due and payable on demand agreement".

5.39 The Tribunal is entirely satisfied that in accordance with the OFT's submission, there is nothing to suggest that the agreement in question was anything other than a regulated consumer credit agreement within the meaning of section 8(1) of the CCA. Nothing has been shown to the Tribunal or suggested to the effect that enforcement properly attracted any of the exemptions set out in the Consumer Credit (Exempt Agreements) Order 1989 as amended.

5.40 Before the OFT adjudicator, Mr Gopee apparently argued that Mr Meregini's loan was for the purpose of Mr Meregini's publication business and therefore the argument relating to that loan was exempt under section 16B(2) of the CCA. Under section 16B(2), if an agreement includes a declaration made by the debtor or hirer to the effect that the agreement is entered into by him wholly or predominantly for the purposes of a business carried on, or intended to be carried on by him, the agreement shall be presumed to have been entered into by him wholly or predominantly for such purpose. The agreement with Mr Meregini did not include such a declaration.

5.41 Moreover, the reason advanced by Mr Gopee before the adjudicator was not advanced before the Dartford County Court when the issue was raised. Quite apart from the materials before the Tribunal, there is no evidence whatsoever that Mr Meregini's loan was for business purposes in the absence of a declaration made by Mr Meregini under section 16B(2). The only inference that the OFT draws, and with which the Tribunal wholly agrees, is that Mr Gopee, having failed to convince the Dartford County Court decided to put forward a different reason in the hope that he would convince the adjudicator

that the agreement was exempt. There can only be one further inference, and that is that Mr Gopee, acting on behalf of BFL, sought in effect to mislead the adjudicator by claiming that the agreement was non-regulated or exempt. The Tribunal duly finds that BFL, acting by Mr Gopee, engaged in an unfair business practice within the meaning of section 25(2A) of the CCA by acting in that fashion.

5.42 Finally, it is alleged that there was an overall lack of transparency and contravention with regard to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

5.43 This is in effect an echo of the allegations concerning a failure to abide by the prescribed provisions regarding the contents of regulated agreements. Failure to provide the relevant details with reference to such matters as to the cost of loans and the duration of the agreements etc are clearly in breach not only of the statute, but also of the relevant guidelines, being in particular the OFT Second Charge Lending Guidance which sets out principles of transparency in all dealings with potential an actual borrowers by ensuring early disclosure of key contract terms.

5.44 The Tribunal wholly agrees with the OFT to the effect that this lack of transparency can only be said to constitute a misleading omission within the meaning of Regulation 6(1) of the CPRs. This is on the basis that consumers were given information which omitted or hid material details and/or were provided with material information in a manner which was unclear and untimely and/or which caused, or was likely to have caused, the average consumer to enter into an agreement that they might otherwise not have entered into.

5.45 A breach of Regulation 6(1) is a criminal offence under Regulation 10 of the CPRs.

5.46 In the circumstances, the Tribunal again has no hesitation in accepting the contentions of the OFT with regard to this head of complaint.

<u>Contentions against Mr Gopee</u>

5.47 Mr Gopee, as has been said on more than one occasion in this judgment, is the sole controller and director of the Appellants and their associated companies in all senses, including both as a de facto and de jure director.

5.48 Four grounds of complaint are levelled against him in that respect.

5.49 First, it is said that he as the controlling mind of the Appellants at least committed an offence under section 49 of the CCA by soliciting the entry of individuals into debtor – creditor agreements during visits carried out in response to a request made on a previous occasion without the request being made in writing and signed by or on behalf of the person making it.

5.50 The Tribunal can deal with this shortly. It has seen a statement by Mr Asemota which is signed by him and constitutes a complaint against Ghana Bunks and Reddy. He states in that statement that he arranged for Mr Gopee to go to his house to discuss a loan. The meeting occurred on 22 August 2007 when Mr Gopee and his son attended Mr Asemota's house. There is nothing in the statement which in any way suggests or supports the submission, if a submission were to be made, that the visit was carried out in response to a request made on the previous occasion without the request being made in writing and signed by or on behalf of the person making it.

5.51 In the Tribunal's view, there is a clear breach of this provision by Mr Gopee and by Reddy.

5.52 The next head of complaint concerns a lack of competence on the part of Mr Gopee.

5.53 Much has already been said about this. It is clear from the lack of experience which one would have expected Mr Gopee to demonstrate ,after a number of years connected with the business of arranging loans and his apparent involvement in the credit business, that he would have demonstrated a level of skill and competence beyond that which he has shown and demonstrated, especially in the context of court proceedings. There is no doubt that the companies which are regarded as associates of the Appellants and the Appellants themselves are no more than the alter egos of Mr Gopee himself. In the Tribunal's mind, there can be no doubt but that the failure by those companies can be directly attributed to Mr Gopee himself. Indeed in cross examination before the Tribunal Mr Gopee was asked about a credit

agreement entered into with a Mr and Mrs Joseph and Ghana Bunks dated 21 August 2006.Mr Gopee asserted that the agreement 'mostly complied' with the relevant rules and regulations . However he went on to say that he did not consider the agreement to be regulated if the borrower's intention was to take a loan over a short period such as 12 months. The Tribunal has no hesitation in finding such a response as wholly indicative of a lack of competence and understanding as to the proper requirements needed in relation to the conduct of a business subject to the CCA regime.

5.54 The Tribunal is therefore entirely satisfied that he has failed to exhibit a suitable degree of competence and ability with regard to the carrying on of business regarding the provision of credit generally, quite apart from the specific businesses of types of business addressed by the CCA generally.

5.55 The third head of complaint concerns the allegation that Mr Gopee engaged in unfair business practices within the meaning of section 25(2A)(e) of the CCA by claiming that a regulated credit agreement was not a regulated agreement.

5.56 This too has been dealt with. The set of circumstances concerning this allegation relates to the agreement dated 26 November 2007 between Mr Meregini and BFL. This concerns the allegation which was proffered to the Dartford County Court by Mr Gopee and/or BFL that the loan fell outside the strict requirements of the CCA. For the reasons set out above, the Tribunal is again entirely satisfied that Mr Gopee, being the alter ego of BFL, engaged in the unfair business practice alleged and in the process sought to mislead the OFT Adjudicator to obtain a suitable advantage.

5.57 The fourth and final head of complaint in this regard concerns an alleged lack of personal integrity on the part of Mr Gopee as the controlling mind and sole director of the Appellants.

5.58 In this connection, there is a new matter which is relied on by the OFT. In proceedings entitled Halifax plc and others v Halifax Repossessions and others (Case No AC0001018) 27 February 2002, Blackburne J in his judgment, a copy of which has been produced to the Tribunal, dealt with a claim for trademark infringement and passing off brought by the claimant, i.e. Halifax plc in relation to the use of the word "Halifax" by companies set up by

Mr Gopee. Those companies were called Halifax Repossessions Ltd (HRL) and the Halifax Business Finance Ltd (HBF). There was also one other company involved. Those companies were set up in February 2002. The claim for summary judgment was brought under the relevant provisions of the Civil Procedure Rules on the ground that the defendants had no real prospect of successfully defending the claims.

5.59 The companies were incorporated between September 1998 and September 1999. Proceedings were issued by Halifax plc in March 2000. Mr Gopee represented all the defendants. At the time of the incorporation of these companies, his eleven year old son, Motilal Prakash Gopee, was the sole director the three companies. His then ten year old daughter, Anarada Gopee was the company secretary.

5.60 The claim was that the defendants had an incorporated business or businesses under names which included the word "Halifax" in breach of trademark and passing off legislation. The claimants were successful. The Judge was clearly satisfied that Mr Gopee was the directing mind behind the companies and the claimants established their entitlement for relief against him as well as against the three defendant companies. The Judge described the evidence of Mr Gopee's involvement as "really overwhelming". He was described in terms as "the directing mind behind the acquisition of these companies". Indeed, the registered office of these companies was where he and his family were then living.

5.61 Since this litigation, the companies have now changed their names.

5.62 The OFT contends that Mr Gopee's conduct in relation to the passing off and trademark matters adds to the general impression that Mr Gopee, as sole director of the Appellants, is indifferent to conducting business fairly and with integrity. As the OFT puts it, there appears to be a tendency to "get away with" as much as possible, for as long as possible.

5.63 Mr Gopee appealed against a further order made in the said proceedings by Patten J as he then was and against an order for costs made by Lightman J dated 14 January 2003. In those appeals, an application to appeal the decision of Blackburne J had been previously dismissed.

5.64 The OFT contends that Mr Gopee, on behalf of the Appellants, attempted to misrepresent the Court of Appeal decision in the Appellants' written representations to the adjudicator by stating that the Court of Appeal decided that the order made by Blackburne J should not have been made. The OFT claims that this is another example of Mr Gopee claiming a state of affairs which did not in fact occur, similar to the example concerning Mr Meregini's agreement with regard to the alleged claim that the same was exempt. In cross examination before the Tribunal Mr Gopee stated that he acquired the relevant companies with the offending names '...as a bit of fun, like licence plates...'In the circumstances of these particular appeals the Tribunal regards such comments as lacking the proper degree of commercial care and seriousness that might otherwise be expected and entirely in keeping with the other failures found to be established against Mr Gopee.

5.65 The Tribunal is sympathetic to the submissions made by the OFT, but does not regard this as being the most weighty matter levelled against Mr Gopee although as said above it adds to the overall conclusions reached in these appeals. There is perhaps not quite the same correlation or direct relationship between the subject matter of these issues relating as they do to the use of the name Halifax on the one hand, and on the other, the internal workings of the operations conducted by the Appellants, their associates and Mr Gopee with regard to those parties' dealings with consumers generally.

5.66 It follows that the Tribunal is minded to afford some weight to these matters, but not what the OFT has claimed should be "considerable weight " in assessing Mr Gopee's integrity. As has been made clear by this judgment already, there is enough to show that his integrity is sufficiently questionable with regard to matters which relate more closely to the subject matter of the appeal.

The Appellants' contentions

5.67 The contentions made by the Appellants can in effect be grouped into two parts. First there are formal contentions which are set out in written form, and second there are contentions which are set out in a witness statement filed just before the appeal hearing by Mr Gopee.

5.68 The first set of contentions can be shortly dealt with. It is fair to say, and the Tribunal so finds, there is nothing in these particular contentions which addresses in any shape or form the basis of the various complaints made by the OFT against the Appellants providing the basis for the adjudicator's determinations that both Appellants are unfit to have licences.

5.69 The first contention made by the Appellants is the claim that the OFT has contravened the Human Rights Act 1998. It is said that it took more than a year to reach its decision and that in doing so, abused its power.

5.70 The Tribunal wholly fails to understand this contention. The Tribunal accepts that in the scheme of things, one year is by no means an unduly long period, but even if that were wrong, it cannot be argued that there was any delay in reaching a decision in respect of raising an application given that the determination was made two and a half months after the Minded to Refuse to Renew Notices were issued. In the case of Barons Bridging, the OFT took a year to consider the application since it had to conduct detailed investigations to ensure whether fitness was established or not.

5.71 It is in particular alleged with regard to this contention that the OFT did not act as an independent and impartial tribunal. The Tribunal has seen nothing to suggest anything other than the fact that the Appellants and Mr Gopee had a fair hearing before the OFT adjudicator. Even if there were any substance in the allegation that the adjudicator is not sufficiently independent, any such lack of independence is clearly cured by the availability of an avenue of appeal open to the Appellants which they have taken advantage of in this case.

5.72 Secondly it is claimed that the OFT erred in refusing to grant an adjournment for the oral hearing.

5.73 The Tribunal is again somewhat mystified by this allegation. At the appeal hearing, the Appellants appeared by Counsel who was more than qualified to deal with the case, and indeed this allegation was not persisted in at the hearing.

5.74 Insofar as the Appellants alleged that the OFT was not prepared to wait for the conclusion of cases involving the Appellants in the Court of Appeal and the county court, again, this point was not pursued before the Tribunal, but in

any event the Tribunal wholly accepts that the OFT is not, and was not, obliged to wait for the conclusion of any outstanding cases before making a determination.

5.75 Third, it is claimed that the OFT placed excessive reliance on a statement by a Mr Culloty. Mr Culloty is Mr Patrick Culloty, a Trading Standards officer, attached to the Southend Borough Council who made a witness statement in relation to the proceedings in the Luton County Court involving Mr & Mrs Odedra. It is clear if only from this judgment alone that no substantial reliance, if any, was placed on the statement in relation to these appeals. The OFT's case against the Appellants is based on documentary evidence which goes far beyond matters addressed by Mr Culloty in his witness statement which is dated 23 November 2009.

5.76 It is also claimed that the allegations made were mainly concerned with high interest rates.

5.77 Again, as is evident from this judgment, little, if any, reliance is placed on this contention. Admittedly, the rates of interest play a part in relation to the unfair relationship issue and contention made following upon the decision in the Mayor's and City of London County Court and the Olubisi decision. Admittedly, too ,the court there took into account in assessing whether there was an unfair relationship several matters including the rate of interest. However, this is a far cry from saying that this forms a major plank of the case against Mr Gopee and the Appellants.

5.78 There is an allegation that the OFT prepared the witness statement of the complainants. Insofar as this connotes any suggestion of bad faith, the Tribunal has no hesitation in rejecting this contention. Indeed, the same was not pursued at the hearing before the Tribunal.

5.79 Finally, it is claimed that there was no evidence of criminal activity or deceit of any kind and that the OFT failed to take into account that the contracts entered into by the Appellants were with "educated persons who very clearly understood the terms and provisions".

5.80 The Tribunal entirely rejects this contention which again was not pursued before the Tribunal at the hearing.

5.81 The next set of contentions, if contentions they be, are those which are articulated in the witness statement submitted by Mr Gopee to the Tribunal on the eve of the hearing of the appeal dated 20 April 2012.

5.82 In this witness statement at paragraph 5, Mr Gopee makes a submission that "the rate of interest of 3.5% per month is extremely cheap and competitive for a borrower who requires the funding immediately". This matter has just been dealt with. The Tribunal does not feel that this adds anything to the contentions that are made by the Appellants. It bases its decision to regard the Appellants as being unfit on matters other than this issue.

5.83 At paragraph 6 of his witness statement, Mr Gopee says that in the eleven year period he has been involved with the Second Appellant at least, he has been very pleased to say that "so far, not a single complaint has ever been upheld by the Ombudsman", i.e. the Financial Ombudsman Service. The Tribunal has heard no evidence to form a concluded view on this issue, but in any event is entirely satisfied that with regards to matters which have nothing to do with the Ombudsman, the question of unfitness has been amply made out by the OFT.

5.84 In paragraph 10 of his witness statement and with reference to the Ul Haq case, Mr Gopee contends that the agency relationship was "not disclosed at the time the contract was entered but instead disclosure was made at a later time". It was for this reason, he claimed, "that the Court felt that the borrower could not have known of the existence of the agent and principal relationship." The Tribunal fails to understand this with the greatest respect. The facts and matters as they unfolded before the courts, and in particular, the Court of Appeal, are more than clearly set out above and are self-explanatory.

5.85 At paragraph 11, Mr Gopee deals with what he calls the" Halifax issue". The Tribunal has already made it clear it does not regard this issue as being a paramount consideration in its overall finding of unfitness as regards both Appellants.

5.86 At paragraph 12, Mr Gopee makes some remarks and observations about the Olubisi case. He claims that since that decision, which he says was not contested, he says that "in several cases I have dealt with, the Court has declined to follow that case." No further details are given. Again, the Tribunal

rejects anything that questions the clear reading of the Olubisi matter. Mr Gopee claims that " a further appeal has now been made to the European Court of Human Rights", but the Tribunal feels that that is of no relevance to the facts relating to the Olubisi matter which, again, as in the case of the Ul Haq case, speaks for itself.

5.87 Mr Gopee deals with the individual cases which have been mentioned several times in this judgment. This is no more than an attempt to say that some, or all of these cases, are on-going and therefore it is premature for the OFT not to mention the Tribunal to make any finding at this stage. The Tribunal rejects this for the reasons given with regard to the written contentions made by the Appellants. There is in any event, as is clear from this judgment, ample basis for finding unfitness in the way which the Tribunal has found.

5.88 At paragraph 15, Mr Gopee says that since Reddy started business some eleven years ago, "We have relied solely on recommendations and we have never advertised or recruited any broker or agent". He says that since the issue of the appeal "I have been receiving several enquiries for loans and when I have questioned the person concerned as to how/she obtained my phone number it turned out that the information being given were false were [sic] false for the purpose of entrapment. I am unable to make any comment about these phone calls but the facts speak for themselves."

5.89 Nothing was advanced by way of oral submissions on the basis of this paragraph, but in any event, the Tribunal fails to see its relevance.

Section 34A authorisation

5.90 By application dated 2 May 2012, Reddy seeks authorisation under section 34A of the CCA as amended.

5.91 Section 34A deals with the winding up and transfer of a licence of business following upon certain determinations by the OFT which are set out in subsection (2).

5.92 Section 34A(1) provides that if it thinks fit, the OFT may for the purpose of enabling the licensee's business or any part thereof to be transferred or wound up include as part of the determination to which subsection (2) applies:

"… provision authorising the licensee to carry on for a specified period –

(a) specified activities, or

(b) activities of specified descriptions, which, because of that determination, the licensee will no longer be licensed to carry on."

5.93 Subsection (2) applies to a determination amongst others to refuse to renew a standard licence.

5.94 Any provisions addressed by section 34A(1) can specify different periods for different activities or provide for persons other than the licensee to carry on certain activities or specify specific requirements.

5.95 It is clear in the Tribunal's view that section 34A clearly contemplates that where the OFT is minded to refuse to renew a licence as it has done in the case of Reddy, it may, as part of the relevant determination, authorise a licensee to carry on specified activities which, apart from the determination, it could no longer carry on. The OFT Adjudicator did not have authorisation in this case.

5.96 Section 41ZB of the CCA deals with the disposal of appeals. Subsection (2) provides that on disposing an appeal under section 41 of the Act, the Tribunal, i.e. this Tribunal, may amongst other things "vary that determination".

5.97 Reddy seeks authorisation for two years to enable it to wind up its business. It requests that such authorisation be granted without restrictions so that Reddy can in effect continue to carry on consumer credit business in relation to existing arrangements only and that would include amongst other matters set out in paragraph 4(ii) of its application for a section 34A authorisation, enforcing any regulated agreement and enforcing any security held in relation to such agreement.

5.98 The Tribunal notes and duly agrees with the OFT that there is no information in the application made on behalf of Reddy as to why authorisation is required for a period of two years. The Tribunal received a written application settled by Counsel dated 2 May 2012. However, the specified activity is simply described as being the continuation of carrying on the consumer credit business as regards the consumer agreements with no details of what forms

of activity that business is to include. It seeks authorisation in order to allow what is called "the orderly winding up of it's [sic] business".

5.99 The OFT points out, first, that the application sought is merely "a ploy to extend the life of Reddy's licence". Second, it points out that the majority of the agreements to which authorisation would apply are defective because of the failure to comply with sections 60 and 61 of the CCA as dealt with earlier in this judgment. Third, and in connection with the second contention, it is contended that the proposal by Reddy does not take account of the unenforceability issue, but merely is indicative of a desire to have unrestricted authorisation to enforce any regulated agreements and any security.

5.100 It is pointed out that given the importance in the appeals of the unenforceability of the relevant agreements, Reddy should have recognised and provided for the need to obtain court orders before seeking to enforce the relevant agreements which failure suggests that Reddy and Mr Gopee remain in denial as to past unfair and improper conduct. Overall, the OFT expresses concern that Reddy may continue to enforce agreements after it is no longer licensed to do so.

5.101 The Tribunal entirely accepts that the question whether it should exercise its discretion to grant authorisation is, in this case, inextricably bound up with the reasons why the OFT determined to refuse to renew the licence to Reddy and refused to grant a licence to BBF.

5.102 The first major contention made by the OFT is whether or not authorisations are relevant will depend upon the finding of agency. The Tribunal has found in its principal conclusion that at no material time was any agency agreement in place. The OFT argues that in such circumstances, no authorisation would be required because Reddy has no assets other than a share capital and therefore has no business to transfer or wind up for the purposes of section 34A. The Tribunal wholly agrees with this conclusion and accepts it. It is quite clear that Reddy, as is described above, is merely an empty vessel.

5.103 The OFT claims that granting authorisation would undermine the consumer protection purpose of the CCA. The Tribunal accepts the primary contention of the OFT that Reddy has no assets. Were that an incorrect conclusion, then the Tribunal would accept the following submissions made by the OFT.

First, there is no right of authorisation. The power addressed by and in section 34A is discretionary. Second, any authorisation would have to be considered in the context of the reasons for the refusal to renew Reddy's licence and therefore the underlying consumer protection purpose of the CCA. Here, the Tribunal entirely agrees with the OFT that the reasons as to why the adjudicator determined to refuse to renew the licence of Reddy are sufficiently serious that granting any authorisation would undermine that purpose.

5.104 In the hearing before the Tribunal, Mr Gopee confirmed that 75% of the loans extended by BBF, BFL and Ghana Bunks as associates and agents and alleged agents of Reddy, are to individuals seeking credit in order to stave off repossessions. The Tribunal agrees that represents strong evidence that the majority of the people to whom these businesses extend credits are themselves in financial straits.

5.105 Next, as an echo of matters already dealt with in this judgment, Reddy and its associates have treated the consumer protection provisions of the CCA as, to say the least, discretionary, if not with a great deal of inattention. The duration and extent of that conduct are clearly relevant. The Tribunal has found that Mr Gopee in particular, not to mention his associates, have shown themselves to be unfair and lacking in the suitable degree of integrity and competence required to conduct a consumer credit or an ancillary credit business.

5.106 During the hearing Mr Gopee was asked on oath as to why he failed to comply with the requirements of the CCA under section 49 and under sections 60 and 61, as well as under the CCARs. His answers were to the effect that the urgent needs of the consumers took priority over the requirements of the CCA. In other words, the desire to "close a deal" took precedence over the consumer protection requirements of the Act.

5.107 In those circumstances, the Tribunal accepts the contentions made by the OFT that in the light of these matters and the other matters articulated in this judgment, there can be no confidence that any such requirements as might be imposed to protect customers would ever be complied with. Mr Gopee, as the person in charge of Reddy's business, not to mention those of the relevant associates, as well as those associates have shown themselves

independently and together as being incapable of dealing with consumers on a fair basis. It follows that, in the words of the OFT, Reddy has forfeited the trust of the regulatory system and therefore any discretion under section 34 should not be exercised in its favour.

5.108 The Tribunal therefore wholly agrees with the OFT that for the reasons set out above, Reddy's request for a section 34A authorisation should be dismissed.

5.109 The Tribunal has been addressed in short terms by the OFT that in the event that the Tribunal were minded to grant authorisation, certain conditions should be applied. The Tribunal finds that in the light of its clear conclusion with regard to the principal contentions made with regard to this issue, there is no need to deal with these provisions.

Conclusions

5.110 For all these reasons as set out in this judgment, the Tribunal dismisses the appeals by both Appellants and refuses the application for section 34A authorisation made on behalf of Reddy Corporation Ltd.

[Signed on the original]

David Marks QC

Tribunal Judge

11 June 2012