

***REFUSAL TO RENEW CONSUMER CREDIT STANDARD LICENCE – refusal of Financial Services Authority authorisation based on long history of complaints and failure to comply with proper regulatory system – appellant seeking licence under the CCA for mortgage broking only, offering to refer all clients to named FAS authorised brokers – dishonesty – competence – relevance of suggested requirements or undertakings – no protection for non FSA regulated loans, such as buy-to-let, commercial mortgages or second charges***

**In the Consumer Credit Appeals Tribunal  
Between:**

**VRAJILAL LAXMIDAS SODHA  
(trading as)  
V L Sodha, M N S Financial and M N S Consultancy**

**Appellants**

**and  
The Office of Fair Trading**

**Respondent**

**Date of hearing: 16 March 2009**

**Venue of hearing: The Finance and Tax Tribunals, 45 Bedford Square, London WC1**

**Tribunal: Dr James Behrens (chairman)  
Mr John Bridge  
Mrs Joan Stone**

**Appearances:**

**For the Appellant: Mr Simon Popplewell, counsel**

**For the Respondent: Miss Deborah Lawunmi, legal adviser employed by the OFT**

## DECISION

1. This is the unanimous decision of the above-mentioned Tribunal.
- 5 2. By a notice of appeal dated 17 September 2008 Mr Sodha appealed against the Determination dated 22 August 2008 (“the Determination”) of Ms. Elaine Rassaby (“the Adjudicator”), acting as an adjudicator on behalf of the Office of Fair Trading (“the OFT”), refusing Mr Sodha’s application to renew his standard licence no 335415 under the Consumer Credit Act 1974 (“the CCA”).
- 10 3. The appeal proceeded in accordance with the provisions of the Consumer Credit Appeals Tribunal Rules 2008, S.I. No. 668 of 1998.

### **The Determination**

4. The main reason for the Determination was that in August 2006 the Financial Services and Markets Tribunal dismissed an appeal by Mr Sodha from a refusal  
15 by the Financial Services Authority (‘the FSA’) of an application by Mr Sodha for Part IV Permission as a mortgage and general insurance intermediary. The Financial Services and Markets Tribunal hearing concerned in the main a number of complaints which had been made against Mr Sodha while he was working as a  
20 financial intermediary. The adjudicator considered that this history of complaints, Mr Sodha’s intransigence in the face of warning and disciplinary action and his lack of respect for regulatory requirements raised risks for consumers which, in the adjudicator’s view, make him an unfit person to hold a consumer credit licence.

### **The grounds of Appeal**

5. Mr Sodha’s written grounds of appeal made the following main points. First, carrying on activities regulated by the FSA is different from the licensable activities of a credit broker under the CCA. Second, the complaints relied on by the FSA and the Financial Services and Markets Tribunal did not mean that Mr  
30 Sodha was unfit to hold a CCA licence, or would not comply with the regulatory requirements which holding a licence would entail. Third, Mr Sodha is only

seeking a licence to carry out credit brokerage. Fourth, Mr Sodha is willing to have a compliance consultant ensure that he complies with all regulatory requirements. Mr Sodha relies on a survey of his client base which shows that he operates his business to his customers' satisfaction, and he claims there is very little possibility of any consumer harm or detriment arising from his activities. Fifth, Mr Sodha is willing to undertake to limit his CCA business to the introduction of individuals desiring to obtain credit to credit brokers who are regulated by the FSA.

### **The complaints against Mr Sodha which were before the Financial Services and Markets Tribunal**

6. The OFT did not call any evidence to prove the commission of the matters which were the subject of the complaints made against Mr Sodha in the FSA proceedings. However Mr Sodha did not either before the adjudicator or in his grounds of appeal or before us dispute that these complaints had been made or that they were in substance correct. They relate to the period 1982 to 1992 when Mr Sodha was a representative of Barclays Life Assurance Company Limited ('Barclays') and the period 1992 and June 2004 when he was a tied agent of St James's Place.

7. Whilst at Barclays Mr Sodha received 22 complaints over a 10 year period, all of which were upheld, and 7 of which resulted in compensation being paid. In the end Barclays issued Mr Sodha with a final warning letter; amongst the matters of concern were his conduct in relation to mortgage business, lack of attention to pension business resulting in a client losing tax relief, and the leaving of clients' monies in Mr Sodha's own bank account. During his 12 year period with St James's Place Mr Sodha was the subject of 55 complaints of which 17 were upheld. In the majority of the cases where the complaints were upheld compensation was paid. Mr Sodha received a final written warning from St James's Place in October 1999 (by which time he had been the subject of 22 complaints) due to the high level of complaints made against him. In a number of

instances compensation was paid to clients, the amounts ranging from £75 to £12,000.

- 5 8. As appears from the decision of the Financial Services and Markets Tribunal, a common theme of the complaints made against Mr Sodha related to the failure to maintain a proper fact file relating to particular clients. This fact file records the personal circumstances of a client and the advice given to him. A large number of complaints relate to the failure by Mr Sodha to issue a 'suitability letter'. A suitability letter explains the reason for the particular advice given to the client.  
10 Both the fact file and the suitability letter are key regulatory matters designed to protect the consumer.
- 15 9. One complaint related to the fact that Mr Sodha had paid a client cheque into his own account when he was not authorised to hold client money. Mr Sodha said the reason for doing this was because he wished to ensure there was no risk that the cheque which accompanied the application might be dishonoured. Mr Sodha therefore ensured that the client's cheque was paid into his own account and the cheque cleared before issuing his own cheque to the broker.
- 20 10. One complaint concerned Mr Sodha's attitude to complaints. He would 'offer a sweetener or compensate for a small amount' to clients to keep them happy in the event of a mix up.
- 25 11. The tribunal noted that Mr Sodha had failed to reveal in his application form the final written notice he had received from St James's Place. The tribunal considered that this suggests a somewhat casual attitude by Mr Sodha to the completion of the Application and gives some cause to doubt whether he would be conscious, if authorised, of the need to deal with the FSA in an open way as required by the APER Statement of Principle 4.
- 30 12. The Financial Services and Markets Tribunal noted that even after Mr Sodha was placed under constant supervision at St James's Place the level of complaints

remained high due to the use of flawed procedure and advice. Mr Sodha offered to have monitoring of his business, but this did not impress the tribunal. In its conclusion the Financial Services and Markets Tribunal said

5 The evidence shows that he has manifested a consistent disregard  
of the need to comply with requirements to maintain fact files or  
issue client advice letters, is prepared to disregard a requirement if  
it is inconvenient such as the requirement not to handle clients'  
10 monies, and will not adhere to a proper system for handling  
complaints if it suits him. His failure to disclose the St James's  
Place warning was consistent with a failure to appreciate the  
importance of the purpose of regulation set up under FSMA.  
Accordingly we are not satisfied that he has adequate non financial  
resources or is a fit and proper person to be authorised in the light  
of the matters before the Tribunal.

### 15 **The evidence of Mr Sodha**

13. Mr Sodha signed his witness statement on 22 November 2008. He sets out in paragraph 1 his work since coming to this country from Uganda in 1972. He describes in paragraph 2 his work with Ashby Group from 1979 as accounts manager. In paragraph 3 he describes his work with Barclays from 1982, and in  
20 paragraph 4 his work for St James's Place from 1992. In paragraph 5 he describes setting up his own business (MNS Financial) in 2002 which he ran alongside his involvement with St James's Place. In paragraph 6 he describes leaving St James's Place in June 2004. In paragraph 7 he describes making the application for FSA authorisation in February 2005. In paragraph 8 he sets out the refusal of  
25 the application and the appeal which was determined against him in May 2007. He continues with paragraph 9 which states as follows:

30 As I was unable to carry out FSA regulated mortgage business during this period I developed my relationship with Blue Sky Mortgages. Under FSA rules I was able to act as an introducer to them, as an FSA regulated firm, without authorisation provided that all I did was pass on the very basic details to them (not much more than the name and contact details) of clients of mine who contacted me relating to FSA regulated mortgages. This actually worked very well such that I am content to carry out business in  
35 this way. They pay me a fee (which is always disclosed to the client) for making the introduction and I charge the client a fee which is always reimbursed in full if a mortgage does not complete. In fact, in most cases the fee is never paid until a mortgage completes. Blue Sky Mortgages carry out spot checks on

my files to ensure that I am not doing any more than is allowed as an introducer. I have a contract with them (page 235 of the bundle) which regulates our relationship. In fact, I refer all lending enquiries to them even those which, under the terms of my consumer credit licence, I could deal with myself. This is because their expertise is significantly greater than my own and they provide a more specialist and comprehensive service than I could. This is in part why I am content to offer conditions attached to any renewal of my licence.

[underlining added]

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14. The problem with the sentence shown underlined is that the FSA does not permit non-authorised persons to charge a fee from the client when acting as an introducer. When Mr Sodha came to give evidence he confirmed the witness statement was true, but then went on to say that paragraph 9 contained a mistake. He said that at one stage he did charge clients a fee, but he dispensed with this about four years ago.

15. Mr Sodha told us that his role is now limited to introducing all the cases which come to him either to Blue Sky Mortgages or to Howsom Evans, or occasionally to a firm of solicitors. He makes an assessment whether what the client wants is a mortgage or some other investment, life assurance or pension advice. If the client wants a mortgage he refers the client to Blue Sky Mortgages. If the client wants investment, life assurance or pension advice he refers them to Howsom Evans. If, as happens in a few cases, he considers the client needs legal advice, he refers the client to a firm of solicitors.

16. Mr Sodha told us that the amount of work he does is extremely small. He does on average 2-3 referrals a month. He makes a client transaction record. He sends a 'one-liner' recommendation to Blue Sky Mortgages or Howsom Evans. He makes a record of the introduction and of when it is likely to be finished, so that he can anticipate when he is likely to receive his commission. In good times he has earned £35,000 over a 12 months period, but because of the recession he has earned only £12,000 over the last six months, and indeed only £2,000 over the last three months.

17. Mr Sodha said that he only has one person working part time in the office on half a day a fortnight. 90 per cent of the work done by that person is for Mrs Sodha. He explained that he did not advertise. He has a large client base, and most work comes to him through referrals from friends and relatives, with the remainder being repeat business. He said his work is limited to finding out basic details of their requirements, assessing whether it is appropriate to make a referral, and then referring the client on to Blue Sky Mortgages or Howsom Evans. In most cases that was the end of his involvement with the client.
18. He had arranged for a customer satisfaction survey to be carried out by Davies Warren Partnership. It is clear that the results of the survey are that the clients are satisfied with the work he has done. He accepted that in the case of one of the survey questionnaires there was a comment ‘Not sure how regular contact will be with H Evans can contact Raj [i.e. Mr Sodha] in emergency but reluctant to do so now he does not deal directly with my finances.’ This indicates to us that his involvement with that client has previously been much more extensive than it is now.
19. On 7 July 2008 the OFT received a CCA licence application from a Mr David Broadbent for the company Charterhouse Scott Ltd. The directors of the company at the time were David Broadbent, Mrs Sodha, and David Jordan. The OFT’s statement of case submits that this application was a way for Mr Sodha to carry out his mortgage broking if his CCA appeal were to fail. Mr Sodha was asked about this. He said his wife had invested £25,000 in this company, but he had nothing to do with her decision to do so, he did not advise her, and he was not involved with the company in any way. He emphasised that it was Mr Broadbent’s, Mr Jordan’s and Mrs Sodha’s ‘baby’, and he was not involved.

### **The evidence of Mrs Sodha**

20. Mrs Sodha is an elected local councillor, and plays an active role in the Asian Cultural Association and with the Ghandhi Committee. She said that she had got to know Mr Broadbent through his involvement with Mr Sodha’s business. She

decided she would like to invest money in Mr Broadbent's company, Charterhouse Scott Ltd. She said she was entirely reliant on his expertise, and that she would be a 'sleeping partner'. She therefore invested £25,000 of her own resources into the venture. In cross-examination she said that Mr Broadbent had  
5 been unwell recently and is now no longer a director. She said that she had not spoken to him about this, and did not know how the company was going to continue. It was not her intention to have Mr Sodha join the company.

### **The evidence of Mr Malcolm Starr**

21. Mr Starr is the managing director of Davies Warren Partnership, a compliance  
10 consultancy. It was his suggestion to organise a client survey to counteract the sting in the FSA findings. He said that the questionnaire which he sent out was slanted towards encouraging complaints. It was clear from the results that there was no current dissatisfaction with the service Mr Sodha was providing. Mr Starr has carried out a file inspection of Mr Sodha's business. This revealed that apart  
15 from in relation to one matter, FSA requirements were being fully met. The one matter which caused Mr Starr concern was that the amount of information that was collected and the degree of consumer contact that occurred where general insurance and pensions were involved was in excess of that permitted. He took this up in a meeting with both Mr Sodha and a representative from Blue Sky  
20 Mortgages, and both parties agreed to change their practices so that no further breaches would occur.

22. In cross-examination by the tribunal Mr Starr explained that most buy-to-lets, commercial loans, second charges and unsecured loans are not regulated by the  
25 FSA. There is nothing in the FSA rules to stop Mr Sodha giving advice on non-FSA regulated matters before making the introduction to an adviser.

### **Witness statement of David Broadbent**

23. We read a witness statement by Mr Broadbent. He says in his statement that Mrs  
30 Sodha is an investor, and that Mr Sodha is not involved nor is likely to be involved in the business. His statement is dated November 2008, when Mr



Broadbent was still a director. He was not present to be cross-examined on his statement.

### **Submissions**

- 5 24. Mr Popplewell submitted that Mr Sodha is a fit person to carry out limited business activities, and invited us to impose requirements which would limit Mr Sodha's activities to dealing with the two businesses Blue Sky Mortgages and Howsom Evans. Strictly, we cannot ourselves impose requirements, but we can issue a direction to the OFT so that the OFT can itself impose the requirements we consider appropriate: see schedule 1A paragraph 12(1)(e) of the CCA.
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- 15 25. Miss Lawunmi submitted that this is a case where requirements cannot deal with the fundamental unfitness of Mr Sodha. She submitted that Mr Sodha is a high risk category applicant. The nature of his work is not merely as a conduit or post-box. People do come to him because of his expertise. He makes qualitative judgments, whether it is appropriate to make a referral, and to whom. He plainly has a good relationship with his clients, and they are exposed to risk. When coupled with the evidence of his recent improper practices as found by the Financial Services and Markets Tribunal he is not a fit person to hold a licence, whether or not his business is to be limited to making referrals to Blue Sky
- 20 Mortgages and Howsom Evans.
- 25 26. In reply Mr Popplewell said that the risk to consumers is minimal. What Mr Sodha does now is very different to what he was applying to the FSA for authorisation to do. He applied to the FSA for authorisation to give complicated financial advice. How, Mr Popplewell asks, can consumers be at risk of losing their homes simply by Mr Sodha forwarding on names and addresses? How can it lead to consumer detriment when Mr Sodha does not charge the consumer a fee? The OFT has not brought a single complaint against him. Mr Starr's questionnaire shows all Mr Sodha's client's are satisfied with the way he works.
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## **Our findings on the evidence of Mr and Mrs Sodha**

27. We do not believe the recent change of Mr Sodha's evidence regarding the payment of fees by clients. Mr Sodha was accompanied at the hearing by Mr Malcolm Starr, who later gave evidence before us. We strongly suspect that it was Mr Starr who advised Mr Sodha that he should change his evidence on this point because what Mr Sodha says he is doing in paragraph 9 is illegal. We note that the witness statement was signed over three months before the hearing, that it was professionally prepared, and that it was only on the day of the hearing itself and when Mr Sodha gave evidence before us that he sought to correct this 'mistake'.
28. We do not accept the evidence of Mr and Mrs Sodha that Mrs Sodha's decision to invest in Charterhouse Scott was just a business decision by her with which Mr Sodha was not involved. We do not believe that she invested £25,000 with Mr Broadbent – who is not a member of the Asian community – without, apparently, a care as to what Mr Broadbent did with the money. We do not believe that the decision by her to invest in the company was anything other than a joint decision by Mr and Mrs Sodha. Mrs Sodha is an experienced business woman, and we do not believe that she invested the money with such apparent carefree abandon. Her investment was, we find, with the full knowledge and approval of Mr Sodha, and was done so that Mr Sodha could be involved with Charterhouse Scott if the need arose. Indeed, with the recent illness of Mr Broadbent and his resignation as a director, this is a perfect opportunity for Mr Sodha to become a director of Charterhouse Scott. We find it difficult to give much weight to Mr Broadbent's statement in the light of these concerns.
29. We do not accept that Mr Sodha's role is as limited as he seeks to make out. We do not accept that his decision whether to refer clients on to a mortgage broker or a financial adviser is almost mechanical. We certainly do not accept that it involves no risk to clients. Mr Sodha has a good relationship with his clients, and this is an important factor in bringing him work. His clients trust him. If they come to him for business which is FSA regulated, he must of course refer all of it to FSA brokers, and he cannot give advice relating to it. If they come to him in

relation to non-FSA business – second mortgages, buy-to-lets, or commercial mortgages – there is nothing to stop him giving advice in relation to this. He may give such advice before he introduces the business to a regulated broker. The risk to consumers in these circumstances is considerable bearing in mind his record while he was working for Barclays and St James’s Place. If a customer asks him for a buy-to-let mortgage, he might recommend a product which was not in fact the best advice for the customer, but which represented more commission to Mr Sodha. The same applies for personal loans and second charge lending.

### **Our conclusions**

- 10 30. We have considerable concerns as to both Mr Sodha’s honesty and his competence, such that we do not consider he is a fit person to hold a consumer credit licence.
- 15 31. Our concerns as to his honesty relate primarily to his attitude to these proceedings. We do not believe his change of story regarding taking fees, his supposed distancing of himself from Charterhouse Scott Ltd, or his supposed role acting only as a postbox. His dishonesty is also a feature of the Financial Services and Markets Tribunal decision: the offering of a sweetener where complaints were made, and his failure to disclose the final written notice he had received from St James’ Place.
- 20 32. Our concerns as to his competence relate mainly to the matters which formed the subject of the Financial Services and Markets Tribunal. We consider that they are entirely apposite to the present application. Despite the survey conducted by Mr Starr, we are not satisfied that Mr Sodha is competent to give proper advice in relation to credit broking, especially when dealing with matters which are not regulated by the Financial Services and Markets Act 2000.
- 25 33. We do not consider that our concerns are properly met by the suggested requirement or undertaking for his CCA licence that he should forward all clients to Blue Sky Mortgages or Howsom Evans, both of which are regulated by the
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FSA. This would not prevent him from giving advice in relation to such matters as buy-to-lets, commercial loans, second charges and unsecured loans; and there would be no protection to consumers if he did so. The suggested undertakings are therefore neither appropriate nor sufficient.

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34. We therefore confirm the determination of the adjudicator and dismiss this appeal.

**Costs**

35. Where a tribunal considers that a party has acted vexatiously, frivolously or unreasonably in bringing an appeal or otherwise in relation to the appeal it may order that party to pay to the other party the whole or part of the costs incurred by the other party.

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36. If the OFT wishes to pursue an application for its costs against Mr Sodha we direct that any submissions be submitted to the Tribunals Service by email within seven days of this decision being sent to them. Such submissions should cover both why a costs order should be made against Mr Sodha, and the amount which is claimed. Mr Sodha shall have three days to submit submissions in answer, and the OFT, if it requires to reply, shall have two days to reply. The tribunal will then give its ruling on costs.

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**DR JAMES BEHRENS  
CHAIRMAN  
30th March 2009**

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