



**IN THE FIRST-TIER TRIBUNAL  
(CONSUMER CREDIT)  
GENERAL REGULATORY CHAMBER**

**Case No. CCA/2010/0005**

**On appeal from:  
Office of Fair Trading's  
Determination reference:**

Determination of Minded to Revoke Notice for  
Licence No. 597164

**Dated:**

18 February 2010

**BETWEEN:**

**Appellant:**

JST Financial Solutions Limited

**Respondent:**

The Office of Fair Trading

**Heard at:**

Manchester Crown Court.

**Date of hearing:**

11<sup>th</sup>- 13<sup>th</sup> July 2011 (sitting in public)

**Date of Determination: 31 2011**

**Before:**

Mr. Peter Hinchliffe      Tribunal Judge  
Mr. Nicholas Paul Baxter      Tribunal Member  
Mr. Alex Dalgleish      Tribunal Member

**Attendances:**

For the Appellant:  
For the Respondent:

Mark Monaghan instructed by DWF LLP  
Mark Vinall instructed by the Office of Fair  
Trading

**DETERMINATION OF THE FIRST-TIER TRIBUNAL**

The appeal is hereby dismissed

## **REASONS FOR THE DETERMINATION**

### **Background to the Appeal**

1. The Appellant (“JST”) was granted a consumer credit licence on 22 February 2007 (the “Licence”). The licence permitted JST to carry out credit brokerage, debt adjusting and debt counselling. JST submitted applications to vary the Licence on 9 March 2007 and 3 February 2008 in order to permit the use of additional trading names. These variations were granted by the Respondent. Further applications were submitted on 2nd February 2009 and 17 June 2009, to permit the use of additional trading names. These were not granted by the Respondent and some were withdrawn by JST. On 12 November 2009 the Respondent (“OFT”) issued a notice to JST headed “Minded to Revoke a Consumer Credit Licence under section 32 of the Act” (the “Minded to Revoke notice”). The Minded to Revoke notice notified JST that the OFT had doubts about JST’s fitness and competence to engage in consumer credit activities covered by the Licence and invited JST to make representations in response to the OFT’s proposal to revoke the Licence. The Minded to Revoke notice set out the reasons for the OFT’s doubts over JST’s fitness to hold the Licence. JST responded to the Minded to Revoke notice in written representations dated 2 December 2009 and with a letter dated 24 November 2009 from Mrs Susan Carter Phillips (as she was at the time, she is now Mrs Scrimgeour). On 18 February 2010 the OFT issued a Determination of Minded to Revoke Notice (the “Determination”) and confirmed that the Licence was to be revoked. The Determination addressed the representations made by JST and outlined the reasons for the OFT’s Determination.

### **The OFT’s Determination**

2. The OFT’s reasons for revoking the Licence were set out in the Determination and can be summarised as follows: Mr Steven Tunaley, the director and a shareholder of JST, Mrs Susan Scrimgeour (under her previous name of Susan Carter Phillips), a shareholder of JST at certain times and her then husband, Mr Russell Phillips, were associates of JST within the meaning of sections 25 and 184 of the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006 (“the Act”). The OFT may take into account matters relating to the conduct of associates. Mr Russell Phillips had committed an offence involving fraud or other dishonesty within the meaning of section 25(2A) (a) of

the Act and had contravened provisions made pursuant to section 25(2A) (b) (i) and (iii) of the Act and had been involved in the promotion and management of a company or companies contrary to his disqualification for ten years under the Company Directors Disqualification Act 1986. JST had contravened sections 36 (4) and 39 (2) of the Act by using trading names that had not been specified in the Licence. JST had engaged in business practices that were deceitful or oppressive or otherwise unfair or improper within the meaning of section 25 (2A) (e) of the Act. JST had used misleading or otherwise undesirable trading names within the meaning of section 25 (1A) (d) of the Act.

### **Summary of grounds for Appeal**

3. JST submitted a Notice of Appeal against the Determination dated 22 March 2010. JST rejected the OFT's findings in the Determination and their reasons for doing so can be summarised as follows: Mr. Tunaley had sole control of JST. Mrs Scrimgeour had no involvement in running JST and was not a controller. The failure to notify the OFT that Mrs Scrimgeour had acquired a 50% shareholding in JST was a genuine mistake and was neither intentional nor reckless. Mr. Philips was not a business associate of JST and "did not, has not and cannot, influence the running of" JST. The evidence of a link between Mr Philips and JST was unreliable. JST did not own or control the websites that the OFT regard as evidence of business practices that were deceitful or oppressive or otherwise unfair or improper and in any event, the websites had never traded and/or were incapable of trading and no customers could have been misled by JST. Therefore JST denies using unlicensed trading names in contravention of section 39 (2) of the Act or misleading customers.

### **The role of the Tribunal**

4. Section 41ZB of the Act deals with disposal of appeals. It provides that;

*"(1) The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.*

*(2) In disposing of an appeal under section 41 the First-tier Tribunal may do one or more*

*of the following*

*(a) Confirm the determination appealed against;*

*(b) Quash that determination;*

*(c) Vary that determination;*

*(d) Remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the Tribunal;*

*(e) Give the OFT directions for the purpose of giving effect to its decision.”*

5. The standard of proof on any issue is the usual civil standard of a balance of probability. The question to be decided by the Tribunal is whether on the evidence adduced before them JST is a fit person to hold a licence at the time the appeal comes before the Tribunal. While the reasons given in the Minded to Revoke notice remain the foundation for the appeal, the Tribunal is entitled to entertain any further matter, which had a bearing on JST's fitness as long as JST has been given the opportunity to make representation on such matters.

### **The relevant statutory regime**

6. Section 25 of the Act deals with the requirement that the licensee is to be a fit person. It provides that:

*“(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).*

- (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 under that Part;*
- (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
- (c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
- (d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
- (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)."*

7. Section 32 of the Act deals with suspension and revocation of consumer credit licences. It provides that:

- "(2) In the case of a standard licence the OFT shall, by notice*
- (a) inform the licensee that, as the case may be, the OFT is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating its reasons, and*
- (b) invite him to submit to the OFT in accordance with section 34 representations*
- (i) as to the proposed revocation or suspension."*

8. Section 36 provides for a duty on consumer credit licencees to notify changes.

*“(1) Within 21 days working days after a change takes place in any particulars entered in the register in respect of a standard licence or the licensee under section 35(1)(d) (not being a change resulting from action taken by the OFT), the licensee shall give the OFT notice of the change; and the OFT shall cause any necessary amendment to be made in the register.*

*(2) Within 21 working days after—*

*any change takes place in the officers of—*

*a body corporate, or an unincorporated body of persons, which is the licensee under a standard licence, or*

*(ii) a body corporate which is a controller of a body corporate which is such a licensee, or*

*(b) a body corporate which is such a licensee becomes aware that a person has become or ceased to be a controller of the body corporate, or*

*(c) .....*

*the licensee shall give the OFT notice of the change.*

*3) Within 14 working days after any change takes place in the officers of a body corporate which is a controller of another body corporate which is a licensee under a standard licence, the controller shall give the licensee notice of the change.”*

9. Section 39 (2) of the Act states:

*“A licensee under a standard licence who carries on business under a name not specified in the licence commits an offence.”*

10. Section 184 of the Act defines the term “Associates” as follows:

*“(1) A person is an associate of an individual if that person is—*

*(a) the individual’s husband or wife or civil partner,*

*(b) a relative of—*

*the individual, or*

*(ii) the individual’s husband or wife or civil partner, or*

*(c) the husband or wife or civil partner of a relative of—*

*the individual, or*

*(ii) the individual’s husband or wife or civil partner.*

*(2) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership.*

*(3) A body corporate is an associate of another body corporate—*

*(a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or*

*(b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.*

*(4) A body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.”*

### **Issues for the Tribunal to decide**

11. In deciding whether, on the evidence adduced before them, JST is a fit person to hold a licence the Tribunal needs to consider some or all of the following issues:

- Was Mrs Scrimgeour a controller of JST?
- Did JST knowingly or recklessly fail to notify the OFT that Mrs Scrimgeour was a controller?
- Did Mrs. Scrimgeour have influence over the running of JST?
- Was Mr. Phillips a business associate of JST or Mrs Scrimgeour or her business?
- Has JST carried on consumer credit activities under a name not specified in the Licence?
- If so, were any of these trading names misleading or otherwise undesirable?
- Has JST engaged in any business practice that are or were deceitful, or oppressive or otherwise unfair or improper (whether lawful or not)?

12. The following matters of fact are relevant and were not in dispute between the parties:

- Mr. Phillips was convicted on 26 November 2004 of two charges of knowingly or recklessly giving false information to the Director of the OFT contrary to section 7 of the Consumer Credit Act 1974 and conspiracy to defraud contrary to common law. He was sentenced to 3 years and 4 months imprisonment for these offences.
- Mrs Scrimgeour and Mr Phillips were married until some time after JST received the Licence and Mrs. Scrimgeour acquired a 50% shareholding in JST.
- Mrs Scrimgeour owned another business, which traded as Carter Phillips Affiliates Network and then as CPAN UK Ltd. Mr Phillips worked in this business after his release from prison (around October 2006) until some time after JST received the Licence and Mrs Scrimgeour acquired a 50% shareholding in JST. Mrs Scrimgeour

said that his employment ended in March 2009.

13. Overall, the tribunal must decide if JST is fit to hold a consumer credit licence having regard to any circumstances that are relevant.

**Tribunal's determination of the disputed issues in this case: Was Mrs Scrimgeour a controller of JST**

14. Mrs Scrimgeour acquired 50% of the shares in JST in early 2007. The evidence from Mrs Scrimgeour and Mr Tunaley was that this took place in April 2007.

15. In the Act a "controller" is defined in section 189 as follows:

*“, in relation to a body corporate, means a person—*

*in accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act, or*

*who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller;*

16. Mrs Scrimgeour was entitled to exercise more than one third of the voting power at any general meeting of JST. Mr Monaghan accepted that she fell within legal definition of a controller, but argued that she was not a de facto controller and that the OFT had accepted that mere non-disclosure was not evidence of unfitness in itself.

17. The Tribunal finds that Mrs Scrimgeour was a controller of JST, within the meaning of the Act, from the time that she acquired the 50% shareholding in JST in or around April 2007 until she transferred a 25% shareholding in or around December 2009.

**Tribunal's determination of the disputed issues in this case: Did JST knowingly or recklessly fail to notify the OFT that Mrs Scrimgeour was a controller?**

18. In Mr Tunaley's letter of 2nd December 2009 in response to the OFT's Minded to Revoke notice, he stated that *“any oversight was absolutely genuine and I included Sue on the annual return which would suggest transparency”*. He indicated that he found the definition of "controller" to be confusing. The reference in the letter to JST's "annual return" is to JST's annual return to Companies House, which was submitted in



February 2008. Similar statements about this issue were made in the Reply to the OFT's Response, in Mr Tunaley's witness statement and in the witness statement of Helen Pavey, the company secretary of JST and Mr Tunaley's partner. Ms Pavey used similar language and stated that *"the failure to notify the OFT was a genuine oversight"*.

19. In cross-examination, both Mr Tunaley and Ms Pavey were asked about the failure to notify the OFT of Mrs Scrimgeour's acquisition of a 50% shareholding in JST pursuant to section 36 of the Act. Ms Pavey and Mr Tunaley both repeated that the failure to disclose the information to the OFT was an oversight. No further explanation was offered. The Tribunal notes that the original application by JST for a consumer credit licence is dated 18 January 2007 only three months before the transaction that resulted in Mrs. Scrimgeour becoming a controller. Amongst the questions that Mr Tunaley had to answer in the application form for the consumer credit licence were:

*"Does your organisation have a controller?"*

*"Are there any individuals or organisations, not already mentioned in your application who can influence the running of your business? This includes .....*

*a large investor*

*a business associate"*

There are also a number of questions that ask about the individuals or organisations that have been identified in earlier questions, including controllers and those influencing the business. A definition of 'controller' is provided. A warning that is included that says that; *"The law on controllers and associates is complex. If you are unsure about controllers or associates you should seek legal advice"*. In the circumstances, it might be expected that the importance of issues surrounding control of and influence over, JST's might have been fresh in Mr Tunaley's mind when he opened discussions with Mrs Scrimgeour shortly after the Licence had been issued.

20. Both Mr Tunaley and Ms Pavey were also asked about the report and accounts of JST for the year to 31 Jan 2008, which stated that only one share was in issue and that this was owned by Mr Tunaley. Mr Tunaley and Ms Pavey had both signed the report and accounts as Director and Company Secretary respectively. During cross-examination, both Mr Tunaley and Ms Pavey said that they had not read the report and accounts before signing them and had relied upon the accountants who had prepared the accounts. Neither was aware where the accountants had got the information from. Ms Pavey had signed the annual return to Companies House with the correct information about shareholders on 25 January 2008, prior to signing the report and accounts. Ms

Pavey is described in her witness statement as having a law degree. The implications of signing any document without reading it must have been obvious to both of them. The Tribunal finds that behaviour of the director and company secretary in signing the report and accounts of JST without reading them was reckless.

21. Overall the Tribunal concluded that there was insufficient information on which to reach a conclusion that the failure to disclose Mrs Scrimgeour's involvement to the OFT was deliberate. On the balance of probabilities the Tribunal finds that the failure was irresponsible rather than a mere administrative oversight. For the reasons explained above, the significance of Mrs Scrimgeour's shareholding should have been apparent to Mr Tunaley. Both Mr Tunaley and Mrs Scrimgeour must have been aware of Mr Phillips' role within CPAN and of his conviction and the significance of that to consumers and to JST's consumer credit licence. JST's failure to notify the OFT of Mrs Scrimgeour's involvement represents a negligent failure to meet its responsibilities as a consumer credit licence holder.

**Tribunal's determination of the disputed issues in this case: Did Mrs Scrimgeour have influence over the running of JST?**

22. Mr Tunaley was adamant that Mrs Scrimgeour had no day-to-day involvement in the management of JST. He argued that she held no position in JST, could not sign the bank account, did not have high-level access to its I.T. systems and had not met JST's bank manager or accountants. She has never represented the company or signed a contract on its behalf. The Tribunal has no reason to doubt these assertions.
23. The business link between Mrs Scrimgeour's businesses and JST was however very close. (I will refer to the Mrs Scrimgeour's businesses; Carter-Philips Affiliate Network and CPAN UK Ltd, as "CPAN" for ease in this Determination. One business appears to have replaced the other without any break in the service provided during the course of their dealings with JST). The extent of the links between CPAN and JST was hinted at in the parties' submissions and witness statement prior to the hearing. During the hearing the closeness of the two businesses became clearer. JST received its customer leads from Mrs Scrimgeour's business. Where it sought to attract leads directly it turned to JST to buy domain names. CPAN was responsible for marketing and promoting JST. The I.T. systems on which JST relied to pass on the leads to the consumer credit lenders was produced by CPAN and appears to have been maintained by CPAN until JST recruited someone from CPAN to take on this work in

March 2009. Indeed Mr Tunaley confirmed during cross-examination that all I.T. activity for JST was undertaken by CPAN. CPAN operated JST's websites, although Mr Tunaley said that he would decide on the content and then ask CPAN to load it on to the website. After March 2009 when Mrs Scrimgeour stated that CPAN had ceased to trade, some of its operations appear to have continued and to have done so under the control of JST without the assets or business being sold or formally transferred. The businesses shared a controller.

24. It appears from the evidence that JST's business was created by CPAN's ability to deliver the potential customers seeking consumer credit, or the means to find them, and to provide the systems required to transfer these details to the prospective lenders and arrange payment to and from JST. Mr Tunaley's contribution was to find the lenders who were prepared to pay for the details of potential customers. In this respect, JST simply replaced another business or businesses that CPAN was ceasing to work with at that time. One of the businesses being replaced was Thornton Shepherd, where Mr Tunaley had worked and which Mrs Scrimgeour's husband, Mr Phillips, had co-owned. Mrs Scrimgeour was asked in cross-examination whether JST was just a front company for her business. Her reply was that "*she would not say that it was a front*". She explained that she needed Mr Tunaley as he was familiar with the finance industry. She "*knew that she would not be able to hold a consumer credit licence because of Russell*". Mr Tunaley had come to her and "*she had explained what they had done before*".
25. The extent of JST's reliance upon CPAN for its successful operation and the 50% shareholding taken by Mrs Scrimgeour gave her the potential to exercise considerable influence over JST if she chose to do so. Mrs Scrimgeour stated during cross-examination that that she never sought to exert control. She said that she did not see herself as the owner of JST; "*I am just not that sort of person*" she said in response to the question.
26. The Tribunal finds that the relationship between Mrs Scrimgeour and her businesses and JST was not at arms length and that she had influence over JST. The Tribunal finds that Carter Philips Affiliate Network and CPAN UK Ltd were associates of JST within the meaning of s.184 (3) of the Act.

**Tribunal's determination of the disputed issues in this case: Was Mr Phillips a business associate of Mrs Scrimgeour, CPAN or JST?**

27. It is accepted that Mr Phillips was an associate of Mrs Scrimgeour by virtue of being her husband at the time. In the Determination, the OFT relied upon Mr Phillips being an associate of Mrs Scrimgeour by virtue of their marriage but also found him to be a business associate of JST. In Mr Vinall's opening remarks to the Tribunal he indicated that the OFT accepted that the fitness of JST to hold a licence should not be determined solely by reference to a controller's spouse having committed an offence of dishonesty. What was relevant was whether the person committing an offence of the type referred to in section 25 (2A) of the Act was a business associate of the consumer credit licence holder or its controller. The Tribunal agrees in the circumstance of this case that that is a matter appearing to it to be relevant to the issue of fitness to hold a licence.
28. The Tribunal heard that Mr Phillips was employed by Mrs Scrimgeour in Carter Philips Affiliate Network and then in CPAN UK Ltd from his release from prison in October 2006 until March 2009. CPAN was never a large business. Mr Phillips said they had four or five employees. On the information available to the Tribunal, the number of people working in the business, outside of the I.T. function, appears to have never exceeded four, including Mrs Scrimgeour and Mr Philips. The I.T. function had up to three people, at least two of these had worked with Mr Phillips in the past.
29. Mrs Scrimgeour told the Tribunal that Mr Philips was never an officer of JST and did not run the company with her. Mr Phillips said the same thing in cross-examination. However, the Tribunal is aware that Mr Phillips was disqualified from undertaking such a role.
30. Mr Philips described his own role at CPAN in the following terms: He was employed as an Affiliate Merchant Manager. He promoted merchants such as JST and managed the affiliates who brought in the leads to potential consumer credit borrowers that were to be passed on by JST to the consumer credit lenders in return for a fee. He promoted JST, for example by using the 'Affiliates 4U' website to make favourable comments about JST. He undertook road shows to recruit affiliates for merchants such as JST. Mrs Scrimgeour would allocate tasks to the staff and his role was to promote JST and other merchants around the affiliates and to help to attract new affiliates. He also took on the role of managing CPAN's litigation with Euro Credit and Thornton Shepherd Associated Ltd, the businesses owned by his ex-business partner and his wife, Lynne Jennings, who gave evidence to the Tribunal. Due to Mrs Scrimgeour's panic attacks

he had undertaken a more active role in running the litigation including leading the negotiations with the other side and speaking on JST's behalf at some hearings.

31. Mrs Scrimgeour described Mr Phillips role in similar terms. He worked from October 2006, when he was released from prison on a tag, until CPAN ceased to trade in March 2009. He earned a salary as the Affiliate Merchant Manager. As well as the promotion of merchants such as JST to affiliates, he had to deal with new enquiries from merchants and check invalid leads presented by affiliates. He had a heavy involvement in the 'Affiliates 4u' website and related activities. She said that Mr Phillips did not have any control over CPAN or JST. He just did his job. She explained that when the Carter Phillips Affiliate Network closed down, she made the two of the employees who dealt with merchants and affiliates and one of the IT employees redundant. She revived the business as CPAN UK Ltd. At this stage, it therefore appears that only Mrs Scrimgeour and Russell Philips ran the business side of CPAN UK Ltd. Although there was a suggestion that one other member of staff continued on the business side; Tina Whitehead.
32. Mr Tunaley could not offer any clarification of Mr Phillips' role at CPAN or with JST. He said that he did not deal with Mr Philips "*in a business sense*".
33. The Tribunal finds that Mr Phillips was a business associate of Mrs Scrimgeour in her business activities as Carter Phillips Affiliate Network and a business associate of CPAN UK Ltd. He was actively involved in the fundamental activities of both businesses for a lengthy period of time. His activities were directly relevant to the consumer credit transactions that JST were broking and which appears to have been the main part of CPAN's business. It is not necessary for the Tribunal to decide if Mr Phillips role amounted to a breach of his disqualification under the Company Directors Disqualification Act 1986 from the promotion and management of a company.
34. In the light of the conclusions at paragraphs 17, 21, 26 and 33, the Tribunal has considered the provisions of section 25 (2A) of the Act and finds that there "*is evidence tending to show that:*
  - (i) JST is a body corporate,
  - (ii) Mrs Scrimgeour was a controller of JST,
  - (iii) Mr Phillips was a business associate of Mrs Scrimgeour and her businesses, and
  - (iv) Mr Phillips has committed an offence involving fraud or other dishonesty or violence.

As a consequence, the Tribunal may not need to consider any other issues, if the effect of the above conclusion is sufficient in itself to cause the Tribunal to conclude that JST is not a fit person to carry on the consumer credit business. In this instance, the Tribunal elected to consider the evidence relating to the extent and the nature of Mr Phillips involvement with JST and how JST dealt with the issue of his involvement with their business.

**Is Mr P's association with JST via its controller such as to affect JST's fitness to hold a licence?**

35. The extent and nature of Mr Phillips connection with JST has been difficult to ascertain with any certainty. However the Tribunal was struck by the desire by Mr Tunaley, Mrs Scrimgeour and Mr Phillips to seek to downplay the connection between Mr Phillips, CPAN and JST in their submissions to the OFT and the Tribunal. Some of the examples of this approach are set out below, together with the correct position as the Tribunal understands it after hearing the evidence of the witnesses at the hearing:

36. In Mr Tunaley's letter to the OFT of 2<sup>nd</sup> December, he stated:

- *"It is my understanding that Russell Phillips worked for a short time at Carter Phillips Affiliate Network"*

Mr Tunaley must have been aware that Mr Phillips worked at CPAN for two and a half years, including the whole period of JST's relationship with CPAN.

- *"I'm completely astounded by the OFT's allegations that Russell Phillips is an associate of my company"*

Mr Tunaley was aware of Mr Phillips' history, his convictions, his role at CPAN and the work that Mr Phillips undertook on behalf of JST in dealing with affiliates. The concern of the OFT cannot have been a surprise.

- *"once again I dispute that Russell Phillips is an associate of JST Financial in your interpretation. I do not believe that JST and CPAN UK are owned by the same people"*

Mr Tunaley knew that Mrs Scrimgeour owned all of CPAN UK and 50% of JST.

- *"The only association between JST and CPAN UK is that we employ the services of CPAN UK for the purposes of online advertising"*

Mr Tunaley knew that the association was much broader and deeper than that.

*-“Russell Phillips has had no involvement in the formation or promotion of my company”*

Mr Tunaley knew that Mr Phillips was marketing and promoting JST in a business sense, although no conclusion has been reached on whether he was involved in the promotion of JST in the sense in which it is intended in the Company Directors Disqualification Act.

*- “As far as I am aware RP has not been in the employment of Carter Phillips Affiliate Network for quite some time”*

Mr Tunaley knew that Mr Phillips had left CPAN earlier in 2009, only eight months before the letter was written

37. In Mrs Scrimgeour’s (then Mrs Carter-Phillips) letter of 24 November 2009, she stated:

*- “I first met Mr Steven Tunaley spring 2007”*

Mrs Scrimgeour had met Mr Tunaley when he had worked for Mr Phillips’ business.

*- “all I was involved in was promoting the “brand JST” to my affiliate base”*

CPAN provided all of the technology and I.T. support required to operate JST and most of the leads that it required to generate revenue.

*- “Russell Phillips did work for a short while at Carter Phillips Affiliate Network as an employee”*

As stated above, Mr Phillips worked at Carter Phillips Affiliate Network and its successor, CPAN UK Ltd, for two and a half years.

*- “Since February 2009, Russell has not worked for me in any capacity. The only contact that we have now is over our children”*

It emerged during the hearing that Mr Phillips and Mrs Scrimgeour still co-operate on the litigation with Mr and Mrs Jennings and their companies. Mr Phillips appears to take the lead role in managing this matter.

*- Only Mr and Mrs Jennings could create an allegation such as Russell setting up a company while in custody”*

Mr Phillips had left custody before JST was created.

38. In the Notice of Appeal JST stated:

- *“In relation to the alleged contravention of s39 (2) ....these sites were not in the control of the company and were owned and managed by CPANUK”*

Mr Tunaley was aware that after March 2009 at the latest, the control over CPAN UK's remaining activities, including the domain names, had fallen to JST

39. In the Appellant's Reply to the OFT Response:

- *“Para 23: The company has had most of its profits reinvested especially into its website”*

The Tribunal heard from Mrs Scrimgeour that JST had paid dividends of £69,000 and £240,000 to its shareholder in 2008/09 and 2009/10 respectively. Half of these dividends went to Mrs Scrimgeour. Mrs Scrimgeour said that the latter dividend payment was used to pay the confiscation order against Mr Phillips arising out of his criminal conviction.

- Para 24 *“ST [Mr Tunaley] has built this company up on his own and apart from a small period of ‘grace’ after assistance with IT and with the development of the CRM system by SCP's [Mrs Scrimgeour] and her company, JST has been independent of outside involvement and /or control direct or otherwise.”*

Mr Tunaley would have known that JST was much more dependent on CPAN that this statement indicates for most of its history.

- Para 46 *“JST dispute fully anything which asserts RP [Mr Phillips] had an involvement with JST bearing in mind he was serving his prison sentence when JST was incorporated and that JST and its two officers have never had any involvement with RP”*

Mr Phillips was released from prison but was still under licence in October 2006. Mr Tunaley formed JST in Jan 2007. It is highly unlikely that Mr Tunaley was unaware of this.

Mr Tunaley is featured as a friend on Mr Phillips facebook site in two print outs that were produced in evidence. The first does not have a date but was believed to be from March 2009 and the later print out was dated 8<sup>th</sup> December 2010.

- Para 47 *“further JST has no knowledge of the affairs of any of the SCP or RP companies either now or previously”.*



Mr Tunaley worked in a company between 2003 and 2006 that was jointly owned by Mr Phillips. This covered the period in which Mr Phillips was arrested and convicted. JST dealt with Carter Phillips Affiliate Network and CPAN UK and must have been aware of the transition between them. He had worked in companies run and part owned by Mr and Mrs Jennings with whom Mrs S and Mr P were in bitter and protracted litigation. As the merchant taking consumer credit leads from CPAN, JST appears to have been a replacement in April 2007 for the business operated by Mrs Jennings for which Mr Tunaley had previously worked. The Tribunal finds that it is highly unlikely that Mr Tunaley was entirely unaware of these developments affecting Mrs Scrimgeour's business.

- Para 49 *"Given that RP was serving a prison sentence during the first 18 months of JST's life it cannot be the case that RP can have had any involvement with the running of JST as he was a prisoner in her majesty's custody as he could not have worked whilst in custody."*

As stated above, Mr Philips had been released on licence before JST was formed.

40. In Mr Tunaley's witness statement:

- Para 37 *"I can confirm that I had no dealings whatsoever with him"* (Mr Phillips)

The facebook connections indicate that some social contact had taken place and Mr Tunaley accepted during cross-examination that he had made contact with Mr Phillips about this case.

- Some of the statements included in the Appellants' Reply to the OFT Response and referred to above are repeated in the statement e.g. para's 34 and 40, 71 of the statement.

41. During the cross examination of the witnesses at the hearing, other matters also emerged that contributed to a better understanding of the closeness of the relationship between JST, CPAN, Mr Phillips and Mr Tunaley. During Mr Tunaley's cross-examination he confirmed or accepted that:

- JST and CPAN had shared an office building at one point. It was suggested that this was a short lived arrangement and that no *"loan activities"* were carried on there.

- He did know Mr Philips. He was not sure if he was a friend but he *"wouldn't ignore"*

him”

- The CRM system supplied by CPAN and maintained by them until March 2009 was the “*heart of JST’s business*”.

- JST had taken on two staff from CPAN after it had ceased trading, Chris Longden, an I.T. person and Tina Whitehead, who had a similar role to Mr Philips in CPAN and who is now a business development manager for JST.

- The link between CPAN and JST was not simply that of an advertiser and a loan broker. By way of example, as well as having a link through the shareholder, JST had lent CPAN money (£10,000) when it needed it. The loan was never repaid.

- There was no formal option for him to buy back Mrs Scrimgeour’s shareholding and that no real understanding had existed at the outset regarding his right to buy back the shares in JST. He agreed that he did not know if the statements that had been made to the OFT regarding a right to buy back the shareholding, which he had said was only been taken as security, were correct.

- JST now controlled what remained of CPAN and its affiliate network including the domain names. The JST affiliate network is still called the Carter Philips Affiliate Network.

42. Mr Tunaley, when questioned by Mr Monaghan, explained that he has seen Mr Phillips since the Minded to Revoke notice was issued. Mr Tunaley had asked him if he had written certain article on the internet site, ‘Articlesbase’ about personal loans in which it was stated that the author was Russell Phillips and that “*Russell Phillips owns and runs JST Financial*”. Mr Tunaley said that he had discussed this case with Mr Phillips but contact was limited.

43. During Mr Philips’ cross-examination he confirmed or accepted that:

- He had worked with Mr Tunaley in Thornton Shepherd Associates. Mr Tunaley was in sales and he had given leads to sale managers and supervised them. He had worked in the same office for a brief period. He said that Mr Tunaley was a colleague not a friend.

- Although he was not involved in the decision by CPAN to work with JST, he accepted that there were only four or five employees in CPAN and “*everyone knew everything*”. He did not deal with JST but he “*said hello to Steve*” when he saw him.

- He denied that the website articles that said that “*he owns and runs JST*” were anything to do with him. He suggested that this may have been the work of Mr or Mrs Jennings, who had first ‘tipped off’ the OFT about his alleged link with JST. He

did accept however that at least one of the contributions to a forum on "Affiliates 4u.com" that endorsed and promoted JST was "probably" from him. This sort of promotional work is what he was employed by CPAN to do. He agreed that he worked to promote JST in his role at CPAN.

- He accepted that a website operating in Spain with a similar name to one that JST had bought from CPAN was "to do with him".

- Mr Phillips facebook page showed Mr Tunaley as a friend and included him amongst the six photos on the front page of the print out of Mr Phillips facebook page on 8 December 2010 out of a total of sixty-nine friends. He could not remember how or when this had come about.

- In the print out of his facebook page from 2009 his contact details were listed as being the websites of CPAN and JST. He sought to explain this by saying that he had listed all of the businesses that he was promoting for CPAN on his website as part of a web optimisation strategy designed to increase the likelihood of these businesses website featuring on internet searches. He suggested that only these two contact addresses were visible on the front page of his facebook account and that around thirty others would be revealed when the "see All" button had been clicked by an internet user. The Tribunal noted that on the print out of the web page the button that users were required to click in order to "see All" below the contact information box had either a '2' or a '7' alongside it. This number appeared to refer to the contact information list where only two websites were listed, those of CPANUK and JST. The only other possibility is that the number referred to the next item on the web page, the list of Groups of which Mr Phillips was a member, where a list of seven groups was visible. There was no indication that a list of the thirty or so websites that Mr Phillips suggested might be revealed would emerge.

The Tribunal found Mr Phillips explanation on this issue to be unconvincing.

44. Mr Phillips referred on one occasion in his evidence to working through a 'front'. When Mr Phillips and Mr Jennings were being investigated for fraud he said that it had been agreed that he, Mr. Phillips. Would *"take the rap and he [Mr Jennings] would run Thornton Shepherd and Eurocredit basically as a front for the two of us"*.

45. During Mrs Scrimgeour's cross-examination she confirmed or accepted that:

- Mr Phillips had worked for merchants as well as affiliates.

- She did not know Mr Tunaley before JST, but knew his name. She then appeared surprised when told that Mr Tunaley had said that they had sat together at an office

Christmas party and said that she had forgotten their previous involvement.

- She saw her shareholding in JST as an investment, as venture capital she said, which also benefitted her business.

- She had given up her shareholding in JST for nothing as he had no more fight left in her after a few difficult years for her. She had lost her marriage, had needed an operation and had fought "*for her own company*". Mrs Scrimgeour broke down at this point. She went on to explain that CPAN had paid off all of its debts and had then closed down. She had decided that JST might as well have the affiliate network without payment.

- Her witness statement was incorrect in saying that she had no further contact with Mr. Phillips as they still had contact over the litigation with Thornton Shepherd and Eurocredit that had been mentioned in her witness statement.

- The dividends from JST had been paid to her and the second payment had been used to use to meet a confiscation order against Mr Phillips arising from his conviction

46. In his closing remarks Mr Monaghan addressed the issue of the connection between Mr Phillips and JST and argued that all of the evidence was circumstantial and that evidence of no consequence must be disregarded even if accumulated. The Tribunal recognises that this is the correct approach. However, the Tribunal finds that there is evidence linking Mr Phillips to JST and its controllers and that there has been an attempt to play down the extent of this link. This may have been in reaction to the allegations from the OFT in the Minded to Revoke notice, or it may be in order to conceal a much closer or more extensive link between JST and Mr Phillips. In the circumstance of this case and taking account of all of the evidence that it had heard, the Tribunal takes the view that Mr Phillips was, via his role at CPAN, actively involved in promoting and furthering the business of JST, that his involvement would have been known to Mr Tunaley and that Mr Phillips, either directly or indirectly, appears to have profited from the consumer credit activities of JST.

47. The connection with Mr Phillips is a matter that is relevant to JST's fitness to hold a licence. The two controllers of JST were aware of the convictions that Mr Phillips had for offences directly connected to consumer credit activities. The Tribunal takes the view that a licence holder should have considered what actions to take in the context of Mr Phillips' work for a controller of and supplier of services to a consumer credit licence holder. The Tribunal was not able to find any evidence that Mr Tunaley or Mrs Scrimgeour or anyone else at JST had addressed this issue. Mrs Scrimgeour was

aware from the outset that she could not obtain a consumer credit licence because of Mr Phillips involvement with her and her business. It is hard to believe that Mr Tunaley had not formed the same view on the potential risk posed by Mr Phillips to consumers, given Mr Tunaley's knowledge of his history.

48. Other issues around the integrity of CPAN arose that might have caused a responsible licence holder to review the suitability of the business practices of the business on which JST relied. The hearing spent a great deal of time on the issue of the domain names that JST acquired from CPAN to use in its business. There was no doubt that these domain names existed and had been registered originally in CPAN's name. The Tribunal takes the view that at least two of these names can only have been intended to mislead consumers; they are *www.citizens-debt-advice-bureau.org* and *www.government-debthelp.org*. Mr Tunaley said that he had to buy these as part of the package of the domain names being sold by Mrs Scrimgeour. He did not object to taking these domain names into JST. He says that these sites were never used. In his response to the Minded to Revoke notice Mr Tunaley said, *"I can fully appreciate that these sites can be deemed as misleading to the public"*. Nevertheless, JST was prepared to continue working with and through the business that had created domain names designed to mislead consumers and which also employed a manager convicted of defrauding consumers over consumer finance matters. In this context Mr Philips registration of a similarly misleading domain name, "Government –debt-line.org", from a Spanish address on 31 March 2009, is relevant. It is an example of the sort of risk to consumers that should have been in JST's mind when considering the suitability of their arrangements with CPAN and the involvement of Mr Phillips in their business.
49. The Tribunal finds that far from taking steps to ensure that consumers were safeguarded and appropriate steps taken to meet their regulatory responsibilities, JST appears to have either concealed Mr Philips' role or to have been indifferent to it. Mr Tunaley failed to notify the OFT of Mrs Scrimgeours' shareholding in JST and he failed to record this in JST's statutory accounts. He appears to have been unconcerned at the CPAN's registration of misleading websites. He appears to have been similarly unconcerned at Mr Phillips role in managing the affiliates that JST relied on to gain detail of consumers who were seeking credit. He was in contact with Mr Philips via facebook despite initially saying that he had no dealings with him. He did not know or did not question why Mr Phillips had JST down as a contact point for him on facebook until after the OFT had taken issue with his involvement. His

account of how Mrs Scrimgeour acquired and then surrendered an interest of JST was inaccurate and continues to leave some unanswered questions. However, the Tribunal notes Mr Tunaley's strong denial that there are any other arrangements between him and Mrs Scrimgeour regarding the sale of her shares for a nominal sum in late 2009 and early 2010. The complete lack of interest that Mr Tunaley and Mr Phillips are said to have had in each other when Mrs Scrimgeour and Mr Tunaley first discussed the business link between them is surprising and all but implausible, given their history and the significance of the transaction for Mr Tunaley and for CPAN. It is more plausible to accept that Mr Tunaley did not know the use for which the £120,000 dividend payment was to be put by Mrs Scrimgeour and that it was coincidence that Mr Tunaley's first approach to Mrs Scrimgeour was shortly after Mr Phillips release from prison and as CPAN was ceasing to deal with Thornton Shepherd. The Tribunal has to decide on the extent and nature of JST's association with Mr Phillips on the balance of probabilities. The most favourable conclusion that the Tribunal can reach from JST's perspective, based on the evidence in this Appeal, is that JST had full knowledge of Mr Phillips history and did not care about his involvement with the business that they relied upon and his active role in the operation of JST's business.

50. It is the overall finding of the Tribunal that Mr Phillips association with JST was of a nature and extent that is relevant to their fitness to hold a consumer credit license. The controllers of JST knew that Mr Phillips had been convicted for serious offences that directly related to consumer credit activities. They chose to let him become involved in the business of JST. The activities of CPAN whilst Mr Phillips worked for them were such as to raise question about the integrity of their dealing or proposed dealings with consumers, if only through their registration of misleading domain names. Mr Phillips appears to have benefited from JST's business activities, albeit indirectly via the payments to his wife. When the concerns of the OFT regarding Mr Phillips were brought to JST's attention their response was to misleadingly deny any connection with Mr. Phillips. Under s.25 of the Act the OFT is required to have regard to the sort of association that JST had with a convicted fraudster such as Mr Phillips. The process by which JST applied for and received a consumer credit licence application process should have led the applicant to understand the significance of an association with someone with a conviction for fraud. It is the view of the Tribunal that JST's conscious decision to permit an association with Mr Phillips to be created and to continue, both directly and via CPAN and Mrs Scrimgeour, represents a reckless disregard for the protection of consumers and a failure by JST to

demonstrate the level of concern for consumers that is to be expected of a consumer credit licence holder. As a consequence, the Tribunal concludes that JST is not a fit person to hold a consumer credit licence.

#### **Tribunal's determination on the other disputed issues in this case**

51. In the light of this finding, it is not necessary for the Tribunal to determine the remaining issues set out at paragraph 11 above. The Tribunal's decision does not therefore rest on a final conclusion on the important issue that emerged at the hearing of whether a licence holder owning a website in a name that has not been authorized by the OFT and which is live on the internet, but which is either highly unlikely to be found through an internet search or is incapable of providing access to a consumer credit provider for technological reasons, is carrying on consumer credit activities.
52. The Tribunal would like to record its displeasure at the failure of Mr Harvey Stringfellow, a solicitor and partner at Hill Dickinson LLP, who failed to attend to give evidence at the hearing. His witness statement has not been relied upon by the Tribunal in coming to its conclusion.

#### **The Decision of the Tribunal.**

53. In all of the circumstances of this Appeal and after having considered all of the evidence and arguments, the Tribunal unanimously finds that JST is unfit to hold a consumer credit licence. The Appeal is dismissed.

**Signed on the original:**

**Peter Hinchliffe  
Tribunal Judge**

**Dated: 31 August 2011**