

Prohibition order – withdrawal of approval – imposition of fine – withdrawal of permission to carry on regulated activities – increase of fine imposed by authority – reference dismissed

No: FIN2008/0019 / FIN2008/0020

IN THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

B E T W E E N:

**(1) SIMON KUUN
(2) MFP GROUP PLC**

Applicants

- and -

THE FINANCIAL SERVICES AUTHORITY

Respondent

**Tribunal; Terence Mowschenson Q.C. (Chairman)
Maurice Bates
Jo Neill**

Sitting in public in London on 21, 22, 23, 24 September and 13 October 2009

**Andrew Fisher Q.C. instructed by Shakespeare Putsman LLP for the Applicant
Andrew Hunter, counsel, instructed by, and for, the Respondent**

DECISION

The References

1. By two references dated 29 October 2008 the First Applicant Simon John Graham Kuun (“Mr Kuun”), and the Second Applicant MFP Group PLC (“MFP”) referred two Decision Notices dated 2 October 2008 by which the Respondent (“the FSA”) decided:
 - (1) As against Mr Kuun, to make a prohibition order against Mr Kuun pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), withdraw his approval under section 59 of the Act, and impose a fine of £50,000, as a result of the FSA’s conclusions that Mr Kuun had demonstrated a lack of honesty and integrity (contrary to APER Principle 1), had failed to be open, cooperative, candid and truthful with the FSA (contrary to APER Principle 4), and was not a fit and proper person to perform functions in relation to regulated activities.
 - (2) As against MFP, to cancel MFP’s permission to conduct regulated activities under the Act on the ground that it was no longer a fit and proper person by reason of its connection with Mr Kuun.

2. APER Principle 1 provides that an approved person must act with integrity in carrying out his controlled function; APER Principle 4 provides that an approved person must deal with the FSA in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice. APER 4.1.2 provides that in the opinion of the FSA deliberately misleading the FSA involves a breach of Principles 1 and 4. Section 56 of the Act permits the FSA to issue a prohibition order if it appears to the FSA that a person is not a fit and proper person and permits a prohibition order to apply to any regulated activity. Pursuant to section 63 of the Act the FSA may withdraw any approval given under section 59 of the Act if it considers that the recipient of the approval is not fit and proper. Section 66 of the Act confers powers on the FSA to levy fines upon a person who commits misconduct which includes failing to comply with a statement of principle issued pursuant to section 64 of the Act. So far as MFP is concerned the FSA concluded that MFP failed to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 to the Act as the FSA was no longer satisfied that MFP was fit and proper to conduct regulated activities having regard to its connection with Mr Kuun who is its director and controlling sole shareholder. In considering whether to cancel Part IV permission the FSA must have regard to relevant provisions of the FSA Handbook. Guidance as set out in the Handbook entitled Threshold Conditions. The ability to have regard to persons in control of a company is to be found in COND 2.5.3 G (1), 2.5.3 G (2), 2.5.3 G (3) and 2.5.6 G (4). In the light of the conduct of Mr Kuun and the FSA’s conclusion as to

whether he was fit and proper the FSA concluded that it was not satisfied that MFP was fit and proper. The FSA was also concerned as to the need to ensure that MFP conducted its affairs soundly and prudently.

3. There was no dispute about the jurisdiction of the FSA to take the steps which it proposed to take.
4. In summary the FSA's case against Mr Kuun is that he deliberately misled the FSA about how MFP operated its business, at first during a supervisory visit in November 2005, and thereafter till May 2007 in the course of various communications and interviews with the FSA. The FSA contended that:
 - (1) During a supervisory visit in November 2005, Mr Kuun told the FSA that MFP did not use unapproved persons to visit and liaise with its clients, but rather that Mr Kuun and Mr Edgington (a director of MFP) visited and advised each client personally. He made no mention of any relationship between MFP and a Nevis company, Membership Services Limited ("MSL"). In fact the true position was that MFP used unapproved persons to visit all clients, collect information, explain products and assist them in filling out application forms. These persons were as a matter of form employed by MSL which provided their services to MFP. However as a matter of substance they were under the control of Mr Kuun and MFP;
 - (2) During the FSA's investigation, and after the FSA discovered that MFP did use unapproved persons and the existence of MSL, Mr Kuun represented first that he was not personally involved in and had no connection with MSL, and then when that story was exposed as untrue that MSL was owned and operated by a "John Graham". In fact the true position was that Mr Kuun arranged for the incorporation of MSL, opened and operated its bank account, and was the sole director of its operations. John Graham does not exist and was a fictitious invention of Mr Kuun (whose middle names are "John Graham") in a deliberate and dishonest attempt to deceive the FSA.
5. The case against MFP is that since Mr Kuun remains its guiding mind and controller, Mr Kuun's lack of fitness means that MFP too must be regarded as no longer fit and proper.
6. In the course of the hearing the Tribunal heard oral evidence from the following witnesses:

On behalf of the FSA:	
Mr Christopher Walmsley	a manager in the Enforcement Division of the FSA
Mr Deenesh Kumar Jhugroo	a supervisor working in the Investments Department of the FSA's Small Firms and Contact Division
Miss Gemma Louise Landucci	a former employee of Millennium Financial Planning Limited ("Millennium") of which Mr Kuun was a director

For the Applicants

Mr Kuun

Mr Brian Edgington a director of MFP and former director of Millennium.

The Tribunal also had unchallenged evidence in the form of witness statements from Miss Lynne Elaine Snipe a relationship manager at National Westminster Bank PLC and Martin Christopher McDonald a Financial Crime Associate in the Royal Bank of Scotland Group, Law Enforcement Operations, Security and Fraud Operations, London.

7. The Tribunal found the witnesses who gave evidence for the FSA were truthful witnesses doing their best to assist the Tribunal.

The Background

8. From 1996 to April 2008 (when it was dissolved) Mr Kuun was a director and controller of Millennium. Mr Edgington was also a director of Millennium. Both Mr Kuun and Mr Edgington were approved persons. Millennium was authorised by the FSA to advise customers on various financial products and also advised customers in relation to mortgage business. Millennium's business model included the use of employees called "account managers" whose job it was to visit customers in relation to mortgage business all round the country, take them through the sales process and ensure that the customers completed the product application forms. The account managers did not necessarily hold professional qualifications and were not approved by the FSA to give investment advice. Their role was to facilitate the completion of sales documentation to assist Mr Kuun and Mr Edgington who were approved by the FSA to give investment advice. Prior to October 2004 mortgage business was not regulated by the FSA and it would not have mattered had the account managers strayed into giving advice in relation to mortgages. The business model had the advantage that it increased the amount of business which a firm can do as the administrative tasks can be delegated to non approved persons whilst the advisers concentrate on giving investment advice.
9. On 29 to 31 July 2003 the FSA carried out a compliance visit at Millennium. The FSA noted as an area of concern the potential involvement of account managers in giving advice on regulated products as well as mortgages. The FSA recorded in a letter to Millennium that there was no evidence that account managers were giving such advice but warned of the risk of account managers becoming involved in giving advice. The letter warned Millennium that the FSA might investigate the matter further at a later date and that Millennium's clients might be contacted in the course of such review.
10. On 31 October 2004 mortgage business became regulated.
11. During the course of 2003, and subsequently through to late 2005, Mr Kuun took steps to gradually transfer the business of Millennium to MFP. On 15 January 2004 MFP was authorised by the FSA to carry on regulated business. MFP is wholly owned by Mr Kuun and he and Mr Edgington were its directors and the only approved persons at MFP exercising controlled functions.

12. In addition, on 26 March 2003, Mr Kuun caused a company to be incorporated in Nevis with the name MFP International Limited. It changed its name to Membership Services Limited (“MSL”) on 10 August 2005. It appears to have remained dormant until some time in 2005 when, according to Mr Kuun, it began to carry on business as described below. A contract apparently dated 25 May 2005 for the sale of the shares in MSL for £1 was purportedly entered into by Mr Kuun with a person called John Graham.
13. Between June 2004 and January 2005 the FSA received “tip offs” as to the use of account managers at Millennium albeit the tip offs were very unspecific. Accordingly it wrote to Millennium on 17 January 2005 notifying Millennium that it intended to carry out a supervisory visit on 3 and 4 March 2005. The letter stated that the FSA’s supervisors would wish to inspect the firm’s recruitment records for advisers or account managers (amongst other information).
14. On 28 February 2005 Mr Kuun responded to the letter of 17 January 2005 by email confirming that Millennium had not placed any new business since September 2004 and was currently applying for the removal of Part IV Permission. That permission was removed on 15 May 2005.
15. On 2 June 2005 an article was published in the FT Adviser to the effect that the FSA would be looking into a complaint by an ex employee of MFP to the effect that MFP employed unqualified personnel to give advice following their fact finding visits. The article came to Mr Kuun’s attention albeit his evidence was that he was unconcerned by it and was not concerned as to the possibility of an investigation by the FSA. There were also a few other unspecified allegations to the FSA by other ex employees in the period leading up to June 2005 to the effect that unqualified account managers were being used to give regulated advice. As the only approved persons at MFP were the same as at Millennium the FSA decided that it would be appropriate to visit MFP in case the practices of which they were concerned about at Millennium had been carried over to MFP and were being carried on by it.
16. In September 2005 MFP was warned of an impending visit by the FSA.
17. The article published on 2 June 2005 and the warning of an impending visit by the FSA appears to have caused some activity by Mr Kuun. On about 10 August 2005 Mr Kuun caused MSL’s name to be changed from MFP International Ltd to Membership Services Limited.
18. On about 12 September 2005 the account managers employed by Millennium were called to a meeting by Mr Kuun and told that they were being made redundant by Millennium but were offered employment with MSL as Senior Relationship Managers (“SRMs”). Their contract of employment with MSL was based on their previous contract with Millennium and the terms, including those relating to remuneration, remained the same. According to Mr Kuun in his evidence to the FSA and the Tribunal the role of an SRM differed from that of an account manager in that whereas an account manager had been responsible for completing a “fact find” with a potential customer, an SRM had a more limited role in that he assisted a customer in completing a questionnaire. The employment agreement with SRMs provided that MSL provided marketing services to MFP and that MSL’s business was the marketing of MFP’s

services to clients. The contracts provided that the SRMs would not provide investment advice to clients or procure financial contracts with clients. In essence the role of the SRMs was to procure sales leads for MSL to refer on to MFP and so to enable MSL to act as an introducer of business to MFP.

19. On 10 and 11 November 2005 two FSA supervisors namely Mr Jhugroo and Mr Brownhill visited MFP's offices and interviewed Mr Kuun and Mr Edgington. At the beginning of the meeting the supervisors explained that they were following up on the visit to Millennium on 29 July 2003 and that the FSA had received allegations concerning the use of account managers at Millennium and were concerned to establish whether account managers were being used at MFP as part of its business model, and if so, whether the concerns raised in relation to Millennium's use of account managers had been taken into account at MFP.
20. Mr Jhugroo's evidence was to the effect that Mr Kuun and Mr Edgington stated Millennium had ceased trading and MFP was trying to get Millennium's clients to transfer to MFP, that they saw all the clients personally and made no mention of any other individuals being involved in the sales process. Mr Jhugroo was challenged about this in cross examination and it was put to him that what Mr Kuun had said was that he or Mr Edgington advised all customers, and not that they saw them all. Mr Jhugroo was adamant that that was what he was told which is consistent with the supervisors' puzzlement as to the feasibility of the business model being described at the meeting. It is also consistent with the contemporaneous notes of the meeting made by the supervisors. Mr Kuun told them that following 31 October 2004 he had decided that the use of account managers would not fall within the FSA's regulatory regime and they had been dispensed with and one factor in dispensing with account managers had been the cost burden of account managers as account managers were remunerated by commission. The supervisors noted that MFP's clients lived all over England and were puzzled how two persons could deal with such a wide spread client base. Accordingly they asked Mr Kuun and Mr Edgington how they managed to see all their customers. Mr Kuun replied that they did not see all their customers and that some of the business was done through correspondence. He said that they employed administrators to deal with product research and preparing sales documentation which resulted in them being able to deal with a large number of customers. Mr Jhugroo was struck by the slight change in Mr Kuun's version of events during the course of the interview.
21. Mr Kuun also told them that MFP acquired its business by way of referrals from clients or from people who heard about MFP as a result of accessing the Money Club Limited's ("the Money Club") web site. The Money Club is, and was, apparently unrelated to Mr Kuun, operated a business of providing its members with information as to the source of various products including financial products. Mr Kuun also stated there were no persons acting as "formal introducers".
22. Mr Kuun was asked to provide a diary showing his and Mr Edgington's appointments with clients. He stated that no such diary was kept and that details of client meetings were kept on his and Mr Edgington's mobile phones and he would need an IT person to assist him in extracting any information from the mobile phones. That struck the supervisors as strange as it would mean that the administrators would not know of the movements of MFP's advisers in order to book appointments for them. The

supervisors were also shown a key facts document relating to MFP's fees structure which recorded MFP's charges as follows:

Principal/Director/Partner	£175-250 per hour
Principal Adviser	£150 – 200 per hour
Financial adviser	£150- 200 per hour
Administration	£45 per hour

That schedule was inconsistent with the description of a business model in which only Mr Kuun and Mr Edgington gave advice. Mr Kuun's explanation was that MFP's external compliance consultant had made a mistake in preparing the key facts document.

23. There was no mention at the meeting of the part played by MSL or the SRMs in obtaining introductions. Mr Kuun emphasised that account managers had been dispensed with due to the regulatory change and their cost.
24. On 18 November 2005 Mr Kuun arranged for MSL to obtain the domain name "membershipservices.org" and the email address admin@membershipservices.org. On 21 November 2005 he arranged for MSL to acquire a post box address (Number 6731) with British Monomarks and at about the same time arranged for MSL to acquire its own telephone number. That number rang in the offices of MFP and was answered on its behalf by employees of MFP. At this stage according to the evidence of Mr Kuun, MSL was owned and controlled by John Graham and Mr Kuun was acting under instructions from John Graham. No evidence was produced to the Tribunal of any instructions given by John Graham requesting for any of these activities to be performed (other than the evidence given by Mr Kuun).
25. In December 2005 and January 2006 MFP on behalf of MSL placed advertisements for SRMs with Jobcentre Plus. The advertisements invited interested persons to call Gemma Landucci on MSL's telephone number which was connected to the telephones in MFP's offices. Again no evidence (other than that given by Mr Kuun) was produced to the Tribunal of any instructions given by John Graham requesting for any of these activities to be performed.
26. On 7 February 2006 Miss Landucci on the instructions of Mr Kuun sent an email to the SRMs to ensure that they gave MSL's phone number to their clients and stated that "all calls that come through on the MFP line asking for a SRM will be told there is no one here by that name".
27. On 14 February 2006 MSL borrowed approximately £300,000 from National Westminster Bank PLC ("Natwest") to acquire a building which it rented to MFP for its offices. MFP guaranteed repayment of £100,000 of the loan supported by a debenture over its assets. Mr Kuun signed the loan agreement on behalf of MSL. Again no evidence (other than the evidence of Mr Kuun) was produced to the Tribunal of any instructions given by John Graham requesting for any of these activities to be performed or any evidence discussing the terms on which the building was to be purchased.

28. On 21 February 2006 Miss Landucci sent an email on MSL's email address to a Mr Dudley offering his employment as a SRM with MSL.
29. The supervisors were not satisfied with the explanations given to them as to MFP's business model as it was inconsistent with certain information which they had obtained during the course of the visit. These matters included the relatively large volume of concluded transactions per month, different hand writing in the files, the different fee scale referred to above, the failure of MFP to produce a central diary and the perceived reluctance of Mr Kuun to access his telephone diary.
30. Following the 10 and 11 November 2005 meeting the FSA wrote to Mr Kuun on 21 February 2006 at MFP seeking additional information including an organisational chart showing all of MFP's staff (and any external contractors or agents used by MFP) and their responsibilities. The FSA sought written confirmation that only Mr Kuun or Mr Edgington gave investment or mortgage advice to clients and written details of MFP's arrangements for recording details of appointments with clients.
31. By letter dated 1 March 2006 Mr Kuun supplied certain of the information requested. He enclosed audited accounts, an organisational chart, and confirmed that "[MFP] does not employ unapproved persons under section 60 of the [Act] to give investment or mortgage advice to its clients. This advice is given by either me or Brian Edgington". He also stated that MFP had no formal process of recording client appointments "but use personal diaries where necessary".
32. The organisational chart enclosed headed "MFP Group Plc employment structure 2006" showed three companies. The two companies other than MFP were said to be dormant. Under MFP was a box containing the names of Mr Kuun and Mr Edgington, Carole Kuun as secretary and nine persons said to be administrative staff of which Miss Landucci was described as the supervisor. There was no reference to Millennium or MSL.
33. On 13 March 2006 Mr Kuun opened a business current account with Natwest in the name of MSL. In the account opening forms Mr Kuun was described as the CEO and his position with MSL was described as being that of director. He was also the sole authorised signatory on the authorised signatures sheet where he was also described as being MSL's CEO. On the Natwest Autopay application form Mr Kuun was described as the primary contact and he signed the application form. From the beginning MSL's account was credited with monies from an account entitled "Kuun SJG T/A Millennium"; loan interest due to Natwest, and after a period, monies due to SRMs were debited from MSL's account. It was contended on behalf of Mr Kuun that the account called "Kuun SJGT T/A Millennium" was not his personal account but that of Millennium; not much turns on whether that was or was not the case. However the account was plainly in Mr Kuun's name albeit it contained the expression "T/A Millennium" and monies continued to be credited to MSL's account from that account throughout 2008 after Millennium had been dissolved. No evidence was produced to the Tribunal of any instructions given by John Graham (other than oral evidence from Mr Kuun) requesting for any of these activities to be performed or any evidence discussing the terms on which the bank account of MSL should be operated.

34. At about the same time on 18 March 2006 MFP's memorandum of association was amended to include as one of its objects the promotion of the interests of MSL or any of its subsidiaries.
35. The FSA was concerned as to the information supplied during the course of the meeting held in November 2005. The accounts made up to 31 March 2005 recorded figures of £99,125 in respect of staff training costs and which exceeded the cost of staff salaries; the supervisors had been told there was no need for staff training at the meeting held on 10 November 2005 and the accounts only recorded £1,018 in relation to costs of travel which appeared low for a company with clients throughout England. The failure to produce a diary remained a cause of concern. In addition in February 2006 the FSA had received information that Mr Kuun had been recruiting staff for MSL.
36. On 27 March 2006 the FSA wrote to Mr Kuun stating that they had received information which suggested that MFP was employing or had used the services of persons who were not approved by the FSA under section 60 of the Act to give investment advice to MFP's clients and that there was evidence that MFP had given advice to customers in respect of regulated mortgage contracts through individuals who have not met the relevant requirements in respect of regulated mortgage contracts set out in Chapter 4 of the Part of the FSA handbook entitled "Mortgages: Conduct of Businesses". The letter reminded MFP as to its duties under the Principles for Business in particular Principles 1, 3, 6 and 9. The letter informed MFP that the matter was being sent to the FSA's Enforcement Division.
37. Mr Kuun replied on 28 March 2006. He expressed his shock at the FSA's actions and wrote:
- During your visit I explained to you, without prompt, that we had radically changed our operational system post full product regulation. I explained we had previously employed a team of "Account Managers" who were partly involved in the sale of non-regulated products and mortgages but since the changes had come into effect we no longer felt it viable from a regulatory and compliance point of view, to continue in this way. I said that [MFP] no longer employed any such individuals and I stand by that today. Mr Edgington and I personally give advice to each client we transact business with. We are supported by a team of office based administrators who are not involved in giving advice to clients.
- . . . The dissolution of the systems was an internal Company decision made for the reasons stated above which I believe demonstrates we are taking full and complete responsibility in complying with both existing and new FSA regulations . . .
- Above all, both Mr Edgington and I act with honesty and integrity and always have done a fact that would be supported by any of our clients, colleagues or friends".
38. On 11 April 2006 formal notice of the investigation and the appointment of the investigators was sent to Mr Kuun and Mr Edgington at MFP.
39. On 8 May 2006 Mr Kuun emailed Natwest to the effect that correspondence relating to MSL's Autopay account should be addressed to him at his home address. No evidence

was produced to the Tribunal of any instructions given by John Graham requesting that the postal address should be altered to Mr Kuun's home address.

40. On 8 June 2006 the FSA wrote to MFP requesting that MFP supply information including a list of clients to whom MFP had provided investment advice or in relation to regulated mortgage contracts since 31 October 2006 and in relation to each client the name and addresses and telephone numbers of the person who had visited the clients. Further the FSA sought all information and documentation relating to the recruitment of MFP's staff, including that relating to any contractors and any other individuals working on behalf of MFP or through the assistance of any third party acting on behalf of MFP. The FSA also wanted details of any bank accounts held in the name of MFP or operated or controlled by MFP.
41. On 21 June 2006 Mr Fatchett, a solicitor, who acted for Mr Kuun and MFP, wrote to the FSA seeking clarification as to the information sought. He proposed that MFP supply a list of clients and the FSA could then select a number in relation to which it sought further information. In relation to the persons who had visited clients Mr Fatchett sought confirmation that that related to MFP only. On 22 June 2006 the FSA replied that in the absence of a list of all clients, MFP should confirm whether individuals who visited clients were not from MFP.
42. By an email sent on 26 June 2006 Mr Fatchett wrote in relation to the request to identify the persons who had visited clients:

“3 This request . . . is more difficult to follow because not all the individuals involved had any contractual or other link to [MFP] and so records may not be available. The circumstances of the arrangements between MFP, Money Club and [MSL] have varied over time. The FSA was made aware of the processes at two previous audits, at the last of which they interviewed two Account Managers.

In the past MFP did employ Account Managers to visit clients of Money Club, a separate entity. These Account Managers did collect information but could not advise on or arrange investments; this could only be done by Simon Kuun and Brian Edgington. Since full regulation (i.e., including mortgage regulation) the visits to Money Club members have only been made by employees of [MSL], and so MFP does not hold separate record of these staff or their visits. It is only where the investments were subsequently sold by Mr Kuun and Mr Edgington that records may be available of the person involved. And this would entail the time consuming process of checking individual files . . . My clients want to explain the full methodology of their work when we attend on the 14 July.

4. Our client has not utilised external recruitment businesses in relation to staff. Advertisements for (sales) staff are placed by MSL. And not MFP, although MFP may have been involved in interviewing and training staff on procedures with regard to generic advice. . .”

...

43. This was the first occasion upon which the involvement of MSL in the sales process had been mentioned to the FSA and was inconsistent with the new business model described by Mr Kuun at the November 2005 meeting. The references to the processes being explained at the last two previous audits was also puzzling as there had been no mention of MSL and the FSA supervisors were told at the November 2005 meetings that the use of account managers had been terminated.
44. Some time after 21 June 2006 but, it was suggested on behalf of Mr Kuun, shortly before or at the meeting of 14 July 2006, a second flow chart entitled “MFP Group PLC business flow at 05/06/06” was sent to the FSA. On the left hand side the chart shows MFP and the two dormant companies. MFP was described as providing investment protection and loans/mortgages to Money Club members and other individuals and companies. It was described as having an introducer agreement with “Millennium and Money Club” who were said to supply leads.
45. On the right hand side in a column entitled non group companies it recorded Money Club which was described as a non connected non regulated company providing a subscription based service to clients anxious to make the most of their money by getting impartial advice. Under it was a reference to MSL described as a non connected non regulated company that provides generic financial advice to Money Club members. It stated that it did not advise on specific products or services but would refer on where necessary. In addition it was described as providing leads to Millennium for commission on subsequent third party sales and help with training and recruitment. At the bottom on the right hand side Millennium was described as connected (by directors), and as being a non regulated introducer that provided marketing services including sales leads to MFP via MSL and Money Club. It stated that it provided leads to MFP in exchange for commission. Millennium was described as becoming deregulated in 2004 and that it would become dormant by the end of 2006. In fact Millennium became deregulated on 17 May 2005.
46. On 14 July 2006 the FSA (whose team included Mr Walmsley) met with Mr Kuun and his advisers, Mr Fatchett and Mr Dexter Perrott of Financial Services Legal. Mr Walmsley gave evidence to the effect that he thought the second chart referred to above was sent after the meeting but thought it might have been available at the meeting.
47. Mr Walmsley opened the meeting by saying that the FSA had obtained information suggesting that MFP was using account managers despite the fact that the directors had informed the FSA that they had discontinued the practice. At the meeting Mr Fatchett tried to explain the discrepancy between the information previously supplied by MFP by suggesting that the previous responses had been a literal response. He said that the account managers, or SRMs were employed by a firm, MSL, over which MFP had no control; account managers had been used by MFP until shortly before the visit in September 2005. He then said that MSL in effect acted as an introducer of business to MFP and obtained most of its contacts from subscribers of the Money Club. MFP trained the SRMs at regular weekly meetings and provided a script for them to use when meeting potential clients.

48. At the meeting Mr Kuun emphasised that he was not personally involved in any functions carried on by MSL and could not control the employees of MSL. He emphasised also that only he and Mr Edgington gave advice to clients of MFP.
49. Mr Fatchett then said that Mr Kuun and Mr Edgington could provide undertakings to the effect that they were not connected to MSL. At the meeting Mr Fatchett said that MFP would provide further information to the FSA including a document detailing the structure of the relationship between MSL and MFP. We have not seen any other document other than the second organisation structure referred to above which could fall within Mr Fatchett's description which leads us to conclude that the second organisation chart was probably produced after the meeting of 14 July 2006.
50. By an email sent on 3 August 2006 Mr Fatchett purported to supply some of the information which Mr Kuun had agreed to supply to the FSA. In his email he stated that MSL was not under the "ownership or directorship" of his clients and that his clients could not interfere with the "workings" of MSL. He also added that his clients believed their initial response had been in accordance with "Principle 11" of Principles for Businesses. On 10 August 2006 the FSA chased Mr Fatchett for the balance of the information he had offered to supply at the 14 July 2006 meeting including a document detailing the structure of the relationship between MFP and MSL, an explanation of how MSL made referrals to MFP, and an account of how MFP ensured that MSL merely introduced clients but stopped short of giving advice. The FSA noted that Mr Fatchett had not addressed a number of points and emphasised the necessity for the FSA to have the information it was seeking.
51. On 1 September 2006 Mr Fatchett forwarded an email from Mr Kuun which stated that MSL did not have a formal agreement with MFP but enclosed an agreement between MSL and Money Club. The agreement between MSL and the Money Club purported to be dated 1 January 2005. We say more about this agreement below.
52. On 15 September 2006 the FSA issued a "compelled information" request relating to the names and addresses of clients referred by MSL since the relationship between MSL and MFP began. On 22 September 2006 Mr Fatchett emailed the FSA to clarify the relationship between MSL and MFP. He wrote that MSL did not have a direct relationship with MFP but provided generic advice in relation to a wide range of matters to Money Club members. He added "those that express an interest in financial service issues are referred". On 28 September 2006 the FSA stated that MSL appeared to be introducing clients to MFP within the terms of the Act. The letter repeated the request for the information already requested to be supplied. The tone of the letter suggested that the FSA was tiring of the prevarication over the supply of information.
53. Mr Fatchett purported to supply the information on 6 October 2006. The information did not comply with the request.
54. On 17 October 2006 the FSA appointed investigators into MSL and on 18 October 2006 required Mr Kuun to meet with the investigators to answer questions pursuant to section 171 (1) and 172 (1) of the Act on 3 November 2006. The letter notifying Mr Kuun

stated that the purpose of the interview was to seek information about MFP, its sales process and Mr Kuun's understanding of the use of account managers. During the course of the interview Mr Kuun stated that:

- 54.1. Millennium stopped trading towards the end of 2004 or early 2005;
- 54.2. Money Club members would be told of the existence of MFP as a result of information contained in the Money Club information pack and would contact MFP;
- 54.3. Money Club had an agreement with Millennium to introduce its members to Millennium and Millennium had an agreement with MSL to provide persons to have a generic chat to potential clients relating to a number of matters such as travel or purchasing articles; if it was a financial product the client would be referred to MFP; the agreements were not set up with MFP because "it was just set up that way";
- 54.4. When Millennium first formed a relationship with MSL, "they", i.e., MSL did not have a presence in the UK. "They" wanted to have a presence in the UK. MSL provides customer services to various companies throughout the world and "we" i.e., Millennium, formed a relationship with "them" i.e., MSL;
- 54.5. MSL was run by a John Graham, whom Mr Kuun met in Spain "at the beginning of 2005-ish" who wanted to run a business providing the type of services which MSL provided; Mr Kuun said that if required he could provide contact details for John Graham; MFP did not get involved with MSL at all and Millennium's involvement with it was confined to the recruitment and training of SRMs. Mr Kuun said he had no relationship with MSL and there was no regular contract between Mr Kuun and John Graham. He and John Graham would have occasional conversations when he rang Mr Kuun to see how things were going on. MSL had an office in London and Mr Kuun had never been to their office and never had any reason to do so. When he wanted to contact John Graham he did so by telephone;
- 54.6. MSL paid the SRMs directly without any involvement of Millennium or MFP;
- 54.7. When MSL approached "us" they had limited experience within the UK market;
- 54.8. Mr Kuun did not set up MSL; he set up the relationship with MSL who wanted to form a presence in the UK;
- 54.9. In mid 2005 during the course of a restructuring of the way Millennium operated, Millennium made the account managers redundant at the time MFP started to operate as it was uneconomic to continue to employ them;
- 54.10. On making the account managers redundant there were no arrangements in place to employ them elsewhere but certain of the account managers previously employed by Millennium, four or five of them, went to work with MSL as SRMs but Mr Kuun could not remember which ones;
- 54.11. MFP trained MSL's SRMs and this was paid for by a reduced rate of commission paid in the agreement between Millennium and MSL; MFP trained the SRMs because one of MFP's concerns in relation to MSL was that it should perform its function in the UK in a way which did not contravene the Act or regulations made thereunder;
- 54.12. MSL paid the SRMs;
- 54.13. MSL provided Millennium with a script for the SRMs which Millennium worked with in order to train the SRMs; the script was intended to prevent a breach of regulation and to assist the SRM in completing a questionnaire with the potential customer; the SRMs did not complete fact finds; Millennium's involvement with the

SRMs was confined to recruiting the SRMs for MSL and training them; MSL itself placed the advertisements for SRM and Millennium would then assist in the selection of suitable SRMs;

54.14. MSL decided they would call their employees SRMs and were deflected from calling them account managers by Millennium.

55. In the course of the interview Mr Kuun was shown certain documents which he was unaware were in the possession of the FSA. The documents included:

55.1. An email from Miss Landucci using the email address of MSL, i.e., admin@membershipservices.org, dated 21 February 2006 offering employment to a person as an SRM and on which Mr Edgington's signature had been placed; Mr Kuun's explanation was that the use of the MSL email address was obviously an administrative mistake but he could not offer an explanation as to why or how she could send an email on MSL's email address and that Millennium or MFP had been very clear that there was to be no contact between MSL and Millennium or MFP;

55.2. A document from Bromsgrove District Council which showed that the ratepayer for MFP's offices at Unit 16, The Courtyard, Buntsford Gate, Buntsford Hill, Bromsgrove was MSL. Mr Kuun explained that MFP rented its office from MSL. In response to a question from one of the investigators as to whether he wanted to say anything else about the relationship between MSL and MFP he said there was not;

55.3. A compliments slip from MSL with a BM Box address as 6731 London and a telephone number and the email address referred to above. Mr Kuun confirmed that the address was MSL's postal address. Mr Kuun admitted that he had helped set up the postal address and was the subscriber for the box number. He then was questioned as to the whether he received the post. Eventually he agreed that he did receive MSL's post but did not open it. Subsequently he agreed that post relating to recruitment was opened at MFP's offices but everything else was forwarded to MSL's address in Nevis. He also admitted that the telephone at the number on the compliments slip was subscribed for by MFP and that MFP personnel answered the phone when it rang at the number. He also admitted that MFP had helped MSL set up a bank account;

55.4. Mr Kuun was asked whether he wanted to reveal any other matters which Millennium or MFP did for MSL he did not volunteer any information but admitted that there was a tenancy agreement between MFP and MSL. However he still insisted that the relationship was essentially based on recruitment and training of SRMs.

55.5. Mr Kuun then admitted that MFP helped MSL acquire the property which MFP rented but continued to emphasise that MFP could not control the SRMs because they worked for MSL and not MFP;

55.6. The interviewers then referred to Mr Fatchett's statement at the interview on 14 July 2006 that Mr Kuun and Mr Edgington could provide undertakings that they were not related to MSL. Mr Kuun then admitted that he had helped set up MSL's web site and email address and that MFP or he had carried out virtually all actions which MSL needed to carry out in the UK. However he said he was not aware whether he or MFP had paid for the email address or the internet site but admitted that it was possible that he had. He then admitted that Miss Landucci could send out emails on MSL's email address albeit he tried to describe the process as forwarding emails;

- 55.7. In relation to his statement at the 14 July 2006 meeting that he could not provide a list of SRMs as he did not know who they were he denied making that statement, but said MFP did not maintain a list of the names of SRMs;
- 55.8. When asked for communications between Millennium and MSL he said that the investigators could have them but that he could not say what form they took and did not know if they took the form of emails;
- 55.9. Towards the end of the interview Mr Kuun was asked again whether he was a director of MSL and denied being one and in response to the question whether he had helped to create MSL he responded, as he had done before, that he had helped to create MSL's presence in the UK. In response to the question why MSL was based off shore he replied that it would be because John Graham lived off shore. These answers were given after the investigators had reminded him of his duty to cooperate with the Authority.
56. On 7 November 2006 the Authority served a further document request seeking production of all correspondence and communications between MFP and any of MSL, Millennium and the Money Club.
57. On 24 November 2006 Mr Perrott wrote to the Authority to the effect that MFP did not have a list of the SRMs and providing an address for John Graham of Kirchgasse 4, 8001, Zurich, Switzerland.
58. On 8 May 2007 the investigators held a second interview with Mr Kuun. Mr Kuun was asked if he wished to add anything to the information he had supplied in the course of the first interview held on 3 November 2006 relating to MSL and his relationship with them. He replied in the negative. In relation to MSL he reiterated that he had met John Graham in January 2005, that he was not a director of MSL and that the only role he had had in relation to MSL's business had been that previously described which related to recruitment and training and helping MSL set up in the UK. He denied that he controlled the day to day affairs of MSL, stated that he was not John Graham and that the fact that his middle names were John Graham was just a coincidence. He also repeated that MFP did not maintain a diary of visits made by the SRMs despite contrary evidence from other employees of MFP such as Miss Landucci being put to him. He did say that MSL might have kept a diary but could not say where it was kept or whether John Graham kept it in Nevis or Switzerland. In response to being shown a document entitled "The Daily Stats Analysis Membership Services Limited" which recorded details of visits by SRMs to clients and which was emailed to MSL's email address (which was received by MFP) he stated that he did not know if the information was received by him, i.e., Mr Kuun, but in any event it was statistical information, and not a diary management system and denied knowing what happened to the information. It was put to him that Miss Laducci was clear that it was perfectly possible to compile a list of clients visited which would also identify the particular SRM who had carried out the visit from the computer records. Mr Kuun replied that Miss Landucci was mistaken in suggesting that such a list could be kept.
59. In the course of the interview on 8 May 2007 interview various documents were put to Mr Kuun which he was unaware were in the possession of the investigators:
- 59.1. A notice of an EGM of MFP to be held on 13 March 2006 for the purpose of passing a special resolution to alter its memorandum of association to the effect that

MFP had power to promote the interests of MSL and to give a guarantee in support of MSL or any of its subsidiaries' liabilities. Mr Kuun affected not to understand the document but then indicated that it had been given in relation to the arrangements concerning the acquisition of the building MFP rented from MSL;

- 59.2. A Natwest Business Current Account New Account Opening Form B for an account to be opened by MSL on which Mr Kuun was described as the CEO of MSL, in which a requirement was stated that the monthly statements be sent to Mr Kuun marked "private and confidential" and in which Mr Kuun described himself as a director and an authorised signature sheet on which Mr Kuun appeared as the only authorised signatory and was also described as a director. Mr Kuun's response to the production of the document was to say he did not know why he had signed it as a director, that he had not completed the form but only signed it. Later in the interview he said that he was not described as "CEO" but "CED" which stood for Corporate Executive Designate. He admitted that the monthly statements were sent to him as was the cheque book. He also admitted that he was the only person with control over MSL's bank account and that it was beneficial for MSL for him to be authorised to effect payments on behalf of MSL;
- 59.3. An Amendment/Replacement Mandate Processing Form in which Natwest was authorised to accept instructions from Mr Kuun and which purported to be signed by TOC Nominees Limited on behalf of MSL. In response to the production of that document Mr Kuun reiterated that he had set up the bank account but did not know how many authorised signatories there were and that he did not know what was happening with the account at the time of the interview;
- 59.4. In response to a question as to the extent of his dealings with TOC Nominees Limited he replied that they were the signatories for MSL and so signed various documents in relation to MSL's mortgage "bits and pieces";
- 59.5. He was then shown a document dated 26 May 2006 signed by him and addressed to Natwest in which he asked for all communications from Natwest in relation to MSL's account to be addressed to him. When challenged as to whether continuing to receive correspondence from the bank in relation to MSL's bank account went beyond merely setting up the account Mr Kuun responded that that was part of establishing MSL's presence in the UK. He then went on to say that John Graham operated the account electronically and that he had given him the passwords to do so.
- 59.6. In relation to how he received instructions as to the operation of the bank account, he said that John Graham spoke to him "once, twice a month a few times a month, something like that" and that John Graham would telephone him from his mobile. This of course was inconsistent with his previous answers during the course of the interview held on 3 November 2006 as to the frequency of contact with John Graham referred to above;
- 59.7. In response to the production of a certificate from the Island of Nevis Office of the Registrar of Companies certifying a change of name on 19 August 2005 for MSL from MFP International Limited to Membership Services Limited and the request for an explanation for the name change, Mr Kuun admitted that he had caused MSL to be set up in about 2003 but that MSL had never traded and so when he met John Graham who wanted to establish a business in the UK it had seemed sensible to sell MSL to him and John Graham had changed its name to MSL. This revelation occurred at the end of the second interview. In the course of the interview held on 14 July 2005 Mr Kuun had allowed Mr Fatchett to talk about the reason that MSL might have been set up in Nevis on the basis that he had no direct knowledge

and was speculating without revealing that he had set up MSL in Nevis. Mr Kuun could not provide a sensible explanation as to why he had not revealed the fact that he had set up MSL and sold it to John Graham during the course of earlier interviews;

- 59.8. Mr Kuun was then shown a document dated 17 April 2007 from Octopus International Business Services Ltd which stated that Mr Kuun had given the instructions to change the name of the Nevis company from MFP International Limited to MSL. That was of course inconsistent with the answer given by him in the interview to the effect that John Graham had changed the name of MSL.
60. In the light of Mr Kuun's answers to the Authority during the course of its investigations the Authority concluded that Mr Kuun had failed to disclose relevant information and that he had provided inaccurate and in some instances misleading answers to the FSA, in particular relating to his involvement with MSL and was not a fit and proper person for the reasons set out in the Decision Notices dated 2 October 2008. Accordingly the FSA decided to make a Prohibition Order against Mr Kuun and withdraw his approval. In relation to MFP the Authority concluded that as Mr Kuun was connected to, controlled, and was a director of MFP, it did not satisfy Threshold Condition 5 as being a fit and proper person.

Mr Kuun's evidence

61. In his witness statement for the hearing of his reference Mr Kuun denied that he had failed to disclose relevant information or provided inaccurate and misleading information to the FSA in relation to MSL. He stated that he had explained that MFP was instrumental in helping MSL with its recruitment and its training and that he had fully explained all of the interaction between sales, commissions and clients. He also said it was true that MFP had no control over MSL's staff and that MFP was legally separate from MSL. He said "neither I nor MFP owned or were directors of MSL and never had been. It is true that neither I nor MFP could interfere in the workings of MSL. The FSA allege and I deny that I set up MSL. I further confirm that MSL was set up, with my full assistance by Mr John Graham a gentleman I met whilst in Spain". He also denied that he had held himself out as a director or executive officer of MSL. He also denied that he was John Graham. He also denied that he gave inaccurate or misleading information during the compelled interviews in November 2006 or May 2007. He denied that he had acted with a lack of integrity. Essentially the statement denied any wrong doing.
62. We note that Mr Kuun had already admitted to the FSA in the course of the May 2007 compelled interview that he had arranged for MSL to be incorporated when presented with documents from the Registrar of Companies in Nevis.
63. One of the main areas where Mr Kuun was said to have misled the FSA was over the ownership of MSL. Mr Kuun said in evidence that he had agreed to sell MSL to John Graham in December 2004 and that as MSL had not traded it was a mere formality to transfer the company to John Graham. In the interviews with the FSA he had said that he had met John Graham in January 2005. His evidence was that Millennium and MFP wanted to change the business model in early 2005 to take into account the change in regulation affecting mortgage business. It is clear from the evidence that Millennium continued to employ some account managers until at least September 2005 others were

transferred to MFP earlier in 2005, and MFP also recruited some additional account managers. MSL did not begin to employ SRMs until 12 September 2005 when Millennium and MFP requested the account managers to resign their respective employments and they were offered contracts with MSL as SRMs. From then on MSL traded. In the period until 13 March 2006 when MSL opened its own bank account, the SRMs were paid by Mr Kuun from an account called Kuun SJG T/A Millennium, just as before. There was no change in the terms of employment and they continued to enjoy the same level of commissions and sales conferences in Spain and the Caribbean as before. The only difference which Mr Kuun could point to was that the SRMs filled in or assisted a potential client to fill in a questionnaire whereas previously an account manager had completed a “fact find”.

64. A document which purported to be a contract of sale for the shares of MSL was produced. The contract was dated 25 May 2005. In the course of his interviews with the FSA Mr Kuun originally emphasised that all he or Millennium or MFP had done for MSL was to assist in the training and recruiting of SRMs. That then turned into a suggestion that what Mr Kuun or his companies had done was to assist MSL in establishing a presence in the UK. Amongst the matters which Mr Kuun did for MSL was to arrange for regular commission payments to the SRMs, to arrange for a post box to be opened, a web site and email address to be acquired and a telephone number subscribed for. All communications for MSL whether by post, email or telephone, were effected by or through Mr Kuun or staff at MFP; Mr Kuun arranged the change of name of MSL, he arranged for the purchase of the property acquired by MSL, the finance for the purchase with the benefit of a guarantee from MFP. No evidence (other than oral evidence of Mr Kuun) was produced to the Tribunal of any instructions given by John Graham requesting for any of these activities to be performed. Payments out of the MSL bank account were also arranged by Mr Kuun who was the sole authorised signatory. Mr Kuun suggested that John Graham accessed the bank accounts electronically in order to arrange payments to the SRMs. We reject that evidence. Any such activity would have required frequent and regular communication with John Graham to enable him to know what amounts to pay to an SRM. No such evidence was proffered. On the contrary Mr Kuun’s evidence was that communication with John Graham was irregular and infrequent. Mr Kuun could not even produce an email from John Graham on the grounds that he said his email system did not retain incoming emails and he did not produce an email address for John Graham. No telephone bills were produced showing calls to or for John Graham and, apparently John Graham never once visited the building MSL owned or met a single employee. Not a single communication from John Graham to any person was produced. The evidence of Miss Landucci was that MSL was run by Mr Kuun and Mr Edgington in just the same way as they ran Millennium and MFP. We accept that evidence.
65. The FSA contended that John Graham did not exist and that Mr Kuun’s description of meeting him in Spain, first it was said in January 2005, subsequently, in late December 2004, selling MSL to him and then helping John Graham set up MSL in business in the UK was a pure fabrication by Mr Kuun in order to try to distance himself from the activities of MSL in supplying SRMs in case the SRMs strayed into providing services which could only be provided by authorised or regulated persons.

66. Mr Kuun described how whilst on holiday in Spain in December 2004 he had met John Graham for the first time and had two meetings with him. In cross examination he said that he had had a few meetings. The meetings, he said lasted between two to three hours each. At the end of these meetings John Graham had in effect agreed to acquire a company which would employ non regulated SRMs and supply their services to Millennium or MFP. Mr Kuun said he carried out no due diligence into John Graham or his background. No documents were signed at the time. However shortly afterwards according to Mr Kuun, John Graham signed an agreement on behalf of MSL and Millennium dated 3 January 2005 on behalf of MSL. In that agreement MSL used the name Membership Services Limited (which it acquired on 10 August 2005 some 8 months later) and Millennium was described as not being authorised or regulated by the FSA. Its authority ceased on 17 May 2005 (some five months after the purported date of the agreement). The agreement was an agreement whereby MSL agreed to introduce leads to Millennium for a commission of up to 30 per cent of any amount received by Millennium from any third party. When questioned about the use of the company name MSL, Mr Kuun explained the use of the name was on the basis that he and John Graham envisaged the change of name which was to occur in the future and so the agreement bore the name MSL being the future name rather than its actual name of MFP International Ltd. He also said that John Graham had signed the agreement on behalf of MSL which, even on Mr Kuun's evidence, was only sold to John Graham in May 2005, five months after the date of the agreement. We are unable to accept that the agreement could have been entered into in January 2005 as the name used by MSL in the agreement had not been acquired by it at that time and John Graham had not purchased MSL by that date and so could not sign on behalf of MSL.
67. Mr Kuun was also asked about an agreement in the form of a letter and made between MSL and Money Club. That agreement bore the date 1 January 2005. Mr Kuun said that he had received a copy of it from Money Club in August 2006 in order to supply it to the FSA. In the agreement, MSL using the name adopted on 10 August 2005, agreed to supply the services of SRMs and agreed that its SRMs would contact Money Club to ascertain what services it required. MSL was to receive a fee in relation to sales generated by the SRMs. The letter agreement also bore at the top the box number, phone number, and email address all acquired by Mr Kuun for MSL eleven months after the date of the agreement. As noted above, Mr Kuun also agreed that MSL had not carried out any business prior to 12 September 2005. Mr Kuun's explanation for the appearance of the box number, phone number and email address on the letter was that they had somehow been transposed onto the agreement in the course of an email transmission. We are unable to accept that explanation. The agreement bearing the date 1 January 2005 had obviously been back dated. Mr Kuun's explanation that John Graham had written to Money Club directly agreeing to provide services in January 2005 signing on behalf of a company he did not yet legally own and in the name of a company that it did not bear until 8 months later was untrue and absurd.
68. The agreement supposedly dated 25 May 2005 for the sale of MSL to John Graham bore an address at Kirchgasse 44, Zurich, (and not Kirchgasse 4 which was John Graham's address according to Mr Kuun) and was sent to him by Mr Kuun for signature. Mr Kuun said the agreement was returned duly signed by John Graham. Mr Walmsley's evidence was that inquiries revealed that John Graham was not known at Kirchgasse 4 or 44. We do not accept Mr Kuun's suggestion that he might have

emailed the contract to him as Mr Kuun failed to provide any evidence that John Graham had an email address.

69. During the course of his cross examination Mr Kuun reluctantly admitted that he had given certain misleading answers to the FSA or not been open to them. Thus in the course of his cross examination he admitted that:

- 69.1. at the interview held in November 2005 he had not explained that SRMs were used through the medium of MSL, albeit he contended that the SRMs did not form part of MFP's sales process and that he had misled the FSA by stating that MFP had no arrangements to pay a person as an introducer because there was an agreement for Millennium to be an introducer;
- 69.2. he had not told the FSA that he had paid for the MSL's post box;
- 69.3. it would have been more open with the FSA to inform them that account managers had been employed until 12 September 2005;
- 69.4. he should have explained that the account managers had been replaced by SRMs and explained their role at the meeting held in November 2005;
- 69.5. the SRMs were paid on the same basis as the account managers with the same rewards by way of sales conventions which took place around skiing or sailing trips;
- 69.6. It was wrong not to reveal the existence of MSL in the February and March 2006 correspondence;
- 69.7. the first organisational chart was misleading;
- 69.8. He did know the names of all the SRMs because either they had transferred from being account managers to SRMs or he had recruited them;
- 69.9. The letter sent on 28 March 2006 was misleading
- 69.10. He should have revealed more about his involvement in MSL's affairs during the course of the meeting held on 14 July 2006, and that the statement made at that meeting that he was not personally involved with MSL was misleading, albeit the admission was made very grudgingly;
- 69.11. At the 3 November 2006 meeting he misled the FSA when he said he had not set up MSL and had a very limited involvement in its affairs and he misled them when he said that he had not paid the SRMs;
- 69.12. At the meeting held on 8 May 2007 he should have said that MFP did keep a diary; He also misled the FSA at that meeting by stating that he did not know whether he received a copy of a document, produced daily, entitled "the Daily Stats Analysis Membership Services Limited" sent to MSL at its email address, and that the suggestion that he did not know how the information was dealt with was false,
- 69.13. That in certain respects he could have been more candid with the FSA.

However the admissions were made grudgingly and often in a qualified form with an attempt to justify the original answer.

70. The Tribunal also notes that Mr Kuun's description of his involvement with John Graham changed over time. Initially he told the FSA he had met John Graham in January 2005. In the course of his evidence that time was moved back to December 2004 and the meeting was described as brief. Subsequently the meetings were described as taking rather longer and being of the nature to lead to fairly detailed agreements being agreed in principle, apparently of such detail that the name Membership Services Limited was agreed prior to January 2005. He also stated that no

one else at MFP had corresponded with John Graham but subsequently stated that some of the SRMs must have done so. He stated at one stage that the scripts drafted for the SRMs had been drafted in September 2005 only to say later that they had been drafted in January 2005 and at one stage appeared to suggest that John Graham drafted the scripts and at another stage said that MFP had done so. There was a similar conflict in his evidence over who drafted the employment contracts for SRMs which were obviously based on those used by Millennium or MFP. Similarly at one stage he denied knowing the identity of the SRMs and that there was no list of the SRMs. At the same time he admitted recruiting them and, in certain cases, paying them commission.

Mr Edgington's evidence

71. The Tribunal also heard evidence from Mr Edgington a director of MFP. He did not claim to have had any personal dealings with John Graham having left all such dealings to Mr Kuun and we did not derive much benefit from his evidence in chief which appeared to support Mr Kuun's position but only by way of indirect evidence relying upon evidence from Mr Kuun. This for example, Mr Edgington stated that "we sold MSL for £1 to Mr Graham on 25 May 2005". He had no personal knowledge of such sale and had never met John Graham. He appears to have been misled by Mr Kuun; despite hearing Mr Kuun being cross examined he affirmed his confidence in him.

Mr Walmsley's evidence

72. Mr Walmsley gave evidence, amongst other matters, to the effect that the FSA had contacted the Swiss Authorities namely the Swiss Federal Banking Commission, later the Swiss Financial Market Supervisory Authority, who reported that they could find no address for MSL in Switzerland and that John Graham was not known at either address supplied by Mr Kuun as being an address for Mr Kuun. One address was that of a hotel who had no record of a John Graham staying there and the other was a residential address at which John Graham was also not known.

The evidence of Martin McDonald and Lynne Snipe

73. Miss Snipe stated in her witness statement that the MSL account opening forms were complete by her or her assistant on the basis of information supplied by Mr Kuun. She filled in the position held by Mr Kuun as "CEO" because that is what she understood Mr Kuun's position to be. Furthermore Mr Kuun signed the authorised signatories form stating that his position with MSL was "CEO". Her assistant had written on the account opening form that Mr Kuun was a director of MSL but did so on the basis of information supplied by Mr Kuun. Mr McDonald's evidence was to similar effect and he also stated that Natwest had no record of any individual other than Mr Kuun being connected to the account or MSL. The evidence of Miss Snipe and Mr McDonald was not challenged.

The determination of the Tribunal as to the true state of affairs

74. The Tribunal reject Mr Kuun's evidence relating to the part allegedly played by John Graham in the affairs of MSL. It is not credible that Mr Kuun could meet a person in December 2004 in Spain, not carry out any due diligence in relation to that person, and agree the part to be played by MSL and MFP to such an extent that by 1 January 2005 MSL was supposedly entering into an agreement with Money Club under a letter head

bearing the name that MSL acquired on 10 August 2005 and an address and telephone numbers which it acquired in late November 2005 or that John Graham caused MSL (under the name it adopted on 10 August 2005) to enter into an agreement bearing the date 3 January 2005 with Millennium to act as an introducer of business to Millennium. Mr Kuun's evidence that John Graham signed these agreements was not credible. Mr Kuun could not provide the address to which the documents might have been sent for signing.

75. At the date of signing these agreements Mr Kuun, on his evidence, had not entered into a formal agreement for the sale of MSL to John Graham. That was entered into, according to Mr Kuun, in a document supposedly dated 25 May 2005 which was addressed to John Graham at an address which Mr Kuun conceded was the wrong address. Notwithstanding that, Mr Kuun contended that John Graham returned the agreement duly signed. Mr Walmsley's evidence was that there was no one at that address, or at any other address supplied by Mr Kuun, known as John Graham. We accept that evidence and accordingly reject Mr Kuun's evidence that the agreement was signed in the manner he described.

76. Furthermore Mr Kuun continued to act as the owner and controller of MSL. He arranged the change of name in August 2005, he obtained and paid for a box office number and telephone number, internet account and email address for MSL in November 2005. All MSL's staff were recruited through advertisements placed by MFP pursuant to instructions emanating from Mr Kuun. They were recruited by him or Mr Edgington and employed on terms that did not differ materially from the terms they had enjoyed when employed by MFP or Millennium. He also acted for MSL in the acquisition of real property and in the opening of a variety of banking facilities. In the facility opening forms he described himself as a director of MSL and its Chief Executive Officer. Thereafter he operated the banking facilities. We reject his evidence that he did so on instructions from John Graham or that John Graham operated the accounts via the internet. That would have required John Graham to be in frequent communication with Mr Kuun which was not the case. The suggestion that Mr Kuun rang him at a telephone answered by an electronic answering machine and waited for John Graham to contact him is not credible. Furthermore, Mr Kuun was unable to produce an email address to which he had, as he stated, sent emails. He said his own email system did not retain such addresses. Mr Kuun provided the two addresses in Switzerland for John Graham and the persons occupying those addresses had never heard of John Graham. No evidence was produced to the Tribunal of any instructions given by John Graham requesting Mr Kuun to perform any actions we reject Mr Kuun's evidence that he followed instructions from Mr Kuun or discussed matters with him.

77. Mr Kuun's evidence that John Graham monitored the performance of MSL and its staff by scrutinising information up loaded onto a web site is also not credible. Had he been involved in the running of MSL in the manner described by Mr Kuun he would at some stage have come into contact with a member of staff of MSL or MFP. In fact no one other than Mr Kuun was alleged to have met or seen him. He did not appear to give evidence or supply a witness statement or letter to assist Mr Kuun.

78. Mr Kuun did not produce any credible evidence that John Graham existed and the evidence was inconsistent with any such assertion. We determine that John Graham is the product of Mr Kuun's imagination and was invented to mislead the FSA in relation to all matters relating to the involvement of John Graham with MSL and also sought to mislead the Tribunal in a similar fashion. We also hold that the agreements referred to above entered into by MSL with Millennium and Money Club, and the agreement for sale of MSL were not entered into on the dates they purported to be entered into and, insofar as they purported to be agreements with MSL, Mr Kuun arranged for them to be created as part of his efforts to mislead the FSA.
79. It is also apparent from the matters described above that in the course of his dealings with the FSA Mr Kuun seriously misled the FSA or failed to cooperate with the FSA so that information had to be dragged out of him by presenting him with documentary evidence which was inconsistent with the information supplied by him at earlier stages of his dealings with the FSA. The number of respects in which Mr Kuun misled the FSA in the course of their investigations are too numerous to set out in their entirety but we are satisfied that either he, or his advisers, acting on his instructions (and without any knowledge of the true state of affairs) misled the FSA in the following important respects:

The November 2005 visit

- 79.1. The failure to mention the use of SRMs through the medium of MSL and the statement that MFP operated with Mr Kuun and Mr Edgington as advisers with supporting administrative staff;
- 79.2. The initial statement that Mr Kuun and Mr Edgington saw all the clients which was changed in the course of the interview to say or corresponded with all clients personally;
- 79.3. The statement that there were no formal introducers. In fact, on Mr Kuun's version of events, MFP had an introducer's agreement with Millennium and MSL both supposedly dated 3 January 2005. We reject Mr Kuun's explanation that by the expression "formal introducers" he understood professional firms such as solicitors or accountants;
- 79.4. The statement that MFP maintained no diary showing Messrs Kuun's or Edgington's appointments with clients.

In effect, Mr Kuun seriously misled the FSA during the course of this meeting as to MFP's business model.

The letter dated 1st March 2006

80. In this letter Mr Kuun misled the FSA as to the business model by not referring to the use of SRMs and MSL's role, and by saying that MFP kept no diary. The organisational chart was also misleading by not referring to MSL.

The letter dated 28 March 2006

81. The letter misled the FSA by not referring to MSL and by suggesting that MFP had radically changed its operational system post mortgage regulation. It had not. Instead of employing account managers directly it used MSL's SRMs who fulfilled a not dissimilar function and one could not understand MFP's operational system without knowing about the role of the SRMs. The inference that the team of office based administrators, some who fulfilled the role previously performed by the account managers, was misleading.

The email sent by Mr Fatchett on 26 June 2006

82. This was misleading in that it suggested that MFP did not have records of visits by SRMs to clients. Miss Landucci's evidence was clearly to that effect and MFP could not have carried on a business sensibly managed if it did not know who the SRMs had visited. It was also misleading in suggesting that MFP had not placed the advertisements for MSL to enable it to recruit staff. There is no evidence to the effect that MSL had any administrative staff. Its affairs were managed out of MFP's offices by Mr Kuun and Mr Edgington with the assistance of MFP's administrative staff such as Miss Landucci.

The second organisational chart

83. The second organisational chart was misleading in that it referred to MSL as being unconnected meaning unconnected to MFP or its directors and shareholders. It was owned by Mr Kuun.

The 14 July 2006 meeting

84. The statements that:

84.1. MSL was a company over which MFP had no control was seriously misleading. It had been owned by Mr Kuun and he continued to act on its behalf in the UK who controlled its every action; in fact he continued to own MSL;

84.2. Mr Kuun was not personally involved in any function carried on by MSL and could not control its employees was seriously misleading. He admitted to controlling many of its functions and was unable to evidence any function it carried on other than through his own agency or at his direction.

The offer made at the meeting of undertakings to bolster the statement referred to above was deeply cynical.

Email of 3 August 2006 sent by Mr Fatchett

85. This email repeated that MSL was not under the ownership or directorship of his clients and that they could not interfere with the "workings" of MSL. It was misleading for the reasons set out above. The suggestion that Mr Kuun's response was consistent with Principle 11 was also cynical.

Forwarding the agreement between Money Club and MSL

86. Forwarding the agreement without pointing out that it could not have been created on 1 January 2005 would have misled the reader into thinking that the document was a genuine agreement entered into on the date it bore.

22 September 2006 email

87. The suggestion that MSL did not have a direct relationship with MFP was misleading for the reasons described above.

3 November 2006 meeting

88. Many misleading statements were made at this meeting. They included statements that:
- 88.1. Millennium stopped trading toward the end of 2004 or early 2005. In fact it employed account managers till 12 September 2005;
 - 88.2. MSL had an office in London from where it conducted correspondence. Mr Kuun knew it had a box number at a provider of postal addresses;
 - 88.3. The description of John Graham's involvement with MSL and with Mr Kuun and the extent of Mr Kuun's involvement with and actions on behalf of MSL;
 - 88.4. account managers were laid off because it was uneconomical for Millennium to employ them;
 - 88.5. MSL placed its own advertisements for SRMs;
 - 88.6. MFP did not have a list of SRMs;
 - 88.7. MSL paid the SRMs; they were initially paid directly by Mr Kuun from his MFP bank account entitled "Kuun SJG T/A Millennium" and after March 2006 via the MSL bank account after he had transferred monies to it from the account entitled "Kuun SJG T/A Millennium" ;
 - 88.8. Mr Kuun was not a director of MSL; at the very least he was a shadow director;
 - 88.9. Mr Kuun had a very limited involvement in MSL's affairs;
 - 88.10. that Miss Landucci was forwarding MSL's emails as opposed to using its email account to send out emails on its behalf;
 - 88.11. Mr Kuun did not open MSL's post; he admitted in cross examination that Miss Landucci did so on his behalf;
 - 88.12. Mr Kuun had merely helped to create MSL's presence in the UK and that it was based off shore because John Graham was based off shore; Mr Kuun had caused MSL to be incorporated.
89. Mr Kuun's purported inability to say what form the communications between Millennium and MSL took was also intended to mislead the FSA. During the interview on many occasions Mr Kuun referred to MSL as "them" and Millennium and MFP as "us" intending to convey a detachment from MSL which did not exist.

Letter dated 24 November 2006.

90. Mr Perrott wrote to the FSA to the effect that MFP did not have a list of SRMs and provided an address for John Graham of Kirchgasse 4, 8001, Zurich, Switzerland. That was misleading. John Graham did not exist and MFP did have a list of the SRMs.

7 May 2008 interview

91. During the course of this interview Mr Kuun maintained his stated position in relation to MSL and gradually conceded greater involvement as documents were placed in front of him. However he continued to mislead the FSA in that:
- 91.1. He maintained that the banking documents described him as MSL's Chief Executive Designate as opposed to Chief Executive Officer; even the former

designation would have revealed a closer involvement on his part with MSL than he had previously been prepared to reveal;

91.2. He stated that he did not know how many authorised signatories there were over the account; he had arranged for the bank authorisation to be signed by MSL's de jure director and was well aware that the de jure director would only contact the bank at his direction;

91.3. He said he was in communication with John Graham and described John Graham's involvement with MSL. John Graham did not exist.

Conclusion

92. As Mr Walmsely said in his evidence effective regulation of authorised firms and approved persons requires the proactive cooperation of persons dealing with the FSA. To be able to achieve its statutory objectives the FSA needs to acquire an understanding of the governance arrangements, systems and controls, business practices and sales processes at firms which give financial advice to customers. The regulatory system is dependent upon persons cooperating with the FSA. In this case the FSA spent 2000 hours investigating MFP, Millennium and MSL and had to do so because Mr Kuun and MFP were not candid with the FSA. The FSA has 17,000 other small firms to supervise and the system of regulation would break down if each firm or its directors acted in the manner in which Mr Kuun and MFP have acted in this case.

93. We conclude that the FSA were correct to conclude that Mr Kuun had demonstrated a lack of honesty and integrity (contrary to APER Principle 1), had failed to be open candid and truthful with the FSA (contrary to APER Principle 4) and is not a fit and proper person to perform functions in regulated activities. Accordingly we consider that the FSA were justified in making a prohibition order against Mr Kuun, to withdraw his approval under section 59 of the Act, and to impose a fine upon Mr Kuun.

94. We also conclude that the FSA was correct to withdraw MFP's permission to conduct regulated activities on the grounds that it was not a fit and proper person by reason of its connection with Mr Kuun.

95. The FSA also submitted that the Tribunal should consider increasing the fine of £50,000 which it had originally imposed on Mr Kuun in the light of his conduct. As the evidence before the Tribunal was adduced the full extent to which the FSA was misled became apparent as were the lengths Mr Kuun was prepared to go to mislead the FSA. In the light of the Tribunal's findings it is apparent that Mr Kuun also sought to mislead the Tribunal by maintaining the story of John Graham's involvement with MSL. Not a word of the evidence of Mr Kuun relating to the involvement of John Graham in the affairs of MSL was accepted by the Tribunal.

96. The FSA submitted that the Tribunal should consider exercising its powers to increase the fine. The decision of the Tribunal in *Phillipe Jabre v FSA* (Case No: 035) held, in effect, that the Tribunal had jurisdiction to increase a fine imposed by the FSA as the Tribunal's duty is to consider the "subject matter of the reference" and to determine "what (if any) is the appropriate course "for the FSA to take in

relation to the subject matter of the reference: section 133 (3) and (4) of the Act. The subject matter of the reference is not the actual decision of the Regulatory Decisions Committee (“RDC”) but the allegations made which led to the Decision Notice and the Tribunal must consider those allegations in the light of the evidence before it. We note the point emphasised in *James Parker v FSA* to the effect that the Tribunal should be slow to increase a penalty save in a case where the RDC has misdirected itself and the penalty imposed falls substantially below a proper amount because otherwise the power to increase a penalty might act as a disincentive to making of meritorious references. We consider that the Tribunal can properly exercise its power to direct an increase in a penalty where the Tribunal is satisfied that an applicant has deliberately set out to mislead the FSA and the full extent which he took becomes apparent before the Tribunal

97. After the hearing we received further written submission and evidence served on behalf of Mr Kuun and the FSA relating to Mr Kuun’s assets. We note that the summary of the accountant’s report served on behalf of Mr Kuun, which derived from a report prepared for the purposes of divorce proceedings in which Mr Kuun had been involved prior to the hearing before the Tribunal, treated MSL as an unconnected company. The information did not reveal any substantial assets albeit it revealed that in the past Mr Kuun had a substantial income; for example in a mortgage application made in December 2005 he claimed to have an income of £250,000. However the income from MFP and MSL started to reduce after mortgage business became regulated and will reduce further when MFP’s permission to carry on regulated activities is withdrawn.
98. DEPP6 the FSA’s guidance on penalties lists a number of matters which it will take into account determining the appropriate level of a financial penalty. Included in such matters are (1) deterrence, (2) the nature, seriousness and impact of the breach in questions (3) the extent to which the breach was deliberate (4) whether the penalty is being imposed upon an individual (5) the financial resources of the individual (6) the difficulty of detecting the breach and (7) conduct following the breach.
99. Mr Kuun embarked on a considered course of conduct over a long period intended to mislead the FSA; that conduct included the production of forged documentation including a false share sale agreement and other forged agreements, the establishment of matters such as a post box and telephone number, and an email address in order to give the impression that MSL was unconnected to him. In interview with the FSA, Mr Kuun implied that he had not visited MSL’s London office, knowing full well that the office he was referring to was nothing more than a post box number that he himself had set up. He misled the FSA for a long period of time and continued to maintain that John Graham controlled MSL to the end of the hearing of the references before the Tribunal; he maintained that position in the light of overwhelming evidence that his evidence could not be true. He had many opportunities to be frank with the FSA but instead he adopted a cynical posture of frankness at the same time as actively misleading the FSA. The Tribunal takes into account that there is no allegation of mis-selling by MFP by the FSA but considers that the manner and extent to which Mr Kuun misled the FSA was very serious and were others to adopt such behaviour it would be very detrimental to the system of regulation adopted by the FSA. We are not satisfied as to the evidence of Mr Kuun’s

alleged lack of means, but means to pay a fine are only one factor amongst a number to which we have had regard.

100. Accordingly in the light of matters set out above the Tribunal considers that the appropriate fine should be £75,000. Accordingly the references are dismissed but the FSA is directed to substitute a fine of £75,000 for the fine of £50,000 previously imposed.

Terence Mowschenson Q.C.

Chairman

Release Date: