REGULATED ACTIVITIES - Performance - Prohibition Order - Fit and proper person - Failure to reply to enquiries from Regulator - Trading while not authorised on account of dissolution of partnership – Failure to conduct proper pensions review - Non-payment of redress to customers - Trading without professional indemnity cover - Failure to make proper disclosure in application for approval - Whether applicant not a fit and proper person to perform functions relating to regulated activities - Reference dismissed – FSMA 2000 s 32 - FSMA 2000 s 56
PRACTICE – guidance on form of chronology - guidance on core bundle

FINANCIAL SERVICES AND MARKETS TRIBUNAL
Case No FIN/2005/0009

JONATHAN MILROY TOWNROW

Applicant

-and-

FINANCIAL SERVICES AUTHORITY

Respondent

Tribunal: **Andrew Bartlett QC (Chairman)**
Christopher Burbidge
Ian Abrams

Sitting in public in London on 1, 2, 5, 6, 7 December 2005
Date of decision: 12 January 2006

For the Applicant Gareth Fatchett

For the Respondent Helen Malcolm and Adrian Berrill-Cox

DECISION

INTRODUCTION

1. The applicant, Mr Townrow, has worked in the financial services industry for more than 20 years. The Financial Services Authority ("the Authority", or "the FSA") decided on 21 February 2005 to prohibit Mr Townrow from performing any function in relation to any regulated activity carried on by an authorised person. The decision was made under s 56 of the Financial Services and Markets Act 2000 ("the Act" or "FSMA") on the ground that it appeared to the Authority that Mr Townrow was not a fit and proper person to perform those functions. Mr Townrow has referred this decision to the Tribunal.

2. The Authority refers to a number of aspects of the conduct of Mr Townrow, principally in his handling of the business of JM Townrow & Associates ("JMTA"). The Authority relies in particular on allegations concerning Mr Townrow's inability and apparent unwillingness to complete JMTA's pensions review, his dealings with his clients, his repeated inconsistencies amounting to lies to the regulator, his failure to comply with decisions of the Financial Ombudsman Service, and his trading while unauthorised and uninsured.

ROLE AND JURISDICTION OF THE TRIBUNAL

3. In order to deal with one aspect of Mr Townrow's concerns about the Authority's decision it is necessary to recapitulate the role and jurisdiction of this Tribunal.

4. Mr Townrow complains that the Regulatory Decisions Committee of the Authority did not deal with the matter properly. He contends that the Decision Notice was authored by the Enforcement Division, contains inadequate reasons, and was merely rubber-stamped by the RDC without any real consideration of his case.

5. We have not found it necessary or useful to consider this complaint, as it does not seem to us to bear on the decision which we have to make. The present reference is not simply a review of the decision taken by the Authority, whether one considers for that purpose the RDC or the Authority's Enforcement Decision. The role of the Tribunal is to consider the matter afresh in the light of all the evidence made available to us. By s133(3) of the Act the Tribunal may consider any evidence relating to the subject-matter of a reference, whether or not it was available to the Authority at the material time. Unlike the RDC, we have heard sworn evidence from various witnesses at some length. Our task is to determine, having heard the evidence, what (if any) is the appropriate action for the Authority to take in relation to the matter referred to us: FSMA s 133(4).

6. We do not rule out the possibility that examination of the Authority's decision-making process might in some very particular circumstances shed useful light on the issues. In the present case we have not found it useful. Our approach, therefore, has been to leave wholly on one side the decision made by the RDC, and to consider the matter afresh without reference to the reasoning contained in it.

'FIT AND PROPER' UNDER THE REGULATORY REGIME; PROHIBITION ORDERS

7. The criteria to be considered by the Authority when assessing whether a person is fit and proper are set out in the Fit and Proper test for Approved Persons (FIT) in the FSA Handbook issued pursuant to s157(1) of the Act. The ingredients of fitness and propriety relate to (1) honesty, integrity and reputation, (2) competence and capability, and (3) financial soundness.

8. While the assessment of fitness and propriety of an approved person takes place within the regulatory framework introduced by the Act (fully effective from December 2001), earlier conduct which gives rise to concerns about possible unfitness and impropriety must be judged against the standards which prevailed at the material time. Some of the matters relied on by the Authority concern events before 2001. Mr Townrow's activities were regulated

originally by FIMBRA and later by the PIA. For the purposes of the present case the standards of conduct required by FIMBRA and by the PIA were not materially different from those required by the new regime.

9. As regards the making of a prohibition order, ENF 8.5.1A states:

> "*The FSA will consider in each case whether its regulatory objectives of maintaining market confidence in the financial system, promoting public awareness, protecting consumers and reducing financial crime can adequately be achieved by withdrawing approval or disciplinary sanctions, for example, public censure or financial penalties, or by issuing a private warning. The FSA considers that a prohibition order generally has more serious consequences than the withdrawal of approval because a prohibition order will usually be wider in scope (see ENF 8.3.2 G). It is therefore likely that the FSA will consider making a prohibition order against approved persons only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives*."

10. ENF 8.5.2 states:

> "*When it decides whether to exercise its power to make a prohibition order against an approved person, the FSA will consider the following factors:*
>
> *(1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness). The criteria include:*
>
> > *(a) honesty, integrity and reputation; this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards;*

(b) competence and capability; this includes an assessment of the individual's skills to carry out the controlled function that he is performing; and

(c) financial soundness; this includes whether the individual has been the subject of any judgment debts or awards in the United Kingdom or elsewhere that are continuing or were not satisfied within a reasonable period;

(2) whether and to what extent, the approved person has:

(a) failed to comply with the Statements of Principle; or

(b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);

(3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;

(4) the particular controlled function the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates;

(5) the severity of the risk which the individual poses to consumers and to confidence in the financial system;

(6) the previous disciplinary record and general compliance history of the individual including whether the FSA (or any previous regulator) has previously imposed a disciplinary sanction on the individual."

THE WITNESSES

11. The Authority called Stefan Brzezicki, Marina Petit, Hilary Bourne, Michael Heather, and Andrew Fatherley of the FSA, and one of JMTA's clients, Graham Evans. The statements of Alan Ford, Christopher Harris, Daniel Shedden, Denis Lyons. Domenic Sidonio, Gary Nicholls, Ian Thomson, John Little, Lesley Titcomb, Malachy Madden, Mark Ferguson, Nigel Smith and

Terry Saunders were read. Mr Townrow gave evidence himself, and called John Bailey.

12. We found no reason to doubt the evidence of the Authority's witnesses, who appeared to us to be doing their best to give honest and reliable evidence.

13. Mr Townrow's evidence suffered from inconsistency and equivocation. Reminding ourselves that the burden of proof lies on the Authority, and making all possible allowances for misunderstanding or faulty recollection, we have nevertheless been driven to the conclusion that Mr Townrow exhibited a strong tendency in his evidence to say what appeared to him to be expedient, rather than trying to give truthful and accurate answers to counsel's questions. We refer to specific aspects below. We also had reservations about Mr Bailey's evidence, to which we shall make reference.

MR TOWNROW AND JMTA

14. JMTA was initially known as Financial Consultancy Services and was authorised as a partnership by FIMBRA in April 1988. It started trading under the name JM Townrow & Associates on 9 February 1989. Mr Townrow and his wife Annette were the partners. It was admitted to membership of the PIA on 11 April 1997.

15. JMTA provided advice on, and arranged and dealt in life assurance, pensions, and collective investment schemes and advised on investment.

16. Although there were from time to time in the history of JMTA others employed who fulfilled various controlled functions, Mr Townrow, who described himself as senior partner was responsible for the day-to-day management of JMTA, the allocation of resources at JMTA, and compliance with the regulatory regime. His wife was not active in the partnership.

MR TOWNROW'S ATTITUDE TO BEING REGULATED

17. Before the principal events with which we are concerned Mr Townrow already had a history of hostility to being regulated, and of not replying to correspondence.

18. He had a company called J M Townrow (Independent Financial Advisors) Ltd which belonged to FIMBRA. Its membership was terminated by FIMBRA on 21 January 1993 for disciplinary reasons. This related to non-payment of surcharges or levies amounting to £250 or £500.

19. JMTA was initially refused membership of the PIA because of Mr Townrow's failure to pay the surcharges levied by FIMBRA. It was admitted on appeal to membership of the PIA on 11 April 1997 only after they had been paid.

20. On 15 May 1997 Mr Townrow received a reminder call from the PIA, chasing for the pensions review quarterly return for the period to 31 March. The file note reads:

> "*Phoned Mr Townrow to remind him that his quarterly return was due on 19th May and if we have not received it we will issue a surcharge. Mr Townrow responded by saying that we 'can get stuffed' – we're 'not surcharging him' and that us 'regulators ought to find another way of making our money'.*

21. On 30 March 1998 the PIA wrote to Mr Townrow because he had not responded to the PIA's four previous letters, over the period 1 October 1997 to 18 March 1998, concerning a customer complaint.

THE LEGAL STATUS AND AUTHORISATION OF JMTA

22. Under FSMA section 32, where a partnership is dissolved, the firm's authorisation continues to have effect in relation to a partnership which succeeds to the business of the dissolved firm only where the members of the resulting partnership are substantially the same as those of the former firm; and the succession is to the whole or substantially the whole of the business. Otherwise, the dissolution of the partnership causes the authorisation to cease.

23. The result of this section is that, in the case of a firm with only two partners, a dissolution inevitably causes the authorisation to cease, even if one partner wishes to carry on the business. The inflexibility of this provision is capable of causing hardship or difficulty in the case of a two partner firm, not only for the

person who wishes to continue the business, but also for consumers. From the moment of dissolution, the surviving ex-partner cannot carry on regulated activities, but must obtain a fresh authorisation as a sole trader. To obtain such authorisation can involve considerable time and expense.

24. On the transfer of regulatory responsibilities from the PIA to the FSA when the Act came into force on 1st December 2001 ("N2"), JMTA became authorised under the Act as a partnership under the 'grandfathering' process.

25. According to the FSA, on 1 February 2002 Annette Townrow resigned as a partner. If that is right, the partnership, and with it JMTA's authorisation, ended on that date. This is in dispute.

26. Mr Townrow contended that the FSA had made an error when accepting the transfer of JMTA as a partnership by grandfathering from the PIA, and ought to have accepted him as a sole trader. His case before the Tribunal was that:

    (1) His wife resigned from the partnership as far back as March 1998.

    (2) He notified the PIA of her resignation in writing.

    (3) His authorisation by the PIA continued notwithstanding her resignation, since the PIA did not have separate categories for partnerships and sole traders.

    (4) The FSA should therefore have accepted him, on transfer, as a sole trader, not as a partnership.

    (5) He represented the partnership as continuing because that is what the FSA told him to do when the difficulty over his authorisation arose.

    (6) It was at the FSA's suggestion that Mr Townrow subsequently provided a new resignation letter from his wife showing that she resigned with effect from 1 February 2002, rather than the actual date of March 1998.

27. In his application to the PIA for individual registration in March 1998 Mr Townrow described himself as a partner in JMTA. No application for individual registration of his wife was submitted to the PIA. As a result she was automatically recorded as having ceased to be a principal in the firm on the default date of 31 October 1998.

28. There was no documentary evidence that Mr Townrow expressly notified the PIA of a change of status from partnership to sole trader in 1998. A copy of any such communication, if it existed, should have been kept by him. There was no extant evidence of any response by the PIA to such a communication.

29. By letter dated 19 March 1998 Mr Townrow suggested to his wife that she resign from JMTA. No specific documentary evidence indicates that she agreed to the suggestion at that time. There is one document from November 1998 in which someone at Guardian Financial Services, in the context of seeking recovery of a debt owed by JMTA, referred to Mr Townrow as a sole trader. This stands alone. Neither party gave evidence about it. It would be easily explicable as a mistake, particularly given Mr Townrow's intention that his wife should resign from the partnership.

30. In the JMTA accounts for the year ending 31 July 1998, both Mr Townrow and his wife were shown as partners. That is inconsistent with his wife having resigned in March 1998.

31. The PIA made a supervision visit to JMTA on 12 February 1999. They recorded Mr Townrow as being a partner in the firm.

32. In the PIA annual questionnaire, signed by Mr Townrow on 12 February 1999, he answered the questions relating to a partnership, rather than those relating to a sole trader, and signed expressly as a partner. He also procured, or himself inserted, his wife's signature as a partner. The signatures were directly below the declaration concerning the truthfulness of the answers and the risk of prohibition or other disciplinary proceedings. On the footing that the declaration was true, this demonstrates that Mrs Townrow did not leave the partnership in 1998.

33. In a letter to a customer on 18 December 1999 Mr Townrow described himself as "senior partner".

34. The accounts for the years ended 31 July 2000 and 2001 again showed Mrs Townrow as a partner. Mr Townrow told us he could not explain why.

35. The PIA conducted a pensions review visit in December 2000. The report of the visit, provided for the use of JMTA, showed Mr Townrow as a partner in the firm. He did not tell the PIA that this was incorrect.

36. On 14 November 2001 Mr Bailey sent in a form to the FSA, in regard to the grandfathering of approved persons, showing Mr Townrow as a partner (Controlled Function 4).

37. A copy letter dated 31 January 2002 showed Mrs Townrow as tendering her resignation from the partnership with effect from 1 February 2002. No signed copy of this letter was in evidence, but by a letter of 1 February 2002 Mr Townrow replied, purporting to accept the resignation. Mrs Townrow later confirmed to the FSA, by letter of 13 February 2004, that she had indeed resigned by the letter of 31 January 2002.

38. On 22 October 2002 Daniel Shedden at the FSA noticed that, although JMTA was registered with the Authority as a partnership, the Authority only had details of one partner. He telephoned Mr Townrow, who stated that as far as he was concerned the firm was a sole trader, although his ex-wife was disputing that she had resigned. A few days later Mr Townrow told Marina Pettit of the FSA that, when he "de-registered" his wife, he assumed that was notification enough. Shortly after, in another call, she asked him if he had copies of any notification that had been sent in. He said that his ex-wife had since written to him agreeing for him to take over the business and would send in that letter and any other correspondence.

39. He did not fulfil his promise to send the correspondence to the Authority. Marina Pettit sent him a written chaser on 20 November 2002, explaining that, as a sole trader, he was trading while unauthorised, and that he needed to submit a new application. She spoke to him again on 4 December. He said that

he had been trading as a sole trader since 1998 but his accountant had told him he was still a partnership (see email of 11 December 2002). She wrote again on 11 December 2002, stating that he would have to submit a new application in order to continue trading.

40. He finally responded by letter of 8 January 2003 (mis-dated 2002), stating that he was

> "*... at a loss to understand why the question has arisen.*
>
> *The legal status of [JMTA] has been and continues to be a partnership since its inception. In 1998 the partners discussed the possibility of the Firm becoming that of a sole trader and the documentation regarding this was put into place, however this change of status was never carried out.*
>
> *Our legal and fiscal representatives advise that the status of our Firm is a Partnership.*"

41. His case before the Tribunal was that this letter was untrue, because the partnership had been dissolved in 1998, and that he was 'forced' to write it in order to continue trading. In interview on 27 January 2004 he said:

> "*The point is that we ... had been told, in order to trade, that because we were grandfathered wrongly, we had to be a partnership.*"

42. On 24 February 2003 Mr Bailey, who assisted Mr Townrow on regulatory matters, told Mr Matthews of the FSA that Mrs Townrow had been a partner until January 2003, and that Mr Townrow had formed a limited company and wanted to apply for authorisation as soon as possible.

43. On 25 March 2003 Mr Matthews wrote to Mr Townrow, explaining the effect of section 32 of the Act, and warning him that he should cease to trade immediately. This elicited a confused response from Mr Townrow's divorce solicitors containing the mutually inconsistent assertions that Mrs Townrow had resigned in February 2002, that the partnership had not been dissolved, that the firm continued to trade, and that Mr Townrow was a sole trader. It

may be noted that the one thing this letter did not say was that Mrs Townrow had resigned in 1998. As Mr Townrow's divorce solicitors, they should have been in a good position to know the facts concerning her resignation.

44. On 17 July 2003 (at the pensions review visit) Mr Townrow told Hilary Bourne of the FSA that his trading entity was a partnership, that his wife had been a partner for the past 20 years, and that he did not see why he should have to be re-classified as a sole trader.

45. After further correspondence the FSA wrote on 30 July 2003 with formal notification that JMTA was not authorised and must not carry on any regulated activity.

46. New solicitors wrote to the Authority on 25 September 2003, setting out Mr Townrow's case that the PIA had been informed in writing of his wife's cessation as a partner, and had been sent a letter of resignation from her, apparently in "*about February 1998*".

47. Given the weight of contemporaneous documentary evidence to the contrary from the period 1998 to 2002, we do not believe Mr Townrow's assertions that his wife resigned in 1998, and that he so notified the PIA. We find that she resigned with effect from 1 February 2002. The fiction that she resigned in 1998 rests on the grain of truth that she took no effective part in the business from 1998. We consider that the fiction has been maintained and relied on by Mr Townrow in order to try to blame the regulators for his lack of authorisation.

48. For the same reasons we are also unable to accept Mr Bailey's evidence on this aspect. He had himself expressly represented to the FSA on several occasions that Mrs Townrow was a partner after 1998. His evidence that he recollected Mrs Townrow's resignation in early 2002 was in our view at best wishful thinking, in the context of desiring to aid Mr Townrow.

49. We reject Mr Townrow's contention that the 2002 resignation letter did not reflect the true position and was provided at the suggestion of the Authority. If the true date of dissolution was in 1998, it would be odd indeed for Mr

Townrow, in response to a request supposedly made in or after October 2002, to draw up correspondence showing a fictitious date of dissolution of 1 February 2002.

50. When the partnership was dissolved in 2002, as a minimum he ought to have advised the FSA in writing. He did not do so.

51. His contention that he was instructed by FSA staff to say that the partnership was continuing at a time when that was not true does him no credit. We found no reason to question the evidence given by the various FSA staff as to their conversations with him, and we accept it. While misunderstandings can occur, no reasonable person in Mr Townrow's position would have understood that he was being instructed to lie. Having heard Mr Townrow's oral evidence we have concluded that he did not regard his true legal status as a matter of any importance, and was prepared to say whatever he thought would enable him to continue trading.

52. We note that, even after the problem came to light in October 2002, he did not treat it as a matter of any importance or urgency. He continued trading while unauthorised up to 30 July 2003 without making any application for fresh authorisation.

53. We also note that after February 2002 he was not careful over correctly describing his status. On forms submitted to the FSA on 10 June 2002 and 6 July 2002 Mr Townrow described himself as "senior partner". Even in his revised application, signed on 7 January 2004, to perform controlled functions on behalf of J T Financial Services Ltd, Mr Townrow represented that his position was that of partner in JMTA. When asked about this Mr Townrow evidence was:

> A. *I think again that is what the FSA informed us to say, you know, how to be a partner.*
>
> *Q. So, the FSA tell you to lie on a form, a declaration of which you were going to sign as being true, and you follow that advice blindly.*

A. Well, realistically, I cannot see --- when I am with my wife as a partnership sole trader, I cannot see what significance it has.

54. We conclude that Mr Townrow regarded it as unimportant to be clear about his own legal status, or to give the FSA accurate information about it, and regarded it as acceptable to sign a declaration of truth without troubling to see that the answers which he gave were true. He has also tried to mislead the Tribunal by putting forward a false case that his wife resigned in 1998. In our judgment this was dishonest according to the ordinary standards of reasonable and honest people.

55. The correct description of his legal status was not a mere legal nicety of no significance. Nor was the misleading information the result of an accidental slip. In so far as (as we find) Mr Townrow regarded it as unimportant to be clear about his own legal status, and to give the FSA accurate information about it, and regarded it as acceptable to give untrue information, that indicates to us a lack of integrity making him unsuitable to work in a regulated environment.

56. As an approved person performing significant influence functions Mr Townrow should have behaved in accordance with the APER Statements of Principle. Statement of Principle 4 provides that an approved person must deal with the Authority and other regulators in an open and co-operative way and must disclose appropriately information of which the Authority would reasonably expect notice. Mr Townrow did not behave in this way in regard to the matter of his legal status, or indeed other matters to which we now turn.

CONDUCT OF THE PENSIONS REVIEW

57. The pensions review was prompted by concerns that many consumers had suffered substantial losses arising from their having failed to join, opted out of, or transferred from occupational schemes in order to take out "money purchase" personal pensions. JMTA was subject to a requirement by the PIA to review its advice on sale of personal pensions to clients.

58. The pensions review was split into two phases. 'Priority cases' were to be dealt with in Phase 1 of the pensions review, to be completed by 31 December 1998. 'Non-priority cases' were to be dealt with in Phase 2 of the pensions review, to be completed by 30 June 2002. (The later deadline of 31 March 2003 where the policyholder had received a "windfall" gain from the demutualization of the pension provider can be ignored for present purposes). Where bad advice had been given, and loss had resulted, firms were required to calculate and provide redress. The preferred method of redress was reinstatement in the relevant occupational pension scheme; the alternative was topping up the personal pension plan to replicate the lost benefits.

59. We received a large quantity of evidence concerning JMTA's pensions review. It is not necessary to rehearse it in detail. Much of it was uncontested. The conduct of the review was a shambles. Mr Townrow did not appreciate the seriousness of the regulatory requirements or of the losses to consumers. He did not approach the review with the attitude of someone who understood professional obligations. He left the review in incompetent hands for a long period. He exercised no effective oversight of it. He gave it a very low priority and made no real attempt to meet the deadlines for Phase 1 or Phase 2. From time to time pressure from the regulator produced flurries of activity which were not maintained. His general attitude was to do the minimum that he could get away with. Quarterly returns were not submitted for long periods. FSA letters went unanswered. Clients' inquiries were ignored for months or even years at a time.

60. At the pensions review visit on 17 July 2003 Mr Townrow was unco-operative and unhelpful. He stated that he did not believe in the review and regarded it as 'retrospective legislation'. Ultimately the Authority had to take over the conduct of the review itself.

61. Mr Townrow had delegated the work of the pensions review first to Mr Freeth and later to Mr Bailey, neither of whom handled it adequately. Effective help from Mr Bailey's daughter was obtained for only a short period. Mr Townrow was evidently either unable or unwilling to appreciate and follow through the responsibilities of a person who delegates to others tasks required by his

regulatory obligations. So far from the delegation exculpating Mr Townrow, this further failure is in our view an additional aspect in which Mr Townrow falls short. (See APER Statements of Principle 5 and 7 and PRIN Principle 3.) We were unimpressed by his and Mr Bailey's attempts to blame the FSA for not giving sufficient assistance early enough.

62. Where a firm ceases to be authorised, it is no longer an "authorised person" and therefore ceases to have the obligations of an authorised person under FSMA. Strictly speaking, therefore, it appears that the regulatory obligation to complete the review came to an end on 1 February 2002 when the partnership was dissolved. Mr Fatchett relied on this circumstance in his supplementary written closing submission dated 23 December 2005. In our judgment this does not adequately excuse or explain Mr Townrow's conduct or materially help his case on the issue of whether he is 'fit and proper'. We observe:

    (1) By 1 February 2002 the review should have been nearly complete. It was not.

    (2) Neither the dissolution of the partnership nor the expiry of the regulatory obligation affected Mr Townrow's existing legal liabilities to clients to whom pensions had been mis-sold (albeit whether the liabilities remained legally enforceable would depend on whether time bar defences had accrued in particular cases).

    (3) For practical purposes Mr Townrow needed to complete the review and compensate his customers if he was to have a realistic hope of persuading the FSA to grant him a fresh authorisation, as a sole trader or otherwise.

    (4) The Authority's case was that, whatever the technical position, Mr Townrow believed he still had a regulatory requirement to complete the review, and his unwillingness or inability to approach this task adequately, or alternatively to alert the Authority to the true state of affairs as to JMTA's status, evidences his lack of integrity and his lack of competence.

(5) In our view Mr Townrow did not in fact rely on the cessation of the regulatory obligation in deciding to adopt his unco-operative attitude to the review. He did not tell the FSA during the material period that he would terminate the review on the ground that his regulatory obligation had ceased. It was not part of his case as opened to the Tribunal that he was free of obligation to carry out the pensions review.

(6) The real issue here is what the debacle of JMTA's pensions review reveals about Mr Townrow's competence and integrity, his attitude to regulation and his regard for his customers' interests. The question as to his status was not raised until October 2002, which was after the last deadline by which the review should have been completed. His conduct after October 2002 was all of a piece with his conduct before that date.

NON-PAYMENT OF REDRESS

63. In November 2001 JMTA received from its insurers a cheque in settlement of the pension mis-selling claim of Mr Evans. The amount does not appear with clarity from the evidence. Mr Evans agreed to accept £12,178. The cheque was probably for the balance of that sum after taking account of the insurance excess to be borne by JMTA. In April 2002 JMTA received from its insurers £8,647 in settlement of the pension mis-selling claims of a Mr Madden and a Mr Richards.

64. Instead of using these sums to provide redress to the customers, Mr Townrow retained them in JMTA's office bank account. He did not tell the customers or the FSA that these sums had been received and retained. This only came to light during the July 2003 pensions review visit.

65. Even after the visit Mr Townrow made no attempt to pay out the monies intended for Messrs Madden, Richards and Evans from JMTA's account.

66. On 9 January 2004 Mr Townrow was given notice pursuant to s170(2) of the Act that the FSA had appointed investigators to investigate the circumstances of his case including that he had retained payments made by his insurers in

respect of redress claims arising from the pensions review. On 22 January 2004 Mr Townrow was notified by fax that he was required to attend for interview on 27 January 2004, the interview to take place at the offices of JMTA. The following day, 23 January 2004, Mr Townrow opened a building society account in his personal name, and at his home address, into which he placed the sum of £15,600. In his interview on 27 January 2004 Mr Townrow showed FSA investigators the building society passbook and said that he was retaining the funds in trust until the status of the firm was determined.

67. A year later, on 18 January 2005, Mr Townrow's solicitors wrote to the FSA stating that they had received from him into their client account the sum of £15,771, which they said related to the "*professional indemnity money*" and had been "*segregated since receipt*". Mr Townrow's instruction to his solicitors that the sums had been segregated since receipt, which was untrue, provides a further example of his cavalier attitude to truth.

68. The FSA replied by letter of 20 January 2005:

> "*As your client appears to be continuing to refuse to pay compensation to the clients in respect of whom the professional indemnity money relates, we would expect that he immediately inform the professional indemnity insurer and the clients concerned … of the fact that money in an equivalent sum (or money purporting to be the sum received from the PI insurers) is being held in your client account and to provide them with an explanation for the reason why the money is being dealt with in this way. Please provide us with a copy of the letters when they have been sent.*"

69. Neither he nor his solicitors answered that letter, or the chaser that followed in February. In response to a further chaser in June 2005, Mr Townrow's solicitors emailed to say that Mr Townrow now wished the monies to be "*used for the intended purpose of redressing disadvantaged clients*". By this time, because of the long delay, the amounts required to restore the clients to the position that they should have been in had greatly increased. The total sum

required for pensions redress for customers who had valid claims was calculated by the FSA to amount to some £209,000 as at November 2004.

70. In the 18 months from mid 2003 to January 2005 Mr Townrow spent in the order of £229,000. None of this was paid for the benefit of investors who were owed redress.

71. Mr Smith had first complained to Mr Townrow about his pension in 1995. It took him four years to get to the stage of obtaining a letter from JMTA stating that he may have been disadvantaged (17 November 1999) and a further two years to secure an offer of compensation in the sum of £16,607 (12 October 2001). Nothing was paid, and in May 2002 Mr Smith complained to the Financial Ombudsman Service ("FOS"). On 25 September 2003 the FOS made a finding in Mr Smith's favour, directing JMTA to arrange for Mr Smith's reinstatement into this occupational scheme without further delay and awarding £200 for distress and inconvenience. In 2005 this remained unpaid and reinstatement had not occurred.

72. The history of Mr Evans' case was similarly drawn out. He first asked Mr Townrow in 1998 to undertake the necessary comparison to see whether he had been disadvantaged. After the initial contacts Mr Townrow did not take Mr Evans' calls or respond to messages. Mr Evans complained to the FSA. Eventually Mr Evans spoke to Mr Townrow on 12 May 1999. Mr Townrow adopted a very aggressive approach in the conversation, swearing at Mr Evans, and complaining that by involving the FSA Mr Evans had "opened a can of worms". We accept Mr Evans's evidence that Mr Townrow called him "*a bag of shit*". After many attempts at further contact, most of which were unsuccessful, Mr Evans finally received an offer of compensation in October 2001 in the sum of £12,178 as already mentioned above, but despite further complaints from Mr Evans this was not paid.

73. In the case of Mr Madden, JMTA did not answer his repeated letters and inquiries for a period of more than 3 years (August 1997 to November 2000). As already noted, after agreement on settlement was ultimately reached with Mr Madden, the redress that was owed was not paid.

74. In his oral evidence Mr Townrow asserted, as if it were a point in his favour, that the total number of complaints was "*only 12*" out of a client base of 3,600. The FSA have not raised concerns about Mr Townrow's general selling practices; their concern in this context is over his attitude to particular customers who had a complaint. In our view the small number of complaints makes it all the more inexcusable that complaints were not answered and dealt with promptly, and highlights Mr Townrow's approach of consistently putting his own interests before the interests of his customers.

75. In interview on 27 January 2004 Mr Townrow suggested that he was retaining the insurance money in case it had to go back to insurers because he was trading without authorisation. This excuse does not meet the point that his obligation to compensate customers did not depend on the receipt of insurance proceeds.

76. When pressed in cross-examination to explain why he had not compensated any of the aggrieved pensioners, Mr Townrow said it was for commercial expediency, and that he was waiting to discover the full extent of his liabilities (including those that might arise from review of endowment policies) before making any pay outs. We regard this as a wholly unsatisfactory explanation, which does not justify Mr Townrow's conduct. Principle 6 of the FSA's Principles for Businesses (PRIN) states that a firm must pay due regard to the interests of its customers and treat them fairly. Mr Townrow evidently did not regard this principle as something which he should live up to.

TRADING WITHOUT PROFESSIONAL INDEMNITY INSURANCE

77. It is a general requirement for authorised firms carrying on regulated business to have professional indemnity insurance since this affords a degree of protection to clients of such firms who suffer loss owing to negligence or misconduct.

78. JMTA's professional indemnity cover expired on 25 April 2003. The renewal quotation dated 28 April 2003 offered terms involving a large premium and a large excess, which were not acceptable to Mr Townrow. JMTA were required to contact the FSA with details of their up to date position within 28 days from

expiry. They did not do so, albeit Mr Bailey made a telephone inquiry about a possible waiver and was referred to the information on the FSA website.

79. Sarah Saltman of the FSA made 6 attempts to contact Mr Townrow by telephone from 20 to 25 June 2003. He finally returned her call on 25 June. In reply to her question he stated that he had current PI cover, which was not true. On the same day the FSA wrote to Mr Townrow warning him that his breach of the rules concerning insurance could lead to enforcement action.

80. This spurred him into action. With Mr Bailey's help he sought a quotation from the Insurance Supermarket, but they wrote on 3 July 2003 to say that they were unable to offer terms.

81. Mr Townrow stated in oral evidence that other inquiries were also made, but there is no written record of them. No mention was made of them in Mr Townrow's explanatory letter of 4 August 2003, and we do not accept his evidence on this point.

82. In oral evidence Mr Townrow claimed that his untruthful answer to Sarah Saltman was a mistake. Given the course of events revealed by the documents, and his acceptance that his PI cover was "*a fairly vital, fundamental issue*", we do not accept this. In our judgment it was a lie.

83. At the visit on 17 July 2003 he sought to dismiss the issue. He stated that the fact that he was trading and giving advice without indemnity insurance in place was not a problem as there were hundreds of other firms who had trouble obtaining cover. He showed no appreciation of the risks to his clients.

84. In our judgment Mr Townrow's actions in regard to his professional indemnity insurance show a lack of honesty and integrity and a serious level of disregard for his regulatory obligations and his customers' interests.

JTFS APPLICATION

85. In June 2003 J T Financial Services Ltd applied for approval for Mr Townrow, who was at the time the sole shareholder and director, to perform controlled functions in relation to the company.

86. In answering question 5.07 of the Form A Townrow answered "no" to a question asking whether he had any outstanding financial obligations arising from regulated activities which he had conducted in the UK. That answer was untrue: JMTA owed the FSA £8,693 by way of fees and had outstanding financial obligations in respect of the pensions review.

87. In answering question 5.11(a) he answered "no" to a question asking whether he or any company or partnership of which he was or had been a partner or director had been refused membership of a regulatory body. That also was untrue: he was a partner in JMTA in 1997 when JMTA's application for PIA membership was rejected owing to unpaid FIMBRA administrative surcharges.

88. In answering question 5.11(b) he answered "no" to a question asking whether he or any company or partnership of which he was or had been a partner or director had been suspended, expelled or been the subject of any other disciplinary action or intervention by a regulatory body. That also was untrue: Mr Townrow was a director of J M Townrow (Independent Financial Advisors) Limited whose FIMBRA membership was terminated for disciplinary reasons as already mentioned.

89. In answering question 6.02 he left a blank when asked to list all directorships currently or previously held by him and in doing so failed to disclose directorships in the following companies: Halebrook Limited, J M Townrow (Holdings) Limited, J M Townrow & Associates Limited, Datam Limited (formerly known as J M (Independent Advisers) Limited), Second City Golf Tournaments Limited, and Allport Construction Limited.

90. The FSA sought clarification of the controlled functions to be performed by Mr Townrow, in response to which he completed a second Form A dated 7 January 2004. He did not change the answers given to questions 5.07, 5.11(a) and (b) and 6.02.

91. The declaration page warned him that knowingly or recklessly giving the FSA information which was false or misleading in a material particular might be a criminal offence. It stated that it should not be assumed that information was

known to the FSA merely because it was in the public domain or had previously been disclosed to the FSA or another regulatory body. By the declaration Mr Townrow confirmed that the information in the form was accurate and complete to the best of his knowledge and belief and that he had read the notes to the Form.

92. Mr Townrow's explanations for the untrue answers were that others had filled in the answers to the questions, that he did not regard the inaccuracies or omissions as material, or that the FSA already knew some of the omitted information. He arrogated to himself the decision on whether information which the FSA had asked for on the form should be included. It is clear, in our judgment, that Mr Townrow did not take seriously the declaration which he signed. This is all the more extraordinary, given that the purpose of the application was to try to get out of the difficulties that he was in with the FSA because of the dissolution of the partnership and the need for a fresh authorisation. We can only conclude that Mr Townrow is either constitutionally incapable of going to the trouble of giving truthful and accurate information to a regulator, or is persistently unwilling to do so.

UNPAID CHARGES

93. We have already referred to Mr Townrow's earlier history of not paying regulatory fees.

94. JMTA currently owes the FSA fees of £8,693 made up of:

1) late payment fees surcharge of £250, due 2 January 2001;

2) PIA Investors Compensation Scheme levy of £312, due 22 October 2001;

3) PIA pensions levy of £204.26, due 7 November 2001;

4) FSCS levy for the period 1 January 2002 to 31 March 2033 of £2,084.14, due 25 February 2002;

5) FSA fees for the period 1 January 2001 to 31 March 2002 of £1,456, due 24 April 2002;

6) previous regulator credit of £719.12, given on 1 June 2002;

7) FSA fees for the period 1 April 2002 to 31 March 2003 of £5,282.86, due 1 July 2002;

8) credit against FSCS levy of £1,493.12, given 10 July 2002;

9) corrected FSCS levy of £758.88, due 11 August 2002; and

10) surcharge and interest for late payment of fees of £557.10, due 27 January 2003.

95. The FSA made repeated requests for the payment of those fees by letters and telephone calls, without result. Mr Townrow's excuses for non-payment were transparently unjustified. At the pensions review visit he stated that he was not really bothered by the non-payment of the fees. His practice was to 'roll them up', in other words, to not pay them. In his letter of 3 February 2004 he used the query over the status of the firm as an excuse for non-payment of the charges, notwithstanding that all except the final figure fell due before the query over JMTA's status arose. Where he did not agree with the rules on how the fees were calculated, he did not pay.

96. This seems to us to be illustrative of his persistent hostility to the whole system of regulation, of his failure to accept that those who work under regulation must comply with the applicable rules, and of his unwillingness to meet his legal obligations when they involved the payment of money.

RESOURCES

97. We received evidence about Mr Townrow's resources. As matters currently stand he would be in difficulty satisfying the Authority on his financial soundness. The pension claims have all been referred to the Financial Services Compensation Scheme. In view of the more serious issues concerning Mr

Townrow's honesty, integrity and attitude to being regulated, we do not consider it is useful to consider this aspect further.

OTHER MATTERS

98. It is not necessary for us to set out the details of the matters relied on by the FSA in relation to Mr Townrow's dealings with Mr Nicholls or with Britannic Building Society, since these add little, and merely fill out the picture which we already have of a person who persistently failed to act in an honourable manner when it involved paying out money to someone else.

PROHIBITION

99. We have to consider what is the appropriate action for the Authority to take in the circumstances of this case.

100. The purpose of a prohibition order is to protect consumers in the more serious cases of lack of fitness and propriety.

101. In our judgment the facts disclose very serious shortcomings in Mr Townrow's openness and honesty in dealing with consumers and regulators and in his ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards. We also consider that he presents a severe risk to consumers, as illustrated by his cynical disregard for the interests of customers whom he should have compensated in relation to their pensions. His history of relations with regulators has been unsatisfactory over a long period.

102. Mr Fatchett submitted on his behalf that a prohibition order was and would be a disproportionate sanction, and that Mr Townrow should be allowed to continue to work in the financial services industry under appropriate supervision. We do not agree. His lack of proper standards of honesty and integrity, his hostility to regulation, and his disregard of his customers' interests lead us to the conclusion that members of the public purchasing financial services should not be exposed to him.

103. We are reinforced in this conclusion by Mr Townrow's whole approach to the actions of the FSA and to this reference. If he had frankly acknowledged the errors of his ways, fully co-operated with the Authority, given accurate information, promptly regularised his situation, discharged his financial obligations to customers to the best of his ability, and produced a credible plan for how he would avoid similar problems arising in the future, we might have been able to take a different view. As it was, he blamed others for his errors, withheld co-operation, gave false information, disregarded his financial obligations to customers and others, and did not evince any real appreciation that his whole approach to being regulated had been wrong and needed to change. The nearest he came to an acknowledgment of his wrong attitude was to say that he was a salesman, and that it was fair to say that he got infuriated with administrators. In our judgment Mr Townrow is temperamentally unsuited to working in a regulated environment.

104. Accordingly, our decision is that a prohibition order in the terms issued was and is the correct action for the Authority to take.

105. Our decision is unanimous.

PROCEDURAL MATTERS

106. The detailed facts of this case were wide-ranging and covered a long period of time. Our task would have been made easier by a fuller chronology to accompany the parties' skeleton arguments, with document references, prepared in advance of the hearing.

107. The most material documents were inevitably spread across a number of lever arch files. We would suggest that a good way of preparing a core bundle in such a case is to place in a single file most of the documents referred to in a specific manner in the parties' skeletons, before the hearing starts. (This of course requires a judgment to be made over which documents are worth placing in the core bundle. If the core bundle becomes too large, its purpose is lost.) The documents placed in the core bundle should not be renumbered but should retain their numbering from the main files, so that further documents can be added to the core during the hearing if necessary. Divider cards can be

used within the core bundle to mark the divisions between the main lever arch files.

108. We also think it worth placing on record how invaluable we found the provision of a verbatim daily transcript of the hearing. It enabled the hearing to proceed significantly more quickly than would otherwise have been the case and was also of great assistance to us when reviewing the evidence in order to reach our decision.

Andrew Bartlett QC, CHAIRMAN