



[2016] UKUT 49 (TCC)

Case number FS/2015/0013

*Financial Services and Markets Act 2000 – application under s55A for permission to carry on regulated activities – whether applicant fit and proper*

**IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)**

**FINANCIAL SERVICES**

**IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

**BETWEEN**

**ABI FOL CONSULTING LIMITED**

**Applicant**

**-and-**

**THE FINANCIAL CONDUCT AUTHORITY**

**Respondent**

**Tribunal: Andrew Bartlett QC (Judge of the Upper Tribunal)**

**Nick Douch**

**Jo Neill ACA**

**Dates of hearing: 18-19 January 2016**

**Date of written decision: 4 February 2016**

**Counsel for the applicant: Nawraz Karbani (pro bono)**

**Counsel for the Authority: Tom Ogden**

## DECISION

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### **DETERMINATION**

For the reasons set out below, we find that Mr Ladele is a person of honesty and integrity. He has been subjected to an unjustified accusation. He has acted and may be expected to act with probity. We remit the application to the Authority and direct that the Authority reconsider and reach a decision in accordance with our findings.

## **INTRODUCTION**

1. In 2014 the applicant applied under s55A for permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a range of regulated activities<sup>1</sup>. The applicant's sole director and shareholder was and is Mr Abiodun Ladele<sup>2</sup>.
2. In 2010, during his employment by HSBC, Mr Ladele had accessed confidential customer details, which were used by one or more persons to engage in fraudulent transactions. This led to an accusation that he had committed the criminal offence of fraud by abuse of position. At Southwark Crown Court in January 2012 he was acquitted.
3. By a decision notice dated 22 May 2015 the Authority decided in accordance with s55X of the Act to refuse the application.
4. The reason for refusal of the application was the Authority's view that, despite the acquittal, on the balance of probabilities Mr Ladele had been involved in the fraudulent activities. Because of this, the Authority concluded-

that it is not satisfied that Mr Ladele has acted and may be expected to act with probity and, as a result, that it cannot ensure that Abi Fol will satisfy, and continue to satisfy the threshold conditions, in particular the suitability condition (of paragraph 2E of Schedule 6 to the Act), which requires Abi Fol to be a fit and proper person, having regard to all the circumstances.<sup>3</sup>

5. Mr Ladele denies any involvement in fraudulent activities. On 18 June 2015 he referred the Authority's refusal to the Tribunal.
6. Our jurisdiction in this case is governed by s133(6) of the Act, which provides that the Tribunal must determine the reference by either dismissing it or remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

## **MR LADELE**

7. After attending Barking Abbey School, Mr Ladele continued his education at Middlesex University, where he obtained a BSc in economics (2003) and a Masters degree in international finance (2005). He started his career in the financial services industry at an American investment firm (Edward Jones), where he qualified as a stockbroker in 2005, before being head-hunted to join HSBC in March 2006.

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<sup>1</sup> Advising on pensions (excluding pension transfers and pension opt outs); advising on regulated mortgage contracts; arranging regulated mortgage contracts; agreeing to carry on a regulated activity; arranging deals in investments; making arrangements (regulated home finance and designated investment business); arranging non-investment insurance.

<sup>2</sup> Mr Ladele also submitted an application for approval for controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money laundering reporting) and CF30 (Customer).

<sup>3</sup> Decision Notice, 22 May 2015, paragraph 5.

8. At HSBC he started as a trainee financial planning manager based in the Barking branch. After a one-year training programme he became a financial planning manager covering the north and north east of London. He passed CeFA examinations. He was promoted to senior financial planning manager in February 2008. His job involved advising on and selling financial products to HSBC's retail customers. Around the time of his promotion his manager described him as 'a shining light', because he had contributed more than half of his team's performance. A further promotion in January 2009 allowed him to take on business clients also; he was one of only eight in the entire London workforce of 150 financial planning managers promoted in this way.
9. At the time of the investigation into the frauds his career with HSBC was going well, but he was looking at other options in private banking and other areas of wealth management. He applied for jobs and had interviews lined up with Barclays Wealth and with Coutts. He was due to attend a second stage interview with one of them. But he pulled out because he considered it was necessary to clear his name before he continued his career.
10. Since July 2011 he has been engaged in freelance consulting. He set up the applicant as an incorporated company in August 2012. In 2013 a firm of financial consultants applied for him to be approved to perform controlled functions but ultimately withdrew the application because 'unable to pass Mr Ladele on the Fitness and propriety tests', adding:

The lack of information and co-operation from HSBC was a considerable contributing factor on us not being able to evidence Mr Ladele's Fitness and Propriety.

11. He is an active member of the Personal Finance Society, the Society of Mortgage Professionals and the Chartered Insurance Institute. He is currently awaiting Chartered Financial Planner status (Level 6) and holds a number of industry qualifications, including in Securities, Regulation, Mortgage Advice, Life & Pensions, Tax Planning and Financial Planning Process. He is also currently training and studying for the second part of the Certificate in Discretionary Investment Management.
12. He produced two character references. One is from a solicitor in local government who has known him for over 20 years. This includes:

Abi demonstrates a giving and generous nature. ... He has consistently proven himself to be a loyal and dedicated individual in both his personal and professional life. ... Abi is a man of integrity and honesty.
13. The second reference is from the Minister of Goodmayes Baptist Church. This includes:

I have known him for the past 10 years ... He is generous, friendly, respectful, honest and law abiding. His integrity and openness endeared him to a position of trust in the Church and he was entrusted with church finances on numerous occasions, which he did with a degree of excellence. As a Minister personally involved ... I can commend Mr Ladele ... trustworthy, reliable, skilled, efficient and conscientious ...

14. The information produced to us shows that Mr Ladele does not gamble, drink, or live beyond his means. He was a frequent giver to charity, sometimes of thousands of pounds. As at March 2010 he was earning a regular salary and he had five accounts at HSBC, none of which had a debit balance. At the time of the frauds he had savings, and there is no suggestion that his personal finances were under any pressure such as might have provided a motive for fraud.
15. Mr Ladele provided three formal witness statements and gave sworn evidence before us. We refer to the details of his evidence, and our assessment of it, below.

#### **THE CONFIDENTIAL INFORMATION AND THE FRAUDS**

16. To obtain access to customer information at HSBC, Mr Ladele had to log in to the computer system. He was made aware, as were all employees with the ability to log in, that the system records each person's activity.
17. The computer record shows that on 22 March 2010 at the Hornchurch branch, over a period of about eight minutes, he used his log-in to access information concerning a Mr K, including the customer profile screen, the customer verification screen (CVS) and a list of past transactions. A CVS shows, among other things, details used for the verification of a customer who is registered for telephone banking, such as a memorable place and so forth.
18. The record shows that Mr Ladele printed historic bank statements of Mr K's account. It does not show whether he printed the CVS screen, because the Bank's system does not record the printing of a screen.
19. Mr K was not due to visit the branch that day; in fact he was abroad at the time.
20. On each of the next two days a person acting fraudulently telephoned HSBC, pretending to be Mr K, and was able to alter personal details concerning Mr K's account. Fraudulent payment instructions by telephone commenced on 26 March and continued to 6 April 2010, in amounts ranging from £900 to over £50,000. Some payments were successfully made, others were made and reversed, and some were stopped before going through. No cash was involved; the payments were all made to named beneficiaries at identified bank accounts. As part of the fraud, a personal loan of £25,000 was applied for and approved through internet banking.

21. On the morning of 30 March 2010 at the Finsbury Park branch, over a period of about five minutes, Mr Ladele accessed information concerning a Mr B, including the customer profile screen, the CVS and a list of past transactions. The computer record does not show what Mr Ladele printed.
22. On the following day a person acting fraudulently telephoned HSBC, pretending to be Mr B, changed the security details on Mr B's account, and instructed that a payment of £8,500 be made to a named beneficiary at an identified bank account. The payment was not successfully made.
23. The total value of the attempted frauds was £125,032, and the Bank's ultimate loss was £20,935.
24. Both in the case of Mr K and in the case of Mr B there were features of the interactions between the fraudster and the Bank which indicate a high probability that the fraudster made use of particular details which Mr Ladele had accessed. Mr Ladele states that he has no personal knowledge of this, but accepts that he is not in a position to dispute it; he concedes that, somehow, information which he accessed fell into the hands of one or more fraudsters. The central factual issue in dispute between Mr Ladele and the FCA is whether it is also right to conclude that he knowingly made the information available for fraudulent use.

#### **THE HSBC INVESTIGATION**

25. On 27 April 2010 a manager in the HSBC fraud investigations department sent out instructions for a 'fact find interview' to be conducted with Mr Ladele concerning the taking over of Mr K's account. The instructions were addressed to Mr Porter, a regional fact find manager with HSBC, who gave evidence before us. 'Fact find manager' was a new role created in 2009, for which there was no formal training provided by HSBC.
26. In Mr Porter's experience, cases of fraud originating within the Bank might happen at a Branch once or twice a year. As it happened, Mr Porter already knew who Mr Ladele was. He was surprised that Mr Ladele was under suspicion.
27. The interview took place on 5 May 2010 in the presence of Mr Ladele's line manager, who took notes. Mr Porter described the meeting as relaxed, polite and friendly.
28. On the day after the interview Mr Ladele was sent the notes of interview, which he approved, subject to some comments and amendments.
29. The Authority, in support of its case, places considerable reliance on certain answers given by Mr Ladele as contained in the notes of the fact find interview.
30. Having heard Mr Porter's evidence, and having read the contemporaneous emails, and the notes themselves, the following features stand out:

- a. Mr Ladele was given no prior explanation of the subject-matter of the interview. He therefore had no opportunity to check what he had been doing on 22 March 2010, or why. Between 22 March and 5 May Mr Ladele would have spoken to and/or considered confidential information relating to a number of customers.
- b. Mr Porter described the interview to Mr Ladele at the outset as ‘an informal fact find’. Mr Ladele was given no warning that things he said might be used against him in legal or regulatory proceedings, and that he should therefore be careful not to guess or speculate if he was unsure of the answers to questions. Mr Porter described him as thinking aloud during the meeting, trying to identify different possibilities which might or might not have occurred. Mr Porter did not mean this as implying anything adverse to Mr Ladele. Mr Porter said Mr Ladele appeared to be trying to be helpful. Mr Ladele said in re-examination: ‘I would not have given such an incoherent response if I had known something was wrong’. It is plain, in our view, that many of Mr Ladele’s answers were speculative, because the questions were sprung on him, without opportunity to consult his diary, to identify the relevant customer, or otherwise prepare so as to be able to answer Mr Porter’s questions accurately and with confidence.
- c. The interview was not recorded.
- d. To read aloud the conversation recorded in the notes takes about 10 minutes, which should be compared with the interview duration of 57 minutes. Allowing for a few minutes taken up by Mr Porter reading out the prior email from the fraud investigations department, the large bulk of the interview time is not accounted for. No one suggested that the interview time was mainly spent in silence. The notes must be a highly selected and compressed summary of what was actually said.
- e. When Mr Porter first mentioned Mr K to Mr Ladele in the interview, Mr Ladele thought he was referring to a different customer. It is not clear from the notes at exactly what point or points during the interview Mr Ladele realised that he might be or was thinking of the wrong person. This makes it difficult to know what to make of a number of Mr Ladele’s answers.
- f. The briefing received by Mr Porter was limited to the email from the fraud investigation department. Based on that email, he believed that Mr Ladele had no legitimate business reason for looking at Mr K’s CVS. He was not aware of the frequency of Mr Ladele’s accessing of CVSs that we refer to below.
- g. There are a number of mismatches in the notes, where the answer given by Mr Ladele does not relate to the question asked by Mr Porter. This suggests that other conversation took place after the questions and before the answers.

- h. Most of the amendments to the note requested by Mr Ladele were not in fact made. Mr Ladele took on trust the statement in Mr Porter's email at 1.25pm on 6 May that he had added in the adjustments, confirming back to Mr Porter in an email at 1.38pm that the notes should be treated as signed. This is in line with the informal, relaxed, open and friendly nature of the interview.
31. We consider the particular fact find interview answers relied on by the Authority below, in our assessment of Mr Ladele's evidence.
32. Mr Ladele went on sick leave on 10 May. On 12 May 2010 HSBC suspended him from his employment.
33. HSBC did not conduct a fact find interview with Mr Ladele concerning access to Mr B's account. Such an interview was conducted with a colleague, Mr R, who had used his own log-in to access some of Mr B's customer information (but not the CVS) at Finsbury Park branch during the afternoon on 30 March, the day before the fraudulent takeover of Mr B's account. The interview was conducted on 28 May 2010. It lasted only 8 minutes. Mr R said he was unable to remember having looked at the information, or whether anyone else had asked him to do so. Mr R was not able to confirm any definite reason for having looked at the information. He was not asked any questions about whether he saw information viewed or printed off by Mr Ladele that morning concerning Mr B. There is no evidence before us concerning the extent to which the Bank investigated whether Mr R accessed Mr B's CVS on any dates other than 30 March 2010.
34. While it was clear that there was no appointment with Mr K on 22 March 2010, there does not appear to have been any rigorous inquiry into whether any attempts were made by Mr Ladele, or by other staff on his behalf, to arrange an appointment with Mr K for a later date. Given that Mr K was abroad at the time, any such attempts are likely to have ended in failure. More generally, as far as appears from the evidence, the investigators did not ask any of Mr Ladele's colleagues who worked at Hornchurch and/or at Finsbury Park whether they had seen confidential information viewed or printed off by Mr Ladele concerning Mr K or Mr B or whether he had passed the information to them for the purposes of further considering Mr K or Mr B as possible prospects for sales and/or arranging appointments with them.
35. The fraud investigators booked a 'non-routine interview' with Mr Ladele for 15 June. Mr Ladele took advice from his Union. He did not attend. Instead, on advice, he gave notice of resignation. He also notified the Authority that he had left. HSBC took the view that having regard to the notice period in his contract of employment the resignation would not take effect until a date in July.
36. On 21 June 2010 the fraud investigation department completed a report, which expressed the opinion that Mr Ladele had conspired with unknown parties to commit fraud against the Bank. Accordingly, on 23 June 2010 HSBC wrote to him, inviting



him to attend a disciplinary hearing. Mr Ladele again declined to attend. The hearing proceeded in his absence, and HSBC purported to summarily dismiss him on 2 July 2010. Mr Ladele subsequently both appealed within the HSBC disciplinary procedure and issued proceedings in the East London Employment Tribunal contesting the dismissal, but all proceedings were terminated by a compromise settlement. It was agreed that his employment terminated by the effect of his resignation on 17 June 2010, and thus he was not dismissed, and that HSBC would provide a standard form reference limited to his dates of employment and job title.

37. The fraud investigation report stated that Mr K had had an appointment with Mr Ladele at the Ilford branch in October 2008, and that on 1 December 2008 at East Ham branch Mr Ladele had accessed Mr K's customer profile, CVS and transaction list. Mr Ladele had also accessed Mr B's customer profile on 5 March 2010. This suggests that Mr Ladele was aware of Mr K and Mr B as persons to consider as potential purchasers of financial products. Likewise, the report noted that on 23 March 2010 Mr Ladele accessed customer profiles and CVSs for customer F and customer A, and on 9 April 2010 transaction lists. These customers had substantial credit balances. This tends to suggest Mr Ladele was looking at customer information with a view to the possibility of making sales. In his evidence he explained the sales pressure culture which was prevalent at the time, and that there was a campaign under way. No frauds were attempted on the accounts of customers F and A. The writers of the report acknowledged Mr Ladele's business reasons for accessing the CVS in six other instances during the early months of 2010, but considered that no business reason was apparent for Mr Ladele accessing Mr K's or Mr B's information in March 2010, or the information of customers F and A.
38. The Bank's records show that Mr Ladele had accessed the CVS of 10 customers between 1 January and 6 May 2010. They also show that in 2009 he had accessed the CVS of 50 customers, without any hint of fraud. (These records were produced by fax by HSBC in December 2011 shortly before the date proposed for the criminal trial and were submitted to the Authority in December 2013).
39. The investigation report does not appear to show an understanding of Mr Ladele's modus operandi. In circumstances where (according to unchallenged evidence) Mr Ladele was a successful salesman, and CVS details had been accessed by him in 58 instances in 2009-2010 without fraud, the view that there was no apparent business reason for such access in a small number of cases seems to have been adopted by the investigators without adequate justification.
40. Mr Ladele, in one of his emails to Mr Porter on the day after the fact find interview, suggested that the Bank should find out more about the individuals that committed the fraud, and perhaps this would lead to the culprit who released information to them. It is not clear from the evidence what, if any, steps the Bank took in this respect; possibly none at all.

41. The Authority asked the Bank by email on 25 March 2015:

Can the bank confirm, to the best of their knowledge, whether the accounts to which the funds were fraudulently diverted were ever traced, and if so whether the owners of those accounts and/or the beneficiaries of the fraud were ever identified?

42. The Bank's response to this question provided summaries of all the fraudsters' telephone calls, and details of the dates, amounts, beneficiary names, banks and account numbers, but without any comment on whether there had been any attempt to use these details as the basis for inquiries about the persons who benefited from the frauds.

43. The Bank's 'Grounds of Resistance' in the Employment Tribunal proceedings stated:

Fraud involving customer accounts is, naturally, of the utmost seriousness to the [Bank], whose business entails the safeguarding of customer money. An immediate investigation was launched.

44. Unfortunately, the Bank's words do not appear to us to correspond with its actions. The fraud investigation report is an unsatisfactory document, which in our view does not demonstrate that the frauds were treated with the utmost seriousness. We bear in mind that the investigation was not helped by the fact that Mr Ladele did not participate in it beyond the initial fact-find. We also keep in mind the need not to criticise the Bank unnecessarily; this would be unfair, given that no witness from the fraud investigation department was called by the Authority to explain, defend or amplify the report. The practical effect of the absence of a witness from the fraud investigation department was that important questions were left unanswered, and important parts of Mr Ladele's evidence were uncontradicted. However, we would add that we have no reason to believe that, if such a witness had been called, the Authority's case would thereby have been strengthened.

### **THE CRIMINAL PROCEEDINGS**

45. Limited information has been produced to us concerning the police investigation. Mr Ladele was arrested in December 2010. He was charged with fraud by abuse of position.<sup>4</sup>

46. Through solicitors, Mr Ladele instructed a defence barrister experienced in criminal fraud cases, Mr Kevin Baumber. At the PCMH (Plea and Case Management Hearing) on 17 August 2011 Mr Ladele pleaded not guilty and the Crown Court made various orders, including for disclosure of information which Mr Ladele wanted from HSBC

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<sup>4</sup> Broadly, under Fraud Act 2006 s4 a person is guilty of this offence if he (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, (b) dishonestly abuses that position, and (c) intends, by means of the abuse of that position to make a gain for himself or another.

to demonstrate that he had legitimate business reasons to access confidential customer information.

47. The prosecution and HSBC did not comply with the orders. Because of the non-compliance the defence obtained listings for mention at the Central Criminal Court on 9 November 2011 and at Southwark Crown Court on 24 November 2011. On 6 December 2011 Mr Baumber prepared a skeleton argument for dismissal on the ground of abuse of process; one of the points included in this was HSBC's refusal to disclose Mr Ladele's work diary. The case was mentioned again at Southwark Crown Court on 23 December 2011 and 4 January 2012.

48. Mr Ladele obtained transcripts of the hearings. We derive the following:

- a. As at 9 November 2011 no CPS lawyer had yet been assigned to the case. Judge Higgins did not mince his words. He warned the prosecution that if they did not get ready in good time for the trial date of 9 January 2012, they might not be allowed to proceed at all. He added:

If [Mr Ladele] is not guilty then he should be properly exonerated, [the] matter should not simply run into the sand because of incompetent prosecution.

- b. On 24 November 2011 the prosecution's excuse for continuing non-compliance was that HSBC was refusing to provide six of the nine items of requested information on the ground of commercial sensitivity. Judge Robbins directed the prosecution to serve a third party witness summons on the Bank.
- c. On 23 December 2011 an email from HSBC was shown to the Court, from which it appeared that the Bank's refusal was not a complete refusal. Prosecuting counsel characterised the Bank's objection as 'baseless' and 'almost a contempt'. However, there was a doubt about the validity of the witness summons, because it was undated. Judge Beaumont said HSBC was taking what might be considered non-existent technical points. The Judge ordered that HSBC either comply or attend Court on 4 January 2012 to make representations.
- d. On 4 January 2012 prosecuting counsel told Judge McCreath that he had been instructed to offer no evidence because, having regard to HSBC's refusal to assist, there was little prospect of a conviction. The Judge directed that a verdict of not guilty be entered. The hearing concluded with this exchange:

Judge: ... I must say I find it disturbing that a corporate institution, even one as important as HSBC, thinks that it can simply defy an order of the court, which is what effectively has happened here, is it not?

Prosecuting counsel: Indeed.

49. The transcripts do not on their own tell the full story. On 19 December 2011 an email from HSBC to the CPS lawyer stated that there were three categories of document which HSBC was refusing to provide on various grounds, and took points on the validity of the witness summons. This was evidently the email shown to the Court on 23 December.
50. On 21 December 2011 the CPS lawyer stated in an email to HSBC's external lawyer:
- In light of the difficulties in this case I have made the decision to discontinue this case in light of advice from counsel. Thank you for getting back to me. It will not now be necessary to provide any further documentation.
51. An exchange of emails between HSBC and prosecuting counsel on 23 December 2011 refers to a 'mistaken premise that HSBC were refusing to make disclosure'. This may reflect the fact that the refusal was not total but was limited to three categories. If so, this would be consistent with what was said in Court on 4 January 2012. But it could also be true that there were different or additional reasons for the offering of no evidence.
52. Recalling Mr Ladele's suggestion that inquiries about the individuals that committed the fraud would perhaps lead to the culprit who released the confidential information, a point of particular interest arises from the evidence about the criminal proceedings. Mr Baumber's skeleton argument on abuse of process stated that the people who compromised the bank accounts and took the money ('the thieves') had been brought to justice separately, and relied on the lack of any proven connection between Mr Ladele and the thieves.
53. Mr Baumber's witness statement of 18 March 2015 confirms that the thieves were arrested and brought to justice separately, and that their names were disclosed by the prosecution to the defence. His statement also explains that, in order to demonstrate the lack of connection between Mr Ladele and the thieves, the defence had requested the prosecution to disclose their inquiries into the necessary mobile phone records, text messages and Facebook entries. Based on his experience in cases of the kind, he might reasonably have expected to see evidence of association between Mr Ladele and the thieves, if Mr Ladele were guilty, or alternatively such information might have identified the true source of the leaks from fellow bank employees working with Mr Ladele, for example, from a text message or telephone contact between one of the convicted thieves and an employee. He states that the lack of such evidence significantly weakened the prosecution case. Mr Ladele gave unchallenged evidence that he handed both his personal phone and his business Blackberry to the police for scrutiny.
54. The Bank and the Authority have stated that they are unaware of the convictions of the thieves. An email dated 6 April 2015 from one of the Bank's employee relations managers to the Authority states that the fraud investigation team 'has received

confirmation from ‘the Police investigating officer’ that ‘they are not aware of any other individual(s) being “caught”.’ This is hearsay upon hearsay, and is of little weight. We do not know who is meant by ‘the Police investigating officer’, or what involvement he or she may have had in 2010 or 2011. This email does not provide a reason for us to reject the cogent, informed and unchallenged evidence of Mr Baumber. Understandably, the Authority did not put forward any argument as to how Mr Baumber’s evidence could have been erroneous. We infer that, whatever the precise details of HSBC’s refusal to disclose documents, the lack of this other kind of information (ie, mobile phone records, text messages and Facebook entries) was probably a material factor in the decision to offer no evidence against Mr Ladele.

### **THE APPLICATION AND THE RDC**

55. The application for permission led to an authorisations interview with the Authority on 8 July 2014. It appears Mr Ladele was not told in advance that he would be asked in considerable detail about the case in relation to which he had been investigated and acquitted. It is also relevant, in our view, that this was more than 4¼ years after the relevant events, so it was not to be expected that Mr Ladele would recall dates and time periods accurately.
56. During the authorisations interview Mr Ladele stated that he often printed off details to ascertain whether customers were new business opportunities or not, and when he found opportunities he would use them to train the other staff and show them what a good prospect looked like. He stated that other members of staff could have used the information from the print outs. He said the information from the CPS was that there had been three convictions for the frauds. He also complained about HSBC’s refusal to release his diary.
57. Some months after the interview the Authority indicated that it was minded to refuse permission. This generated substantial correspondence between the Authority and Mr Ladele. We note in particular that, in the first email in this series (29 October 2014), Mr Ladele emphasized to the Authority, as a ‘key point’, that information ‘was accessed, then assessed, then printed for staff’. He stated:

‘I normally leave the information with staff, to call client. They will need to verify the customer, before proceeding with a sales pitch – ie benefits of coming in to see Abi Ladele for financial planning and investment needs.’
58. He also repeatedly emphasized that his diary, which HSBC refused to release, was crucial to show his method of working, and that he was running an investment campaign at the relevant time.<sup>5</sup>

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<sup>5</sup> The diary was not obtained either for the RDC hearing or for the hearing before us. For the purposes of the Tribunal proceedings the Authority’s position was that the Authority did not possess the diary or many other documents which Mr Ladele requested, that the requested documents did not form part of the basis of the

59. The RTC (Regulatory Transactions Committee) issued a warning notice on 16 January 2015. Through lawyers, Mr Ladele made written and oral representations to the RDC (Regulatory Decisions Committee). The written representations included Mr Ladele's first witness statement dated 20 March 2015. He also contributed briefly to the discussion at the oral hearing on 26 March 2015. A substantial part of the oral hearing was taken up with discussion of what it was that had to be proved, and by whom, and as to the legal significance of the not guilty verdict.

60. His first witness statement included:

I dealt with printed documents in a number of different but legitimate ways including passing them to colleagues for them to later telephone conversations [*sic*] arrange calls to, or meeting with such customers, in order to discuss financial planning. This information usually included the customer identification information. ...

... printed documents containing customer information were routinely available to (or could be viewed by) a range of persons in both branches.

61. Following the oral hearing the Enforcement Division asked the RDC to take into account additional material, consisting of an email from HSBC stating that their instructions for customer verification on an outbound telephone call required confirmation by the customer of the second half of their postcode and their month and year of birth, not use of the customer's memorable details.

62. Mr Ladele responded with legal submissions and a second witness statement. This included evidence from him that it was not his practice, or that of colleagues, to use only the post code and birth date information for verifying customers during outbound calls, since this would have been an inadequate means of identification; he was trained by his previous manager to use additional information, including the memorable details.

63. On 22 May 2015 the RDC refused the application on the basis stated in paragraph 5 above.

### **HSBC PROCEDURES**

64. Mr Porter gave evidence about the system for confidential waste at Hornchurch. Confidential documents, once they were no longer required, were placed in the confidential waste bin, which had a blue bag. But any member of staff could pick something out of the bin until the end of the day, when the bin was taken and placed in a locked area.

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Authority's decision as set out in the Decision Notice or of the Authority's pleaded case in the Tribunal proceedings, and that the Authority did not have any obligation to obtain the documents (letter 10 September 2015).

65. At the hearing before us the Authority called Mr Huw Stephens of HSBC to give further information about the Bank's procedures. He had worked for HSBC in the Bath area from 2005 to 2012 as a Premier Independent Financial Adviser, advising HSBC's retail customers in relation to their financial needs. He has never worked in the East London Business Unit, which includes Hornchurch and Finsbury Park. He is now an Area Premier Relationship Manager, based at Canada Square. In his current role, which is not customer-facing, he does not have access to any customer's CVS.
66. He commented on what Mr Ladele had said about the practice of accessing the CVS and the transactions list before calling customers in order to consider their potential needs, and when calling them proactively to establish whether they might require financial advice. In his view Mr Ladele should not have been using either the CVS or a transactions list covering multiple months for these purposes.
67. It may be that the practice in the Bath area differed from the practice in the East London area. Mr Stephens' evidence did not persuade us that we should either doubt Mr Ladele's account of the working practices in the East London area or regard those practices as illegitimate. Mr Stephens was unable to provide a convincing explanation of why, if financial planning managers did not normally need access to the CVS, the Bank gave them such access. In our view the practices spoken to by Mr Ladele are no more than common-sense and also accord with common experience of telephone calls from Banks. It seems to us obvious that to interest a customer in a product sufficiently to persuade them to make an appointment to come into the branch it may be necessary to refer to their personal circumstances to explain why the product is needed and would fit their circumstances. Reference to such information during the call would be improper without first obtaining secure verification of the identity of the person who has answered the telephone. Information as basic as the postcode and the month and year of birth would often be known to other household members who might have answered the telephone, and would therefore be wholly insufficient for positive verification. There would be some kinds of calls for which confirmation by the customer of the second half of their postcode and their month and year of birth would be sufficient, because the purpose of the call would not involve discussion of any confidential information, but this would not apply to calls made for the purpose of interesting customers in financial products in the kinds of circumstances envisaged by Mr Ladele, as described in his third witness statement and in the oral evidence which he gave to us (see further paragraph 77 below).
68. Moreover, Mr Stephens' initial evidence that only the latest bank statement would be looked at by the adviser seems to us to be at odds with the realities of the needs of the financial planner, if he is to be an effective salesman; he cannot conduct a telephone call to persuade a customer to consider a financial product with maximal effectiveness if he only has available the minimal information discoverable from the basic details on the customer profile screen and a single bank statement. During cross-examination Mr Stephens conceded that it might be necessary to look back further. We infer from

his answer in cross-examination, that the ‘norm’ was ‘not to go back further than six months’, that in some circumstances the adviser would look further back. An example which he gave was where a customer had not used his ISA allowance for the year. It would seem self-evident that, in order to see whether this was so, it might be necessary to look back for up to 12 months.

69. Mr Stephens confirmed a number of points made by Mr Ladele:
- a. In 2010 there was a target-driven sales culture in the Bank.
  - b. In the branch network there were numerous different people who could help a Financial Planning Manager by opening up opportunities to see customers.
  - c. Bank employees were very much aware that when accessing the Bank’s computer system they were leaving a footprint showing what they had been doing.
  - d. Confidential information might be put in pigeonholes during the day, where other staff members would be able to access it.
70. The Authority did not provide evidence of the number of employees who might work from time to time both at Hornchurch and at Finsbury Park, but it was clear that Mr Ladele was not the only person in that category.<sup>6</sup>

### **MR LADELE’S EVIDENCE**

71. Mr Ladele provided a third witness statement for the Tribunal proceedings and also gave sworn oral evidence. He told us he always put clients first and enjoyed making a difference in people’s lives. He spoke graphically of the hard work that he had put in and the sacrifices that he had made, in order to advance his career in the financial services industry. He was cross-examined firmly and at appropriate length by Mr Ogden. He denied wrongdoing, and explained his methods of work and how an insider at the Bank might have misused information that he had accessed and printed. He expressed keen disappointment with the lack of thoroughness in the Bank’s investigation and the lack of disclosure.
72. He readily accepted that he had been wrong in asserting, in his Reply to the Authority’s Statement of Case, that he had not been invited to sign the fact find notes until weeks afterwards and had protested the accuracy of the notes. We note that this erroneous recollection may have originated from a mistake by his lawyer in October 2014.<sup>7</sup> Mr Ogden put to Mr Ladele that it showed he was prepared to lie and say whatever it took to help his case, but we are unable to regard it as a deliberate

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<sup>6</sup> The Authority did not allege that Mr Ladele was the only person who worked at both branches. Nor did the evidence suggest that this was the case.

<sup>7</sup> We derive this from the text of an email of Mr Ladele to the FCA 30 October 2014 at 17:48.



falsehood or to attribute any particular significance to this error, whoever originally made it.

73. According to the note, he stated twice at the authorisations interview that he had not been ‘charged’ with fraud or with a crime. It was put to him in cross-examination that this was a deliberate false statement made for the purpose of assisting his application. He said he had provided evidence of his acquittal to the Authority and he thought it must be a typo. We find the suggestion that he made a deliberate false statement baseless. He knew perfectly well, and would have assumed that those interviewing him also knew, that the Authority already had details of his acquittal. His application form referred expressly to the previous application, which was withdrawn; and the form submitted to the Authority to withdraw the previous application referred in explicit terms to the Court documents which confirmed that he had been acquitted. We doubt there was a typographical error and think it more likely that he mis-spoke at the interview without intent to deceive. During his evidence before us there were similar occasions when he used incorrect words and had to be pressed as to what he really meant before he realised that he was not speaking accurately and was able to clarify what he had intended to convey. Similarly, we noted that in his emails to the Authority it was sometimes evident that he was using words incorrectly.
74. In his evidence in chief Mr Ladele stated that he had not been disciplined by HSBC. He referred to a Bank email dated 27 February 2013 which stated that he ‘had not been disciplined for a matter which required notification to the FSA’. On the basis of what HSBC had said in its Grounds of Resistance to his employment tribunal claim, Mr Ogden put to him that this evidence was false, and was an example of his saying things that he thought would help his case. But the effect of the compromise agreed with the Bank was that his employment terminated by the effect of his resignation on 17 June 2010, with the result that the disciplinary proceedings were not valid. It seems to us that Mr Ladele was entitled to say what he said.
75. In an email to the Authority dated 30 October 2014, sent at 4.43am, Mr Ladele had written:
- ... everyone knows I print off this data. ... I share it with staff. It is the information they use to book appointment for me. They call customer, I never do. The branch responsibility to turn the opportunity I have identified to an appointment. [*sic*]
76. In oral evidence Mr Ladele said that staff ‘normally’ booked appointments but occasionally he did it himself. Mr Ogden put to him that the email, because it used the word ‘never’, provided an example of his saying something that was not true in order to help his case. Mr Ladele conceded that, read literally, the word ‘never’ was incorrect, and protested that the email should be read in context. Since he had told the Authority in an email on the previous day (29 October 2014) that ‘normally’ he would

leave the information with staff to call the client, we are wholly unpersuaded that there is any basis for regarding his email of 30 October 2014 as intended to mislead.

77. Mr Ladele further explained that, having looked at a customer's financial information, he would decide whether to follow the customer up as a lead. Then there were various possibilities: he might call up and try to make a sale or do a KYC<sup>8</sup> fact find on the telephone, or he might call up and organise an appointment, or he might ask someone else in the branch to make an appointment. If he asked another staff member to make the appointment, depending on circumstances he might pass them only the customer profile or might pass them the whole pack of information that he had printed off, including the CVS. The latter would apply where he was training staff to make telephone sales calls and gain a commitment from the customer, even though the actual sale would be made when the customer came in to see him. Unless or until passed to a member of staff, the confidential information might be on his desk during the day, but cleared and locked away at night. A member of staff, after booking an appointment, would retain the documents in their pigeonhole or give them back to Mr Ladele.

78. Mr Ogden drew attention to a passage in the informal fact find note:

AP – Did you hand out statement prints?

AL – Definitely not. I would destroy them in confidential waste. You're not allowed to take them out of the branch any more.

79. Mr Ogden put to Mr Ladele that this was inconsistent with his oral evidence. Mr Ladele explained that his answer did not relate to handing prints to colleagues within the branch but to whether prints should be taken out of the branch. This seems to us plainly correct. On the face of the note, if the question is about handing prints to colleagues, the answer, which is about taking documents out of the branch, does not relate to the question,

80. Mr Ogden cross-examined Mr Ladele about answers given during the informal fact find in which he appeared to deny knowledge of or access to the CVS. The suggestion was that he was lying to Mr Porter. Given that the atmosphere of the interview was informal and relaxed, and Mr Ladele on many occasions accessed and used the CVS, as was recorded by the system, it would be very surprising if Mr Ladele was intending to deny having access to or even knowledge of the CVS. Mr Ladele explained there was a misunderstanding: what he was intending to convey was that his access would not extend to dealing with the passcode section of the screen or resetting the passcode (security number); this was not something he dealt with or was comfortable dealing with because it was outside his job description. We accept his explanation.

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<sup>8</sup> KYC stands for 'Know Your Customer'.

81. Mr Ladele admitted both in his Reply to the Authority's Statement of Case and in his oral evidence that he did not personally telephone Mr K after accessing his details. He said in evidence that he would have invited one of his colleagues to do so. We understood this in its context as a reference to his general practice, not as an assertion that he had a specific recollection of asking a colleague to call Mr K. Mr Ogden put to him that he had never mentioned this before, the implication being that he had just invented it while in the witness box. This was not correct, as can be seen from Mr Ladele's emails of 29 and 30 October 2014, paragraph 6 of Mr Ladele's first witness statement, paragraph 2 of the Authority's email of 23 April 2015, and paragraph 13 of Mr Ladele's second witness statement. If Mr Ogden's point was that Mr Ladele had not previously claimed to have a specific recollection of asking a colleague to call Mr K, we consider this was based on a misunderstanding of the intent of Mr Ladele's answers.<sup>9</sup>

82. Mr Ladele explained that he accessed Mr B's information for a second time at Finsbury Park because he was a low net-worth individual and so of more interest to Finsbury Park, where smaller cases were dealt with, and he invited staff at Finsbury Park to follow it up. His evidence that he asked staff to follow up Mr B was consistent with what he had said previously. Mr R's signed statement to the police (17 January 2011), concerning the attempted fraud on Mr B's account, stated:

DC Darmody also informed me that Mr Ladele suggested a print of Mr [B's] profile<sup>10</sup> was given to me to book an appointment for him to come in and speak to me. I cannot remember receiving this print out or calling Mr [B], however it is possible because from time to time various managers would give me actions to contact certain customers. These documents were often left on my desk in the office or in my tray during the day ... . Once I finish with documents I place them in a confidential waste bag ... [underlining added]

83. Mr Ladele further explained that there were about 10-12 staff in the Hornchurch branch who might make appointments for him and about four or five at Finsbury Park. Mr Ogden put to Mr Ladele in cross-examination that he had never previously explained that the reason for accessing Mr B's information a second time at Finsbury Park in particular, rather than at Hornchurch, was Mr B's lower net-worth. Mr Ladele said: 'No one's asked me the question, so I didn't think of a response to it.' We have no reason to doubt this answer or to derive from it anything adverse to Mr Ladele.

### **ANALYSIS**

84. Our approach to assessing Mr Ladele's evidence is primarily to

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<sup>9</sup> Day 2, pp57-59.

<sup>10</sup> Mr Ogden pointed to the word 'profile' as not including the CVS, but Mr Ladele said in evidence that his practice was to staple together the information he printed out concerning a particular customer.

- a. look for consistency or inconsistency both within his own evidence and between his evidence and that of others, including documentary evidence, and
  - b. consider the inherent probabilities in the matters spoken to.
85. We have also taken into account our overall impression of him as a character, gained from his written and oral evidence, and from what others have said or written about him. To an extent we have taken into consideration his demeanour in the witness box, particularly under cross-examination, but we have reminded ourselves that demeanour alone can be an unreliable guide.
86. In cross-examination Mr Ogden did the best he could with the material available, but it amounted to little, and we found Mr Ladele's answers to be satisfactory. While Mr Ladele did make some evident mistakes in what he said, we concluded that he endeavoured to give honest testimony. He is not shown to have lied at any point, whether in the informal fact find, in the authorisations interview, in correspondence, in witness statements, or in his oral evidence. We would add that while giving oral evidence he showed commendable self-control in a highly stressful situation, and his maturity of character was shown by a remarkable generosity of spirit towards his accusers; he understood that, while he strongly contested what was said against him, his accusers had a job to do.
87. There is no admission of guilt from Mr Ladele and there is no direct evidence showing that he deliberately released customer information for fraudulent purposes. He has firmly denied such involvement. Nor is there any direct evidence to show a connection between him and the fraudsters or that he derived a benefit from the frauds. It is therefore appropriate to consider whether there is a circumstantial case against him, based on the presence of motive and opportunity. Such a case might support a conclusion that on the balance of probabilities he is guilty and that despite the lack of direct evidence his denial should be disbelieved.
88. No credible motive has been suggested. Mr Ladele had worked very hard over a number of years to achieve his position. He was looking forward to furthering his career by a move into private banking. His whole future depended not only on his professionalism but on his reputation for probity. He was not a gambler. He was not in financial difficulty. If he wanted to spend more on himself or on someone else, he could give less to charity. It makes no sense whatever that he would risk not only his career but the shame and ignominy of conviction and imprisonment, for the sake of some financial gain obtained by passing information to fraudsters.
89. As regards opportunity, there is no dispute that he accessed the information which was used in the frauds. But what seems to be lacking from the particular set of circumstances here is the opportunity for Mr Ladele to access the information without leaving his digital footprints behind so as to attract immediate suspicion. It is common ground that employees were well aware that their accessing of the Bank's computer

system was recorded against their personal log-in details. Two possibilities therefore require consideration:

- a. That there was some unusual or compelling circumstance which led Mr Ladele to misuse the information despite his knowledge that his access to the information was recorded against his personal log-in;
- b. That the fraudulent release of the information was by a person who had not logged in to obtain it, and might therefore be able to misuse it without being identified.

90. As between these two possibilities, in our judgment the evidence all points to the second. There is no hint or suggestion of any circumstance which could explain misuse by Mr Ladele despite his knowledge that his accessing of the information was recorded. He was not stupid, or suddenly desperate for funds because of financial troubles, or overwhelmed by greed. There was ample opportunity for a colleague to obtain and misuse the information without being identified. Mr Ladele may have handed it to a colleague for follow up. It may have been left on his desk during the day. It may have been put in a pigeonhole to which any member of staff had access. It may have been retrieved from the confidential waste bag.
91. In opening on behalf of the Authority Mr Ogden asserted that it was not plausible that someone else gained access to and misused the information. This was a necessary plank of his case. The evidence shows that this plank is missing. On the basis of the evidence about how confidential information was handled within a branch, it is entirely plausible that other staff had access to the information which Mr Ladele downloaded. Taking into account Mr Ladele's evidence we find positively that other staff did have access to the information which he downloaded concerning Mr K and Mr B.
92. The Authority relies on the coincidence that on two occasions frauds commenced on the day after Mr Ladele had accessed information, and that he had accessed it at two different branches. In our judgment this coincidence is insufficient to point towards guilt on the part of Mr Ladele. It does not resolve the absence of any explanation for misuse by Mr Ladele after logging in. And it is not in any way inconsistent with the possibility that a colleague obtained and misused the information, whether one employee who visited both branches or a different employee at each branch.
93. In our judgment, when the matter is fully examined with the benefit of the evidence adduced before us, the case against Mr Ladele is not credible. We have no hesitation in finding on the overwhelming balance of probabilities that he did not pass on customer information for fraudulent purposes.
94. In the arguments there was some discussion of the standard and burden of proof, of exactly what, in such a case as this, either the Authority or the applicant had to prove,

and of the possible relevance of Article 6 or Article 8 of the European Convention on Human Rights. Given our clear conclusion on the facts, it is not necessary for us to enter upon those interesting questions.

### **CONCLUSION**

95. In our view Mr Ladele is a person of honesty and integrity. He has been subjected to an unjustified accusation. He has acted and may be expected to act with probity. The Authority should therefore reconsider the application in the light of these findings. For the avoidance of doubt we would add that on our view of the evidence Mr Ladele did not breach any relevant and applicable Bank procedure.
96. No doubt the Authority will also need to consider matters which have not been the subject of the hearing, such as whether the applicant will satisfy the threshold conditions in the light of the nature and extent of Mr Ladele's experience in organisations with in-house compliance functions and whether his experience and qualifications are such that he is suitable for all of the controlled functions for which approval will be needed. Nearly six years have passed since the unjustified accusation was first made. In one of his emails to the Authority he expressed confidence that his painful situation was temporary. While we express no view on the aspects of the application which have not been the subject of the hearing, we express the hope that he will be able promptly to resume his career in whatever way is appropriate, so that he can begin to regain the position in the industry that he would have attained but for the unjustified accusation.
97. We also thank both counsel for their very real assistance. We commend Ms Karbani for her pro bono representation of Mr Ladele, which made our task considerably easier than it would have been, and helped him to achieve what we consider to be the just result.

Andrew Bartlett QC

Judge of the Upper Tribunal

Release date: 5 February 2016