

**PROCEDURE** – Withdrawal of reference – Permission of the Tribunal – Applicant submits letter purporting to withdraw reference notice lodged after case called on for adjourned hearing but before Authority's opening – Whether withdrawn before the hearing of the reference – Yes – Financial Services and Markets Tribunal Rules 2001 (SI 2001/2476 r.14(1))

**FINANCIAL SERVICES AND MARKETS TRIBUNAL**

**EUROLIFE ASSURANCE COMPANY LTD;- Applicant**

**- and -**

**FINANCIAL SERVICES AUTHORITY - Respondent  
(withdrawal procedure)**

**Tribunal: STEPHEN OLIVER QC  
ANDREW BARTLETT QC  
TERENCE CARTER FCA  
KEITH PALMER**

**Sitting in public in London on 4 September 2002**

**Ali Malek QC and John Taylor, counsel, instructed by Simmons & Simmons, solicitors, for the Applicant**

**David Mayhew and Andrew George, counsel, for the Financial Services Authority**

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**DECISION**

1. This procedural point arises from the purported withdrawal by Eurolife Assurance Co Ltd ("EAC") of its reference to the Tribunal. The question is whether EAC, as applicant, can withdraw without the permission of the Tribunal.

2. On 29 November 2001 the Financial Services Authority ("the FSA") issued a supervisory notice under section 53(4) of the Financial Services and Markets Act 2000 ("FSMA"):

- withdrawing EAC's authorization to conduct new insurance business with effect from 1 December 2001; and
- requiring assets sufficient to meet liabilities within the European Community to be held by an approved trustee.

On 24 December 2001 EAC referred the action to this Tribunal in accordance with section 55 of FSMA.

3. The reference was listed for a full oral hearing in public starting on 2 September 2002. On 2 September and before the hearing was due to start the parties asked for time to see whether they could reach agreement on certain matters. The Tribunal signified its consent. By 4.00pm on 3 September the parties had not reached an agreed position. The Tribunal went into open court and the parties asked for further time. The Tribunal acceded to this on the basis that the FSA would open their case at 10.30am on 4 September.

4. At 10.30am on 4 September, and before the FSA had started to open their case, the representatives for EAC handed the Tribunal a letter (dated 4 September) in open court. This letter referred both to EAC's reference and to the references of five directors and employees of EAC. So far as EAC's reference is concerned, the letter reads as follows:

"Following an agreement reached today between the parties to the proceedings described above, we are writing ... on behalf of [EAC] to withdraw the Notice dated 24 December 2001 by which EAC referred the FSA's First Supervisory Notice to the Tribunal pursuant to section 133 of the FSMA."

5. Rule 14 of the Financial Services Markets Tribunal Rules 2001 (SI 2001/2476) is headed "Withdrawal of reference and unopposed references". Paragraph (1) provides:

"(1) The applicant may withdraw the reference –

(a) at any time before the hearing of the reference, without permission, by filing a notice to that effect; or

(b) at the hearing of the reference, with the Tribunal's permission,

and the Tribunal may determine any reference that is so withdrawn."

6. The Tribunal has the statutory obligation "on a reference ... to determine what (if any) is the appropriate action for the Authority to take in relation to the matter referred to it" : see section 133(4). If the reference has been withdrawn before the hearing, our permission is not, by reason of rule 14(1)(a), required; otherwise we have to consider the circumstances relevant to the withdrawal and reach a decision whether to allow it to take effect. The question for us to decide is whether, in the circumstances summarized above, the applicant has purported to withdraw the reference "before the hearing of the reference".

7. Neither FSMA nor the rules state when "the hearing of the reference" begins. In one sense the hearing can be said to have started either when the time on the listing notice has arrived, or when the parties come into court to ask for further time (as happened here). The other way of reading those words is to take them as referring to the time when the hearing effectively starts and from then on. On this latter reading an application for a standover or an adjournment would not constitute the start of the hearing. The hearing would effectively start with the FSA's opening.

8. On practical grounds we prefer the latter reading. Until the FSA opens its case the determination process will not have begun. It seems to us that the expression "the hearing of the reference" is directed at the time from which the hearing has effectively begun. It does not, for example, cover the situation here when all that has happened is that an application for further time has been successfully made.

9. Accordingly we decide that the application for withdrawal is valid without the Tribunal having to give permission. No direction is required.

**STEPHEN OLIVER QC ANDREW BARTLETT QC**