AUTHORIZATION – Suitability – Fitness and propriety – Applicant firm's connections with other persons in a relevant relationship – Those other persons refused approval on grounds of non-disclosure – No other person to carry out controlled functions – Whether Applicant firm satisfies "fit and proper" test – No – Threshold Condition 5

APPROVED PERSONS – Fit and proper to perform the controlled function – Non-disclosure by director seeking approval of earlier unsuccessful application to Lloyd's – Whether applicant fit and proper – No – FS&MT 2000 s.61(1)

FINANCIAL SERVICES AND MARKETS TRIBUNAL

EVERSURE FINANCIAL SERVICES LIMITED First Applicant
FREDERICK GEORGE YOUNG Second Applicant

- and -

FINANCIAL SERVICES AUTHORITY Respondents

Tribunal: STEPHEN OLIVER QC
P V BURDON
I B ABRAMS

Sitting in public in London on 27 April 2006

Mr F G Young, director, for the Applicants

Sarah Clarke, counsel, for the Authority

DECISION

1. Eversure Financial Services Ltd ("Eversure") and Mr F G Young ("Mr Young") have referred to this Tribunal the matters relating to two Decision Notices, issued by the Financial Services Authority, on 26 August 2005. One Decision Notice refused Eversure's application for permission under Part IV of the Financial Services and Markets Act 2000 ("the Act") to carry on regulated activities relating to non-investment insurance. The other Notice refused the application for the approval of Mr Young to perform the controlled function of Apportionment and Oversight.

Background

2. Eversure is a company operated principally by Mr Young who is its managing director. He holds 80% of the shares. The other 20% is held by Mr D H Evers ("Mr Evers").

3. Eversure carries on business from an office in Essex. Eversure's business is the provision of motor insurance claims management services to insurance brokers. It provides these from its own organization which consists of, among other things, its arrangements with accident management firms to provide insured persons with repairs, replacement cars etc, and of arrangements with lawyers to handle their claims. For those services Eversure earns fees from the accident management firms and from the lawyers; Eversure pays fees to the brokers.

4. Eversure is in the process of arranging legal expense cover for insurance brokers. In Mr Young's words the cover would "be arranged between the broker and the insurer direct, not actually involving us because we do not get a commission … . We will simply introduce and explain the contract that is available and explain the details of it and its interaction with our accident management and legal services".

5. By an application received by the Authority on 7 December 2004 (on the HSF1 Form), Eversure sought, first, permission to perform various regulated activities arising out of insurance business ("the Part IV Application") and, second, approval for Mr Young to perform the apportionment and oversight controlled function ("CF8") for Eversure ("the Control Function").

6. The application form presented by Eversure to the Authority ticked each of the five boxes in paragraph 41. Eversure's application, therefore, seeks authority to carry on five activities under the heading "Insurance Business".

7. The first of these is "advising customers on non-investment insurance contract". We assume from Mr Young's explanation that the customers will be brokers.

8. The second activity to which the application related was "arranging (bringing about) deals in non-investment insurance contracts". This is said in the HSF1 Form to

cover a range of activities such as introducing a customer to an insurer and helping someone to fill in an application form and sending a customer's application to an insurer. Mr Young explained that Eversure was just the "arranger". Its customer will be the insurance broker and the insurer will be the underwriter.

9. The third is making arrangements with a view to transactions in non-investment insurance contracts. The Form says that this covers helping a potential policyholder to fill in a proposal form. Here the broker will be the policyholder in relation to the legal services cover.

10. The fourth activity for which application was sought is dealing as agent in non-investment insurance contracts. This is said to include entering into a contract of insurance with a customer on behalf of the insurer, such as issuing cover notes. Mr Young said that Eversure might be agent for a customer "one day".

11. The last activity to which the application relates is "assisting in the administration and performance of a non-investment insurance contract". This is said to include notifying an insurance claim to the insurer and negotiating settlement on behalf of the customer. The form states that merely handling claims on behalf of the insurer and not of the customer will not be a regulated activity, nor will the provision of information to a claimant or insurer in connection with the assessment of a claim be a regulated activity.

12. It was far from clear to us how the business activities, present and projected, of Eversure qualified as regulated activities. For the purposes of the present reference, however, we have to accept Mr Young's explanation that to cover all eventualities Eversure seeks authority for all of them.

Summary of alleged failure to disclose and other shortcomings relied upon by the Authority.

Refusal by Lloyds of London to approve Mr Young's application for individual registration

13. On 24 June 1997 Lloyd's of London ("Lloyd's") wrote to Mr Young informing him that a sub-group of the Lloyd's Regulatory Board ("the Lloyd's Board") were minded to refuse his application for registration as a claims director of Eversure Underwriting Agency Ltd ("EUAL"), ("the Lloyd's Applications") together with his request to be registered for regulated underwriting functions (b) and (c):

> (b) the authority to reinsure risks underwritten on behalf of members of any syndicate managed by the sponsor;
> (c) the responsibility for preparing or determining the reinsurance to close of any syndicate managed by the sponsor.

14. The Board's letter stated that they were minded to refuse the Applications on the grounds that Mr Young had failed to satisfy the Board that he was fit and proper to be so registered.

15. By letter of 4 July 1997, Mr Young stated:

> "Thank you for your letter of 24 June 1997. I have noted your comments and in the circumstances wish to withdraw the application for Claims Director and for Registration functions (a), (b) and (c)."

Failure to disclose the Lloyd's application on the Authority's Application Form for Approval ("the HSF2 Form").

16. Question 38 of the HSF2 form asked:

> "In respect of activities regulated by the FSA or any other regulatory body has the individual, or any company, partnership or unincorporated association of which the individual, or any company, partnership or unincorporated association of which the individual is or has been a controller, director, senior manager, partner or company secretary, during the individual's association with that entity and for a period of three years after the individual ceased to be associated with it, ever:
>
> (a) been refused, had revoked, restricted or terminated, any licence, authorization, registration, notification, membership or other permission granted by any such body? …
>
> (d) decided, after making an application for any licence, authorization, registration, notification, membership or other permission granted by any such body, not to proceed with it?"

The "bodies" are specifically defined to include the FSA, the SIB, the Society of Lloyd's and other institutions. Mr Young answered "No" to both those questions.

17. Section E of the HSF2 form contains a declaration which was signed by Mr Young. The declaration states:

> "Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, is a criminal offence.
>
> It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or to another regulatory body. If there is any doubt about the relevance of the information, it should be included …
>
> I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this form."

18. Further, the guidance notes to the form state:

> "Do not assume that we know certain information merely because it is in the public domain, or has been previously disclosed to us, or to another regulatory body. In all the circumstances, disclosures should be full, frank and unambiguous. If there is any doubt about the relevance of the information it should be included."

Mr Young's alleged failure to disclose that he had resigned as a director of EUAL.

19. Question 25 of HSF2 form requires the applicant to enter his "relevant employment history since 1 January 1994". Mr Young's entry states that he had been managing director of EUAL from 1 August 1997 until 27 November 2004. There is no dispute that Mr Young was managing director of EUAL throughout that period.

20. The Authority alleges non-disclosure under this question because Mr Young had resigned as a director on 1 July 1997, at the time that his application to Lloyd's was withdrawn and he was not re-appointed to the Board of EUAL until 10 December 1999. The Authority refers to Mr Young's representation to the Regulatory Decisions Committee of the FSA dated 14 August 2005 where he states that:

> "In view of our preparations to commence broking operation I could not remain a director of the company but was re-elected once the broking ceased and was at all times the acting claims director of Eversure."

In his oral representations to the Regulatory Decisions Committee on 24 August 2005, Mr Young stated that he "had to" resign as director of Eversure at the time the application to Lloyd's was withdrawn, because Lloyd's regulatory regime precluded an individual from being both a director of an underwriting agency and of the broker.

21. The Authority points out that at no stage did Mr Young provide any explanation of his failure to disclose this matter.

22. The Authority are wrong on this. A person who holds office as a director is not on that account an employee. He may be employed as, e.g., a managing director, but he does not on that account hold office as a director. Question 25 asks about "relevant employment history", not about offices that the applicant has held. We have found nothing in the notes to the Application Pack that alters the normal meaning of "employment". Thus, as Mr Young's only relevant employment with EUAL was as managing director until November 2004 he gave a correct answer. His holding of office as director is not within the ambit of question 25. There was therefore no failure to disclose in this respect.

Mr Young's alleged failure to notify his directorship of Visage Fashions Essex Ltd at a time when he was a director.

23. Mr Young had been appointed as a director of Visage Fashions Essex Ltd ("Visage") on 12 December 1996. The Companies House records contain no reference to any resignation of this directorship. Visage went into liquidation on 13 November 2002. Mr Young made no reference to this matter in the supplementary material he provided at question 39(a) of the HSF2 form which, so far as is relevant, asks whether a company of which the individual has been a director has, during his involvement or within a year of his involvement, been put into liquidation.

24. By letter of 27 April 2005 the Authority requested Mr Young to explain his failure to disclose this matter on the HSF2 form. In the course of a telephone call with the Authority on 4 May 2005 Mr Young stated that he was not a director of Visage at the time of the liquidation and had not been aware of the liquidation. During his oral representations to the Regulatory Decisions Committee on 24 August 2005 Mr Young said that he had not had a working involvement with Visage, except as a customer; he explained that he had had no correspondence or communications with Visage regarding its accounts or business; he said that he had ceased having any involvement with Visage in 2003. He could not, he said, explain why the appropriate documents resigning his directorship had not been filed with Companies House. He stated that the accountant had dealt with the "paperwork" and he thought that he had signed "the appropriate forms with the accountant".

25. The Authority does not dispute that Mr Young thought that he had ceased involvement with Visage and that there is no evidence to suggest that Mr Young knew about Visage's liquidation. The case for the Authority is that Mr Young did not take sufficient care of the responsibilities of a company director or the formalities of the system of registration and filings required under the Companies Act. As a result the Authority was not satisfied that Mr Young was ready and willing to comply with the requirements and standards of the regulatory system and would not conduct Eversure's business in respect of any regulated activity in compliance with proper standards and exercise due skill, care and diligence.

26. We accept that when Mr Young filled in and signed the HSF2 application form he honestly and with good reason believed that he had ceased to have any involvement with Visage from at least a year before. We do not regard the matter as evidence indicating that Mr Young's conduct falls short of the standards required by the regulatory system and that he would fail to conduct Eversure's business in respect of any regulated activity in compliance with proper standards and to exercise due skill, care and diligence.

Issues relating to Mr Evers

27. Mr Evers is a director of Eversure. The Authority regards him as someone who has close links with Eversure. He was required under the High Street Firms

application process to notify the Authority of his interest as an individual controller of Eversure. He completed a HSF2 form on 3 December 2004. This form was co-signed by Mr Young.

28. In 1996 Mr Evers had applied to Lloyd's for individual registration as chairman of EUAL. The sub-group of the Board sent him a letter on 3 October 1996 stating that they were "minded to refuse" his application on the grounds that he had failed to satisfy Lloyd's that he was fit and proper to be so registered having regard to his professional competence and his failure to comply with Lloyd's regulatory requirements.

29. Mr Evers made representations in response dated 17 October 1996. After considering his representations, the Lloyd's Board refused his application for registration by letter dated 30 December 1996. Mr Evers then instructed solicitors to lodge an appeal against the decision with the Lloyd's Appeal Tribunal which they did on 13 January 1997. However, Mr Evers withdrew his appeal on 14 March 1997.

30. Question 38(a) of the HSF2 form asks whether the individual has ever had its authorization refused by the Authority or any other regulatory body. Mr Evers marked "No" in response to this question. On that basis he failed to disclose that his application for individual registration as chairman and director of Eversure had been refused. In a letter to the Authority of 17 February 2005, Mr Evers sought to justify this omission by stating that "a permission which had not been previously granted was not one that could be refused or revoked". (The Authority submits, and we agree with this, that this is not a reasonable or justifiable interpretation of question 38.)

31. At the time of the Lloyd's Board decision to refuse his application, Mr Evers resigned as a director of EUAL on 28 February 1997 and was re-appointed when EUAL was deregistered by Lloyd's on 10 March 2000. This was not disclosed in the statement of his employment history at question 25 of his HSF2 form.

32. In view of those facts relating to Mr Evers, the Authority states that it is not satisfied that Eversure is fit and proper having regard to its connection with Mr Evers and the non-disclosures on Mr Evers' HSF2 form relating to the refusal of his application to Lloyd's and subsequent resignation as director from Eversure.

33. It is not suggested that Mr Evers was at the relevant time an employee of EUAL. His resignation and re-appointment as director of EUAL are not, for the reasons given in relation to Mr Young, relevant. We therefore leave out of account Mr Evers' resignation and re-appointment as director in determining whether Eversure is fit and proper having regard to its connection with Mr Evers.

The task for the Tribunal

34. We have to be satisfied on the evidence before us that Eversure satisfies the Threshold Conditions and that Mr Young is a fit and proper person. We will come back to the tests after we have examined the evidence of the failures on the part of Mr

Young and Mr Evers to make disclosures of their Lloyd's applications and made findings relevant to those tests. At the heart of the present reference is the question as to whether Mr Young and Mr Evers, or either of them, knowingly refrained from disclosing the circumstances of the Lloyd's applications when filling in their respective HSF2 application forms. We start with a fuller summary of the circumstances of the Lloyd's application.

The Lloyd's application

35. In 1996 Lloyd's introduced a requirement for individual registration of those involved in certain classes of Lloyd's-related activities. Mr Evers and Mr Young applied for registration as individuals. On 3 October 1996 Mr Evers received the letter from Lloyd's in which they stated that the Board were minded to refuse his application on the grounds that he had failed to satisfy Lloyd's that he was fit and proper. On 17 October Mr Evers made written representations in response. Lloyd's considered these and refused his application for registration by letter of 30 December 1996. Mr Evers instructed solicitors to lodge an appeal against the decision with the Lloyd's Appeal Tribunal. This was done on 17 January 1997. However Mr Evers withdrew his appeal on 14 March. Mr Young admitted in evidence that he knew about the Lloyd's refusal of Mr Evers' application and that he knew about Mr Evers' appeal. He had taken part in discussions about the possibility of appealing and instructing solicitors for the purpose. Mr Evers had not, Mr Young said in evidence, pursued the matter because of the costs involved and because Eversure's plans to establish a new motor syndicate were being shelved.

36. The next relevant happening is that on 24 June 1997 Lloyd's wrote to Mr Young informing him that the Board were "minded to refuse" his application for registration as claims director of Eversure and to refuse his request for registration as a person authorized to re-insure certain risks and as a person with responsibilities in relation to re-insurance to close transactions. The letter noted that representations had been made and documents submitted by Mr Young, Titmuss Sainer, solicitors, and Littlejohn Frazer, accountants, on 27 January 1996 and on 19 March 1997. The letter said that, having considered those representations and documents, the Board was minded to refuse that application on the grounds that he had failed to satisfy the Board that he was fit and proper to be so registered. By letter dated 4 July 1997, Mr Young withdrew the application. The terms of that letter are set out in paragraph 15 above. Mr Young explained in evidence that he had not had time to provide more than a simple response. The reason for the withdrawal of his application, Mr Young told us in evidence was that Eversure's plans to establish a new motor syndicate were being shelved.

37. Two aspects of those events have struck us. First, Mr Young was closely involved with both Lloyd's applications. He was, of course, directly concerned with his own application. In the case of Mr Evers' application he had participated in the decision to instruct solicitors and to appeal. In the second place, in the case of his application, he had engaged lawyers and accountants in making it and when the refusal letter was received he had noted the comments in it and in the circumstances

decided to withdraw the application. Notwithstanding the fact that Eversure's plans to establish a new motor syndicate were being shelved, we think that one reason – possibly the main reason – for the withdrawal of the Lloyd's application was that Lloyd's had said they were minded to refuse the application.

38. We move on now to investigate the evidence as to the failure of the High Street Firms applications provided by both Mr Evers and Mr Young to disclose the circumstances of the Lloyd's applications. Mr Young accepted that both forms had been submitted at around the same time. They had spent some time trying to find out whether "registration" was required and when they decided to apply they had been "in a bit of a rush". Mr Young had signed Mr Evers' application dated 3 December 2004. Mr Young's application was dated 27 November 2004. Mr Young accepted that he was required to provide accurate and complete information; this was made clear by the guidance notes which went on to state that "knowingly or recklessly giving the FSA information which is false or misleading in a material particular is a criminal offence".

39. Asked at the present hearing why he had not disclosed the withdrawal of the Lloyd's application following the "minded to refuse" letter, Mr Young said that that had happened seven or eight years before and it was something they "had not regarded as sustainable"; "Not one of the directors regarded ourselves as anything other than fit and proper". As background to that assertion, Mr Young referred us to a decision of the Lloyd's Appeal Tribunal dated 15 August 1994. EUAL had appealed against a withdrawal of permission to act as a managing agent and against decisions to remove its permission to act as such and to act as an underwriting agent, in all cases on grounds that it was not fit and proper. EUAL's appeal succeeded, the tribunal deciding that it "was not of the opinion that EUAL is not a body which is a fit and proper person to act as a managing agent".

40. Mr Young in evidence before us answered "No" when asked whether the Lloyd's events relating to his application in 1996 had simply not entered his head when filling out the HSF2 application form in 2004. He said – "I just did not regard myself as ever having been in a situation that was not fit and proper".

41. Mr Young accepted that there was no dispute that Mr Evers' application should have disclosed the Lloyd's refusal of his application in 1996. Mr Young accepted that, in line with his general practice when countersigning, he would have looked through the Evers' application before he signed it.

42. Regarding Mr Young's own application in 2004 and the failure to disclose the withdrawal of his Lloyd's application in 1997, these were drawn to his attention in a letter from the Authority of 27 April 2005. The letter was followed up with a telephone conversation between Mr Young and the Authority. A note records Mr Young's explanation for the non-disclosure as EUAL's decision not to go ahead with its new motor syndicate proposal and to the fact that in Mr Young's opinion he could have forced Lloyd's to accept the application. A letter from Eversure, written by Mr Young, to the Authority on 5 May 2005 states that the only reason the Lloyd's

application was amended (which we take to mean withdrawn) was because registration was not needed following the decision not to go ahead with the new motor syndicate.

43. On 14 August 2005, when Mr Young made his written representation to the Regulatory Decisions Committee, he drew attention to EUAL's successful appeal to the Lloyd's Appeal Tribunal in 1994 and stated – "I have no doubt that if we had wished to continue with our new syndicate application we would have prevailed" in the 1996 application for registration.

44. The Regulatory Decisions Committee heard evidence from Mr Young. Asked whether he had addressed his mind to the issue of what correspondence he had had with Lloyd's in 1996 his answer is recorded as – "I must admit, I did not even really think about it." The Committee went on to ask him if he had read the guidance notes to the HSF2 application forms and his response was – "I did … and I never regarded myself as having been refused any. There was only minded to refuse. If I had wanted to carry … if we were carrying on without noticing that, I would have prevailed, there is no two ways about it". Mr Young conceded that with the benefit of hindsight he should have written his letter of 4 July 1997 (withdrawing his application) to Lloyd's in more detail. He stated that at the time he "didn't have time to waste on the idiots."

45. Based on the evidence summarized above we do not think that Mr Young had forgotten about his Lloyd's application of 1996 and his withdrawal of that application following the "minded to refuse" letter. His explanations to the Authority were all based on his opinion that the refusals by Lloyd's could not have been sustained; they were fit and proper persons as had been found by the Tribunal in the EUAL appeal. The first occasion on which Mr Young put forward the suggestion that the circumstances of the Lloyd's refusal had not crossed his mind at the time of submitting the HSF2 form was at the hearing of the Regulatory Decisions Committee in August 2005. Nonetheless the circumstances of the Lloyd's application must, we think, have been in Mr Young's mind on at least two occasions in late 2004. The Lloyd's refusal of Mr Evers' application had been an event of significance; Mr Evers had gone to the lengths of appealing and then dropping his appeal; and these were matters that had been discussed with and considered by the other directors of EUAL, who included Mr Young. Mr Young was involved in and countersigned Mr Evers' HSF2 application. It is, we think, inconceivable that Mr Young did not have those events in mind on 3 December 2004 when the HSF2 application for Mr Evers was completed. When Mr Young made his own HSF2 application he had read the direction requiring complete disclosure and the statement that he could be committing a criminal offence if he failed to make such disclosure. The irresistible inference from all those circumstances is, we think, that Mr Young and Mr Evers knowingly failed to disclose the failure, i.e. the refusal or withdrawal as the case may be, of the Lloyd's applications of 1996. They did so because they disagreed with the decisions of the Lloyd's Board. But those decisions, whatever view Mr Young and Mr Evers took of their merits, remained in place.

46. In his further dealings with the Authority, so far as they relate to the non-disclosure issue, Mr Young's approach has been to attempt to justify the failure to disclose the Lloyd's application and its withdrawal. In essence his explanation to the Authority has been that he never really thought about the Lloyd's matter and that the Lloyd's Board had got it wrong; and anyway it was all water under the bridge since EUAL and its directors had given up the motor syndicate proposal.

The case for Eversure and Mr Young

47. Mr Young represented Eversure and himself. It does not appear that he had the benefit of legal advice when responding to the Authority's questions about non-disclosure or in the course of preparation for this hearing. We cannot say whether their cases would have been improved had they been professionally represented. Our task might have been less difficulty had there been legal representation for the two of them. As things are we have to make the best of things and have endeavoured to take into account every point made by Mr Young in the course of the hearing.

48. Mr Young stressed that the HSF2 applications had been straightforward about what "they" were to be doing in the future and for that purpose they had selected the wide range of activities in paragraph 41 of the HSF1 application. They had no intention of breaking into an activity for which approval had not been given. Regarding the failure to disclose the matters concerning Mr Young's (and Mr Evers') Lloyd's applications, Mr Young observed that they had occurred nearly ten years ago. He had, he said, not recalled his letter of withdrawal. He said that he had had nothing to hide because he had always been regarded by himself as fit and proper.

49. A propos the first point taken by Mr Young we recall that at an earlier stage of this decision we referred to our lack of any clear understanding as to precisely for what functions Eversure was seeking approval. By the same token it was not clear to us what controlled function Mr Young was to perform. We record, however, that Mr Young made it clear that Eversure had determined to seek authorization for all the functions listed in paragraph 41 of the HSF1 application.

The legal and regulatory framework

50. We start with the Part IV Regime. In this connection we mention that we heard evidence from Mr A R Honey, currently head of the Insurance Department in the Small Firms Division of the Authority. He explained that the High Street Firms Division has responsibility for the development and implementation of the Authority's policy relating to the regulatory regime of mortgage and general insurance business, and the development of the supervisory regime for authorized firms with mortgage and/or general insurance permissions. The High Street Firms Division was also responsible for deciding applications by firms for authorization under Part IV and for approval under section 60 of the Act enabling individuals within authorized firms to perform controlled functions.

51. Under section 41(2) of the Act the Authority must ensure, in giving permission under Part IV of the Act, that the person concerned will satisfy, and

continue to satisfy, the threshold conditions set out in Schedule 6 of the Act ("the Threshold Conditions") in relation to all of the regulated activities for which he will have permission.

52. The function of the authorization process was explained by Mr Honey. Its purpose is to ensure that all firms carrying on a regulated activity satisfy the Threshold Conditions. A firm is not authorized to carry on a regulated activity until it is demonstrated to the Authority that it satisfies them. Once a firm is authorized it may advertise or otherwise hold itself out to the public as being authorized and regulated by the Authority. The Authority maintains a register recording such authorizations, as required by statute; this is available to the public on the Internet. Mr Honey expressed the view, and we see no reason to depart from this, that the public perception of the status of being authorized and regulated by the Authority is significant because it demonstrates that the Authority accepts that the firm in question has satisfied, and continues to satisfy, the minimum standards and requirements of the regulatory system. The public are, therefore, entitled to place reliance on the status of an authorized firm when doing business with it.

53. The Authority has provided guidance as to its application of the Threshold Conditions in its Handbook of Rules and Guidance which is published on the Authority's website. The source book is referred to shortly as "COND".

54. When a firm applies for Part IV permission, the Authority has regard to various factors in order to ensure that the firm will satisfy, and continue to satisfy, the Threshold Conditions. Threshold Condition 5 (Suitability) requires the Authority to be satisfied that the firm is fit and proper to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its proposed regulatory activities and the overall need to be satisfied that its affairs are, and will be conducted soundly and prudently (see COND 2.5.2G). The Authority has to assess the suitability of each of the persons who perform a controlled function; it may consider that the firm is not suitable because of doubts over a particular individual (COND 2.5.3G). The Authority must also have regard to any persons appearing to it to be, or likely to be, in a relevant relationship with the firm (such as a director) which might pose a risk to the firm's satisfaction of the Threshold Conditions (COND 2.4.3(1)G).

55. We turn to the "approved persons" regime. Under section 61(1) of the Act, the Authority may grant an application for approval made under section 60 only if it is satisfied that the candidate is fit and proper to perform the controlled function to which the application relates. The purpose of the approved persons regime, explained Mr Honey, is to ensure that all persons carrying on controlled functions within a firm carrying on a regulated activity are fit and proper to do so. No candidate has a right or entitlement to carry on a controlled function until he has satisfied the Authority that he is a fit and proper person to do so. Conversely, the Authority is under a statutory duty not to allow anyone to perform such a role unless he meets that threshold.

56. Once approved status is conferred, an individual may advertise or otherwise hold himself out to the public as having received the approval of the Authority. The Authority maintains a register recording such approvals, as required by statute, which is available to the public on the Internet. Mr Honey took the view, and here again we accept this, that the public perception of the status of approved person is significant and that they are entitled to place reliance on an individual having that status as a fit and proper person when doing business with such a person. The Authority has a heavy responsibility.

57. The Authority has provided guidance as to its application of the "fit and proper" test in its Handbook in the FIT part. When a firm applies for approval, the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function (FIT 1.3.1). The most important considerations will be the person's honesty, integrity and reputation, his competence and capability and his financial soundness. Once a candidate has been approved he may expand the scope of his activities to include all activities both wholesale and retail for which he has approved. This is true regardless of whether at the time of the authorization process, a candidate states that he proposes to undertake only a limited number of regulated activities. Small firms do not have regular contact with supervisory staff at the Authority, and are not, in the ordinary course of events, subject to supervision visits. If a matter comes to the Authority's attention which suggests that the person might not be fit and proper according to the considerations set out above, the Authority will take into account how relevant and important that matter is. Every application will necessarily turn on its own facts and circumstances.

Conclusion on Mr Young's application for approval

58. With those considerations in mind we now consider Mr Young's application for approval. We start by observing that the Authority's regulatory function generally and it statutory approval function in particular is entirely dependent on its being provided with full and accurate information by the individuals seeking approval. Mr Honey's evidence is in point here. The Authority cannot carry out its statutory approval responsibility without having the information to assess the candidate's integrity and willingness to be open and honest with it. If it fails to insist on absolute disclosure, it will not be fulfilling its public function. In this regard the Authority is entitled to expect anyone who performs or intends to perform controlled functions to adhere to high standards of competence and capability. When it comes to filling in the application form for approval, and thereby seeking access to the advantages and responsibilities of approval, the applicants must be taken to understand the express and unambiguous language of the application form in question; the HSF forms explicitly call for full and frank disclosures and the inclusion of any material information if the applicant has any doubt about it. Understandably the Authority, as Mr Honey explained, places a great deal of importance on an open and co-operative relationship with firms. Because small firms do not have regular contact with supervisory staff at the Authority, it is important that the Authority can rely on them to bring to its attention voluntarily any matters relating to their ability to comply with relevant rules and requirements.

59. Here as we have found Mr Young knowingly refrained from disclosing the fact that he had withdrawn his Lloyd's application following receipt of the "minded to refuse" letter. He did so despite the clear wording of question 38 in the HSF2 form. And he went on to confirm that the information in the form was accurate and complete. To the extent that Mr Young was of the opinion that the reasons given by Lloyd's for refusal were misconceived and that in any event approval by Lloyd's was not necessary, these features are beside the point. The responsibility to approve lies with the Authority. The applicant has no right to assess his own fitness and to exclude the Authority from this opportunity.

60. Here Mr Young failed to ensure that the information submitted to the Authority in his own HSF2 form was accurate and complete to the best of his knowledge. Moreover, despite the obligation to do so, Mr Young did not ensure that the information provided by Mr Evers on his (Mr Evers') HSF2 form was accurate and complete.

61. It follows in our view that Mr Young has failed to show that he has sufficient honesty, integrity, competence and capability to carry out the controlled functions to which the application relates. We think that the Authority's decision was appropriate and proportionate in all the circumstances. We therefore dismiss the second reference.

Conclusion on Eversure's Part IV application

62. We turn now to Eversure's application for Part IV authorization.

63. In the light of our decision accepting that the Authority properly refused the application of Mr Young (and Mr Evers), Eversure will have no person approved to carry on the controlled functions and will by that reason alone fail to satisfy Threshold Condition 4 (Resources).

64. To meet Threshold Condition 5 (Suitability) Eversure has to satisfy the Authority that it is "fit and proper". Fitness and propriety are assessed with regard to all the circumstances, including the applicant firm's connections with other persons, the range and nature of its proposed regulated activities and the overall need to be satisfied that its affairs are, and will be, conducted soundly and prudently. For this purpose the Authority must consider the conduct of Mr Young and Mr Evers in the light of COND 2.4.1(1)G, as they are both in a relevant relationship with Eversure. We cannot be satisfied that Eversure is "fit and proper" having regard to all the circumstances summarized above with particular reference to the non-disclosures.

65. For those reasons we dismiss Eversure's application.

STEPHEN OLIVER QC
CHAIRMAN

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