

DECISION

1. On 29 June 2007 I heard an application by the Applicant, Mr Qamar Hussain. Mr Hussain had been served with a supervisory notice of 22 May 2007 by the Respondents (“the Authority”). The Notice contained a decision to vary his permission by removing all his regulated activities with immediate effect. I gave an oral decision dismissing the application with effect from 29 June 2007. What follows is based on the oral decision.

Background

2. The reason for the Authority’s action was because they had had drawn to their attention certain relevant previous convictions recorded against Mr Hussain. He had, the Authority stated, been convicted on 18 September 1985 of an offence of theft and criminal damage. He had been convicted on 25 October 1985 of theft from a vehicle. Those offences had not been drawn to the attention of the Authority in Mr Hussain’s application for authorisation.

3. Following the grant of authorisation to Mr Hussain he had, the Authority understand (and he accepts), been convicted on 2 September 2005 of theft and certain other offences; in relation to all those a Community Order had been made against him with requirements that he be supervised for twelve months and carry out unpaid work for 150 hours. On 10 April 2006 Mr Hussain was convicted on the grounds of non compliance with the requirements of the Community Order. The Community Order was revoked and Mr Hussain was instead made subject to a curfew requirement.

4. Since the issue of the Notice Mr Hussain has made it clear to the Authority on a number of occasions that he is not prepared to abide by the terms of the Notice, continually stating that he is still conducting business; this has been in correspondence, some of which has been threatening and abusive. A further relevant fact is that Mr Hussain is being pressed by the Authority to submit a late Retail Mediation Activities Return (RMAR) and pay a related fee. He has written to the Authority stating that he is withholding the Return and the fee until the Authority has addressed certain points raised by him in connection with the Authority’s source of the information that they hold against him.

The law

5. Tribunal Rule 10(1)(e) provides that:

“Directions given by the Tribunal may – (e) suspend the effect of an Authority Notice (or prevent it taking effect) until the reference has been finally disposed of, or until any appeal against the Tribunal’s determination that the reference has been finally disposed of, or both.”

Tribunal Rule 10(1)(p) provides that:

“Directions given by the Tribunal may – (p) require that the register shall include no particulars about the reference”.

Tribunal Rule 10(6) provides that:

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“Where an application for a direction is made under paragraph (1)(e), the Tribunal may give such a direction only if it is satisfied that to do so would not prejudice –

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(a) the interests of any person (consumers, investors or otherwise) intended to be protected by the Authority notice; or

(b) the smooth operation or integrity of any market intended to be protected by that notice.”

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Tribunal Rule 10(9) provides that:

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“In the case of an application for a direction under paragraph 1(p) that the register should include no particulars about the reference, the Tribunal may give such a direction if it is satisfied that this is necessary, having regard to:

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(a) the interests of morals, public order, national security or the protection of private lives of the parties; or

(b) any unfairness to the applicant or prejudice to the interests of consumers that might result from the register including particulars about the reference.”

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6. The issue as to whether Mr Hussain satisfies the threshold conditions in respect of suitability (principally threshold condition 5) is not a matter that falls to be decided at this interim hearing.

These proceedings

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7. Mr Hussain served his reference notice on 23 May 2007. He has asked for the immediate effect of the decision contained in the Notice to be suspended. Mr Hussain also asks that the Tribunal’s register should contain no particulars of the reference. Essentially Mr Hussain’s reasons for making the stay application is that it was disproportionate in all the circumstances to suspend with immediate effect; a less draconian direction could have achieved a more sensible result. To the extent that the Authority’s decision was based on information of a third party, Mr Hussain insists that the third party’s name be revealed so as to afford him a just hearing of the present application.

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8. Mr Hussain’s contentions are opposed by the Authority. The basis of the Authority’s opposition is the convictions and the failures to disclose the relevant

material since the supervisory notice. These mean that it was, and continues to be, appropriate and proportionate from the Authority's point of view to impose the requirements set out in the supervisory notice with immediate effect.

5 **Conclusions**

9. The question for the Tribunal is whether I can be satisfied that suspending the immediate effect of the supervisory notice would not prejudice the interests of any relevant person. I also have to be satisfied that it is necessary that the register of the Tribunal should contain no particulars of the reference.

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10. I have considered the facts that have been drawn to my attention in the submissions made by Mr Hussain and in the light of those I need to decide whether the giving of a direction suspending the effect of the Authority's notice suspending the final hearing would, as I have noted, prejudice the interests of any relevant person and whether it is reasonably considered necessary for the variation to take effect immediately. In this connection I also have to consider whether the action taken by the Authority is proportionate to the object that the Authority is seeking to achieve.

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11. I have already summarised the concerns of the Authority. These relate not just to the non-disclosure of the convictions of 1985, 2005 and 2006. They are concerned also with the fact that Mr Hussain has insisted on carrying on business notwithstanding the clear statement in the notice that he should cease business forthwith. My attention has also been drawn to the tone of the letters and the stance that Mr Hussain has taken in his position with the Authority relating to the submission of the RMAR and the payment of the related fee.

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12. Mr Hussain pointed out that the 1985 offences were really the result of youthful indiscretion and should not in any event of been brought to the attention of the Authority. He had no idea that those issues were on his record. In any event, he said, when filling out application forms he had been "under stress". I note, however, that Mr Hussain has at no time challenged the fact that those offences took place. His case is that they were issues beyond his control. He goes on to say that the Authority have acted disproportionately and that they should have taken into account the fact they he had been under severe pressure in recent months and that he is trying to run a business.

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13. I have already explained that the issue I have to decide is whether I should suspend with immediate effect of the notice; most of the points raised by Mr Hussain are matters for the main hearing of his application when it comes on. I cannot however see that those points require me to suspend the immediate effect of the notice.

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14. Regarding Mr Hussain's claim that the Authority ought to disclose the name of the "whistleblower" on grounds that without disclosing that he is disadvantaged, I note that the Authority having given an explanation as to why its not appropriate for them to disclose the name. I have been referred to a letter which has been sent to Mr

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Hussain on 15 June 2007 in which the Authority explain why the Data Protection Act does not, in their view, require them to disclose the name of the whistleblower. They say that if they were to disclose under the Act the identity of the source who provided the Authority with the information about his criminal convictions, there would be a real risk of the source of that information drying up. Another reason why I do not think that the Authority's non-disclosure of the name of the whistleblower should be taken into account is that the Authority are proceeding on the basis of non-disclosure. In the present case that non-disclosure is admitted by Mr Hussain. Thus, for these purposes, the details of the whistleblower cannot be relevant of the question of whether I should suspend with immediate effect of the supervisory notice.

15. On the topic of non-disclosure, the importance of being open and co-operative with the Authority in making applications for authorisation and approval was stressed by the Tribunal in the case of *Eversure v FSA*. The Tribunal emphasised that the Authority relies on full disclosure to enable it to carry out its statutory approval responsibility. If the Authority fails to insist on absolute disclosure, it will not be fulfilling its public functions. It is therefore entitled to expect anyone who performs or intends to perform controlled functions to fill in the application form for approval or authorisation properly and to make all disclosures of subsequent relevant events (such as convictions) as soon after they happen as is possible. Mr Hussain has not done so. The result is that the FSA cannot carry out their regulatory function. In the circumstances it would not be proper to suspend the effect of the notice.

16. To summarise, I am not satisfied that suspending the effect of the supervisory notice would not prejudice the interests of the relevant person such as consumers, investors and others. This is all the more acute in the present case where Mr Hussain refuses to cease carrying on the regulated activities despite the Notice. It necessarily follows that the action taken by the Authority must have immediate effect for the protection of consumers. All in all I think it was and continues to be proportionate to impose the requirement set out in the supervisory notice with immediate effect. The Authority have to balance the need to protect consumers with the potential harm to the Applicant. But I think the duty to consumers outweighs the requirement to protect Mr Hussain.

17. For those reasons I do not think I should lift or suspend the supervisory notice.

18. Finally I turn to the question of whether it is appropriate to direct that the reference be removed from the Tribunal's record. I do not think it would be appropriate; it should therefore remain. For those reasons I confirm that the applications were dismissed with effect from 29 June 2007.

**SIR STEPHEN OLIVER QC
CHAIRMAN**

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