



Reference No: **FIN/2010/0002**
FIN/2010/0003

PENALTY – Breach of APER 6 – Decision Notice issued in ignorance of financial circumstances of Applicants – Penalties reduced to take account of hardship – Fuller details of financial circumstances received by FSA after Decision Notice – Whether Tribunal should increase penalties – Implication of Applicants’ non-cooperation with the FSA (APER 4)- Decision Notice made no determination regarding breaches of APER 4 – Whether penalties should be imposed for such breaches - No

**UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES**

NAZIA BI & QADEEM MOHAMMED

Applicants

- and -

THE FINANCIAL SERVICES AUTHORITY

Respondents

**TRIBUNAL JUDGE: SIR STEPHEN OLIVER QC
MAURICE BATES
COLIN SENIOR**

Sitting in public in London on 1 and 2 June 2011

Sarfraz Mohammed, brother of the Applicants, for the Applicants

Peter Wright, solicitor advocate (civil), for the Authority

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DECISION

1. The Applicants, Ms Nazia Bi and Mr Qadeem Mohammed, have referred Decision Notices of 28 January 2010. The notices –

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- (i) withdrew their permissions to perform controlled functions and prohibited them pursuant to sections 63 and 56 of FSMA 2000 and
- (ii) imposed financial penalties of £25,000 on Nazia Bi and £15,000 on Qadeem Mohammed pursuant to section 66 for breaches of Principal 6 of the Statement of Principle and Code of Conduct for Approved Persons (“APER 6” which requires that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function).

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2. (All section references in this Decision are to the Financial Services and Markets Act 2000.) These references by the two Applicants were consolidated by direction of the Tribunal and stem from a “mortgage fraud” investigations by the FSA started in September 2008; Warning Notices relating to the activities disclosed from those investigations (“the original misconduct”) were issued in May 2009.

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3. The Decision Notices which are the subject matter of the present references have, as just mentioned, included the withdrawals of approval and permission for both Applicants. Their reference notices have neither challenged those parts of the Decision Notices nor challenged the facts and matters of the original misconduct relied upon by the FSA in reaching those parts of its decisions following the hearings before the Regulatory Decision Committee (“RDC”). The sole ground contested by the two Applicants is the level of the financial penalties.

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4. In late September 2009 both Applicants had sent written representations to the RDC in anticipation of the hearings due to take place on 28 October. The FSA responded on 16 October demanding formal statements of means pursuant to sections 171(1)(b) and (2) and 172(1). By 22 October, signed statements of means had been received from both Applicants by the FSA.

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5. The Decision Notice relating to Qadeem Mohammed imposed a financial penalty of £15,000; the Warning Notice had proposed a penalty of £50,000. In determining the level of financial penalty the FSA took into account Qadeem Mohammed’s financial circumstances. Had it not been for representations as to financial means, the FSA (through the RDC) would have imposed a penalty of £25,000.

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6. The Decision Notice relating to Nazia Bi imposed a penalty of £25,000; the Warning Notice had proposed a penalty of £75,000. In deciding the level of penalty the FSA took account of her position as an individual (rather than a firm) and of its then knowledge of her financial circumstances. (The FSA’s investigation had discovered a property, 35 Trafalgar Road, whose entry in the property registry showed

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“Nazia Bi” as co-owner. The value of that was therefore taken into account in addressing the financial hardship likely to be suffered by her from the imposition of a penalty. It is now accepted that Nazi Bi, the Applicant, had no interest in that property.)

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7. The decisions in the two Decision Notices issued on 28 January 2010 had taken account of information as to means provided by Qadeem Mohammed and Nazia Bi in:

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- (i) the statements of means received on 22 October 2009,
- (ii) oral evidence given by them in the course of the RDC’s hearing on 28 October and
- (iii) further written representations as to means provided on 8 and 11 November 2009 respectively in response to a request from the RDC.

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8. On 27 February 2010 both Applicants had signed Reference Notices to the Tribunal (then the Financial Services and Markets Tribunal). As already noted the grounds for the references related to the level of the financial penalties. Shortly after that the FSA carried out extensive enquiries as to the financial positions of both Applicants.

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9. The references were consolidated by direction of the Upper Tribunal. A single Statement of Case had been served by the FSA on 21 May 2010 but, with the permission of the Tribunal, an amended Statement of Case was later served. The amended Statement of Case set out the facts and matters relied upon by the FSA as regards the original misconduct of both Applicants. The original conduct had been confined to breaches of APER 6 (the relevant statement of principle issued by the FSA under section 64). The Warning Notice had notified them of the proposal to take action under section 66 and to seek the penalties stated in the notices. The Decision Notices recorded decisions to take that action.

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10. The Amended Statement of Case introduced, for the first time and on the strength of the enquiries conducted in 2010, allegations of breaches by the two Applicants of a further Statement of Principle (APER 4). APER 4 requires an approved person to deal with the FSA (and with other regulators) in an open and cooperative way and to disclose appropriately any information of which the FSA would reasonably expect notice. The Amended Statement of Case stated, as the grounds for the breaches of APER 4, the fact that both Applicants had misled the FSA in respect of their financial means and had deliberately provided false and incomplete information. Specifically, the particulars of the offence of breaching APER 4, as regards Nazia Bi, were that she had, “in the course of providing information to the Authority, both pursuant to compulsory requirements for information and in the course of her written and oral representations, provided false, misleading or incomplete information in respect of her assets and liabilities.” The particulars of Qadeem Mohammed’s APER 4 offence were in similar terms.

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11. The Amended Statement of Case concludes with these words:

5 “The actions of the Applicants in attempting to mislead the Authority [described as “the subsequent misconduct”] compound the seriousness of the original misconduct and ought now to be taken into account *de novo* by the Tribunal in its assessment of the appropriate financial penalty. But for the misleading representations of the Applicants in the course of the Authority’s determination of the facts, it is submitted that the Authority would have imposed the financial penalties set out in its
10 Warning Notices.

15 It is therefore submitted that the Tribunal ought to dismiss the Reference and direct the Authority to issue Final Notices withdrawing the Authority’s approval for the Applicants to perform controlled functions, prohibiting the Applicants and imposing financial penalties of at least the level set out in the Warning Notices for breaches of APER 4 and APER 6.”

20 Mr Peter Wright, representing the FSA, contended that any financial penalties that the Upper Tribunal determined as appropriate ought to be not less than those set out in the original Warning Notices. Mr Wright went on to contend that if the Tribunal were to accept that the Applicants, by virtue of their conduct in dealing with the FSA, had also breached APER 4 then an additional sum in respect of that misconduct ought to be included in the total level of penalty to be imposed.

25 12. We have no doubt that section 133 requires us to take account of the subsequent misconduct in determining what the proper financial penalty should be so far as concerns the breaches of APER 6. The APER 6 breaches were, as required by section 67, duly specified in the Warning Notices: so were the proposed financial
30 penalties. The decision of the FSA (following the RDC hearing) was, as regards financial penalties, specifically based on the information as to means that the Applicants provided to enable the decision to be taken. The Applicants have therefore made their financial circumstances “the subject-matter of the reference” as that expression in section 133(3), as interpreted in the decision of the Financial Services and Markets Tribunal in the *Jabre* (Case No. 35) (Decision on Jurisdiction), is to be
35 understood. Thus, in now determining the appropriate action (i.e. the level of financial penalty), the Tribunal can properly take account of evidence that has become available since the decisions were taken.

40 13. *Jabre*, it will be recalled, was concerned with the question whether the Tribunal could determine as the appropriate course the making of a prohibition notice where only a financial penalty had been the subject-matter of the Decision Notice. There was no question of the FSA seeking to introduce a different breach as the subject-matter of the reference. Here, the FSA were seeking penalties for the APER 4
45 breaches. We had doubts whether section 133 authorised us to determine that separate and discrete penalties should now be imposed for the APER 4 breaches. To do so we would not just have to be satisfied that the Applicants as approved persons

had failed to comply with APER 4 (section 66(2)(a)); we would also have to be satisfied that the procedure in section 67 (requiring Warning Notices and Decision Notices relating to the breaches) had been complied with. While we might in practice conclude from the evidence of subsequent misconduct that, prima facie, Qadeem Mohammed and Nazia Bi had been uncooperative and misleading, the most we could do under the Financial Services and Markets Act was to direct the FSA to go through the section 67 procedures and see where these lead to. There was no discussion at the hearing as to whether an additional and separate penalty should now be imposed for the breaches of APER 4. To enable us to resolve the issue we asked for written submissions. Both the FSA and Nazia Bi have confirmed that no separate penalties should, in the circumstances, be imposed in respect of the alleged breaches of APER 4.

14. Our account of the events leading to the hearing of these References falls into two parts. The circumstances comprising the original misconduct, considered by the RDC in the course of production of the Decision Notices, need to be briefly summarised. The subsequent misconduct which is largely based on the outcome of the FSA's investigations into the financial circumstances of the Applicants, calls for more detailed examination. The subsequent misconduct is, as we observed in paragraph 12, relevant to the quantum of penalty for breach of APER 6.

The Applicants and their families

15. The Applicants are among the brothers and sisters in a family whose father is Mr M Fazal. Qadeem Mohammed is the third of four sons. Nazia Bi is the third of three daughters. We will give a short explanation of the roles played by each member of the family in the circumstances leading to the references.

The father

16. The father of the family is Mr M Fazal. He lives at 23 Aubrey Road, Birmingham, with his wife and his second daughter (Rukshana Shaheen); also living there is the fourth son (Banarise Mohammed) and his wife and children. In 2004, to judge from Qadeem Mohammed's vague recollection, a cheque for £9,000 had been drawn on an Abbey National account in the names of the father and Rukshana Shaheen in favour of a firm of solicitors (Elliott & Co) as deposit for the purchase of 31 Ravensdale Road, Birmingham. (31 Ravensdale Road became in due course the home of Qadeem Mohammed, his wife and four children.) The father, apparently, had another account (in the name of himself and Qadeem Mohammed) into which (according to Qadeem Mohammed's evidence which is examined later) was paid his "disability money"; Qadeem Mohammed asserted that that account had been entirely for his father's use.

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The two elder daughters

17. Saria Shaheen is the eldest. Rukshana Shaheen, as noted, lives at 23 Aubrey Road and is a director of Edwards Estates Ltd (a property company that will be referred to later).

Sarfraz Mohammed, the eldest son

18. Sarfraz Mohammed is the eldest of the four sons. He represented the Applicants at the present hearing. He has been the subject of a prohibition order prohibiting him from carrying on any activity in relation to a regulated firm; the expressed reason was his lack of honesty and integrity making him not a fit and proper person for the purposes of approval. The prohibition order had arisen from four matters. He had obtained a mortgage for himself based on false and misleading information about his income and employment. He had been knowingly involved in the submission of a mortgage application on behalf of a customer based on false and misleading information about that customer's income and employment. He had persuaded two individuals, the present Applicants, to be candidates for approval in support of the authorisation of 2 Minds Mortgages Ltd ("2 Minds") even though, and this is not denied, he was the shadow director of 2 Minds. And in relation to authorisation application for 2 Minds, Sarfraz Mohammed had indicated that he was a 10% shareholder whereas in fact he was and remains an 80% shareholder (which misinformation is in breach of the "controller" requirements).

19. We gave the Applicants leave to be represented by Sarfraz Mohammed in recognition of those circumstances and their implications. Our reasons for this were essentially pragmatic. The reference needs to be heard and there have been difficulties in obtaining evidence from the Applicants. However, the present reference, which relates to the financial positions of the Applicants, has not been concerned with the events that gave rise to the Decision Notice. Even so, we were well aware that Sarfraz Mohammed, as an important member of the family and "puppet master" of the activities comprising the original misconduct, might have an interest in the outcome of the reference. We informed the parties at the hearing that we would have to exercise extreme caution in reaching any conclusion that was based on Mr Sarfraz Mohammed's submissions.

20. Sarfraz Mohammed appeared on the register of No. 182 Clements Road as a co-owner with Nazia Bi. Nazia Bi's case is that that property belongs entirely to Sarfraz Mohammed because he had paid all the monthly mortgage contributions and she had known nothing about the property and who lived there.

21. Sarfraz Mohammed had produced the £3.3m valuations of the properties owned by Edwards Estates Ltd for purposes of the 2009 and the 2010 accounts.

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The family : Nadeem Mohammed

22. Nadeem Mohammed is the second son. He gave evidence relevant to Qadeem Mohammed's means. For some years he had worked "off and on" as a taxi driver earning £1,000-£1,200 a month and he is now part-owner of a pizza shop (drawing some £1,300 a month). He lives, he told us, at No 62 Wash Lane with his wife and children. (62 Wash Lane is registered in the name of Qadeem Mohammed.) Nadeem said that this was because he had been out of work at the time, but he said that he had provided the deposit in July 2004 to buy the property and had provided the cash for Qadeem Mohammed to pay the mortgage instalments. Nadeem Mohammed did not know whether the mortgage lender had been notified that Nadeem was the real owner. He claimed to have gone to a firm of solicitors (Elliott & Co) on 7 July 2004 where he and Qadeem Mohammed had signed a Declaration of Trust showing himself as the 99% owner.

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The family : Qadeem Mohammed

23. Qadeem Mohammed, one of the Applicants, is the third son. He and his wife and four children live at 31 Ravensdale Road. At all relevant time he has had two jobs. He works for Bloomsbury Estate Management, a housing organisation run by Birmingham City Council. The hours of work are from 7.00pm to 2.00am and the work is largely noise control. During the daytime he drives children with learning difficulties to and from school for "West Midlands Special Needs". The hours of work are 7.00-9.30am and 2.30-5.00pm. The job pays £500 a month. Qadeem Mohammed is recorded as a shareholder in 2 Minds. More details of his financial position are examined later.

The family : Nazia Bi

24. Nazia Bi, the third daughter and one of the Applicants, lives at 33 Aubrey Road, Small Heath, Birmingham. She has a degree from Aston University in Environmental Science and Health and Safety, which included a course in Business Management. Until May 2010 she worked for one law firm and then moved to another where she is now an officer manager. More details of Nazia Bi's financial position will be examined later.

The family : Mohammed Banarise

25. The youngest son, Mohammed Banarise, lives at 23 Aubrey Road with (as well as his father, his mother and his eldest sister) his wife and two children. The relevance of Mohammed Banarise to the present issue is this. The FSA enquiries carried out after the RDC's hearing revealed that a payment of £20,000 into Nazia Bi's "active savings account" had been made by cheque drawn on Mohammed Banarise's account. This had happened on 16 October 2009 and had been followed by that amount being transferred to Nazia Bi's current account. This matter is dealt with in connection with the examination of her financial resources.

The family's businesses : 2 Minds Mortgages Ltd

26. 2 Minds is a mortgage broking firm based in Birmingham. Qadeem Mohammed is a director and he is approved by the FSA to perform the CF1 (Director) role for 2 Minds. We learned very little about the scale of its activities. In evidence Qadeem Mohammed said it had processed two to three mortgage applications each month and thought that one of these had been completed each month.

The family's business : Edwards Estates Ltd

27. Edwards Estates owns property and its income comes from rents. It carries on regulated activities as the agent of 2 Minds under an appointed representative arrangement pursuant to section 39. Nazia Bi is approved by the FSA to perform the CF1 (Director) role at Edwards Estates. She is company secretary and Sarfraz Mohammed is the sole director. The accounts to 31 March 2009 show Sarfraz Mohammed as the 62% shareholder and Nazia Bi as the 19% shareholder.

The investigations and the Decision Notices

28. The FSA's investigation into 2 Minds and Sarfraz Mohammed started in September 2008. The FSA's concerns arose as a result of information indicating that these parties had been involved in mortgage fraud. It became apparent to the FSA that while Qadeem Mohammed was the director of 2 Minds and while he had accepted regulatory responsibility for the firm, he in fact played no substantive role in the decision-making of the business. He acknowledged that he worked at the business and dealt with some paperwork by checking mortgage applications; but the reality of the situation was that the business was controlled and directed by Sarfraz Mohammed who was neither an approved person nor recorded as director of the firm with Companies House.

29. The investigation had also revealed a similar state of affairs in relation to Edwards Estates. Nazia Bi had claimed that she worked at Edwards Estates solely in an administrative capacity. Her recollection of applying to be an approved person was vague. She acknowledged in the course of interview that she did not know what an FSA controlled function was. The investigation into Nazia Bi revealed further failings as it had become apparent that she had been involved in the provision of a false and misleading reference submitted to a mortgage provider. The reference had been to a customer who, it was claimed, had been an employee of Edwards Estates, when he was not so employed. She had identified Sarfraz Mohammed as being "in charge" of 2 Minds and said of Qadeem Mohammed, a director of 2 Minds, that his name had been "on the paper for the sake of having people". She claimed that she had not had any direct dealings with Edwards Estates and, although her recollection of applying to be an approved person had been vague, she did accept that she held the CF1 role. She acknowledged that she had been involved in signing an employment reference (to be used in support of the mortgage application for a customer). She also acknowledged that she had signed documents at the request of Sarfraz Mohammed without reading them.

30. The Decision Notice regarding Qadeem Mohammed recorded the decision to withdraw his approval to perform CF1 (director) functions for 2 Minds and to prohibit him on the grounds that he was not fit and proper as he lacked the competence and capability to perform functions in relation to regulated activities. The Decision Notice also records the decision that his misconduct amounted to a breach of APER 6 in that he had failed to act with due skill, care and diligence in managing the business for which he was responsible in the performance of his controlled function. The breach merited an imposition of the financial penalty of £15,000; had it not been for his representation as to his means, the FSA would, as already noted, have imposed a penalty of £25,000.

31. Regarding Nazia Bi, the Decision Notice records the decision to withdraw approval for her to perform CF1 (director) for Edwards Estates and to prohibit her on the grounds that she is not fit and proper and that she lacks the competence and capability to perform functions in relation to regulated activities. The Decision Notice states that her misconduct amounted to a breach of APER 6 in that she had failed to act with due skill, care and diligence in managing the business for which she was responsible in the performance of her controlled function. That breach merited the imposition of a financial penalty of £25,000. The Decision took into account the erroneous information (mentioned above) that she had an interest in a property (35 Trafalgar Road). It also took account of the financial circumstances known to the FSA at the time. The conclusion was that Nazia Bi's misconduct and lack of fitness and propriety had significantly increased the risk that the business of 2 Minds could be used for a business related to financial crime and that her actions and omissions facilitated financial crime.

Events following the Decision Notice

32. The Reference Notices served by Qadeem Mohammed and on Nazia Bi stated that the grounds for the references were essentially based on hardship. Nazia Bi, it was said, could not pay the £25,000 penalty because her assets, after allowing for her creditors, were insufficient. Moreover it was said she had not benefitted in any way from the mortgage activities; her only involvement had been to sign a mortgage application on behalf of the customer who had falsely claimed to have been an employee of Edwards Estates. Qadeem Mohammed, it was said, worked all hours and had an income that just about matched his outgoings. What was more, said Sarfraz Mohammed on their behalf, Edwards Estates had no surplus; its properties (recently revalued by him) were now shown as insufficient to cover its liabilities.

33. It will be recalled that Qadeem Mohammed and Nazia Bi had pleaded hardship as part of their case before the RDC and that the Authority had, in anticipation, directed the production of statements of means. At the RDC hearings both Applicants had been advised by the Committee to look more closely at their assets and their incomes as disclosed in their statements of means. And, as already mentioned, in early November both of them provided further written representations about their means.

34. From April 2010 onwards the FSA carried out their extensive investigations into the means of Qadeem Mohammed and Nazia Bi with particular reference to the properties that they appeared to own, to their liabilities and to their sources of income. The findings of the FSA have been summarised in a witness statement from a Ms Alison Newton of the Authority. In the light of the information obtained (much of which will be examined later), the FSA now ask the Tribunal to make a direction that it should issue Final Notices that would include additional regulatory failings (and to make substantive findings in support of those failings).

35. As regards Qadeem Mohammed, the additional matters are breach of APER 4 and a direction that it is appropriate that the Final Notice should reflect the fact that he lacks honesty and integrity. (We have already explained our position in relation to the breach of APER 4.) Regarding Nazia Bi the FSA submit that her dealings and her course of conduct warrant a finding that she has acted in breach of APER 4. That finding should also support the prohibition order that it was proposed to impose upon her in the light of the finding of the RDC that she lacked honesty and integrity.

The present proceedings

36. We are, for reasons given earlier in this Decision, authorised to direct that the financial penalties for breaches of APER 6 be imposed at higher levels than those imposed following the hearing of the RDC. The right approach is, we think, to evaluate the evidence of the two Applicants in relation to their means, being evidence that was not available to the RDC, and to re-assess what the appropriate financial penalties should be. It is not open to us, as regards alleged breaches of APER 4, to do more than direct the FSA to issue warning notices if they so decide. However, the fact that both Applicants have, or may have, misled the FSA as to their means, may well affect our conclusions as to their culpabilities when it comes to assessing the penalties for breaches of APER 6.

37. When will the Tribunal increase the size of a financial penalty? In common with all referable decisions of the FSA, penalties will not be increased save in “a clear case”. We refer in this connection to the decision of Judge Bishopp in the recent case of *Alistair Curren* (14 January 2011). An example of a “clear case” existing is where the relevant circumstances have been specifically identified in the Statement of Case but were not, by accident or by concealment, available to the RDC. Concealment is in issue here.

The financial circumstances of Qadeem Mohammed

38. Qadeem Mohammed asserted, and continues to assert, that the proposed fine of £50,000 would cause him financial hardship. During the course of the RDC proceedings he made representations about his employment status, his property ownership, his bank accounts and his personal liabilities. These, say the FSA, have been shown by subsequent investigations to have been falsely misleading; they should

not therefore have been taken into account by the RDC in deciding to impose the lower financial penalty of £15,000.

39. Regarding Qadeem Mohammed's employment he had admitted to his continuing employment at night with the Bloomsbury Estate management. But he had stated to the RDC that he had resigned from his day job driving children with special needs. This latter claim has been shown to be incorrect. The bank statements for the twelve months to March 2010 have shown continuous payments between £400 and £450 per month from West Midlands Special Needs which has confirmed to the FSA that Qadeem Mohammed still works for it and that there has been no gap in his employment.

40. As regards his property interests, Qadeem Mohammed made no mention in his statement of means form of any property, but he did list two mortgage payments, each of £1,300. Subsequently (in further representations to the RDC before they reached their decision) he confirmed that he owned 31 Ravensdale Road (his home). He stated that the mortgage of approximately £85,000 exceeded the value of the property which he stated to be £84,475. Based on information provided by the mortgage lender to the FSA, it appears that the mortgage as at November 2009 was £74,600. The mortgage lender also confirmed that the mortgage had been taken out on an interest only basis before being transferred to a repayment basis in 2007.

41. While we accept that 31 Ravensdale Road is Qadeem Mohammed's family home, we do not accept that there was no "equity value" in the house. We are not satisfied that the open market value of the house is less than the mortgage. Nor, in the light of the information provided by the mortgage lender, do we think that any credence can be placed on the assertion of Qadeem Mohammed that he had tried, in September 2009, to have the mortgage changed to an interest only mortgage because of his financial difficulties.

42. Also regarding Qadeem Mohammed's property interests, we note that he had represented that the second mortgage payment (admitted in his statement of means) had been referable to the part share he held in another property at 54 Farmer Road. He had represented that this property had been worth £95,000 and he had produced two letters from local estate agents supporting his assertion. Enquiries made by the FSA had shown that Qadeem Mohammed did not appear on the land registry entries as registered owner of 54 Farmer Road. The name Nadeem Mohammed appears as the registered owner. Any interest in this property that Qadeem Mohammed might have had was not apparently a registered legal title. Further, the mortgage lender did not have a mortgage in Qadeem Mohammed's name for 54 Farmer Road. Consequently Qadeem Mohammed's payments of £1,300 could not, so the FSA inferred, have related to 54 Farmer Road. The Authority's assessment of the value of 54 Farmer Road has produced a figure of £121,000.

43. Enquiries of the FSA also revealed that Qadeem Mohammed owned a further property at Wash Lane. This property, according to the land registry entries, had been purchased by him on 12 July 2004 for £90,000; a mortgage had originally been held

by one lender and the property had subsequently been remortgaged with a building society. As at 6 April 2010, the mortgage was £26,000. The FSA calculated that, as at November 2009, the outstanding balance on the mortgage would have been £30,790.

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44. We heard evidence from Qadeem Mohammed and from his brother Nadeem Mohammed. The accounts they gave us, at the hearing, were that the Farmer Road house had belonged, as to 99%, to Qadeem Mohammed and 1% to Nadeem Mohammed; the Wash Lane house had belonged as to 99% to Nadeem Mohammed and as to 1% to Qadeem Mohammed. We were provided, on the second morning of the hearing, with two similar declarations of trust showing those interests in each property.

45. The declaration of trust relating to the Wash Lane house was dated 2 July 2004, i.e five days before Wash Lane had been purchased. Qadeem Mohammed, who had professed to remember nothing about the purchases of either property, said of the declaration of trust relating to the purchase of the Wash Lane house that they had signed it up because they knew they were going to buy that property. Asked who told them to do so that way, he responded – “The Solicitor” and said “this was because we done the last one, so we did this way as well”. The only other one done that way had been the Farmer Road house. As Farmer Road had been purchased and the declaration of trust been signed six months later in January 2005 we had no confidence in Qadeem Mohammed’s explanation. Nadeem Mohammed said that both declarations of trust had been signed at the office of “the Solicitors”. If the declarations of trust had indeed been signed at the solicitors and both properties were being bought subject to mortgages, the full state of affairs should properly have been disclosed to the mortgage lenders. And yet they both appeared to have been immaculately drafted. That also gives us cause to doubt the authenticity of both of the declarations of trust. Nor were the declarations of trusts disclosed in the statements of means of Qadeem Mohammed presented to the RDC, nor were they referred to in his “further written representations” (lodged with the RDC on 11 November 2010); nor were they disclosed in response to this Tribunal’s Direction of April 2011 to “disclose evidence”. We do not therefore place any reliance on the declarations of trust.

46. We also mention that Qadeem Mohammed is said to have met the monthly mortgage requirements as regards the Wash Lane premises out of cash paid to him by Nadeem Mohammed. Nadeem Mohammed said “I paid him when I saw him, by cash – about £1,300 in total”. The informality of the actual arrangements is so striking that it makes us wonder if there might have been a greater degree of commonality and flexibility of ownership of property within the family than we have been led to suppose. Overall we were left with the impression that Qadeem Mohammed leads a hand to mouth existence and has a very limited grasp of his finances. He let out the admission at one stage of his oral evidence that he had an account with NatWest which was overdrawn. The FSA had had no mention of this account. However, when completing his statement of means he should have included his home (Ravensdale Road) and the Farmer Road house, both of which he insists belonged to him. Moreover, he misled the FSA about his part-time job having stopped.

47. Regarding the bank accounts of Qadeem Mohammed, he disclosed one account with Barclays to the FSA on his statement of means form; this represented that the account held a balance of approximately £3,000. It appears however that this account had a balance of 1p at the time. He disclosed a statement relating to a second Barclays account when he made further representations in November 2009. As at 15 October 2009, this account held a balance of £1,480. He did not however disclose the third Barclays Bank account which he held jointly with his father. As at 15 October 2009 this account held a balance of just over £3,900.

48. Qadeem Mohammed insisted that the funds in the joint account (with his father) were entirely his father's. We are inclined to accept that, but he should have disclosed it in the course of his statement of means and, we observe, its existence drives home the impression we have of overlapping ownership of assets within the family.

49. In his representations as to his financial circumstances, Qadeem Mohammed stated that he owed approximately £37,500 to various friends and family members. These debts were apparently interest free and it was expected that the capital would be repaid. Letters from each of the individuals concerned were provided to support the loan amounts disclosed. The evidence as to whether there really were undertakings to repay those amounts to the creditors, who appeared to be friends and family, was not there. We are not persuaded that these debts should be taken into account in fixing the financial penalty to be imposed upon Qadeem Mohammed.

Examination of the financial circumstances of Nazia Bi

50. It was asserted for Nazia Bi that the proposed fine of £75,000 would cause her severe financial hardship. In the course of the RDC proceedings (both in her written and her oral representations) she had asserted that she was employed by a solicitors' firm with net earnings of £1,498 a month. She stated (in her further written representations of 8 November 2009) that she had been informed that she would be made redundant on 22 December 2009. The FSA subsequently established that Nazia Bi in fact resigned in May 2010. She had not been made redundant. She had been paid by the same solicitors' firm up to the date of her resignation. She then commenced employment with another legal practice as office manager. In this connection we heard evidence from a Mr Madanhi (a partner in the solicitors' firm that employed Nazia Bi until May 2010) and read the letter, sent by that firm to its staff, informing them all that redundancy notices might have to be given. We are satisfied that it did not and could not be read as informing Nazia Bi that she would be made redundant either on 22 December 2009 or at all. Her representation to the RDC was clearly wrong.

51. We note also that she had been receiving monthly payments from Lloyds Pharmacy up to and including May 2010 which appeared to have been salary payments.

52. As regards Nazia Bi's property interests, she disclosed none in her statement of means form. The FSA have investigated her interests in property since then. They have discovered that in November 2006 she purchased a property at 182 Clements Road with Sarfraz Mohammed for £84,200. Shortly after that Sarfraz Mohammed and Nazia Bi applied for a remortgage with a different building society for the sum of £95,000 on a valuation of £100,000. The balance on the mortgage account as at 5 November 2010 was £86,000. A "desk-based" valuation of that property on 20 May 2010 indicated the value of £81,600. Whether there is any value in 182 Clements Road is beside the point. There was no evidence to show that it belonged wholly to Sarfraz Mohammed. She should have disclosed her interest in it and we are not satisfied that, even now, she has no beneficial interest in it. We note that in the course of applying for a mortgage of that property, Nazia Bi appears to have falsely claimed that she worked for the NatWest bank.

53. In November 2003 Nazia Bi also purchased 163 Aubrey Road with a mortgage from a building society. She sold this property to Edwards Estates in 2005. In her mortgage application to that building society she had stated that she had been employed by 2 Minds since February 2001 earning a salary of £35,000 a year. But 2 Minds had not been incorporated until June 2002 and, according to Sarfraz Mohammed, had not begun trading until 2004. Moreover, this statement that she earned £35,000 a year at 2 Minds is inconsistent with her representations of 29 September 2009 that she "did not receive any financial benefit from 2 Minds". She had said that regarding Edwards Estates, she had worked for free as it had been a family business.

54. Those, we note, are three further examples of untruths on the part of Nazia Bi and they call in question her plea (reinforced by written submissions put in after the hearing) that she would suffer hardship if exposed to a greater penalty than £25,000.

55. In her further written representations Nazia Bi informed the RDC that at the time she held no interest in Edwards Estates. However, the most recent filing at Companies House in relation to shares held in Edwards Estates, in its annual return filed on 24 June 2010, shows her as company secretary and as owner of 19 ordinary shares out of the total of 100. Edwards Estates' financial statement for the year to 31 March 2009 shows the land and buildings at cost price to a value in excess of £3m.

56. Nazia Bi is living at 33 Aubrey Road, a property which is owned by Edwards Estates. The FSA's investigations of her bank accounts have revealed no payments that are indicative of rent or mortgage payments for this property. In evidence she said that she rented it from an organisation called "Homewise". When it was drawn to her attention that 33 Aubrey Road in fact belonged to Edwards Estates (the company for which she was approved to perform the CF1 (Director) role on behalf of 2 Minds), she said that she had not been aware of any family connection between Edwards Estates and Homewise and that she had not known that it had been owned by Edwards Estates. That evasiveness further calls in question her plea of hardship.

57. We turn now to Nazia Bi's bank accounts. In her written representations she had said that she had no savings, assets or any shares. And in her statement of means form, she had disclosed no bank accounts. The FSA has now established that she had four bank accounts, She received salary payments from her job with the solicitors' firm, together with payments from Lloyds Pharmacy, into a current account.

58. During December 2009, Nazia Bi had made five separate payments totalling £20,000 to Mohammed Banarise. She has asserted that these payments to him were made to repay the sum of £20,000 which she said had been paid to her by mistake. In oral evidence to us Nazia Bi said that the payments to her account had been an online error on Mohammed Banarise's part or "he ticked the wrong payee". The bank records show that the £20,000 payment into her account had not been made by electronic means. In cross-examinations she was asked whether she had in fact received the £20,000 by cheque and she had said "I can't remember". The bank records show that the payment had been made by the encashment of a personal cheque made out to her by Mohammed Banarise.

59. Referred to five payments aggregating £20,000 from her account to Mohammed Banarise, she claimed that these had been made to correct an error, with the result that the £20,000 should be disregarded as money available for her use. We cannot accept that. Her explanation as to how the money came to be in her account in the first place was inconsistent with the bank records. She never disclosed the account and she never sought to explain to the FSA that the presence of the £20,000 had been a mistake. In the absence of any evidence, such as supporting statements from Mohammed Banarise, we cannot rule out the real possibility that £20,000 was and remains Nazi Bi's money.

60. We heard evidence of a third bank account, a "higher education" account, which appears to have been the account in most constant use. We heard that she held an "active savings" account into which she made regular payments from her current account. As at 16 October 2009 (the date of her completed statement of means form) that account held £28,617. On 23 October the sum of £20,000 had been paid back to Nazia Bi's current account and the balance of her active savings account as at 8 November stood at £9,619. Then on 21 June 2010 she is shown as having made a payment of £20,000 from this account to a Mr T Qadi. This payment had been partially funded by a transfer from Nazia Bi's "tax haven" ISA. Nazia Bi said of Mr Qadi that he had been a friend who had, unknown to her family, helped her out financially during her university days. We cannot draw any conclusions from the verifiable evidence as to whether or not the £20,000 left Nazi Bi's ownership or whether it is still available to her. For completeness we mention that her "tax haven" ISA received regular payments and as at 16 October 2009 the balance of the account was £3,500. The following month when she submitted her supplemental written representations (on 8 November) the accounts stood at £3,510. Then on 21 June 2010 she transferred £8,800 from her tax haven ISA to her active savings account leaving the ISA with a zero balance.

61. We accept the summary of the FSA relating to Nazi Bi's bank accounts. As at the date of the form showing her statement of means she says that she had no such accounts or savings; but she had in fact had savings amounting to £32,000 spread over four Barclays Bank accounts. As at 8 November 2009, having represented to the FSA that she could not afford the proposed financial penalty set out in the Warning Notice, she is shown as having held £33,384 in cash across the four accounts.

62. We are satisfied that both Applicants misled the FSA (through their statements to the RDC) about their financial means. Qadeem Mohammed ought to have disclosed his ownership of the two properties and should not have stated that he had ceased to be employed as a driver. Nazi Bi misled the Authority on almost every aspect of her means. Had the RDC been provided with the proper information as to the means of both of them, we have no doubt that they would have imposed higher penalties and given less weight to the hardship that might otherwise be caused to the two Applicants.

63. The Warning Notices issued to Nazia Bi and Qadeem Mohammed had recited the relevant statements of policy from DEPP that the FSA had had regard to in setting its proposed level of financial penalty. The first relevant consideration is to have regard, as a principal purpose for the imposition of sanctions, to the promotion of high standards of regulatory and market conduct by means of deterring the persons who have committed breaches from committing further breaches. On this basis a financial penalty should be set as the level that promotes the required standards of regulatory behaviour among traders in comparable lines of business.

64. The nature, seriousness and impact of the breach are relevant considerations in fixing the financial penalty. The FSA acknowledged that the principal APER failings were errors of omission in that both Applicants had failed to discharge any of their regulatory responsibilities. The FSA acknowledged that Nazia Bi had not been engaged in substantial mortgage fraud activities but noted that she had been involved, on at least one occasion, in signing a false documentation when asked to do so by Sarfraz Mohammed. Qadeem Mohammed had, we recognise, done very little for 2 Minds. Both of them had, we think, allowed themselves to be puppets of Sarfraz Mohammed. Nonetheless, financial penalties are warranted in the circumstances because both accepted regulatory responsibilities: and, for reasons that we now give, those were accepted recklessly.

Was the breach deliberate or reckless?

65. This is a relevant consideration. Regarding Nazia Bi's conduct, in breach of APER 6, in respect of signing the false employment references for a customer, this must have been reckless in that she knew or should have known that the content was false. She must have known that that customer had not been an employee of Edwards Estates.

66. Both Qadeem Mohammed and Nazia Bi knowingly accepted significant influence function positions within 2 Minds and Edwards Estates. They did nothing

to discharge their regulatory responsibilities and left all the significant management decisions and actions to Sarfraz Mohammed who, they must have known, was not approved by the Authority to be concerned in the affairs of a regulated business.

5 **The amount of benefit gained or loss avoided**

67. The FSA do not claim that Qadeem Mohammed and Nazia Bi made any direct benefit or avoided any loss as a direct consequence of the original misconduct. It does however rely on the fact that without their involvements in 2 Minds and Edwards Estates, those regulated businesses would not have been authorised by the Authority.

The amount of the penalties

68. Comparable situations drawn to our attention by the FSA, where the FSA has recently taken action against other individuals who had sought approval to perform controlled functions but abrogated the responsibilities for what these entailed, show penalties of between £17,000 and £85,000. (In some instances the figures were reduced in the light of verifiable evidence of a financial hardship. We will return to the “hardship” question later.)

69. Using the £17,000/£85,000 range as a guide for offences of the present nature, we now consider where in the order of things the present offences and penalties should be placed. Both Qadeem Mohammed and Nazia Bi delegated their regulatory responsibilities and left Sarfraz Mohammed, whom they knew was not approved, to get on with running the businesses unsupervised. By doing so they opened a way to unlawful activities perpetrated by Sarfraz Mohammed. Nazia Bi was actually involved in the mortgage fraud activities. Qadeem Mohammed was not involved. See the summary of their relative involvements above. Nazia Bi’s conduct fell well up in the range; she was seriously involved and on the face of it her penalty should be in the upper part of that range (say £55,000). Qadeem Mohammed’s conduct rates at a much lower lever (say £30,000).

70. We next consider whether the impact of the particular penalty on the target involved makes those amounts suitable, proportionate and, above all, sufficient to deter others from committing like forms of misconduct. Inevitably, where the target individual has ample financial resources, the penalty should be pitched at a higher figure than where the individual has little or nothing.

71. Qadeem Mohammed, we believe on the basis of the limited and vague evidence available to us, is a man of small means and large family responsibilities. For him, the appropriate financial penalty for the APER 6 breach should, we think, be £25,000. This will severely penalise him.

72. Nazia Bi, to a greater extent than Qadeem Mohammed, failed to be open and honest about her means. She must have known that she was not going to be made redundant. She knew that she had a 19% interest in Edwards Estates. She must have been aware that her claims to be indebted, e.g. to Mr Qadi, were unacceptable unless

supported by evidence. And she must have known that the positive balances on her bank accounts were substantial and if any weight were to be given to her assertion of the allegedly erroneous payment of £20,000 made to her by Mohammed Banarise, this also would need evidence which she took no steps to produce. However, we
5 acknowledge that the only source of income she currently has is a salary for clerical work and we recognise that a final notice imposing a prohibition notice and a penalty will materially damage her job prospects. We think therefore that the appropriate financial penalty in respect of the APER 6 breaches should be the sum of £45,000.

10 **Financial hardship**

73. The evidence we received as to the means of Qadeem Mohammed and Nazia Bi was nowhere near verifiable enough for us to make reductions of the penalties determined above on account of financial hardship. It will now be a matter between
15 them and the FSA as to whether they can demonstrate sufficient financial hardship to enable “time-to-pay” arrangements to be made. But that is not a matter for this tribunal.

Other directions

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74. Regarding Qadeem Mohammed, we consider that the Final Notice prohibiting him (in respect of the APER 6 breach) from performing a function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, pursuant to Section 56, should be based on his lack of honesty and
25 integrity as well as his competence and capability, being the basis on which he is not a fit and proper person. We direct accordingly.

75. Regarding Nazia Bi, the prohibition order (in respect of the APER 6 breaches) prohibiting her from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, pursuant to Section 56, should be based on her lack of honesty and integrity; on that
30 basis she is not a fit and proper person. We direct accordingly.

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SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL
RELEASE DATE: 22 September 2011

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