

REGULATED ACTIVITIES – Refusal of application – Threshold Condition 5 – Fit and proper person – General insurance business – Application (HSF 2) by Applicants failed to disclose material facts – Failure to cooperate with Regulator – Whether Applicant a fit and proper person – No – Reference dismissed

FINANCIAL SERVICES AND MARKETS TRIBUNAL

JOHN SUTER ASSOCIATES

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

Respondents

**Tribunal: STEPHEN OLIVER QC
ANDREW LUND
KEITH PALMER**

Sitting in public in London on 19 October 2005

The Applicant in person

Nasim Amir for the Respondents

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DECISION

1. Mr John Andrew Suter referred a Decision Notice dated 24 January 2005 to
5 the Tribunal. The Notice refused his application for permission under Part IV of the
Financial Services and Markets Act 2000 (“the Act”).

2. Section 41(2) of the Act provides that in giving permission under section
42(2), the Authority must ensure that “the firm” will satisfy and continue to satisfy the
10 threshold conditions in relation to the regulated activities for which it will have
permission. Condition 5 requires the firm to satisfy the Authority that it is “fit and
proper” to have Part IV permission having regard to all the circumstances. The
emphasis of this threshold condition is on the suitability of the firm itself. Condition
15 2.5.4 allows the Authority to have regard to all relevant matters including whether the
firm will conduct its business with integrity and in compliance with proper standards
and will have a competent and prudent management. Condition 2.5.6 allows the
Authority, in determining whether a firm will satisfy and continue to satisfy threshold
20 Condition 5 in respect of conducting its business with integrity and in compliance
with proper standards, to have regard to various matters. Those matters include the
openness and degree of cooperation between a firm and the Authority or any other
regulatory body, the conviction of the firm or any person involved in the firm of any
relevant criminal offence, investigations or enforcement proceedings by the Authority
or other regulatory authorities, the dismissal of the firm from a position of trust and
any revocation of the firm’s authorization to carry on a trade.

3. By an application of 13 July 2004 Mr Suter, a sole trader trading as John Suter
Associates, applied under section 40 of the Act for Part IV permission to carry on the
following regulated activities: advising customers on non-investment insurance
contracts; arranging (bringing about) deals in non-investment insurance contracts;
30 making arrangements with a view to non-investment insurance contracts and agreeing
to carry on a regulated activity.

4. For reasons that are summarized below, the Authority concluded that Mr Suter
did not satisfy and would not therefore continue to satisfy Threshold Condition 5.

5. Mr Suter attended the hearing, presented his own case and gave evidence. The
Authority were represented by Ms Nasim Amir. The evidence of the Authority
consisted of an unchallenged witness statement of Mr Andrew Honey, head of the
Insurance Department in the Small Firms Division of the Authority and of Natasha
40 Peter who, at the relevant time, had acted as a legal adviser to the Case Management
Team carrying out reviews of the cases that were to be presented to the Case
Management Committee and the Regulatory Decisions Committee. Her evidence
related to the previous activities of Mr Suter, either as a sole trader or through a
limited company.

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Facts and matters relied on

6. On 22 November 1994 the disciplinary committee of the Insurance Brokers
5 Registration Council ruled that Mr Suter, in his capacity as director of John Suter
Insurance Brokers Ltd, should be removed from the Register of Insurance Brokers for
“unprofessional conduct” with effect from 18 January 1995. The “unprofessional
conduct”, to which the charge under section 15 of the Insurance Brokers
(Registration) Act 1977 related, was set out in a letter from the solicitors acting for the
10 Council, dated 21 October 1994, as:

- (a) Mr Suter’s failure to reply to correspondence addressed to him by the
Council and
- 15 (b) Mr Suter’s action as a registered insurance broker in allowing John
Suter Insurance Brokers Limited to use the title “Insurance Brokers” when he
knew that company was not entered in the list of companies maintained by the
Council.

7. On 21 July 1995, both Mr Suter and John Suter Insurance Brokers Ltd were
20 convicted at Aldershot Magistrates Court for a breach of section 22 of the Insurance
Brokers (Registration) Act 1977, for using the title “Insurance Broker” without being
registered members of the profession. Mr Suter was given a twelve month conditional
discharge. The company was fined £100 and ordered to pay £200 in costs. In addition,
25 the company was ordered to forfeit possession of a fascia sign bearing the name of
“John Suter Insurance Brokers Ltd” and Mr Suter was ordered to destroy all business
stationery making reference to the term “Insurance Brokers”. (Mr Suter’s
unchallenged explanation of the circumstances of that conviction are set out below.)

8. On 20 September 1995, John Suter Insurance Brokers Ltd was wound up by
30 order of the High Court. (Again, Mr Suter’s unchallenged explanation is set out
below.)

9. On 28 August 1997 Mr Suter was convicted at Aldershot Magistrates Court of
35 using a prohibited company name, namely John Suter Insurances, having been a
director of John Suter Insurance Brokers Ltd during the twelve months preceding its
liquidation. He was fined £1,000 and ordered to pay costs of £450.

10. On 4 November 1996 Norwich Union revoked John Suter Insurance Brokers
40 Ltd from acting as their agent for, as the Authority understood it, failing to pay
premiums received from policyholders. (Our comments on this will appear in
paragraph 46 below.)

11. On 9 September 2003 Lloyds of London referred a complaint, made to Lloyds,
45 regarding John Suter Associates to the General Insurance Standards Council (“GISC”)
following concern that Mr Suter may have accepted a premium without placing
insurance. Consequently GISC instructed Pricewaterhouse Coopers (PwC) to audit Mr
Suter. On 1 October 2003 PwC sent Mr Suter a copy of their report and asked him to

advise them about the action he proposed to take to ensure that specific breaches of the GISC Rule book did not recur. Mr Suter was asked to respond within three weeks, but failed to do so.

5 12. On 24 June 2004, Mr Suter was advised by GISC that his failure to respond to the PWC report and correspondence was a breach of GISC Rules and that the Authority would be informed of this breach, should they make any enquiry regarding his business.

10 13. On 10 December 2003 Hampshire Police arrested and interviewed Mr Suter for obtaining property by deception in connection with the matter referred to in paragraph 11 above. A policyholder had complained that he had paid Mr Suter for insurance but had not received a certificate. The matter was, to use the Authority's word, "investigated" and no further action was taken. (Mr Suter's unchallenged
15 explanation of this event is given below.)

14. On 13 July 2004 Mr Suter completed and submitted a High Street Firms Form 2 (HSF2) to the Authority. The matters set out in paragraph 6-13 above were not
20 disclosed in HSF2.

15. On 1 September 2004 the Authority wrote to Mr Suter asking him to provide details in respect of the matters set out in paragraphs 7, 10 and 11 above. He was asked to provide any other information "You believe requires disclosing at this point". The letter also asked "I would be grateful if you would provide an explanation as to
25 why this information has not been disclosed together with any comments you may wish to make concerning the circumstances surrounding the de-registration". Mr Suter did not respond.

16. On 13 September 2003 the Authority wrote to Mr Suter referring to the letter
30 of 1 September 2004 and seeking the information set out in paragraph 15 above. The letter requested the information by 13 September and went on to say that if he was unable to provide the information or had any questions about it he should contact the Authority. Mr Suter did not reply.

35 17. On 21 September the Authority again wrote to Mr Suter referring to the letters of 1 and 13 September and seeking the information set out in paragraph 15 above.

18. On 1 October 2004 Natasha Peter of the Authority, who gave evidence, had a
40 telephone conversation with Mr Suter. Mr Suter confirmed that he had received the letters of 1, 13 and 21 September and that he would respond by 8 October 2004.

19. Following the telephone conversation, Natasha Peter wrote to Mr Suter on 1
October asking him to provide the information set out in paragraph 17. He was also
45 asked for any further information that he might believe required disclosing with a request to reply within seven days. Mr Suter did not reply to the Authority though he did write a letter to this Tribunal on 14 April 2005 setting out his view of the facts and matters relied upon by the Authority.

Information submitted to the Authority

20. The Authorisation Application process required the Applicant to complete a High Street Firms Form 1 (“HSF 1”). The Applicant completed and submitted HSF 1 and HSF 2 electronically on 13 July 2004.
21. A High Street Firms application pack accompanies HSF 2 on the Authority’s website (“the Notes”).
22. Page 1 of the Notes contains the following direction: **“Please read this important information before completing the Application Form”**.
23. Under the heading **“other important points to remember”**, page 4 of the Notes contain the following statements:
- “(i) The firm is responsible for the accuracy of the data and completion of the form in respect of the individual. The firm should verify the information supplied by the individual wherever possible. If our vetting checks reveal any matters that have not been disclosed, then applications will be delayed and, in some cases, rejected.
- (ii) 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 circumstances, disclosures should be full, frank and unambiguous. If there is any doubt about the relevance of the information, it should be included”.
24. Question 28a on HSF 2 stated:
- “Has the individual ever been convicted of any offence involving fraud, theft, false accounting or other dishonesty? Or have they been convicted of an offence (whether or not in the United Kingdom) relating to companies building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection, money laundering, market manipulation or insider dealing?” (Convictions spent under the Rehabilitation of Offenders Act 1974 must be included).
- In response to Question 28a, the Applicant typed the word “No”. This, the Authority claimed, was incorrect in light of the matters set out in paragraphs 7 and 9 above.
25. Question 36 on HSF 2 states:
- “Is the individual, or has the individual ever been, the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity?”

In response to Question 36 the Applicant typed the word “No”. This, the Authority claimed, was incorrect in light of the matters set out in paragraphs 6, 10, 11, 12 and 13 above.

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26. Question 37b on HSF 2 states:

“Has the individual ever, either in the United Kingdom or elsewhere, been refused, restricted in, or had suspended, the right to carry on any trade, business or profession for which specific licence, authorisation, registration, membership or other permission is required?”

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In response to Question 37b the Applicant typed the word “No”. This, the Authority claimed, was incorrect in light of the matter set out in paragraph 6 above.

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27. Question 38a on HSF 2 states:

“In respect of activities regulated by the FSA or any other regulatory body (including the designated professional bodies), has 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; been refused, had revoked, restricted or terminated, any licence, authorization, registration, notification, membership or other permission granted by any such body?”

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In response to Question 38a the Applicant typed the word “No”. This, the Authority claimed, was incorrect in light of the matter set out in paragraph 6 above.

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28. Question 39a on HSF 2 states:

“Has any company, partnership, or unincorporated association of which the individual is or has been a controller, director, senior manager, partner, or company secretary, in the United Kingdom or elsewhere, at any time during the individual’s involvement or within one year of such involvement been put into liquidation, wound up, ceased trading, had a receiver or administrator appointed or entered into any voluntary arrangement with its creditors?”

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In response to Question 39a the Applicant typed the word “No”. This, the Authority claimed, was incorrect in light of the matter set out in paragraph 8 above.

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29. Section 41 of HSF 2 contained the following statements:

“(i) Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, is a criminal offence;

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(ii) 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 information, it should be included;

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(iii) By signing this declaration: 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;

10 (iv) Please tick here to confirm you have understood the declaration.”

30. In response to the statements in paragraph 41, the Applicant typed the word “Yes”.

15 **The case for the Authority**

31. In essence the case for the Authority is based on the following factors:

20 (a) He has been convicted of two offences relevant to financial services;

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(b) He failed to disclose the following:

25 (i) that he had been the subject of investigations and/or disciplinary action by the Insurance Brokers Registration Council, GISC and the Police; and

(ii) that he had been removed from the Register of Insurance Brokers for “unprofessional conduct”;

(iii) that he had been dismissed from a position of trust, namely as an agent for Norwich Union and

30 (iv) that he was the director of a company that had been wound up.

(c) Mr Suter had failed to cooperate in the following respects:

35 (i) that he failed to cooperate with the GISC;

(ii) that he failed to be candid in his dealings with the Authority in Form HSF 2 and

40 (iii) that he had failed to cooperate with the Authority in that he repeatedly failed to respond to correspondence, despite having agreed to do so in a telephone conversation with Natasha Peter of the Authority on 1 October 2004.

45 32. Based on those factors, the Authority asserts that it cannot be satisfied that Mr Suter is a fit and proper person having regard to all the circumstances.

Mr Suter's explanation

33. Regarding the point relied on by the Authority in paragraph 6 above (unprofessional conduct), Mr Suter did not challenge the circumstances set out in that paragraph. He explained, however, that the Insurance Brokers Registration Council had taken some nine months to approve his membership application. During that time he had not been able to practice. He had paid their £400 initial fee at or about the time when he had applied. In March 2003 his application was accepted. This had been followed, a week or so later, by a demand for a renewal fee of £300 for the year 1993/94. Mr Suter had argued with the Council that £300 of the £400 should be regarded as his fee for 1993/94. It turned out that the rules of the Council required full renewal fees and Mr Suter claimed he had been struck off on account of his refusal to pay the renewal fee.

34. Regarding the conviction in 1995 (see paragraph 7 above), Mr Suter explained that the signs in question had been temporary and had been designed to help, not mislead, visitors. The visitors would, in any event, have seen three permanent signs, all correctly titled, on the way in.

35. The winding up in September 1995 (see paragraph 8 above) arose because of the non-payment of a disputed invoice issued by a broker. By the time the broker had been paid it was too late to stay the winding up proceedings. In any event, Mr Suter said, the broker's invoice had been muddled and inaccurate.

36. Turning to the August 1997 conviction (paragraph 9 above) Mr Suter accepted that the consequence of winding up was that he could no longer use the name John Suter Insurance Brokers Ltd. The conviction was for displaying the sign with a prohibited name after he had moved out of the premises where the sign was found. They had remained empty and boarded up but the old name signs had been left on display.

37. Paragraph 10 above refers to the Norwich Union's revocation of John Suter Insurance Brokers Ltd's agency for failing to pay over premiums received from policyholders. Mr Suter explained that this had been something beyond his control. The administrator had seized funds, records, files and computer.

38. The next matter relied on by the Authority (see paragraph 11 above) was the reference by Lloyds of London of a complaint to GISC. Associated with this (paragraph 12) is the fact that no explanation had been given until June 2004. Mr Suter admitted that he had been late in dealing with the enquiry, but he had assumed that he had provided a full explanation in a letter to GISC in December 2004. The background to the affair was that a client had asked for urgent cover. Mr Suter said he had placed the risk through a broker and settled the amount on that broker's statement. The client had wanted a certificate. Mr Suter had therefore produced a summary and called it a certificate of insurance. The client was, as a result, left without cover. Mr Suter went on to say that family and personal matters had

prevented him from “getting to grips” with the points and queries raised by GISC (and in any event he thought he had given a full explanation). The PwC requests for information had, he conceded, been “pushed to one side”.

5 39. The matter relied on by the Authority in paragraph 13 above is the arrest on 10
December 2003. Mr Suter said that he had been arrested following a complaint from
the insured person and a statement from Norwich Union’s fraud office. He established
that the policy schedule and the certificate of employer’s liability had been properly
and validly issued. The police had realised their mistake and apologized to him for
10 wrongly arresting him.

40. Regarding the omissions to provide proper information in the HSF 2 form, Mr
Suter accepted that had he read the questions more carefully and sought guidance his
answers might have been different. As it was he had left the filling in of the
15 application form to the last minute and had completed it in some haste. The
documents needed to provide him with the necessary information had not been at
hand. With some of the questions he had answered “No” because the alternative
would have been to have risked “opening a can of worms”.

20 41. So far as concerned Mr Suter’s non-response to the Authority’s subsequent
queries (see paragraph 15-19 above) Mr Suter accepted that he should have replied
earlier, but he had suffered from numerous migraine attacks and had been “struggling
to keep up with the normal client communications”. He apologized and pointed out
that no client of his had ever complained of any lack of response from him.

25 42. More generally, Mr Suter said, he had been suffering from migraine over a
long period; that and blood-pressure problems could have accounted for many of the
matters relied upon by the Authority.

30 **Conclusions**

43. With the benefit of Mr Suter’s explanations the offences, shortcomings and
circumstances adverse to him do not appear so bad as the bare narrative account set
out in paragraphs 6-14 above suggests. Most of the problems have resulted from Mr
35 Suter’s ineptitude and his recurrent failures to give due attention to the demands of
regulators and their investigators. But, however one looks at the circumstances two
things stand out. The first is Mr Suter’s comprehensive failure to inform the Authority
of matters relevant to the questions in HSF 2. The second is Mr Suter’s persistent non-
cooperation with the relevant regulator when asked for explanations. Subject to two
40 points that we will make below, it seems to us that the non-disclosure of the matters
identified in paragraphs 6-12 above and Mr Suter’s subsequent failure to provide any
explanation for this non-disclosure give rise to justifiable concern about his honesty,
integrity and reputation and therefore his fitness and propriety. Insurance contracts
require good faith on the part of the proposer in disclosing material information. Mr
45 Suter’s record of non-disclosure raises concerns as to whether he will conduct his
business with the necessary integrity and in compliance with proper standards.

44. The various non-disclosures on the part of Mr Suter demonstrate not just a lack of openness and cooperation with the Authority, they also give rise to concerns about Mr Suter’s competence and capability. He ought to have understood the express and, subject to one point, unambiguous language of the Application Form. His record
5 of non-disclosure gives rise to justifiable concerns that he may breach his duty to deal with the Authority in an open and cooperative way and disclose appropriately any information of which the Authority would reasonably expect notice.

45. In summary we consider that Mr Suter has failed to persuade us that he will
10 satisfy and continue to satisfy the Threshold Conditions. On that basis we have concluded that the reference should be dismissed.

46. We should mention two misgivings. First, when asked in HSF 2 whether he
15 had been the subject of an investigation into allegations of misconduct or malpractice in relation to a business activity, Mr Suter answered “No”. He should certainly have mentioned the GISC enquiry and the PwC investigation (see paragraphs 11 and 12 above). The arrest by the Hampshire police was, we think, a different matter. It is not in dispute that the reason for this had been misconceived and, as the police admitted, it had been a mistake on their part. We do not see that a person who answers “No” in
20 the light of a mistaken cause of action of that nature in circumstances where the police so rapidly realized that they had been wrong can fairly be regarded as having failed to answer the question correctly. Second, we have misgivings about the reliability of the circumstances referred to in paragraph 10 above (Norwich Union’s revocation of Mr Suter’s agency). The only information put forward by the Authority was an e-mail to
25 Norwich Union. This read as follows:

“Just to clarify again:

- 30 1. John Suter was appointed by Norwich Union to act as an agent on their behalf, meaning that he had sold policies on behalf of Norwich Union? – YES
- 35 2. As a result of selling policies he received premiums from policyholders which would have been payable to Norwich Union? – YES
- 40 3. Mr Suter did not pay the money he owed to Norwich Union (is this of premiums?), so his agency was revoked? – YES
4. ...
5. How was Mr Suter informed of the revocation of his agency? – **A LETTER WAS SENT RECORDED DELIVERY TO HIM.”**

45 (The words in capitals were inserted by Norwich Union.) That information is, we think, inadequate to form the basis of any decision as to Mr Suter’s ability to satisfy the threshold conditions and to evidence “dismissal” of Mr Suter from a “position of

trust”. Nonetheless, those two points do not affect our overall decision that the reference should be dismissed.

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**STEPHEN OLIVER QC
CHAIRMAN**

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