

*PROCEDURE – non-compliance with “unless order” – whether appropriate
to vary unless order – no – application dismissed*

FINANCIAL SERVICES AND MARKETS TRIBUNAL

JOHN SHEVLIN

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

Tribunal: SIR STEPHEN OLIVER QC

Sitting in Chambers on 12 June 2008

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DECISION

1 I have considered the application dated 11 June 2006 from the Applicant, Mr
5 Shevlin, asking for a further 14 day extension of time in which to lodge his Statement.
I have also considered the response from the FSA to that application. In the
circumstances I have reached the conclusion that I can see no good reason for either
granting a further extension of the period in which to comply with the Direction given
on 22 May or for revoking the later Direction that the reference now stands dismissed.

10 **The Background**

The decision notice was issued on 10 September 2007. The decision was to impose a
15 financial penalty for behaviour constituting market abuse.

Mr Shevlin, through Edwin Coe, his solicitors, referred the matter to the
Tribunal on 9 October 2007.

The FSA's Statement of Case was issued on 8 November 2007.

20 Mr Shevlin's reply was due by 6 December. On 28 November a 14 day
extension was applied for. This extension was granted by the Tribunal on 30
November.

25 The reply was not lodged by 20 December and on 2 January 2008 Edwin Coe
asked for a further 14 days as a final extension. The Tribunal granted the application
on the following terms:

30 "It is directed that the Applicant shall have until 4.30pm on 18 January in
which to lodge his Reply and if the Reply has not been lodged by then and
acceptable reasons have not been provided the Tribunal will consider
dismissing the reference without a hearing."

35 It appears that a reply was lodged. At a Directions hearing on 26 March 2008
the Tribunal gave Mr Shevlin leave to serve an amended reply by 28 March. (This
was complied with.) The Tribunal also directed, in Direction 3, that Mr Shevlin
should file and serve on the FSA signed statements of his witnesses of fact by 4pm on
16 May 2008. It was further directed that the substantive hearing be fixed to
40 commence on or after 24 June 2008 with a six day time estimate. Case management
directions requiring staged compliance were given.

The hearing was in due course fixed to start on 17 July 2008.

45 On 29 May 2008 the Tribunal released a Direction given on 27 May. The
Direction provided as follows:

“Noting that the Applicant has not complied with Direction 3 of the Directions given on 26 March 2008 (“Direction 3”), this Tribunal has in mind dismissing the Application for non-compliance.

5 It is directed that unless by 4.30pm on 4 June 2008 the Applicant shall have complied with Direction 3 or provided this Tribunal with good and sufficient reasons for his non-compliance, this Tribunal will decide whether to dismiss the application without a hearing.”

10 On 3 June 2008 Edwin Coe, for Mr Shevlin, wrote into the Tribunal in these terms:

15 “We refer to the directions given in London on 27 May. We apologise that we have been unable to comply with the directions given by the Tribunal in relation to the exchange of evidence. We are discussing the matter with our client and his evidence in response to the evidence of the FSA.

We would ask for a further seven days so that we can conclude those discussions.”

20 The letter of 3 June was followed by a letter of 4 June from the Tribunal stating that the Tribunal had instructed that good and sufficient reasons were required to explain why the Applicant had not complied with Direction 3. The letter observed that good and sufficient reasons had not been given and that the Applicant had until 25 4.30pm on 4 June to provide these, or the Tribunal “will have no choice but to dismiss this application”.

Later on 4 June 2008 Edwin Coe for Mr Shevlin replied as follows:

30 “The reasons for the delay are that our client has had difficulty raising money in order to meet the costs of the application as it goes on. We have considered with him whether we should come off the record and he should conduct his application himself, but we are attempting to address the issues and thats why we have asked for further time on his behalf. We would hope to sort the 35 matter out in the next seven days.

The Tribunal gave a direction, released on 9 June. Its effect was to grant Mr Shevlin’s application for a seven day extension, but backing it up with an “unless order”. The Direction released on 9 June reads as follows:

40 “Unless by 4pm on 11 June 2008 the Applicant has filed and served on the Authority signed statements of his witnesses of fact, the Reference will stand dismissed without further hearing.”

45 On 11 June at 1506 Edwin Coe, for the Applicant, informing the Tribunal that Mr Shevlin had been dismissed from his employment. He had been told that the dismissal arose from the allegation made by the FSA. As a result, the letter

continued, not only had Mr Shevlin's financial position substantially changed but he had been unable to deal with the finalisation of a witness statement. The letter asked for a further 14 day extension.

5 **Conclusion**

I can see no good reason for either varying the "unless order" (which has already applied to dismiss the reference) or for extending the time for compliance. In the first place there has been no unforeseeable event to prevent compliance. Mr Shevlin has had plenty of time, from 28 March 2008 onwards in which to comply with Direction 3. In the second place Mr Shevlin's loss of his employment has not significantly changed things in a way that has precluded his opportunity to comply with Direction 3.

15 Overall, my view is that the track record of non-compliance on Mr Shevlin's part indicates that compliance will not improve, and certainly not improve to enable the 6 day hearing in July to take place. The risk of long and continuing delay is too great for me either to grant a further extension or to vary the effect of the "unless" order.

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The reference stands dismissed.

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**SIR STEPHEN OLIVER QC
CHAIRMAN**

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