Reference number FS/2010/0025

PERFORMANCE OF REGULATED ACTIVITIES – Conduct – Disciplinary powers – Misconduct – Financial penalty – Whether client adviser guilty of misconduct – Appropriate penalty - FSMA 2000 s.66

UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES

LAILA KARAN **Applicant**

- and -

THE FINANCIAL SERVICES AUTHORITY **Authority**

TRIBUNAL: SIR STEPHEN OLIVER QC
MAURICE BATES
KEITH PALMER

Sitting in public in London on 12-16 and 19 and 20 December 2011

Hodge Malek QC and Saima Hanif, counsel, instructed by Russell, Jones and Walker, for the Applicant

Jonathan Crow QC and Sharif Shivji, counsel, for the Authority

DECISION

This reference concerns the conduct of the Applicant as a "client adviser", being an approved person holding the CF21 (Investment Adviser) and CF30 (Customer) controlled functions. At the start of the hearing of the reference and following submissions from the press, the tribunal issued a direction restricting reporting of the names of "actual or prospective clients of UBS or any related party of such". We have anonymised references to UBS clients (using the terms Customer A, Customer B etc) save as regards these clients and clients' companies that have already been identified through articles in the press.

Introduction

1. During the period from 20 February 2007 to 30 January 2008 ("the Relevant Period"):

(a) UBS AG ("UBS") is a major global financial group headquartered in Zurich. Amongst other businesses, UBS operates an international wealth management business ("UBS WM"), which focuses on providing wealth management services to individuals. UBS WM's business in the United Kingdom is conducted through its London branch (the "London Branch").

(b) Laila Karan worked for UBS WM within the London Branch. Ms Karan was a client adviser in the London International Business which dealt with non-UK resident clients advised in the UK. She worked on the Asia II Desk, which provided wealth management services to customers resident in India, or of Indian origin. Between 1 November 2005 and 7 February 2006, Ms Karan was approved by the Authority to perform the Investment Adviser (Trainee) controlled function (CF22). From 7 February 2006 until 31 October 2007, Ms Karan was approved to perform the Investment Adviser controlled function (CF21). On 1 November 2007, CF21 was superseded by the Customer controlled function (CF30). Ms Karan held CF30 until 28 March 2008 when she was dismissed by UBS for gross misconduct.

(c) Sachin Karpe was the desk head of the Asia II Desk, and was Ms Karan's line manager.

2. By a Decision Notice dated 9 July 2010 the Authority (the "FSA") informed Mr Karpe of its decision to impose a financial penalty of £1,250,000 by breaching Principle 1 of the Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") and prohibiting Mr Karpe from performing any function in relation to any regulated activity as his conduct demonstrated a lack of honesty and integrity.

3. Mr Karpe referred the decision to impose the financial penalty to the Upper Tribunal (Tax and Chancery Chamber – Financial Services) ("the Tribunal"). Mr Karpe's reference was heard at the same time as that of Ms Karan. The Tribunal has

directed the FSA to serve a Final Notice on Mr Karpe in respect of the financial penalty.

4. By a Decision Notice dated 9 July 2010, the FSA informed Ms Karan of its decision to:

(a) Impose a financial penalty of £90,000 pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act") for breaching Principle 1 of APER;

(b) Make an Order pursuant to section 56 of the Act prohibiting Ms Karan from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm on the grounds that she was not a fit and proper person as her conduct demonstrated a lack of honesty and integrity.

5. By a Reference Notice dated 23 August 2010 ("the Reference"), Ms Karan referred the Decision Notice to the Tribunal.

6. In summary, Ms Karan relies upon the following grounds in her reference:

(a) The FSA has failed to consider all relevant evidence, and had it done so it would not have concluded that Ms Karan demonstrated a lack of integrity;

(b) The FSA has applied the wrong legal principles when assessing Ms Karan's conduct;

(c) The sanction imposed is wholly disproportionate to Ms Karan's conduct and not in accordance with case law, or with the sanctions imposed on other ex-UBS employees investigated by the FSA.

7. Ms Karan invites the Tribunal to find that:

(a) There is no evidence of a lack of integrity and that accordingly Ms Karan breached Statement of Principle 2 of APER, rather than Principle 1;

(b) the prohibition order be limited to 5 years in duration;

(c) no financial penalty should be imposed, because Ms Karan lacks the means to pay.

Relevant statutory framework and Authority's Handbook provisions

8. Section 2(1) of the Act provides that, in discharging its general functions, the Authority must, so far as is reasonably possible, act in a way which is compatible with its regulatory objectives and in a way which the Authority considers most appropriate for the purpose of meeting those objectives.

9. Pursuant to section 2(2) of the Act, the Authority's regulatory objectives include the maintenance of confidence in the financial system, the protection of consumers, and the reduction of financial crime.

Disciplinary Powers

10. The Authority is empowered by section 66(1) of the Act to take action against a person under this section if (a) it appears to it that he is guilty of misconduct; and (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him. By Section 66(3) of the Act, the Authority is empowered to impose a financial penalty in such circumstances.

11. Section 66(2) of the Act provides that a person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 or he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

12. The Authority has issued APER pursuant to section 64 of the Act. Principle 1 states that an approved person must act with integrity in carrying out his controlled functions. Principle 2 states that an approved person must act with due skill, care and diligence in carrying out his controlled function.

Policy on the imposition of financial penalties

13. Section 69 of the Act requires the Authority to issue a statement of its policy with respect to the imposition of penalties under section 66 and the amount of such penalties. In deciding whether to exercise its power under section 66 in the case of any particular behaviour, the Authority must have regard to the statement of policy in force at the time the misconduct occurred.

14. The Authority's current policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"). The Authority has also had regard to the guidance published in the Enforcement Manual ("ENF"), and in particular Chapters 11 and 13 which set out the relevant guidance in force when some of the misconduct described below occurred.

Prohibition

15. By section 56 of the Act, the Authority has the power to prohibit individuals who appear to it not to be fit and proper from carrying out functions in relation to regulated activities.

16. The part of the Authority's Handbook entitled the Fit and Proper Test for Approved Persons ("FIT") sets out guidance on how the Authority will assess the fitness and propriety of a person to perform a particular controlled function.

17. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person and that the most important

considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

18. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regard to factors including, but not limited to, those set out in FIT 2.1.3G, which include:

> *(5) whether the person has contravened any of the requirements and standards of the regulatory system...*
>
> *(13) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.*

19. The FSA's policy in relation to prohibition orders and withdrawal of approval is set out in Chapter 9 of the Enforcement Guide ("EG").

Facts and matters relied upon by the Authority

20. The services UBS provides to its international wealth management customers in the UK include, amongst other things: bank account services; investment advisory services; portfolio management (i.e. the discretionary management of a portfolio of cash and investments in accordance with investment guidelines); the execution of trades on customer instructions; and the safekeeping of documents and assets. International wealth management customers are typically non-UK resident individuals who have substantial assets to invest, and are sophisticated, active and performance-driven investors.

21. During the Relevant Period, defined in the Statement of Case to be from 20 February 2007 until January 2008, the London International Business operated from seven desks including the Asia II Desk, each of which focused on non-UK resident customers from different geographic areas. Each desk had its own portfolio of customers and was led and managed by a desk head".

22. Each international wealth management customer was allocated to a particular client adviser. The client advisers had day-to-day contact with customers, executed customer orders, provided advice and made recommendations in relation to investments and other products and services where relevant.

23. Ms Karan worked in the UK financial services industry between July 2000 and March 2008. She worked for ABN AMRO in London before joining UBS on 1 November 2005. Throughout her employment at UBS, she acted as a client adviser on the Asia II Desk. Between June 1995 and November 1999, Ms Karan worked at Deutsche Bank and HSBC in Mumbai, India.

24. As an approved person holding the CF22 (Investment Adviser (Trainee)), CF21 (Investment Adviser) and CF30 (Customer) controlled functions, Ms Karan was able to, and did, deal with customers, and their property, in a manner substantially connected to the carrying on of regulated activities by UBS.

25. As an approved person, Ms Karan was required to comply with APER. In addition, Ms Karan was required to act in accordance with UBS's legal and compliance requirements (including money-laundering requirements, UBS Group and local policies and procedures and the UK Compliance Manual), the UBS Client Adviser Manual and the Employee Handbook.

26. Ms Karan managed a portfolio of customers, and offered a number of services to customers, including:

(a) Advising customers regarding investments;

(b) Making recommendations to customers on financial products;

(c) Marketing or distributing marketing material in respect of regulated products; and

(d) Opening UBS accounts for customers and providing account maintenance.

27. UBS's customers agreed a specific mandate for their accounts (the 'Mandate'), establishing the terms by which customers authorised UBS to provide services. Ms Karan's responsibilities included ensuring that her customers' investments were undertaken in accordance with the relevant Mandate.

28. The terms of the Mandates were such that UBS's customers could elect for a number of different account services, including:

(a) a self-directed account whereby the customer would give instructions to execute transactions which may or may not have been based upon investment recommendations; and

(b) a discretionary service whereby the customer's assets would be managed at UBS's discretion but in line with guidelines provided by the customer.

29. The terms of the Mandates in relation to customers who selected the self-directed service did not provide Ms Karan or any other UBS employee with any authority to provide a discretionary service whereby the customer's assets would be managed at UBS's discretion.

30. Further, the terms of the Mandates did not provide Ms Karan or any other UBS employee with any authority to arrange loans with other UBS customers, whether or not they were guaranteed by UBS, nor was the arrangement of inter-customer loans among the services offered by UBS to its customers.

31. During the Relevant Period, the London Branch had in place a 'Whistleblowing' policy (set out in the Employee Handbook) which required Ms Karan to disclose information which related to fraud or other illegal or unethical conduct to the London Branch's senior management if she felt unable to report her concerns to her line manager.

The Misconduct

Ms Karan's breach of Principle 1 of APER

32. The Authority issued a Decision Notice against Ms Karan on 9 July 2010. This notice records the decision of the Authority that, during the period from 1 January 2007 to 30 January 2008, Mrs Karan demonstrated a lack of honesty and integrity, in breach of Principle 1 of APER.

The allegations of misconduct

33. The case against Ms Karan is based on four areas of related misconduct (occurring between February and November 2007). These are specified in paragraph 31 of the Statement of Case and are dealt with later in this Decision as follows:

(i) Mismanagement of the Customer A account (see paragraph 48 to 68).
(ii) The Suspense Account issue (see paragraphs 69 to 73).
(iii) The Loan and Guarantee Letters (see paragraphs 74 to 77)
(iv) The Customer B Compensation issue (see paragraphs 78 to 88).

Those four areas of misconduct, it is alleged by the FSA, occurred in parallel, such that Ms Karan became aware of more and more suspicious activity on the desk, known as the Asia II Desk, over the Relevant Period. Notwithstanding her awareness of a number of instances of suspicious activity, she had failed to escalate her knowledge within UBS or the FSA. (The term "escalate" is regulatory vernacular and is understood to mean – to pass on, usually upwards, to the appropriate officer or institution). Instead, Ms Karan had continued to be involved as instructed by Mr Karpe, the desk head, despite being aware of that activity. The losses compensated to customers for whom Ms Karan acted as client adviser are said by the FSA to have totalled $32,536,473. The losses that accumulated during her period of oversight were said by the FSA to have been $5,946,966.

34. The significance of 20 February 2007, as marking the start of the Relevant Period, is that that was the date from which Ms Karan was appointed by Mr Karpe as the client adviser in relation to the Customer A account. The beneficial owner of the Customer A account was a Mr X. At the same time Ms Karan was appointed client adviser in relation to the Customer C account of which the beneficial owner was a Mr Y.

35. Ms Karan was, according to her evidence, already client adviser in relation to some 25-30 clients. Some of these had multiple accounts. She was therefore managing some 60 accounts. Of those accounts (in relation to which Ms Karan had

been client adviser since before the start of the Relevant Period) we mention two, namely The Customer B account and the Z account which was associated with Customer B.

36. Before examining the FSA's allegations in detail we say something about Mr Karpe. We mentioned in paragraphs 2 and 3 that we heard his reference at the same time as hearing that of Ms Karan and that we have directed the FSA to serve a Final Notice confirming the Decision to penalise him for misconduct. Mr Karpe chose not to attend the hearing. Consequently there was no opportunity for his evidence to be tested. The case for Ms Karan in this connection is set out in her Skeleton Argument. It reads as follows:

> "Considered objectively and dispassionately, Ms Karan was unwittingly caught up in a sophisticated fraud orchestrated by Mr Karpe. The FSA's case against Mr Karpe, which is accepted by Ms Karan, is that Mr Karpe carried out unauthorised transactions and unauthorised loan arrangements, in an attempt to conceal the "endemic" losses which he had run up by engaging in an unauthorised FX trading, which had taken place as early as 2002, if not before. Incredibly, this deceit went undetected for some 6 years. However, Ms Karan like the senior management of UBS, was not aware either of the accumulated losses or that Mr Karpe was engaging in unauthorised transactions to conceal those losses. As a result, she trusted Mr Karpe, her Line Manager, the Head of Desk and Managing Director of the Bank, and duly complied with his instructions.
>
> The situation in which Ms Karan found herself was unique; this was also echoed by Miss Kuhnert [The London International Business of UBS] who stated: "in the history of UBS, as far as I'm aware, this is the only time where we had a Desk Head involved in fraudulent transactions or unauthorised transactions. And, never, to my knowledge, have we had a collusion of several members of staff of the same team in anything. For us this was new territory".
>
> In truth, the dispute between Ms Karan and the FSA is a narrow one: as the FSA confirmed, the issue before the Tribunal is the degree of culpability to be attributed to Ms Karan. It is for the FSA to establish to the requisite high standard its very serious allegation of lack of integrity contrary to Principle 1.
>
> In broad terms, the fact of the underlying transactions is not in dispute. What is in dispute, however, is what knowledge Ms Karan possessed at the material time.
>
> The task for this Tribunal is therefore an evaluative one: based on the documents in the bundle and the oral evidence, the Tribunal has to form a judgment as to whether Ms Karan acted negligently, as she has always accepted, or whether in fact she was reckless, as the FSA seek to argue. Importantly the Tribunal will have to form an assessment as to Ms Karan's integrity based on her oral evidence: this is the first proper opportunity Ms Karan has had to put forward her version of events to an independent panel".

The role of Mr Karpe

37. Mr Karpe was the individual with primary responsibility for all activities on the Asia II Desk. He joined UBS in November 1998 as a client adviser. Prior to that he had worked in Bombay in the financial services sector since 1990. Including the Relevant Period, Mr Karpe had some 17 years of banking experience which included FX trading. Before he joined UBS he was in fact an FX trader.

38. In addition to being experienced, Mr Karpe was a highly successful employee. For example, in respect of net new money, in the year 2006 he was ranked first for his net new money being 21% of the total for the London International Business, and second among all the London International Business Client advisers in terms of net revenue. Ms Karan explained, and this was not in dispute, that Mr Karpe was repeatedly singled out by the senior management as one of UBS's most successful private bankers and was held up as an example to which other employees would aspire.

39. In mid-2007 a case of unauthorised trading occurred on the Africa Desk. Mr Karpe was appointed to lead the disciplinary procedure relating to an employee working on that desk. This was at the request of Miss Kuhnert. She said of Mr Karpe's conduct in that respect that he had dealt with the disciplinary proceedings with commitment and with a high degree of integrity. He had demonstrated high professional standards and he had gone on to suggest proactively areas for improvement in the way in which the issue had been investigated.

40. Mr Karpe's behaviour was particularly complimented by Mr Matthew Brumsen (Head of UBS Wealth Management UK) who observed in an email that the financial performance of his desk was very impressive as was the manner in which he had embraced his leadership role and observed that his desk was demonstrating best practice in a number of areas.

41. Mr Karpe's responsibility as desk head was to supervise his client advisers on a day-to-day basis by making a number of mandatory checks and controls. Where appropriate, Desk Heads were expected to meet customers with the client advisers.

42. The Decision Notice issued to Mr Karpe cites, as aggravating factors in his misconduct, his abuse of his position of responsibility as desk head and of the trust placed in him by customers and by UBS and the exertion by him of his authority as Desk Head to involve employees of the Asia II Desk in his own misconduct.

43. Ms Karan said of Mr Karpe in her evidence that "we" (i.e. the individuals on the Asia II Desk) had regarded him with a mixture of awe and fear.

44. It is relevant to mention that Mr Karpe had had significant contact with UBS's customers and had been able to develop substantial relationships of trust with them. UBS had, however, encouraged desk heads to relinquish their customer relationships but had not insisted that they do so. Where desk heads had retained customer relationships, a local senior manager was expected to perform the desk head role in relation to those customer relationships that the desk head had retained; however, this

had not happened in practice with the customer relationships retained by Mr Karpe as desk head. (That information comes from the Decision Notice issued against Mr Karpe). Miss Kuhnert confirmed that she had been under the impression that Mr Karpe had handed over the vast majority of his client relationships to client advisers; but it emerged later, during the investigation in 2008 into the Asia II desk's activities, that Mr Karpe had in fact been effectively continuing to take the primary responsibility for managing a larger number of client relationships than the documentary records suggested.

45. The Customer A account was, as already noted, allocated to Ms Karan on 20 February 2007. Ms Karan's evidence (which we accept) was that she had never met the beneficial owner, Mr X. Regarding the Customer C account, to the extent that Ms Karan had contact with the beneficial owner, Mr Y, this, she said, had been in respect of his deposits and structured products.

46. Mr Karpe maintained close relationships with the clients. At the same time, it was alleged for Ms Karan, he had exerted considerable pressure on the employees on the desk. Ms Kuhnert in her evidence confirmed that she had received a complaint from a member of the Credit Risk Control team to the effect that Mr Karpe had been too pushy or aggressive with a junior credit employee and that she had had to tell Mr Karpe to revise his behaviour. Ms Kuhnert had also accepted in evidence that junior members of staff had been pressed into signing documents.

47. We accept the points made above about the conduct and character of Mr Karpe. We did not understand the FSA to dispute those. The FSA's case, essentially, is that Ms Karan's misconduct arises from her actions and omissions, during the Relevant Period, which had assisted Mr Karpe in ensuring that his unauthorised transactions went undetected. Those activities included her creation of misleading documents and failing to "escalate". In that way, it is said, Laila Karan had allowed improper activities to take place in relation to accounts for which she was client adviser. By allowing those activities to continue she had, for example, enabled money in one account to be used to repay "loans" made to another account.

Mismanagement of the Customer A account

48. Paragraph 31(a) of the Statement of Case gives particulars of this issue.

> "(a) From 20 February 2007 to late November 2007, Ms Karan was client adviser for Customer A, a customer of the Asia II Desk; however, throughout the Relevant Period, she had very limited or no contact with Customer A. She breached Principle 1 by:
>
> > (i) Transferring money through Customer A's account to disguise the audit trail for a series of transfers being carried out for another customer of the Asia II Desk for whom Ms Karan also acted as client adviser, Customer B;
> > (ii) Preparing three false, handwritten telephone attendance notes purporting to record discussions between Ms Karan and

the beneficial owner of Customer A authorising activity on the account when she had taken no such instructions; and

(iii) Signing a number of UBS documents which recorded the customer's approval of a number of FX transactions on the account and transfers to the accounts of other unconnected UBS customers, without having received instructions or authorisation directly from the customer and being aware that improper activity was taking place on this account."

49. We accept that Ms Karan was an experienced banker who had brought with her high profile clients such as Customer B when she moved to UBS. Her basic pay for 2007 had been £80,000; in 2006 she had received a £90,000 bonus. She had been managing large amounts of money. The environment in which she worked contains clients who are extremely wealthy, sophisticated and highly motivated. She was perceived by UBS management to be a "successful member, apparently managing close to 250,000,000 Swiss francs". In March 2007 she had been promoted to the rank of "Director".

50. Ms Karan received daily cash investment statements (from UBS) covering all the accounts in relation to which she was client adviser. Four of these, including the account of Customer C, had been taken on by her from Mr Karpe. Her evidence was that she only checked transactions and entries relating to those of the accounts "that I called mine"; she had, she said, a "clear distinction between clients that were … mine and clients that Sachin Karpe was looking after". There was, she said, "no reason at the time for me to doubt that Sachin Karpe was fully and properly looking after these transactions". ("These transactions" included transactions on the accounts of Customer A and Customer C.) That was, she said, "how it was at the time on the desk".

Transferring £3m from Customer B through Customer A (Item (i) of Paragraph 31(a) of the Statement of Case)

51. This is an element in the allegation of mismanagement of the Customer A account. There is no dispute about the basic facts. In early March 2007, Customer B had met up with Ms Karan and Mr Karpe. Customer B had requested that £3m be transferred from his personal account in Zurich to his personal account in London via an indirect route for reasons of confidentiality. Ms Karan had initially told Customer B that this was not possible. Mr Karpe, however, appears to have told Customer B that this could be achieved by transferring the amount via another account and Customer A was used to facilitate this. The following transfers took place:

(i) On 8 March 2007 Ms Karan countersigned Customer B's written instructions to transfer £3m from Customer B's Zurich account to Customer A. Customer A was unaware of this transfer.

(ii) Between 15 and 16 March 2007, Ms Karan signed three internal transfer forms whereby some of these funds were transferred from Customer A's account to Customer B's London account via the "Suspense Account". The use of the Suspense Account, it is not in dispute, meant that the identity of the transferee was not recorded in

Customer B's account statements and the identity of the transferor was not recorded in Customer A's account statements. The transfer forms were in the following amounts: £1m on 15 June, £1m on 15 June and £350,000 on 16 June. The final transfer form was supported by a telephone note which recorded a purported conversation between Ms Karan and the beneficial owner of the Customer A account authorising the transfer to Customer B. (The contents of this note will be referred to later.)

52. Ms Karan's account of the transaction was that she had come to know, in December 2006 or January 2007, that Customer B wanted to buy a London house using money in his London account that was to originate from one of his Swiss accounts. Customer B had, she said, told him that he wanted there to be no link between the Swiss and the London accounts; her response had been that she saw no sense in that. However, Mr Karpe had decided that there was to be no link Transferring the funds to Customer A had, said Ms Karan, been at Mr Karpe's direction and (Ms Karan said in her written statement) she had been told that Mr Karpe had been in contact with the beneficial owner of Customer A (Mr X, whom Ms Karan said she had never met). In oral evidence Ms Karan admitted that she had not contacted Customer A; but she suggested that Mr Karpe had done so "subsequently".

53. We are not satisfied from the evidence that Customer A ever authorised the use of the account for this purpose. We were however provided with handwritten instructions, regarding the transfer of the £3 million to Customer A (signed by Ms Karan and Mr Karpe); these directed the transfer and an annotation by Ms Karan contains the words "Confirmed by Client".

54. The onward transfers from Customer A to Customer B were supported by notes to the transfer authorisations. These were in Ms Karan's handwriting. The notes record Mr X as the caller. Her written notes explaining the transactions said they were for a "diamond purchase", "property" and "property purchase". She admitted that she had been told the real purpose of the transaction as having been "confidentiality". She admitted in evidence that she knew Customer A was not buying any property. She further said in evidence that she had written in the explanations "at the instructions of Sachin Karpe who would have spoken to the client at the time and made me write the note". She also acknowledged that the use of the Suspense Account was "abnormal".

55. Ms Karan's case is that all the transfers of funds had been carried out under the instructions of Mr Karpe, who was not only desk head and managing director but also her line manager. She had not been aware of any suspicious activity. We note that the transfer of the £3 million to Customer A took place within two to three weeks of Ms Karan being appointed Customer A's client adviser. Ms Karan said that at that stage she had not checked the Customer A accounts. She said in evidence that she had trusted Mr Karpe who had "really" been the client adviser. Nonetheless Ms Karan was, as we have observed, an experienced client adviser. She must have known that the Customer A account was being used to accommodate Customer B's requirement for confidentiality and she had been providing misleading explanations as to the use of the money. Had that series of transactions stood alone we might have

concluded that Ms Karan had been negligent. But other transactions followed and from those a picture emerges of Ms Karan knowingly carrying out acts and omitting to make checks which show that she was prepared to comply with Mr Karpe's instructions and give the impression that she was the real client adviser. In that way her conduct contributed to the non-detection of Mr Karpe's unauthorised activities.

Other unauthorised transfers

56. There were 15 other transfers of funds from Customer A for which authorisations had been signed by Ms Karan. The sequence started within three weeks of her taking on the Customer A account. Customer C, of which she had been made a client adviser, had been party to seven of these. There is no evidence that she either received or saw any instructions from Customer A which had been a party to most of them. Nonetheless her signatures acknowledged the client's authorisation. Her explanations were that Mr Karpe had either taken the instructions or had told her to carry out the transfers. We now set out a selection of transfer authorities signed by Ms Karan:

- On 15 March 2007 Ms Karan had signed an internal transfer form transferring $100,000 from Customer A to the account of another customer, Customer D. There was no connection between these two accounts and the transfer had not been authorised by either client.
- On 15 March 2007 Ms Karan signed an internal transfer form, transferring $2,152,000 from Customer A to Customer C. That transfer was the repayments with accrued interest of a purported loan that had originally been made from Customer C to the account of another client called Customer E. Customer A had been unaware of the transfer.
- On 16 April 2007 Ms Karan had signed an internal transfer form for the transfer of £14,000 from Customer A to Customer B. Customer A was unaware of this transfer.
- On 30 April 2007, Ms Karan had signed a transfer note for the transfer of $242,000 from Customer A to Customer C. Customer A had been unaware of this transfer.
- On 15 June 2007 she had signed internal transfer notes transferring $24,000 from Customer A to Customer C via the Suspense Account and $1m had been transferred from Customer C to Customer A. This too had been routed via the Suspense Account. Customer A had not been aware of either transfer.
- On 26 June 2007 Ms Karan and Mr Karpe had signed internal transfer notes for a transfer of $1.2m from Customer A, via the Suspense Account, to Customer B's London account. Customer A had been unaware of this transfer.
- On 28 September 2007 Ms Karan and Mr Karpe signed an internal transfer note transferring $97,213 from Customer A to Customer B's account (to top up an amount of compensation already paid to Customer B by UBS). That transaction is dealt with in more detail below. Customer A was unaware of the transfer.

- On 3 October 2007 Ms Karan and Mr Karpe had signed two internal transfer forms transferring $207,000 and $293,000 from Customer A to Customer C. Customer A was unaware of these.
- Also in October 2007 Ms Karan had signed two internal transfer forms for a transfer of £11,000 from Customer A to Customer D and a transfer of 100,000 Swiss francs from Customer A to the account of another UBS customer. Customer A had been unaware of this transfer.
- On 16 November 2007 Ms Karan had signed payment instructions for the transfer of $1.039m from Customer A to the account of Customer F. Customer A was unaware of this transfer.

57. It is significant that while Ms Karan may not have known the beneficial owner of Customer A she did deal with Mr Y, the beneficial owner of Customer C, on other forms of investments. It is further significant that Ms Karan had known nothing about the purpose of the transactions. Many of the transfers had been of substantial amounts, yet where the transfer form purported to state that the purpose had been, for example, "property" she had not sought to verify that information. Where the transfer had related to a "loan", she must have realised that this was abnormal; she accepted in evidence that none of her other clients lent money through their client accounts with UBS.

58. Ms Karan's case, essentially, was that she had not been aware of the unauthorised or suspicious activity on, for example, the Customer A account. It had been managed by Mr Karpe. Mr Karpe had set up a "retained mail" facility that ensured that the beneficial owner of Customer A did not become aware of the unauthorised transactions; Ms Karan's evidence was that she had not become aware of that. We did not accept her explanation that she was unaware of the retained mail facility. The Customer A client account statement records payments for retained mail facilities. Nor can we accept Ms Karan's case that she had been unaware of the unauthorised or suspicious activity.

59. The above series of unauthorised transfers shows Ms Karan growing to accept from an early stage in the Relevant Period that she was to "front" the accounts nominally transferred to her by Mr Karpe. She acted at Mr Karpe's direction in participating in transactions to which her clients were parties and about which she had known nothing except that she had signed the transfer authorisations. They indicate to us an unwillingness and a consequent failure on her part to face up to the suspect nature of transactions and query them.

Preparation of telephone notes of instructions: paragraph 31(a)(ii) of the Statement of Case

60. The FSA's allegation of misconduct in relation to the Customer A account refers to the preparation by Ms Karan of telephone notes of three conversations with the beneficial owner of Customer A purportedly authorising transfers from the Customer A account. While the telephone notes represented that Ms Karan had personally received these calls, Ms Karan accepts that the calls did not take place and that she was instructed by Mr Karpe to prepare these telephone notes. The notes were

prepared at the same time as the relevant unauthorised transfers identified above took place. The notes are summarised as follows:

- On 12 March 2007, Ms Karan at the request of Mr Karpe prepared a handwritten telephone attendance note of a purported discussion between Ms Karan and the beneficial owner of the Customer A account authorising the transfer of $1.25m from Customer A to the account of another UBS customer, Customer G. (Customer G was one of the four accounts transferred to Ms Karan in February 2007.) The telephone attendance note was signed and dated by Ms Karan. The note stated that Ms Karan had received the call at 1.30pm.
- On 13 March 2007 Ms Karan, at the request of Mr Karpe, prepared a handwritten telephone attendance note of a purported discussion between Ms Karan and the beneficial owner of Customer A authorising the conversion of £1m to US dollars. This telephone attendance note was signed and dated by Ms Karan. The note also recorded the time of the call as 1.30pm.
- On 16 March 2007 Ms Karan prepared a handwritten note, at the request of Mr Karpe, of a purported discussion between Ms Karan and the beneficial owner of Customer A authorising the transfer of £350,000 from Customer A's account to Customer B. The telephone attendance note was signed and dated by Ms Karan. The note also recorded the time of the call as 12.00pm.

61. The FSA's allegations are admitted. Ms Karan did not take those calls. It is therefore plain to us that the notes purport to record that she took the calls when she had not. They are, we think, misleading documents. She could always have avoided misleading by writing down the words "Mr Karpe took the call" as happened on some other documents. As to the second note the explanation she had attributed to Mr Karpe of the transaction was that Customer A had thought the exchange rate was favourable and wanted to execute an FX transaction. That does not ring true. Customer A was a client of hers and she had no first hand knowledge of whether the content of the note was true. The entry took the form it did to make the transaction look like a legitimate exchange rate deal and thereby create a misleading paper trail. As regards the third note, this is said to relate to a property transaction between Customer A and Customer B. She must have known this was untrue; indeed in oral evidence she had accepted that Customer A had not been buying any property.

62. Those notes are evidence that Ms Karan was prepared to give a misleading impression to a reader of documents that she had produced when the occasion demanded.

The FX instruction records: paragraph 31(a)(iii) of the Statement of Case

63. The other ingredient in the particulars of the FSA's allegations of mismanagement of the Customer A account were a number of FX instruction records. During February 2007 Ms Karan had signed 26 FX instruction forms which purported to confirm that instructions had been received from Customer A. The number of such instruction forms during March 2007 had been 19. During April 2007 she had signed

12 such instruction forms. During May 2007 she had signed six such instruction forms. During June 2007 she had signed six such instruction forms.

64. Each instruction record form contains a box to be filled in stating when the transaction was received and by whom. We heard evidence from Mr Shaun Challis, Chief Risk Officer at UBS, that the intended purpose of the forms was to have an accurate record of the instructions received from the client to the client adviser. Ms Karan must have known that. And she knew that Customer A was a self-directed client. Her explanation for her signing as having received the client's instructions (when she had not) was that all the transactions had been handled by Mr Karpe. "I trusted my boss to have taken the instructions and didn't think otherwise"; that, she said, "was just the procedure on the desk".

65. At the start of her oral evidence Ms Karan said that she had looked at her own clients' account statements. Had she done so, we note, she would have seen little or no FX activity on the Customer A account prior to 2 February 2007. That was when another account, "the Customer E account" managed by Mr Karpe and which carried out substantial FX transactions was closed. From that date on there was a massive increase in FX activity on the Customer A account. When presented with this fact, Ms Karan denied that she had looked at the relevant account statements. It is relevant to mention that in March 2007 Ms Karan submitted an annual review of the Customer A account. This says nothing of the significant changes of activity within the account. Ms Karan had initially claimed that she had taken Mr Karpe's word about the information to be provided in the annual review. Later in the course of oral evidence, she said that she did not look at client account statements where those clients were "managed by Sachin". Those factors show that Ms Karan, despite being the official client adviser in relation to the Customer A account, ignored the responsibilities that the function required.

66. Reverting to the FX instruction records, however, we do accept in Ms Karan's favour that what she did may have been common practice within the Asia II Desk. This practice appears to have been for the instruction record forms to have been collated and signed by client advisers. If a client adviser were away at the time the forms may have been signed by another client adviser. Moreover the forms did not record the fact that the transaction had been approved by the client. Nonetheless where Ms Karan did sign the instruction record form and where that form related to one of the four clients transferred to her by Mr Karpe in February 2007 (which Mr Karpe continued to manage), the form in question purported to relate to instructions received from her client. She had no first hand knowledge as to whether any client instructions had in fact been given and she had done nothing to check whether instructions had indeed been received. Nor did she check whether her client had been notified of any trades after the event. We observe in that connection that there is a requirement in the UBS policies and procedures for clients to be notified of such transactions. We mention also that in July 2007 a member of UBS's Africa Desk had been dismissed for unauthorised trading and Ms Karan knew that this had happened because he had not been complying with the UBS requirements.

67. Her conduct extended over at least five months and cannot, having regard to the number of such instruction records, have been a temporary lapse. She must, we think have known what she was signing and that the information she was giving was

misleading. We observe in that connection that on 15 August 2007 an email had been received by Ms Karan (and others) from the UBS manager responsible for all the London International desks stating that "mobile telephones should never be used to take client instructions or to give advice". Ms Karan's response to that had been to email Mr Karpe saying: "We need to stop trading FX for Customer A". Moreover, when in the course of a "compelled" interview Ms Karan had been challenged on whether there was fraudulent activity, her reply had been: "I did think maybe the client does not know".

68. The evidence relating to the FX instruction records is in line with the conclusion that Ms Karan was prepared to sign for transactions carried out at the initiative of Mr Karpe (not knowing whether they were authorised) and in doing so was prepared to produce documents containing false information.

The Suspense Account Issue

69. Paragraph 31(b) of the Statement of Case sets out, as the second ingredient of Ms Karan's misconduct, the wrongful use of the Suspense Account. It reads as follows:

> "Throughout the Relevant Period, Ms Karan was aware that UBS operated a Suspense Account, and that the primary purpose of the Suspense Account was to process intra-day transactions where timing differences existed. During the Relevant Period, Ms Karan deliberately used the Suspense Account on at least seven occasions to route internal transfers between customer accounts so as to conceal the originating customer's name and account number from the recipient customer's statement (and vice versa). Ms Karan was aware that this use of the Suspense Account would not have been approved by UBS had formal authorisation been sought and that using the Suspense Account in this way raised serious compliance issues."

70. The use of the Suspense Account was explained to us by Mr Challis the Chief Risk Officer. The Suspense Account was intended to be used by "operations" (i.e. the back office) on a daily basis principally to process intra-day transactions where timing differences existed. At the end of the day, it was expected to show a nil balance as the total debits would match the total credits. There was, Mr Challis explained, no legitimate reason to use the Suspense Account for money transfers between client accounts.

71. The seven transactions put through the Suspense Account had been used improperly in order to route money from one client to another. All the transactions involved one or more of Customer A, Customer C or Customer B. They included the transactions of March 2007 where the Suspense Account had been used to provide the "confidentiality" for the transfer requested by Customer B.

72. It was stressed for Ms Karan that the practice of using the Suspense Account for an improper purpose had been devised by Mr Karpe in 2005 or 2006 and well before her involvement in 2007. Also, it was pointed out, the Chief Risk Officer had

confirmed that there was no explicit statement or policy that the use of the Suspense Account by members of the Asia II Desk was inappropriate; moreover no one had come back to Ms Karan to query her use of it. Besides, it was said for her, all the transfers via the Suspense Account had been carried out under the instruction of Mr Karpe.

73. It had been suggested for Ms Karan that the issues of the Suspense Account had reflected not a lack of integrity on her part, but a lack of care. The FSA's response was that Ms Karan was an experienced banker and she knew from her own experience that it was "not normal practice to pass payments through a suspense account so that the course of the monies cannot be readily identified". (Those were her words in her witness statement). Using the Suspense Account obscured the details of the transactions from scrutiny by the client and by the bank (since it required the bank to analyse the Suspense Account to match incoming and outgoing payments), and Ms Karan must have been aware of this. Further, save for the case where Customer B had specifically requested that the transfer be made in confidence, there was no apparent reason to use the Suspense Account in relation to other transfers that Ms Karan had effected.

The Loans and Guarantee Letters

74. This issue arises from the third allegation of misconduct in paragraph 31(c) of the Statement of Case. This reads:

> "During the Relevant Period, Ms Karan was the client adviser for a further customer of the Asia II Desk, Customer C. From June 2007 she was aware that at least two UBS employees, Mr Karpe and Andrew Cumming, had been involved in arranging purported loans ("Purported Loans") from Customer C to other UBS customers. These were not however loans but a means utilised by Mr Karpe of concealing substantial losses to customers arising from unauthorised trading. From June 2007, Ms Karan was aware or should have been aware that the Purported Loans were suspicious because (i) they were unusual arrangements; (ii) they were documented using non-standard UBS documents; (iii) they were arranged significantly above commercial rates of interest; and (iv) they purported to carry a guarantee from UBS. However, Ms Karan did not take any steps to clarify her understanding of the Purported Loans, nor did she escalate her knowledge at any time."

75. We are satisfied that Ms Karan knew about the loans. We note that, in her first interview with UBS on 24 January 2008, she admitted that she had been told that "there was a regular occurrence of Customer A borrowing from Customer C and Customer C funding at high interest rates, and then repaying Customer C". She also stated, in the course of that interview, that she had been aware of the transfer of $3m from Customer A to Customer C and she explained that it had related to a loan. And there is an email from Mr Y of Customer C dated 31 January 2008 addressed to Ms Karan. This reads:

> "Just for your information, Mr Andrew McDonnell, Andrew Cumming and yourself also knew about these loans."

(Mr McDonnell and Mr Cumming had at the time been working on the Asia II Desk. Mr McDonnell was a client adviser assistant and Mr Cumming was a client adviser).

Further in this connection, it should have been apparent to Ms Karan from the daily current account statements and cash movement emails that money was moving from Customer C to Customer A, both of which were clients of Ms Karan.

76. Turning now to the Guarantee Letters, the evidence indicates that Ms Karan was on notice of these. An email from Mr Y dated 16 June 2007 read:

> "Dear Laila, Just for information".

That email forwarded another email from Mr Y to Mr Karpe and Mr McDonnell of 13 June 2007 relating to the loan arrangements. Ms Karan claimed not to recall the email or the attachment. It is apparent that Ms Karan did read the email, however, since she forwarded it to Mr Karpe on 18 June 2007 saying:

> "Please can you tell me which client the loan was given to. If customer A, can we please discuss".

Mr Karpe responded:

> "Not for Customer A … !".

Further, a review of the forwarded email (which was in the body of the email sent to Ms Karan) would have revealed to Ms Karan that the loan in place was to be documented by UBS, signed by Mr Karpe and Mr Cumming and at an interest rate agreed with Mr Karpe. Ms Karan had denied reading the email attachment but in oral evidence she claimed, for the first time, that she had discussed the email with Mr McDonnell and that he had said it related to Customer A. Two weeks later, we note, Ms Karan received another email from Mr Y. This refers in terms to "the Guarantee Letter". She must have noticed that email because she sent it on to Mr McDonnell and she was copied in to the reply. The culmination of that evidential material suggests strongly to us that Ms Karan had been on notice of the Guarantee Letters.

77. It is relevant in this connection to point out, as a matter of chronology, that these emails were being sent to her by Mr Y during June 2007. In the course of her witness statement, Ms Karan admits that she had become uncomfortable with this account by the summer. She had also admitted, in the course of the investigation, that it had been the misuse of the Customer A account that had made her uncomfortable. She had sought to explain her "discomfort" from the fact that she had not had any meeting or meetings with the beneficial owners of those accounts. That does not convince us. In the first place, she admitted to having met Mr Y in relation to his investments. And Ms Karan admitted having seen a copy of another "guarantee" in October. That related to a purported loan document between Customer C and Customer A. She said she had seen it on a printer in UBS's offices and said that she had been aware that the purported loan document was being prepared by Mr

McDonnell of the Asia II Desk and that the document was to be signed by Mr Karpe and Mr Cumming. And yet she had made no enquiries about the loan notwithstanding the fact that she was the client adviser on the accounts at the time. Taking all these factors into account it is more probable than not that Ms Karan was aware of both the loans and the guarantees. She must have known that the giving of guarantees by desk staff was improper and she could easily have located the documentation through the UBS "On-Demand" system. She chose to do nothing and in that respect she ignored the interests of her clients and facilitated the misconduct of Mr Karpe who was involved in making sham loans backed by unauthorised guarantees.

The Customer B Compensation Issue

78. The particulars of this area of misconduct are summarised in paragraph 31(d) of the Statement of Case. This reads:

> "During August 2007, Customer B suffered a loss in connection with a transaction on his account. In connection with this loss:
>
> (i) Ms Karan was aware that Mr Karpe had been instructed by senior management at UBS to try to reach an agreement with Customer B on the terms that UBS would reimburse 50% of the loss; however, she was aware that Mr Karpe had nonetheless confirmed to Customer B that he would receive a full reimbursement. Thereafter, Ms Karan was aware that Mr Karpe had deliberately misled senior management into the erroneous understanding that Customer B had agreed to a 50% settlement. UBS subsequently paid 50% of the loss to Customer B;
>
> (ii) Unbeknown to senior management at UBS, and in conjunction with Mr Karpe, Ms Karan arranged a transfer from the Customer A account to Customer B's account in order to make good the full amount of the loss. There was no connection between Customer B and Customer A, and Customer A was unaware of the transfer;
>
> (iii) Ms Karan did not escalate her knowledge of the unauthorised transfer."

The events leading to the alleged misconduct

79. During late 2006, Customer B had requested that UBS lend $3m to the UBS account of a company he owned called Z so that he could make an investment. In error, UBS had sold assets held by Z to raise the funds for the investment. The error was detected by UBS in May 2007 and Customer B requested full reimbursement of all lost earnings relating to the investment, totalling $194,426 (the "Loss"). Ms Karan met with Customer B in Zurich in May 2007 and advised him "that UBS would willingly reimburse any loss caused as a result of an error".

80. On 24 July 2007 Mr Karpe forwarded an email chain to Ms Karan which related to the Loss. The email chain had been an exchange between Mr Karpe and

two senior UBS managers, Messrs Kumschick and Wuethrich. The email chain included an email from Mr Wuethrich at 7.46am on 24 July 2007 in which Mr Wuethrich stated that he believed the loss was a result of another desk within UBS, but that Ms Karan should have controlled the implementation of Customer B's transaction. The email went on to instruct Mr Karpe to negotiate with Customer B and try to get him to agree to a "deal", i.e. accept compensation of less than the full amount of the Loss. However, in a telephone call a week before that email exchange, Mr Karpe had already offered to compensate Customer B for the full amount of the Loss. On 24 July 2007, Customer B emailed Mr Karpe and accepted Mr Karpe's offer that UBS would reimburse approximately $200,000 in respect of the Loss, i.e. the full amount of the Loss. Whilst Ms Karan was not copied into this correspondence, and was not a party to the telephone call, she has admitted that she was aware that Mr Karpe had agreed to pay the full compensation to Customer B, and that Mr Wuethrich and Mr Kumschick were not aware of this and believed that only 50% compensation was to be paid.

81. On 21 August, 2007 Ms Karan (and Mr Karpe and Mr Wuethrich) received an email from UBS Zurich which stated that the process for the reimbursement of the Loss had been initiated. The email stated that the reimbursement to be made totalled $97,213, i.e. 50% of the Loss. On 30 August, Ms Karan emailed Mr Wuethrich and thanked him for his assistance in approving and arranging the compensation which had now been credited to Customer B's account.

82. At 14.42 on 28 September 2007, Ms Karan emailed Mr Karpe reminding him of the remaining compensation of $97,213 that needed to be paid to Customer B. At 14.55 the same day, Mr Karpe forwarded Ms Karan's email to another Asia II Desk employee, instructing him to transfer the amount from Customer A to Customer B. Ms Karan and Mr Karpe both signed an internal transfer note, transferring $97,213 from Customer A to Customer B's account.

Analysis of the misconduct in relation to the Customer B Compensation Issue

83. Ms Karan admitted in evidence that, by late August 2007, she had been told by Mr Karpe that he had informed Mr Wuethrich that Customer B had accepted 50% compensation. Ms Karan was, before then, aware that Mr Karpe had agreed to pay the full compensation. Ms Karan herself had emailed Customer B on 12 June 2007 stating that he would be reimbursed for the Loss; she explained in evidence that her understanding throughout was that Customer B would be reimbursed in full. It follows that Ms Karan must have been aware that senior management of UBS (e.g. Mr Wuethrich) had been misled.

84. By the end of August, Customer B had been paid 50% of the loss with the approval of UBS management: half of that had come from the Zurich quality desk and the remaining half from the London Asia/Pacific account. Then (as noted in paragraph 80) at 14.42 on 28 September 2007 Ms Karan emailed Mr Karpe prompting him that the remaining compensation ($97,213) needed to be paid to Customer B. She had a good reason for ensuring that the full compensation was paid to Customer B because, as she admitted in oral evidence, the latter was an important client to her and she had informed him that he would be compensated. She had been annoyed that

the error had been attributed by Mr Wuethrich to her. She was concerned that Customer B might "walk" if not properly compensated and this would have damaged her financially. Within an hour of the 14.42 email, Ms Karan had signed the transfer authorisation in the exact amount of $97,213, naming Customer A as payer and Customer B as payee with the reference "monies payable".

85. That transfer was recorded in Customer A's current account statement; it appeared on Ms Karan's daily cash movement email. While Ms Karan had initially acknowledged, in oral evidence, that she normally glanced at the cash statement email in the morning, she later stated that she did not open the email every day. Directed at the email recording the $97,213 payment by Customer A to Customer B, she said of such emails that "they were not looked at".

86. Ms Karan's actual case was that she had not known that the compensation or any part of it was to be paid by Customer A. She contended that in late August she had become aware that Mr Karpe had not confirmed a 50% compensation settlement with Customer B. Mr Karpe had told her that he had not told UBS management about the proposed 100% compensation because the quality desk in Zurich was already under pressure and there was a chance someone would lose their job. She had not, she said, been told by Mr Karpe that he intended to make the remaining 50% from another client's account: he had, she contended, been told that the payment would come from the "Desk Profit and Loss Account". Regarding the transfer from the Customer A account, Ms Karan claimed that she had simply signed the internal transfer form without reading it. She claimed that this was entirely consistent with her case, referred to earlier, on the FX instruction records and that "all the client advisers would simply sign payment instruction without checking the details, i.e. it was not a practice to look behind the details on the form, and investigate the underlying forms – there was an element of trust in signing the forms".

87. In our view Ms Karan knew that the remaining 50% payment was to come from and did come from the Customer A account. She had told Customer B at an early stage that he would be fully compensated. She knew that senior management had been misled; her email to Mr Wuethrich of 30 August is evidence of this. She must have known that UBS authority would have been required for the remaining 50% to have been absorbed as a loss by UBS. No evidence was produced to show the existence of a Desk P&L account out of which payment might have been made. She prompted Mr Karpe to arrange the compensation. She signed the transfer authorisation for the 50% from the Customer A account. She received at least four records of the payment.

88. In summary, Ms Karan knew that the arrangements to pay compensation at Customer A's expense was improper. She pretended not to have noticed the movement of funds from the Customer A account because, we infer, if she had admitted to that knowing misuse of the Customer A funds, she would be undermining her credibility in relation to all the other occasions on which Customer A's funds had been improperly used. In our opinion the misappropriation of Customer A funds to compensate Customer B tends to reinforce the FSA's case that Ms Karan was, by September 2007, prepared to go along with Mr Karpe in making unauthorised payments and unauthorised transfers. She was more than just facilitating Mr Karpe's

misconduct. It was not just the case of shutting her eyes. She was knowingly using clients' money for unauthorised purposes.

Conclusions on the misconduct

89. Assuming in favour of Ms Karan that it had been Mr Karpe and not her that had initiated the various acts of wrongdoing, we are nonetheless satisfied that the duty of integrity can be breached where someone else initiates wrongdoing and where the person in question is put in a position of choosing whether to go along with it. In this connection we note that Ms Karan did not have to pretend to be the client adviser on the four accounts that had been formally transferred to her in February 2007. She had had no client contact at any time, as regards the Customer A account; and yet she allowed her name to figure as the client adviser in relation to numerous transactions. Nor did she have to sign documents that created the impression that she had actually received client instructions. Nor did she have to pretend that there were property dealings between Customer A and Customer B. Nor did she have to keep quiet with regard to the correspondence she saw referring to suspicious loan and guarantee transactions. Nor did she have to keep quiet when she learnt that Mr Karpe had been misleading senior management over the payment of compensation to Customer B. Nor did she have to keep quiet when she saw, as she must have done, that money belonging to her client, Customer A, was being misappropriated and used to pay compensation to her other client (Customer B).

90. We recognise that Ms Karan had been placed in an extremely awkward situation through the manipulation of Mr Karpe. The fact, however, is that over and over again she chose to go along with and, on occasions, to facilitate Mr Karpe's wrongdoing.

91. We are told that Mr Karpe was a senior, successful, respected and credible personality. We appreciate what a powerful person he was both in the wealth management business and as a leader of the desk. We do not, however, accept that Ms Karan was putty in his hands. She herself was an experienced banker with a substantial client base. She knew how client accounts and relationships ought to be run. In this connection she admitted that she would not have used the Suspense Account in the way that Mr Karpe did and that she had felt uncomfortable about the activities on the Customer A account. She presented an apparently solid front when cross-examined and persisted with her explanations notwithstanding their evident incredulity. As the nominated client adviser on both the Customer A and the Customer C accounts, she was fully alerted to the transactions that they participated in and the movements of money. The clear inference must be that she knew about many, if not all, of these transactions and payments. In that connection Ms Karan never suggested that she had been under any form of duress when signing the various transaction authorisations, telephone notes or FX instruction records.

92. In assessing the level of involvement of Ms Karan, we take into account her repeated explanations that Mr Karpe really managed the Customer A and the Customer C accounts and maintained the client relationship and that she had trusted him. The fact is, however, that she actually participated in transactions that enabled Mr Karpe to continue making unauthorised transactions and unauthorised payments. She did not just ignore what he was doing, she actually created and signed documents.

We note in that connection that when Ms Karan became a client adviser with regard to the Customer A's account, there was already a "retained mail" arrangement in force which ensured that Customer A received no information about the amounts being misappropriated. We have already observed that Ms Karan had had the means of knowing about the retained mail facility because the Customer A client account statement records payment for retained mail services.

93. We note that Ms Karan relies on the fact that there had been a longstanding problem with unauthorised FX trading that had long predated her becoming client adviser on the relevant accounts. We do not see that to be a relevant consideration. She is accused here of misconduct only in relation to the period while she was client adviser. The fact that it started earlier does not change the position.

94. We acknowledge that the quantification of loss attributable to Ms Karan's misconduct and the basis on which it is made are open to debate. We accept that the scale of her losses may to some extent indicate the scale of the unauthorised trading; but it is not indicative of the gravity of the misconduct. We think that the misconduct was grave. The high point of the misconduct occurred on the occasion when she knowingly allowed and facilitated the use of £97,213 belonging to Customer A to be used to compensate Customer B.

95. In assessing the gravity of the offence, we acknowledge that there is no evidence that Ms Karan directly stood to gain from the misconduct. This is not a case of embezzlement by her. Nonetheless, she was prepared, over and over again, to lend herself to the misconduct initiated by Mr Karpe because it suited her career and, we infer, her remuneration package. For example, she accommodated the requests of existing clients in order to keep them happy even when she must have known it was wrong: we referred to Customer B's request for the transfer of £3m to London and to the means by which he was compensated.

96. For the reasons given above we are satisfied that the FSA has established a breach of Principle 1 of APER in relation to each of the four issues identified above. We now turn to the level of the appropriate penalty and the need for prohibition.

The level of the appropriate penalty

97. Ms Karan contends that the penalty imposed by the Authority, £90,000, is too high. A point is made that Ms Karan did not stand to make any personal gain from her conduct. Further, our attention was drawn to Ms Karan's most recent Statement of Means. This confirms that payment of a financial penalty, even if modest, would cause her serious financial hardship. In the course of evidence Mr Baker, an investigating officer of the FSA, confirmed that, in respect of her statement of means … "I don't believe that any of the information is incorrect and I don't have any reason to suspect that there's omitted information".

98. £75,000 is, we think, an appropriate amount of penalty in the present circumstances. We are satisfied that Ms Karan's conduct has shown a lack of integrity over a relatively long period of time. Ms Karan has not acknowledged this. Her basic pay for 2007, which covers the Relevant Period, is said to have been £80,000. A penalty of £75,000 will not just take away her post-tax earnings, most of which related to work on the affairs of her real clients, but will (we accept) result in

financial hardship to her. Moreover, there is no suggestion that she made any personal gain during her disastrous time with Mr Karpe as her desk head. (We note that, with effect from March 2010, a different method of calculating penalties has been provided in the new DEPP 6.5D.2(5)). This takes account of the earnings of the person in question. As we work it out, the new penalty would be in the region of £75-80,000.

99. For these reasons we direct the FSA to impose a financial penalty of £75,000.

Prohibition

100. We note that the FSA cannot impose a time-limited prohibition as such. The most they can do, as happened in relation to Mr Cumming, is to indicate whether it would be minded to oppose an application for revocation after a stated period. Whether they do give such an indication is a matter for the FSA and not for us, however appropriate and consistent we might regard it.

101. We think that a prohibition against Ms Karan is appropriate. She was, as we have already noted, the nominated client adviser on a number of accounts. She abused that position, not only by failing to monitor the activity on those accounts, but by actually producing documents and records to facilitate the abuse. Moreover she turned a blind eye to suspicious activity. We do not, as we have indicated, have the authority to commit the FSA to any future course of conduct should Ms Karan make a renewed application for approval.

SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL
RELEASE DATE: 15 May 2012