Appeal number: FS/2012/0006

FINANCIAL SERVICES – authorisation to carry on regulated activity – approval to perform controlled functions – decisions to refuse applications – fit and proper – whether candidate for approval satisfied honesty and integrity criteria – failure to disclose prior investigation in applications for permission and approval – subsequent concealment by individual candidate - decision to reject applications upheld

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER
FINANCIAL SERVICES

SIDNEY CORDLE	**First Applicant**
SCOTT BRISCOE LIMITED	**Second Applicant**
- and -	
FINANCIAL SERVICES AUTHORITY	**The Authority**

TRIBUNAL: **SIR STEPHEN OLIVER QC**
CATHERINE FARQUHARSON
KEITH PALMER

Sitting in public in London on 6 and 7 November 2012

Sidney Cordle representing himself and the second Applicant

Sharif A Shivji, counsel, for the Authority

DECISION

1. Mr Sidney Cordle ("Mr Cordle"), the First Applicant, has for many years been a sole practitioner IFA (independent financial adviser). He has operated through his firm, Scott Briscoe Limited ("SBL"), the Second Applicant. Mr Cordle and SBL have referred Decision Notices issued on 20 January 2012 rejecting SBL's application for authorisation to carry on regulated activities and Mr Cordle's application to become an approved person on account of Mr Cordle's lack of honesty and integrity. The controlled functions for which Mr Cordle had sought approval had been CF1 Director, CF10 Compliance Oversight, CF11 Money Laundering Reporting Officer and CF30 Customer.

Brief account of background circumstances

2. Prior to the applications with which this reference is concerned, SBL had been an appointed representative of a financial services network called Sesame Limited ("Sesame"). As such, SBL had not been required under Financial Services and Markets Act 2000 ("FSMA") to be an authorised person to carry out regulated activities for which Sesame had accepted responsibility; it was through this arrangement that Mr Cordle had carried out his controlled functions.

3. In November 2010, investigators from Sesame attended SBL's office. They had a meeting with Mr Cordle. This took place in the course of an investigation by Sesame into SBL following information Sesame had received to the effect that SBL and Mr Cordle had been permitting an "introducer" to SBL, a Mr Mark Foster, to give advice to customers without regulatory authorisation and even though Mark Foster had not had the necessary qualifications to do so.

4. At that meeting Mr Cordle had been asked by Sesame about Mark Foster. Mr Cordle told them that Mark Foster had not been involved in giving advice and that it had been he (Mr Cordle) who had given the advice. Notwithstanding Mr Cordle's answers, Sesame's investigators came to the conclusion that Mark Foster had been giving advice. Sesame gave notice to SBL, on 28 January 2011, of their intention to terminate SBL's membership of Sesame. Mr Cordle notified Sesame of his and SBL's appeal on 1 February. The appeal meeting took place on 22 February 2011. On 26 April 2011, Sesame notified SBL of SBL's termination from the Sesame network and termination took effect in July 2011.

5. At a hearing before the Regulatory Decisions Committee ("the RDC"), on 20 December 2011, Mr Cordle stated that the information that he had provided to Sesame in that respect, regarding Mr Foster, had been untrue.

6. On 9 February 2011, Mr Cordle approached an organisation called "SimplyBiz" whose activities included the provision of consultancy services in compliance matters; the reason for the approach had been to arrange the application to the Authority ("the FSA") for SBL to be directly authorised. As part of that application process Mr Cordle and his agents (SimplyBiz) completed application forms for both SBL (for authorisation – "the SBL Application") and for Mr Cordle (for approval to carry out the controlled functions specified in paragraph 1 of this Decision – "the Cordle Application").

7. In the Cordle Application, the Form asked whether Mr Cordle had "*ever been, the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity"*. Mr Cordle signed the Cordle Application, dated 7 March 2011, which contained the answer "*No"* to the question and made no mention of either the Sesame investigation or its outcome. In the form for SBL's Application, similarly signed and dated, disclosure was required of any investigation "*for the possible carrying on of unauthorised regulated activities"*. No mention was made of the Sesame investigation. The texts of the actual questions will be found in paragraph 12 of this Decision.

8. In April 2011, the FSA learnt of the Sesame investigation (from Sesame). Following a request to Mr Cordle to explain the non-disclosure in the SBL and the Cordle Applications, the FSA issued Warning Notices indicating that it proposed to reject both Applications. Mr Cordle challenged the Warning Notices and the matters came before the RDC on 20 December 2011.

The Relevant Statutory and Regulatory Provisions

9. Section 60(1) of FSA provides that the Authority may grant an application for approval under section 61 only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates. Section 41(2) requires the FSMA, in giving a Part IV Permission, to ensure that the person concerned will satisfy, and will continue to satisfy, the Threshold Conditions in relation to all of the regulated activities for which he will have permission.

10. *The Fit and Proper Test for Approved Persons* is found in the section, bearing that title, of the FSA's Handbook. This sets out the criteria that the FSA will consider when assessing the fitness and propriety of a person to perform a particular controlled function. FIT 1.3.1G(1) states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations include the person's honesty, integrity and reputation. FIT 1.3.4G states that, if a matter comes to the FSA's attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important that matter is.

11. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regard to all relevant matters including but not limited

to those set out in FIT 2.1.3G. By FIT 2.1.3G those matters include, but are not limited to:

a. whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation that might lead to those proceedings; and

b. 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.

The Issues

12. The FSA's decision is based on the non-disclosure in the Application Forms of the nature and outcome of the investigation. The relevant parts of the Application Forms are as follows:

a. The Long Form A (Application to perform controlled functions) asks the individual applicant – "*5.09. Is the candidate, or has the candidate* ***ever*** *been, the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity? YES/NO"*. The answer given was – "*NO"*.]

b. The "Disclosure of significant events appendix" to the Application for Authorisation asks – "*1.6. Has the applicant firm been the subject of any civil investigations or proceedings or arbitration in the last five years? YES/NO":* and – "*1.13. Has the applicant firm ever been found guilty of carrying on any unauthorised regulated activities or been investigated for the possible carrying on of unauthorised activities? YES/NO"*: and – *"Is the applicant firm currently involved in any proceedings, investigations or other events referred to in any of the questions above that* are *pending or not yet determined? YES/NO.* All three questions were answered – "*NO"*. The FSA's case is directed at the answers to the second and third questions.

Specifically, the FSA says, Mr Cordle failed to demonstrate the required standards of honesty and integrity by not disclosing the Sesame investigation and the termination of SBL as an appointed representative of Sesame. Moreover, the FSA points out, Mr Cordle knew that Mark Foster, the introducer of business to SBL, was advising on mortgage and life protection matters without authorisation; and yet he lied to Sesame's investigators. [If Mr Cordle's application for approval fails, SBL's application for authorisation fails because it will have no officer to perform the relevant controlled functions.]

13. Mr Cordle does not dispute the fact that the Sesame enquiry into the activities of Mark Foster was an "investigation". Nor does he dispute that, in the course of the meeting with Sesame in November 2010, his explanation of the activities of Mark Foster as not involved in the giving of advice, had been wrong. He expressed his regret and sought to put the matter in what he saw as its proper context.

14. Mr Cordle does not dispute that full and proper answers to the questions in the SBL Application Forms (see paragraph 7 above) should and would have made reference to the Sesame investigation and its conclusions and to Sesame's stated intention to terminate SBL's position as an appointed representative of Sesame. He seeks to explain the failure to provide such answers as attributable to the pressures that were on him at the time when he signed the Forms and his understanding that SimplyBiz had been aware of the Sesame investigation but had chosen not to make reference to it when preparing the answers to the questions asked in the Forms.

15. In this decision we propose to address the factual scenario and Mr Cordle's explanations from two aspects. The first will be to explore the development and change in the relationship between Mr Cordle and SBL on the one side and Sesame on the other. We will then explore the circumstances of the non-disclosure.

The circumstances leading to Sesame's termination of SBL's position as an authorised representative

16. For many years Mr Cordle had traded as an IFA through SBL of which he was the sole director. SBL, as already stated, had been the appointed representative of Sesame, the financial services network, and it had been through Sesame that Mr Cordle had carried out his controlled functions. Some time in 2008, an ex-employee of SBL had made an allegation, to Sesame, of misconduct against Mr Cordle. The gist of the allegation, from which the enquiry developed, was that *"Mark Foster who for the purposes of the firm's audits is described as an introducer is actively providing financial advice from this office in the full knowledge of Sidney Cordle"*. Mark Foster, who worked four days a week for the Fire Service, did not have the regulatory qualifications to advise. The allegation further claimed that Mr Foster and Mr Cordle had been splitting commissions received; and in SBL's records Mr Foster's clients had been marked with an "M". In the course of a visit by a Sesame supervisor in October 2010, a copy of SBL's new business register had been taken away. Certain clients had been marked on the register with an "M" and, in the course of an analysis of some of the files on the register, Sesame had noted that the handwriting had been different to that on other files submitted by Mr Cordle. The consequence was another visit by Sesame.

17. On 24 November 2010, Sesame's investigators (from its "Network Integrity" department) attended the offices of Mr Cordle and SBL. Presented with evidence that the handwriting on one of the files was that of Mark Foster, Mr Cordle claimed that *"only he gave the customers advice as [Mark Foster] was not authorised"*. Mr Cordle went on to say that on receipt of the initial mortgage file *"he would complete the necessary research always having spoken to the clients by phone"*. Informed of the allegation (set out in the previous paragraph) against him, Mr Cordle repeated his position that Mr Foster did not give any financial advice since he was not authorised to. Sesame left the meeting with a number of files for further analysis.

18. The following day (25 November) Mr Cordle emailed Sesame giving further details about Mark Foster's and Mr Cordle's role. The email notes, among other

things, that – "*… as I told Network Integrity yesterday, I speak to the customers on the phone to give the necessary advice and get feedback*". (A note of the meeting was sent to Mr Cordle who suggested some revisions; no corrections were suggested by him as to his previous statements that Mark Foster had given no advice and that it had been he (Mr Cordle) who had spoken to all clients personally on the phone.)

19. An SBL letter of 1 December 2010 to Mark Foster, signed by Mr Cordle, explains that Mark Foster cannot "*be involved in any aspect of the advice process*". The letter goes on to say – "*I believe we have been working within these rules but for the sake of clarity I am formalising the situation so that we have evidence on every file that both you and the customer are aware of the process we are undertaking*".

20. Sesame wrote to SBL on 28 January 2011 giving notice of their intention to terminate SBL's relationship with Sesame. On 1 February 2011, SBL appealed by letter signed by Mr Cordle. This states – "*We have been working in accordance with the compliance rules on introduced business as enclosed. [I] think this will be confirmed by the fact that in every one of the files submitted to you which were requested without notice you will see that I have always given the advice rather than Mr Foster*".

21. The "appeal" meeting took place on 22 February 2011. The meeting notes record Mr Cordle as having claimed that he had "*given advice in all cases*". At the meeting concerns had apparently been expressed about the new form, referred to in paragraph 19 above, which Sesame were not prepared to accept. Indeed Sesame stated that Mark Foster would not be accepted as an adviser and Mr Cordle communicated this to Mr Foster the same day. On 1 March 2011 Sesame wrote saying that they remained minded to terminate the agreement with SBL but would defer doing so for the time being.

22. On 5 April 2011, Sesame wrote to SBL saying that they had contacted ten clients where Mr Foster had been involved to ascertain who had actually provided them with advice. Two had confirmed the adviser to have been Mr Foster, three had named Mr Cordle and the rest could not remember. Mr Cordle wrote back on 7 April saying – "*When I phoned customers I told them that I am the adviser and am responsible for the advice*".

23. Following the submission of the Cordle and the SBL Applications, dated 7 March 2011, the FSA sought a reference from Sesame. On 20 April, Sesame reported the background to the investigation and the finding that Mark Foster had been actively involved in the advice process. Sesame's reference includes these words – "*he remains adamant that he[Mr Cordle]provided the advice in all cases*".

24. Sesame wrote to SBL on 26 April giving notice of SBL's termination from the Sesame network. The letter stated – "*Sesame has provided you with numerous instances of where we believe your relationship with Mark Foster constitutes a serious breach of FSA Rules and Principles. Where appropriate we have identified client file documentation (i.e. fact finds, file notes, Verification of Identity forms, illustrations etc.) which provides evidence of such breaches and records of client*

contacts by Sesame where clients have failed to positively identify you as their financial adviser. You have freely admitted to culpability with some of the irregularities in the documentation – e.g. – Completion of Verification of Identity documentation by Mark Foster signed 'Sidney Cordle', and –Verification of Identity documents signed 'Sidney Cordle', where the 'Sidney Cordle', … where the signature was in Mark Foster's handwriting and you have no explanation for this. You have denied the validity of other irregularities but have offered or produced no evidence to counter our findings or allay our concerns. … You should consider this letter as formal notice of our intention to terminate your authorisation and agency agreement…".

25. Mr Cordle responded to Sesame the next day stating, among other things, that he had approached the FSA directly for authorisation and that the process was under way. The letter added – "*The only thing I would ask from you is that you delay enforcing my termination until that process is complete so we can part on good terms*" . That letter was followed with an email of 10 May 2011 to Sesame complaining about requests for files relating to Mr Foster. The email concluded – "*I am very concerned that you should not give false information to authorities and so force me into a situation where I have to take this matter to court which I am fully qualified to do."*

26. Following correspondence between the FSA and Mr Cordle concerning the Sesame investigation and why that had not been disclosed in the Cordle and SBL Application Forms, Mr Cordle wrote to the FSA, on 22 August 2011, stating that the FSA had all the details – "*but the allegation is that I allowed an introducer to see customers and complete fact finds. The question remains is this misconduct or malpractice? It is accepted that I gave the advice and was responsible for all advice given. We were of the view that the investigation did not concern misconduct or malpractice".*

27. On 26 August 2011, Mr Cordle emailed the FSA providing details of the engagement of SimplyBiz. In that email Mr Cordle stated that the SimplyBiz contact had told him that – "*it is not against FSA rules for an introducer to see a customer and complete a financial review, nor is it wrong for them to be involved in arranging business. The key issue is if they are giving advice. I told him that all the advice had come from me and that my advice letters were documented in every file."*

28. The FSA's Permissions Department made a recommendation to the Regulatory Transactions Committee to reject both the SBL and the Cordle Applications. Warning Notices to that effect were issued on 8 November 2011 and the matter came before the RDC on 20 December. In the course of the hearing, Mr Cordle admitted that Mark Foster had been involved in the advice process and that he had known that. He admitted that he not answered every question asked by the Sesame investigators (when they visited on 24 November 2010) honestly.

29. Decision Notices relating to both Mr Cordle and SBL were issued on 20 January 2012. These refused the applications. The decisions were based on, first, Mr Cordle's

admission that he had been untruthful with Sesame and, second, Mr Cordle's and SBL's failure to disclose the existence of the Sesame investigation and its outcome to the FSA in the Cordle and the SBL Applications.

Findings and conclusions relating to the circumstances and outcome of the Sesame investigation

30. At this stage we are concerned with the first limb of the reasoning behind the decisions. We address four issues. First: the breach and the manner in which it occurred. Second: was Mr Cordle aware that a breach had been occurring? Third: was the breach serious? Fourth: to what extent did Mr Cordle attempt to conceal the breach?

31. The breach, as seen by Sesame and as alleged by the FSA, was permitting Mark Foster, an introducer who was neither authorised nor fully qualified to advise on regulated products, to give such advice. This was admitted by Mr Cordle. He told the RDC that Mr Foster had given advice and that, when he (Mr Cordle) spoke to customers introduced by Mr Foster this had been more of a satisfaction survey than advice. Mr Cordle sought to assure us that when Mr Foster gave advice it had been "very good advice"; nonetheless he said he had made substantial changes to suitability letters drafted by Mr Foster. Mr Cordle's evidence in the course of the present hearing was that he had not spoken to all of Mr Foster's clients and that he (Mr Cordle) had not been the person making the recommendations to clients.

32. Some of the files inspected by Sesame showed that Mr Foster's involvement had gone beyond giving advice. On at least four occasions that Mr Cordle had become aware of, Mr Foster had forged Mr Cordle's signature. Identity verification forms were examples of this. These were drawn to Mr Cordle's attention after the Sesame visit of 24 November 2010.

33. Regarding his awareness that the breaches had been occurring, Mr Cordle had confirmed to Sesame, during the course of the 24 November 2010 visit, that Mr Foster had not been authorised to give advice; and, as noted above, Mr Cordle had insisted (in the course of the appeal meeting of 22 February 2011) that Mr Foster had been qualified only to interview clients and complete paperwork. In the course of the present hearing, Mr Cordle said – "*I totally accept that what Mark Foster was doing was beyond what is acceptable under the rules strictly speaking*". Before the RDC, Mr Cordle admitted that Mr Foster was not qualified and had no professional indemnity ("PI") cover. Before this Tribunal, Mr Cordle accepted that Mr Foster was giving advice "*under my watch*" with his (Mr Cordle's) permission and authority. But, he admitted in the course of these proceedings, he did not think breaching regulatory rules was itself misconduct.

34. Was the breach serious? We think it was. Advice was being given without PI protection by Mark Foster who was not fully qualified or approved. The practice appears to have continued over a relatively long period and with the knowledge of Mr Cordle. Mr Cordle may not have been conscious of the forged signatures until they

were drawn to his attention by Sesame. But, from then on, the seriousness of the situation must have been high in Mr Cordle's awareness. Moreover, Mr Cordle acknowledged that, from February 2011, the investigation had put him in serious trouble with Sesame. He must, we infer, have appreciated that the Sesame

investigation had been concerned with whether Mr Cordle himself had been guilty of misconduct.

35. The breach was not simply concealed at the time of the visit by Sesame's "Network Integrity" investigators on 24 November 2010; Mr Cordle persisted in concealing it from all parties that might have had an interest until his admissions to the RDC on 20 December 2011. Mr Cordle admitted to this Tribunal that he had not been truthful when he had told the investigators, on 24 November, that only he (and not Mr Foster) had been giving advice. He sought to explain why he had lied. He said that he had not been told in advance what topics the investigators wanted to explore with him. He had, therefore been caught out and unprepared and, to use his words in his skeleton argument, *"gave some untruthful answers"*. That may have been his reason for telling the lies in the first place, but it does not excuse him for that or for his subsequent behaviour of suppressing the truth.

36. The first opportunity to correct the lies had been the email to Sesame from Mr Cordle on 25 November 2010; (Mr Cordle also sent a further email on 26 November in response to Sesame's communication containing the note of the proceedings of 24 November). By then Mr Cordle knew that Sesame had been misled. Consistent with the misleading statements to the investigators, Mr Cordle wrote - *"I speak to customers on the phone to give the necessary advice"*. In oral evidence Mr Cordle acknowledged that that had not been correct. Another opportunity to be truthful arose when Mr Cordle submitted his appeal letter to Sesame on 1 February 2011. There he writes – *"I have always given the advice rather than Mr Foster"*. Then, on 22 February 2011, Mr Cordle writes to Mark Foster referring to the fact that Sesame thought that he (Mark Foster) might have been giving advice to customers. Mr Cordle accepted in oral evidence that he had known that Mr Foster had been giving advice to customers but was trying to keep up the pretence that there had been no impropriety.

37. Another opportunity to be truthful with Sesame occurred when Mr Cordle replies, on 7 April 2011, to an enquiry from Sesame about Mark Foster's advice to customers (by letter of 5 April 2011). Mr Cordle's letter states, inaccurately, that *"I was phoning customers and giving them advice"*. (That answer was, we note, inaccurate; Mr Cordle was not contacting all customers.) By then the SBL and the Cordle Applications had been submitted to the FSA. Later, in response to enquiries from the FSA, Mr Cordle wrote (on 22 August 2011) *"I gave the advice"* and (on 26 August) – *"I told [Sesame] that all the advice had come from me"*. A written submission from Mr Cordle to the FSA, dated 17 November 2011, states – *"I have been actively involved in every case primarily to ensure customers are correctly advised."* In oral evidence to the Tribunal Mr Cordle said – *"Having given some answers that were wrong, I, if you like, persisted with expressing the case that I had*

given the advice, that Mark Foster had not given the advice … I admit these were half- truths and untruths". There could, we think, be no clearer evidence of dishonesty than that.

The circumstances of Mr Cordle's failure to disclose the Sesame investigation to the FSA

38. SimplyBiz, the compliance specialists, came on the scene on 9 February 2011. That was nine days after Mr Cordle and SBL had submitted the appeal letter to Sesame against its *"decision to issue a formal notification of termination of our membership agreement"*. Mr Cordle acknowledged in the course of his evidence to us that, by then – "*I knew I was in serious trouble as far as Sesame was concerned"*. Mr Cordle and Mr Mark Harper of SimplyBiz had meetings on 9 and 18 February.

39. By 2 March 2011, drafts of SBL's and Mr Cordle's Applications had been submitted by Mr Cordle to SimplyBiz. SimplyBiz emailed Mr Cordle on 4 March 2011. This was entitled – *"FSA Application Details – VERY IMPORTANT PLEASE READ"*. The email enclosed the application forms and stated: *"It is essential that you read through the attached application and send the FSA declarations back to us ASAP. … Please note that Mark [Harper] explained that you were arrested therefore I have ticked the box on your Form A that states you have received a caution"*. The email also stated: *"Your application for the FSA has now been prepared and is ready for submission to the FSA. A copy of the application has been attached for you to read and check for your approval. Should you require any alterations to the application, please contact one of the applications team who will be happy to do this for you. Once you are happy with the application please sign & date the declaration at the back of the application and return the original to [address]. Please note that we cannot send the application off until we have received the original signed declaration"*.

40. Mr Cordle acknowledged that the Notes to the application forms had been sent to him as an email attachment. His evidence was that he had not, and still had not, read them. He said that he had looked back at question 5.09 but had not examined it before signing it. He had taken that approach because, he said, he had not wanted – *"to say anything inconsistent with Sesame about"* the investigation. Mr Cordle accepted that he had considered his answer to questions 1.13 and 1.14 (in the SBL Application); he claimed that he had misread the form and should have answered "yes" to question 1.14.

41. Precisely what information about the Sesame investigation had been supplied by Mr Cordle to SimplyBiz is not clear from the documentary evidence. We know he explained the circumstances of the investigation to the FSA in the email of 22 August 2010 (referred to in paragraph 26 above) in these words: *"You have all the details but the allegation is that I allowed an introducer to see customers and complete fact*

finds". In September 2010 SimplyBiz conducted its own internal enquiry and concluded, in a communication to the FSA of 13 September 2011, that there had been a discussion with Mr Cordle about "*an ongoing investigation into a connected 'introducer' to his firm"*. An email from Mr Cordle of 26 August 2011 explaining the involvement of SimplyBiz says – "*I told him all the advice had come from me"*. In the course of the hearing before the RDC Mr Cordle admitted that he had not told SimplyBiz that Mark Foster gave advice. In evidence before this Tribunal, Mr Cordle accepted that he had told Mark Harper of SimplyBiz that he had given all the advice; he accepted that he had not discussed the position of Mark Foster in any detail.

42. On 7 March 2011, Mr Cordle emailed SimplyBiz asking that the reference to a caution be removed. He explained that he had been arrested for demonstrating against the Archbishop of Canterbury but he had not received a caution. The same day, Mr Cordle signed the two Applications. As mentioned in paragraph 7 above, Mr Cordle answered "*no"* to the question as to whether he had ever been the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity. No mention in the form for SBL's Application was made of the Sesame investigation; that form required disclosure of any investigation "*for the possible carrying on of unauthorised regulated activities*".

43. Mr Cordle's Application stated that the reasons for leaving the Sesame Network were because he was "*seeking direct authorisation"*.

44. The FSA wrote to Mr Cordle and SBL on 23 March 2011. Among other things the letter observes, in relation to SBL's membership of Sesame that SBL could not have dual authorisation. The same day, Mr Cordle wrote back for SBL saying – "*I fully understand this. As soon as you confirm you are ready to authorise me I will give notice to Sesame and provide you with evidence of the termination of my contract with them"*. (The letter, we note, makes no mention of the Sesame investigation or of the fact that Sesame had already served notice of intended termination on 28 February 2011.)

45. On 20 April 2011, Sesame sent its reference to the FSA disclosing the investigation and the outcome.

46. Sesame's final termination letter is dated 26 April 2011. On 12 May 2011, Mr Cordle sent a message to the FSA chasing his applications. The message made no mention of the termination letter.

47. On 13 May 2011, the FSA emailed Mr Cordle mentioning that the reference from Sesame had referred to the investigation into SBL and that the FSA had received a copy of Sesame's letter terminating SBL's membership of Sesame. The FSA asked why SBL had not disclosed that information. Mr Cordle replied the same day suggesting that Sesame's findings had been limited to the completion by Mr Foster of Verification of Identity documents in Mr Cordle's name. Specifically, Mr Cordle said that he had not informed the FSA of Sesame's conclusions because he had been "*hoping that [Sesame's head of compliance] would apologise and withdraw the*

notice … because crucial information has not been passed on by his investigator". Mr Cordle wrote to Sesame on 16 May 2011 asking Sesame, for the first time, to withdraw the termination notice.

48. The FSA asked for a further explanation and, on 5 July 2011, Mr Cordle emailed the FSA and, in summary, this was his message. He had, he claimed, given Mark Harper of SimplyBiz "*the full details of the investigation* " and informed him of Sesame's decision (in Sesame's letter of 26 April). In a further email of the same date, Mr Cordle stated that he *"presumed it was all on the application form as required"*. Mr Cordle claimed that he had not been sure what to put in answer to the relevant

questions in the application forms. The Sesame investigation had, he asserted, been into Mark Foster's activities and "*I did not take this to mean I was being investigated for misconduct or malpractice in connection with a business activity which I had undertaken"*. He went on to say by way of explanation – *"SimplyBiz were told everything and advised me what to write on the application"*.

49. On 12 August Mr Cordle emailed the FSA suggesting that SimplyBiz had concluded that it had not been necessary to include details of the Sesame investigation on the application forms. The email indicated that SimplyBiz was likely to accept responsibility for any omissions on the forms. An email from Mr Cordle to the FSA, of 22 August 2011 was to the same effect. Then, addressing question 5.09 of the Cordle Application form and question 1.14 of the SBL Application form, Mr Cordle wrote – *"I thought both these questions referred to an FSA investigation. Be that as it may Mark Harper at the time of the completing the form was of the view expressed to me that Sesame's investigation would come to nothing. You have all the details but the allegation is that I allowed an introducer to see customers and complete fact finds. The question remains is this misconduct or malpractice. It is accepted that I gave the advice and was responsible for all advice given. We were of the view that the investigation did not concern misconduct or malpractice"*.

50. In an email of 26 August 2011 to the FSA, Mr Cordle repeats *"I gave all this information to Mark Harper and talked him through the allegations against the firm"* and *"I told him all the advice had come from me"*.

51. As we understand the position, Mark Harper's notes of his meetings and conversations were either deficient or they made no proper record of the information said by Mr Cordle to have been given to him. An internal investigation by SimplyBiz resulted in an email from its managing director to the FSA dated 13 September 2011. Referring to a meeting between Mr Cordle and Mark Harper to discuss the services offered by SimplyBiz, it is noted that there had been a brief discussion about an ongoing investigation into a "connected introducer" to Mr Cordle's firm by Sesame. The writer goes on to say - *"It is my assessment that Mr Cordle made no effort to conceal the fact that an investigation into a connected 'introducer' was being*

undertaken by the network. Our representative was later told by Mr Cordle that the matter had been resolved satisfactorily".

52. We interject at this point to mention that Mr Cordle, before this Tribunal, challenged the accuracy of the findings contained in the email of 13 September referred to in the previous paragraph. He claimed to have given Mark Harper the information required for the completion of the application forms. He had given that information in the course of the several meetings that they had had and the meetings had not been brief. However, for the reasons that will come apparent, we do not need to make findings on what went on between Mr Cordle and Mr Harper. Bearing in mind that Mr Cordle had not revealed the true position (i.e. that Mark Foster had been giving advice) until the RDC Meeting of 20 December 2011, we would be bound to infer that Mr Cordle had not presented the full picture to Mark Harper earlier in 2011.

53. When Mr Cordle came to draw up his submissions to the FSA's RDC (dated 2 December 2011) he wrote – "*Following the visit the 5 files from the office at the visit were reviewed. It was felt that in all cases the files were in good order"*. This, we note, was wrong and was known by Mr Cordle to have been wrong. One of those files, removed by Sesame on 24 November 2010 and returned on 30 November had again been taken away on 17 March 2011. This file related to a client called "Jordan". The Jordan file contained the forged Verification of Identity documents which Sesame had referred to at the appeal hearing of 22 February 2011 and which had been attached to Sesame's investigation report.

Findings and conclusions relating to the failure to disclose the information to the FSA

54. With our conclusions about the circumstances of the breach of FSA rules and principles (summarised in paragraphs 30 to 37 above) in mind, we turn now to address the issues that arise in relation to the non-disclosures.

55. The responsibility for providing the information required in the applications for approval and authorisation lay with Mr Cordle. This was prominently emphasised at the start of SimplyBiz's email of 4 March 2011 that accompanied the application forms.

56. Mr Cordle acknowledged to this Tribunal that the application forms had not disclosed to the FSA the investigation by Sesame and its outcome. He could not do otherwise in view of the admissions that he had subsequently made to the RDC. The position taken by Mr Cordle was essentially that the failings were excusable. He had, he told us, been under such pressure that he had not had the time to read and understand properly the questions asked in the application forms. He acknowledged that the Notes explained that the term "investigation" covered an investigation of the sort conducted by Sesame. He said in his witness statement – "*To this day I've never had a copy of these notes nor ever seen them, nor do I know how to get hold of them*". He had, he said, engaged SimplyBiz to handle the application process; and when the application forms were sent to the FSA by SimplyBiz there was no covering letter to

show that they came from SimplyBiz rather than from Mr Cordle. He had not, he said, believed that he had been involved in misconduct or malpractice so far as concerned the underlying circumstances of the Sesame investigation.

57. We note that the "Long Form A" for applications for approval states, at the start and in heavy print, that the explanatory notes are available on the FSA's website. When this was put to him in cross-examination, Mr Cordle said "*I didn't read this"*. If he had not done so, he showed a reckless indifference to compliance with the regulatory system. Even so, he must, we think, have been aware of the significance of the investigation and of its outcome and his denials in his answers to the relevant questions should have been known by him to have been misleading. He had been providing financial advice in a regulated environment for so many years that he must have understood the significance of the Sesame investigation to the Regulator. He knew the investigation and its outcome were serious matters for him and his business. And he must have understood that application forms of this importance called for careful study and full disclosure.

58. We accept that Mr Cordle was under pressure at the time when the application forms were signed by him. As well as training for a marathon (which he completed in below three hours), he had been heavily involved in Christianity-related campaigns. He had found himself drawn into the personal tragedy of a person who is a character witness of Mr Cordle's in the present proceedings. These may have been reasons, but they do not excuse him. But why there was urgency about getting the application forms to the FSA is something that was not explained to us. We can only infer that, to Mr Cordle, the imminent rejection from the Sesame network demanded speedy approval from the FSA to enable him to continue carrying on business through SBL.

59. We accept that he had placed reliance on SimplyBiz to see the application process through. But his evident concealment of the circumstances underlying the Sesame investigation (which only came out at the RDC meeting in December 2011) makes it impossible for us to attribute responsibility for the non-disclosures to SimplyBiz.

60. The chronological summary of events set out in paragraphs 38 to 53 above shows that Mr Cordle persevered in his concealment of the true position from the FSA. He had many opportunities to inform the FSA that Mark Foster had been giving advice and that that had been the true reason for the Sesame investigation. He provided misleading answers to their enquiries and had sought to place the blame for his lack of candour on SimplyBiz.

Is Mr Cordle a fit and proper person to perform the functions to which the application relates?

61. Shortly after the hearing was over, Mr Cordle informed us that he had not had the time available to enable him to present a suitable reply. He submitted a full written statement adding to the points that he had sought to cover in the course of his oral

reply. We have read and discussed the points in Mr Cordle's written statement. Those points have been taken account of in the conclusions that follow.

62. The decision referred to us covers Mr Cordle's application for approval to perform four distinct controlled functions. These, as noted at the start of this Decision, are CF1 Director, CF10 Compliance oversight, CF11 Money laundering reporting officer and CF30 Customer.

63. FIT 1.3.1 states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations include the person's honesty, integrity and reputation. The correct approach, in our view is to have regard to all of those factors. Mr Cordle drew our attention to his long and virtually unblemished career in financial services and to the reputation for competence and honesty that he enjoyed among his clientele. A number of good references were sent to us. Mr Cordle accepted that there had been one complaint to the Financial Ombudsman. However, honesty and integrity cannot be ignored. Those two qualities are essential because of the way the regulatory regime works. It places significant trust in its advisers in the front line. It depends on their honesty and integrity because the regime does not involve constant supervision on the part of the regulatory authority, the FSA.

64. Integrity, in common with the other considerations stated in FIT 1.3.1, is used in the context of the standards required for the performance of a particular function in the regulated financial industry. In that context the word embraces a whole and all-round coverage of the standards and qualities required. Here, having regard to the findings and conclusions set out above, Mr Cordle paid insufficient attention to the requirements of the regulatory system. He knowingly misled the FSA by not disclosing the Sesame investigation and its outcome; and he persisted in misleading the FSA at least until he owned up to the truth in the course of the RDC hearing. We think he showed, by his conduct, a lack of integrity.

65. We acknowledge, from the several testimonials as to Mr Cordle's character that have been sent to us, that he is seen by many to be a man of honesty and good reputation. But the circumstances of the matter referred to us have demonstrated a want of honesty on Mr Cordle's part.

66. Those two failings, of honesty and integrity, cannot in our view be overlooked. They cannot be excused on account of the pressures on Mr Cordle at the time. He has failed to prioritise the requirements properly and, in giving himself the benefit of the doubt and not making a full disclosure, he has fallen short of the relevant requirements.

67. The fitness and propriety of an individual is to be assessed in the context of the particular controlled function. Also relevant to the assessment will be any positive steps towards rehabilitation that have been taken by the individual. In that connection, we read in the Decision Notice that Mr Cordle has conducted industry training in order to increase his knowledge in matters with which he was not previously familiar.

We mention also the evidence of Francesca Harte (who attended as a witness for the FSA) that the FSA was not seeking to question Mr Cordle's competence and capability.

68. Our conclusion is that the FSA had sound reasons for rejecting the applications for authorisation and approval. Both applications turn on the fitness and propriety of Mr Cordle to perform the relevant controlled functions. We therefore uphold the terms of the Decision Notice.

69. The demands of CF1, CF10 and CF11 functions are significantly different from those of a CF30 function. In view of the apparently adequate standards of Mr Cordle's technical competence and advice in the fields of mortgage and life protection, an application on his part for approval to carry out CF30 functions alone might, on the limited information available to us, have succeeded. But that was not the subject-matter of the Decision referred to us.

SIR STEPHEN OLIVER QC

TRIBUNAL JUDGE
RELEASE DATE: 2 January 2013