
FINAL NOTICE

To: **Sir Ken Morrison**

Address: Myton Hall
Myton on Swale
Helperby
Yorkshire

Date: 16 August 2011

ACTION

1. For the reasons given in this Notice, the FSA hereby imposes on Sir Ken Morrison a financial penalty of £210,000.
2. Sir Ken agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% (Stage 1) reduction of the financial penalty under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a penalty of £300,000.

SUMMARY OF REASONS

3. The FSA decided to take this action as, when reducing his shareholding and voting rights held in respect of Wm Morrison Supermarkets Plc between 16 September 2009 and 21 June 2010, Sir Ken failed to make timely notifications when his voting rights fell below 6%, 5%, 4% and 3%, in breach of DTR 5.8.3R.

4. The FSA considers that Sir Ken's failings were serious due to his prominent position and the significant delay in his eventually making the required notification.
5. The rules contained within DTR 5 are designed to enhance market transparency and provide investors with timely information regarding voting rights in issuers. Failure to comply with the rules risks damaging investor confidence in the financial markets.

DEFINITIONS

6. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Company” means Wm Morrisons Supermarkets Plc;

“the DTR” means the Disclosure Rules and Transparency Rules;

“the FSA” means the Financial Services Authority; and,

“Sir Ken” means Sir Ken Morrison.

FACTS AND MATTERS

7. Sir Ken is the son of the founder of supermarket chain Wm Morrison. He joined the family business in 1952 and retired as Chairman of the Company in March 2008. He is now 79 years of age.
8. He is widely credited for taking the family business from an annual turnover of £50,000 in the early 1950s to an annual turnover of £13 billion.
9. In May 2006, the Company announced that Sir Ken had informed the Board of his intention to retire as Chairman and a Director of the Company by the end of the next financial year in January 2008 and take the honorary post of Life President. A further announcement confirmed that he had stood down on 13 March 2008.

10. On 28 March 2008, fifteen days after the announcement of his retirement, the Company issued a detailed announcement revealing a number of transactions involving Sir Ken's holdings. The announcement revealed that Sir Ken had gifted shares into various trusts and going forward had a "*notifiable holding of voting rights*" of 6.38% or 171,346,034 shares.
11. On 1 March 2011, the Company announced that Sir Ken had, between 2009 and 2010, substantially cut his shareholding, reducing his voting rights from 6.07% (a holding worth over £450m) to 0.9%. The announcement stated "*the Company understands that these changes in voting rights have arisen as a result of Sir Ken Morrison retiring as one of the trustees of certain family trusts and other estate and tax planning exercises undertaken by Sir Ken Morrison following his retirement as a director of the Company.*"
12. After the announcement on 28 March 2008 there were no further shareholding notifications made concerning Sir Ken's holdings until the 1 March 2011 – just under three years later.
13. Sir Ken's failure to notify the Company of the changes to his shareholdings resulted in the Company not being in a position to update the market in accordance with DTR 5.8.12(1)R and meant that Sir Ken's level of shareholding was incorrectly stated in the Company's published annual report of 31 January 2010.
14. The following is an extract from the 1 March 2011 announcement which sets out the four occasions on which Sir Ken's voting rights passed through a percentage point and thereby became notifiable:

“On 16 September 2009 Sir Ken Morrison's shareholding and voting rights in the Company reduced from 160,831,808 ordinary shares to 157,381,808 ordinary shares. Accordingly his voting rights over the Company's issued share capital reduced from 6.07% to 5.94%.

On 16 November 2009 Sir Ken Morrison's shareholding and voting rights in the Company reduced from 138,363,123 ordinary shares to 131,363,123, ordinary shares. Accordingly his voting rights over the Company's issued share capital reduced from 5.22% to 4.96%.

On 13 April 2010 Sir Ken Morrison's shareholding and voting rights in the Company reduced from 110,767,453 ordinary shares to 105,297,791 ordinary shares. Accordingly his voting rights over the Company's issued share capital reduced from 4.18% to 3.97%.

On 21 June 2010 Sir Ken Morrison's shareholding and voting rights in the Company reduced from 95,297,791 ordinary shares to 23,955,723 ordinary shares. Accordingly his voting rights over the Company's issued share capital reduced from 3.59% to 0.90%.”

15. The reduction in Sir Ken's voting rights during 2009 and 2010 appears to have occurred as a result of a number of separate transactions. The first three detailed above relate to the sale of shares in his personal capacity and the fourth arising as a result of his resignation as a trustee of certain share-holding family trusts
16. Sir Ken's explanation for the failure to notify in good time is that he was not aware of the requirement to do so.

FAILINGS

17. The statutory provisions, regulatory guidance and policy relied upon are set out at Annex A.
18. Pursuant to DTR 5.1.2(1) R a person must notify the issuer of the percentage of its voting rights which he holds or is deemed to hold (through his direct or indirect holding of financial instruments) if the percentage of those voting rights reaches or exceeds or falls below certain percentages (in this case 6%, 5%, 4% and 3%). Such a notification is usually required to be made by the vote holder by way of submission of a completed form TR1.
19. The DTR use the expression “voting rights held as shareholder”. The definition of “shareholder” for these purposes is not confined to the person whose name is entered in the company's register of members as the holder of the shares. The DTR definition includes not only the registered holder of the shares, but also their beneficial owner.

20. For the purposes of DTR 5 the salient factor is the level of *voting rights* rather than actual or direct shareholdings and it is only the transactions that actually cause the voting rights to reach, exceed or fall below the thresholds that are relevant for notification. The actual value of the shareholdings is not relevant for the purposes of DTR5 which is concerned with the level of voting rights.
21. The relevant transactions causing the reduction in his voting rights are as follows:

| Sale Date | Shares Sold | % Voting Rights Pre Sale | % Voting Rights Post Sale | % Points passed |
|------------------|--------------------|---------------------------------|----------------------------------|------------------------|
| 16 Sep 2009 | 3,450,000 | 6.07 | 5.94 | 1 (6% mark) |
| 16 Nov 2009 | 7,000,000 | 5.22 | 4.96 | 1 (5% mark) |
| 13 Apr 2010 | 5,469,662 | 4.18 | 3.97 | 1 (4 % mark) |
| 21 June 2010 | 71,342,0068 | 3.59 | 0.90 | 1 (3% mark) |

22. Whilst the transaction of 21 June 2010 actually reduced Sir Ken's holding by three percentage points (3%, 2% and 1%), DTR 5.1.2(1)R required him only to notify the breach of the 3% mark.
23. DTR 5.8.3R requires that relevant transactions are reported to the issuer as soon as possible but (as relevant here) no later than two trading days following the trade.
24. Sir Ken submitted completed Form TR1s for the above transactions on 1 March 2011. It follows that he is not in breach of DTR5.1.2(1)R as he has now actually made a notification albeit at a significantly late stage and only after the non-notification was highlighted to him by the Company.
25. Sir Ken's late notifications represent significant breaches of DTR 5.8.3R.

SANCTION

Financial penalty

26. The FSA's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The misconduct straddles both the old and new penalty regimes with two breaches before and two breaches after 6 March 2010. The FSA considers that the new penalty regime set out in DEPP 6.5B should be applied. This is because the gravamen of the breaches occurred after 6 March 2010 when the value of the share transactions was much higher.
27. The FSA applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Steps 1-3

28. As Sir Ken did not financially benefit from his breaches (for the purpose of Step 1, DEPP 6.5B1G) and had no relevant income (for the purpose of Step 2, DEPP 6.5B.2G) because he was not employed in connection with the breaches, the penalty calculation after Step 3 will be £0. Nonetheless before proceeding to Step 4 the FSA has determined the seriousness of Sir Ken's breaches to be Level 3 for the purposes of Step 2 having taking into account:
- (a) DEPP 6.5B.2(12)G which lists factors likely to be considered 'level 4 or 5 factors'. Of these, the FSA considers the only factor that might suggest a level of 4 or 5 is Sir Ken's prominent position; and
 - (b) DEPP 6.5B.2(13)G which lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the FSA considers the following factors to be relevant:
 - (i) Sir Ken did not make any profit or avoid any loss as a result of this breach;
 - (ii) There was limited actual effect on the orderliness of, or confidence in, markets as a result of the breach. However the FSA notes that the failure to notify the Company meant that Sir Ken's level of

shareholding was incorrectly stated in the Company's published annual report of 31 January 2010; and

- (iii) Whilst a man in Sir Ken's position should have been aware of his obligations and might have been expected to take legal advice when selling his shares there is no evidence to suggest that he was reckless in this regard or that his conduct was deliberate.

Step 4: adjustment for deterrence

- 29. Pursuant to DEPP 6.5B.4G, if the FSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the FSA may increase the penalty.
- 30. Since the figure after Step 3 would result in a penalty figure of £0, it is considered appropriate to adjust the penalty level upwards to £300,000 on the following grounds:-
 - (a) The seriousness of the breaches as detailed above;
 - (b) The need for credible deterrence in this area. Sir Ken is an extremely wealthy individual who held a prominent position within his industry. Person's breaching DTR 5.8.3R are likely to be comparably wealthy and/or institutional investors. There is a clear need to impose a meaningful penalty to achieve deterrence.
- 31. The penalty figure after Step 4 is therefore £300,000.

Step 5: settlement discount

- 32. Pursuant to DEPP 6.5B.5G, if the FSA and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 33. The FSA and Sir Ken reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

34. The penalty figure after Step 5 is therefore £210,000.

Penalty

35. The FSA therefore decided to impose a total financial penalty of £210,000 on Sir Ken for breaching DTR5.8.3R.

PROCEDURAL MATTERS

Decision maker

36. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

37. This Final Notice is given in accordance with section 390 of the Act.

Manner of and time for Payment

38. The financial penalty must be paid in full by Sir Ken to the FSA by no later than 30 August 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

39. If all or any of the financial penalty is outstanding on 31 August 2011, the FSA may recover the outstanding amount as a debt owed by Sir Ken and due to the FSA.

Publicity

40. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

41. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

42. For more information concerning this matter generally, contact Stephen Smith (direct line: 020 7066 2142) or Dan Enraght-Moony at the FSA (direct line: 020 7066 0166).

Matthew Nunan

Acting Head of Department

FSA Enforcement and Financial Crime Division

ANNEX A

Relevant statutory provisions

1. Pursuant to section 91(1B)(a)(i) of the Act, if the FSA consider that a person has contravened a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive it may impose on the person a penalty of such amount as it considers appropriate.

Relevant regulatory provisions and guidance

2. The Disclosure and Transparency Rules (DTR) are set out in the FSA Handbook. Of most relevance to this matter are:
 - (a) DTR 5.1.2(1) R which states that subject to the exemption for certain third country issuers (DTR 5.11.6 R), a person must notify the issuer of the percentage of its voting rights he holds as shareholder or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within DTR 5.3.1R (1), subject to the exemption in DTR 5.3.1R(2), and DTR 5.3.1R (2A), (or a combination of such holdings) if the percentage of those voting rights reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK issuer on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of shares or financial instruments falling within DTR 5.3.1 R.
 - (b) DTR 5.8.3(1) R which states that the notification to the issuer shall be effected as soon as possible, but not later than four trading days in the case of a non-UK issuer and two trading days in all other cases, the first of which shall be the day after the date on which the relevant person learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect.
 - (c) DTR 5.8.12(1) R which states that an issuer not falling within DTR 5.8.12(2)R (not relevant here) must, in relation to shares admitted to trading on a regulated market, on receipt of a notification as soon as possible and in any event by not later than the end of the trading day following receipt of the notification make public all of the information contained in the notification.