FINAL NOTICE

To: **Kevin Allen**

Individual Reference Number: **KXA01208**

Dated: **9 June 2015**

PROPOSED ACTION

1. For the reasons listed below, the Authority hereby takes the following action against Kevin Allen:

   (a) publishes a statement of his misconduct, pursuant to section 66 of the Act, for failing to comply with Statement of Principle 1; and

   (b) makes an order against Mr Allen, pursuant to section 56 of the Act, prohibiting Mr Allen from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2. The Authority considers that Mr Allen's misconduct also merits a financial penalty pursuant to section 66 of the Act. Had Mr Allen not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship, the Authority would have proposed to impose on him a financial penalty of £355,000. In that event, Mr Allen would have qualified for a 30% discount (Stage 1) in accordance with the Authority's executive settlement procedure, reducing the penalty to £248,500.

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SUMMARY OF REASONS

3. On the basis of the facts and matters described below, the Authority has concluded that Mr Allen failed to act with integrity in carrying out his controlled functions in breach of Statement of Principle 1, by deliberately causing New Life to make illegitimate payments and directing his firm NMB to receive the payments to fund its running costs. Mr Allen also fabricated an email purporting to provide authority for one of the transfers and altered a bank statement in order to conceal from New Life that he had directed another of the transfers to be received by NMB.

4. The serious nature of these breaches leads the Authority to conclude that Mr Allen is not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.

5. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

DEFINITIONS

6. The following definitions are used in this Final Notice (and in the Annexes):

   "the Act" means the Financial Services and Markets Act 2000;

   "the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

   "DEPP" means the Authority's Decision Procedure and Penalties Manual;

   "EG" means the Authority's Enforcement Guide;

   "FIT" means the Authority's Fit and Proper Test for Approved Persons;

   "the Handbook" means the Authority's Handbook of rules and guidance;

   "New Life" means New Life Mortgages Limited;

   "NMB" means The NMB Group Limited;

   "the Relevant Period" means 26 March 2009 to 29 July 2012; and

   "the Statements of Principle(s)" means the Authority's Statements of Principle for Approved Persons.

FACTS AND MATTERS

Background

7. On 31 October 2004, NMB was authorised by the Authority to conduct mortgage mediation activities and Mr Allen was approved to perform the CF1 (Director), the CF11 (Money Laundering Reporting) and the CF8 (Apportionment and Oversight) controlled functions at NMB. Mr Allen was the sole shareholder of NMB. Mr Allen remained a Director of NMB throughout the Relevant Period. He ceased to hold the CF8 (Apportionment and Oversight) controlled function on 31 March 2009, and ceased to hold the CF11 (Money Laundering Reporting) controlled function on 21 December 2012. He ceased to hold the CF1 (Director) controlled function on 12

February 2013 and is no longer an approved person with NMB or any other firm authorised or regulated by the Authority.

8. On 31 October 2004, New Life was authorised by the Authority to conduct mortgage mediation activities and Mr Allen was approved to perform the CF1 (Director) and CF11 (Money Laundering Reporting) controlled functions at New Life with those permissions continuing throughout the Relevant Period, until 27 September 2012. Mr Allen was a 9% shareholder and NMB was a 37% shareholder in New Life.

9. During the Relevant Period, NMB acted as a specialist loan administration company and New Life offered equity release mortgage products (lifetime mortgages). New Life sourced funding from third parties and lent that money to customers in the form of regulated mortgage contracts, receiving repayments from borrowers in relation to those mortgage contracts. New Life's third party funding was secured against its mortgage book. NMB, under inter-company agreements with New Life, assisted with the administration of New Life's mortgage book and was entitled to receive a fee for this service. The amount earned by NMB in fees was dependent upon the number of loans being underwritten each month by New Life and the overall balance of the loan book being administered by NMB.

10. On 2 October 2012, New Life notified the Authority that Mr Allen had resigned as Finance Director of New Life with effect from 28 September 2012 and in offering his resignation, Mr Allen had admitted to making unauthorised transfers of monies from New Life to NMB. In October 2012, New Life carried out an internal investigation regarding the unauthorised transfers and in February 2013, New Life submitted its internal investigation report to the Authority. In that report, New Life stated that Mr Allen had admitted to making unauthorised transfers from New Life to NMB since 2010 and that Mr Allen had also admitted to fabricating an email purporting to agree to one of the unauthorised transfers.

11. Mr Allen was disqualified from acting as a director for three years with effect from 5 February 2013 as no accounts has been filed in relation to NMB since those for the year ended 29 February 2008. At the date of Mr Allen's disqualification he was the only director of NMB.

12. NMB ceased trading on 26 April 2013 when it entered into administration. On 1 July 2013, NMB was sold to New Life and on 13 March 2014, NMB moved into creditors' voluntary liquidation.

13. On 10 July 2014, NMB's application to cancel its Part 4A permission was accepted by the Authority and NMB's Part 4A permission was cancelled on that same date.

Mr Allen's conduct

14. During the Relevant Period, NMB legitimately invoiced New Life for monthly fees totalling approximately £1,600,000 under the inter-company agreements between New Life and NMB and during the Relevant Period, legitimate payments were made to NMB in respect of those fees.

15. NMB's overheads in relation to its administration of New Life's mortgage book were fixed and did not vary when the number of loans written by New Life reduced. Mr Allen admitted to making additional, illegitimate transfers totalling £1,000,000 from New Life which he directed to be received by NMB (as set out in the table below), without the knowledge or approval of New Life's other directors, when New Life was not generating the volume of loans required to provide the levels of fees adequate to meet NMB's running costs such that NMB was at risk of becoming insolvent. Mr Allen stated that because the fees under the inter-company agreements were fixed and could not be increased, he took it upon himself to make payments from New Life to NMB representing what he considered to be dividends

that he believed were due to NMB. He stated that he had hoped that there would be a declared dividend payment, or a super dividend, against which those amounts transferred could be netted off, but that did not happen.

Illegitimate transfers from New Life to NMB made on the sole direction of Kevin Allen

Transaction	**Date**	**Amount**
1	26 March 2009	£100,000
2	29 May 2009	£100,000
3	30 June 2009	£100,000
4	26 February 2010	£35,000
5	31 March 2010	£60,000
6	28 April 2010	£50,000
7	18 June 2010	£50,000
8	19 July 2010	£100,000
9	2 September 2010	£100,000
10	28 October 2010	£50,000
11	27 January 2011	£50,000
12	13 July 2011	£100,000
13	28 June 2012	£75,000
14	17 July 2012	£30,000
Total		**£1,000,000**

16. New Life used NMB staff to conduct its day-to-day activities. Any transfers made out of New Life or out of NMB were made via internet banking. A form would be filled in with the payee's bank details with a brief description of the transaction. All transfers would require two individuals to enter their authorisation codes into the system before the transfer could be made. In relation to the illegitimate transfers, Mr Allen gave the form to a member of the finance team and instructed that employee to make the payment. Mr Allen would log in, and then instruct another member of that same team to log in too (as the system required authorisation codes from two individuals), and the payment would be sent. Mr Allen effectively over-rode the payment system and its safeguards by instructing members of the finance team to enter their login details.

17. New Life's internal processes prohibited the making of any loan or advance to any body corporate and also prohibited the disposal of any assets exceeding £50,000

without the approval of the other directors of New Life. Both of those prohibitions were breached by Mr Allen.

18. Mr Allen also fabricated an exchange of emails purportedly between Mr Allen and another director. The email exchange was provided to a colleague of Mr Allen, as evidence claiming to authorise the £75,000 transfer made on 28 June 2012. Further, Mr Allen also falsified a bank statement to mislead New Life's auditors into believing that a payment of £100,000 dated 26 March 2009 from New Life had been made to HMRC (rather than that he had directed the funds to be received by NMB). He did this in order to expedite the signing-off of New Life's accounts.

FAILINGS

19. The statutory and regulatory provisions relevant to this Notice are set out in Annex A.

Failing to act with integrity in carrying out his controlled functions: Statement of Principle 1

20. Mr Allen, as a director of both NMB and New Life, failed to act with honesty and integrity in carrying out his controlled function as an approved person (CF1 Director), in that he deliberately caused New Life to make illegitimate payments to NMB totalling £1,000,000 and fabricated documents in order to procure or conceal some of the money transfers.

Not fit and proper

21. By reason of the facts and matters described above, the Authority considers that Mr Allen lacks honesty and integrity and, therefore, is not a fit and proper person.

SANCTIONS

Financial penalty

22. Given Mr Allen's breach of Statement of Principle 1, the Authority may impose a financial penalty on him pursuant to section 66 of the Act. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to that guidance.

23. Changes to DEPP were introduced on 6 March 2010. Given that Mr Allen's breach occurred both before and after that date, the Authority has had regard to the provisions in DEPP in force before and after that date.

24. The application of the Authority's penalty policy is set out in Annex A to this Notice in relation to:

(1) Mr Allen's breach of Principle 1 prior to 6 March 2010; and

(2) Mr Allen's breach of Principle 1 on or after 6 March 2010.

25. In determining the financial penalty to be attributed to Mr Allen's breach prior to and on or after 6 March 2010, the Authority has had particular regard to the following matters as applicable during each period:

(1) the need for credible deterrence;

(2) the nature, seriousness and impact of the breach;

(3) the applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation; and

(4) serious financial hardship.

26. The penalty calculation in relation to Mr Allen is set out in Annex B to this Notice. Having regard to all the circumstances, the Authority considers that £248,500 (after a 30% Stage 1 discount), is the appropriate financial penalty to impose on Mr Allen. However, having taken into account all the circumstances of the case, including that Mr Allen derived no direct personal benefit from his misconduct and that the Authority considers that Mr Allen has provided verifiable evidence that he would suffer serious financial hardship if he was required to pay any financial penalty at all, the penalty has been reduced to £0.

Public censure

27. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and DEPP 6.4.2G (regarding whether to issue a public censure rather than impose a financial penalty), the Authority considers that a financial penalty would have been an appropriate sanction, given the nature of the breaches, were it not for the fact that Mr Allen has provided verifiable evidence that he would suffer serious financial hardship if any financial penalty were to be imposed. The Authority therefore considers that a public censure is an appropriate sanction. This is in accordance with guidance set out in DEPP 6.4.2G(8)(a).

Prohibition

28. The Authority considers that in light of the conduct described above, Mr Allen is not a fit and proper person as he lacks honesty and integrity, and poses a serious risk to consumers. The Authority, therefore, considers it appropriate to prohibit Mr Allen from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

Decision Maker

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

30. This Final Notice is given to Mr Allen in accordance with section 390 of the Act and it is being served on Mr Allen at his last known address.

Publicity

31. Section 391(1), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as it considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not pubish information if such publication would, in the opinion of the Authority, be unfair to Mr Allen or prejudicial to the interests of consumers.

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

Authority contact

33. For more information concerning this matter contact Stephanie Prowse at the Authority (direct line: 0207 066 9404).

Bill Sillett
Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.

2. The Authority has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes publishing a statement of his misconduct.

RELEVANT HANDBOOK PROVISIONS

Fit and Proper Test for Approved Persons (FIT)

4. FIT sets out the criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

5. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.

Statements of Principle and Code of Practice for Approved Persons (APER)

6. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, do not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

7. APER 2.1.2P sets out Statement of Principle 1 which, at the relevant time, stated that an approved person must act with integrity in carrying out his controlled function.

OTHER RELEVANT REGULATORY PROVISIONS

The Authority's policy on the imposition of financial penalties

8. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP (the penalty analysis in relation to Mr Allen is located at Annex B).

DEPP as applied both before and after 6 March 2010

9. The Authority will consider the full circumstances of each case when determining whether or not to impose a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to impose a financial penalty, which include the following:-

   (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

   (b) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority, the degree of co-operation the person showed during the investigation of the breach, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority.

   (c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.

DEPP as applied on and after 6 March 2010

10. DEPP 6.5D sets out the Authority's approach to serious financial hardship.

11. DEPP 6.5D.1 states that the Authority may consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of the enforcement action to suffer serious financial hardship.

12. DEPP 6.5D.1(2)(a) sets out that the Authority will only consider a reduction if the individual provides verifiable evidence that payment of the penalty will cause them serious financial hardship.

13. DEPP 6.5D.2(1) states that the Authority would consider an individual's ability to pay the penalty over a reasonable period. The Authority's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty.

The Authority's policy for exercising its power to make a prohibition order

14. The Authority's approach to exercising its power to make prohibition orders is set out in Chapter 9 of EG.

15. EG 9.1 states that the Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

ANNEX B

Penalty Analysis

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.

2. Changes to DEPP were introduced on 6 March 2010. Given that Mr Allen's breach occurred both before and after that date, the Authority has had regard to the provisions of DEPP in force before and after that date.

3. The application of the Authority's penalty policy is set out below in relation to:

   (1) Mr Allen's breach of Statement of Principle 1 prior to 6 March 2010; and

   (2) Mr Allen's breach of Statement of Principle 1 on or after 6 March 2010.

4. **Breach of Statement of Principle 1 prior to 6 March 2010**

4.1. In determining the financial penalty to be attributed to Mr Allen's breach prior to 6 March 2010, the Authority has had particular regard to the following:

Deterrence (DEPP 6.5.2G(1))

4.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring individuals who have breached regulatory requirements from committing further contraventions, helping to deter others from committing contraventions and demonstrating generally to individuals the benefits of compliant behaviour.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(2))

4.3. Mr Allen exhibited deliberate and sustained dishonesty over a three year period. In the period prior to 6 March 2010, Mr Allen made four illegitimate transfers from New Life to NMB. The loss to New Life during this period totalled £335,000. Whilst there was no direct risk to consumers as a result of Mr Allen's dishonest actions, Mr Allen abused his positions within NMB and New Life and the trust of his employees in order to cause the transfers of cash from New Life to NMB, for which there was no legitimate basis.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

4.4. Mr Allen has admitted to knowingly causing illegitimate transfers to be made by providing the relevant authority requesting that his employees execute the cash transfers from New Life to NMB. His actions were therefore deliberate.

Whether the person on whom the penalty is to be imposed is an individual (DEPP 6.5.2G(4)) and the financial resources of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

4.5. Information provided by Mr Allen indicates that he has an annual income of less than £14,000 and capital of less than £16,000.

Other action taken by the Authority (or a previous regulator) (DEPP 6.5.2G(10))

4.6. In determining whether to impose a financial penalty on Mr Allen in respect of his breach of Statement of Principle 1, the Authority has taken into account action taken by the Authority in relation to comparable breaches.

4.7. The Authority considers that Mr Allen's breach of Statement of Principle 1 in the period prior to 6 March 2010 (26 March 2009 until 5 March 2010) merits a financial penalty of £65,000 before settlement discount.

4.8. Mr Allen agreed to settle at an early stage of the Authority's investigation. Mr Allen therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. The Authority considers that Mr Allen's misconduct merits a financial penalty of £45,500 in relation to the breach of Statement of Principle 1.

5. **Breach of Statement of Principle 1 on or after 6 March 2010**

5.1. In respect of any breach occurring on or after 6 March 2010, the Authority 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 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.

Step 1: Disgorgement

5.2. Mr Allen gained no direct benefit from the breaches as all the money misappropriated from New Life was paid to NMB and used for the business expenses of NMB.

5.3. The Step 1 figure is therefore £0.

Step 2: Seriousness of the breach

5.4. At Step 2 the Authority determines a figure that reflects the seriousness of the breach (DEPP 6.5B.2G). The Authority will determine a figure which will be based on a percentage of an individual's "relevant income". Relevant income will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred during the Relevant Period.

5.5. The Authority considers Mr Allen's relevant income for the period 6 March 2010 to 29 July 2012 to have been £725,106.

5.6. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

5.7. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers that the following factors are relevant:

Impact of the breach

5.8. The loss to New Life in the period after 6 March 2010 totalled £665,000. However, there was no apparent loss or risk of loss caused to individual consumers or consumers in general.

Nature of the breach

5.9. Mr Allen, who held senior positions at both New Life and NMB, failed to act with honesty and integrity and abused his position of trust within New Life and NMB to facilitate the transfers of monies. Mr Allen's misconduct continued throughout the Relevant Period, involving 14 illegitimate transfers that were made during a three year period (10 of which were made in the period after 6 March 2010). Mr Allen was also an experienced industry professional.

Whether the breach was deliberate or reckless

5.10. Mr Allen has admitted to causing the transfers deliberately, knowing there was no legitimate basis for the transfers of money from New Life to NMB and in the belief that the breach would be difficult to detect. His actions were therefore deliberate.

5.11. Taking all of these factors into account, the Authority considers the seriousness of Mr Allen's breach of Statement of Principle 1 on or after 6 March 2010 to be level 5 and so the Step 2 figure is 40% of £725,106.

5.12. The Step 2 figure is therefore £290,042.

Step 3: Mitigating and aggravating factors

5.13. At Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach (DEPP 6.5B.3G).

5.14. The Authority does not consider there to have been any aggravating or mitigating factors. Therefore the Step 3 figure is £290,042.

Step 4: Adjustment for deterrence

5.15. If the Authority considers the figure arrived at after Step 3 is insufficient to deter the person who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

5.16. The Authority considers that the Step 3 figure of £290,042 represents a sufficient deterrent in the circumstances of this case.

Step 5: Settlement discount

5.17. 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 Authority and Mr Allen reached agreement.

5.18. The Authority and Mr Allen reached agreement at Stage 1 so a 30% discount applies to the Step 4 figure.

5.19. The Step 5 figure is therefore £203,000 (rounded down to the nearest £100).

6. Serious Financial Hardship

6.1. Pursuant to DEPP 6.5D.1G the Authority may reduce the proposed penalty if appropriate, if the penalty would cause the individual serious financial hardship.

6.2. Information provided by Mr Allen indicates that he has an annual income of less than £14,000 and capital of less than £16,000. In light of this, the Authority has reduced the penalty to £0 on the grounds of serious financial hardship.

7. Conclusion

7.1. The Authority considers that £355,000 is an appropriate financial penalty to impose on Mr Allen (before any Stage 1 discount), comprising:

(1) A penalty of £65,000 relating to Mr Allen’s breach of Statement of Principle 1 under the old penalty regime; and

(2) A penalty of £290,042 relating to Mr Allen’s breach of Statement of Principle 1 under the new penalty regime.

7.2. After the Stage 1 discount is applied to the total penalty, the total amount is reduced to £248,500.

7.3. However, the Authority considers that Mr Allen has provided verifiable evidence that he would suffer serious financial hardship if he was required to pay any penalty and as such, the penalty has been reduced to £0.