Financial Services Authority

# FINAL NOTICE

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| **To:** | **Peter Sprung** |
| **Date of Birth:** | **01 January 1953** |
| **IRN:** | **PXS00087** |
| **Date:** | **23 February 2010** |

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Peter Sprung ("Mr Sprung") final notice about a requirement to pay a financial penalty and an undertaking to not perform or make any application to the FSA to be approved for any significant influence function for a period of five years.**

## 1. ACTION

1.1. The FSA gave Mr Sprung a Decision Notice on 7 January 2010 which notified him that the FSA had decided to take the following action:

(1) withdraw the approval given to Mr Sprung, pursuant to section 63 of the Financial Services and Markets Act 2000 ("the Act"), to perform controlled functions involving the exercise of any significant influence function in relation to Park Row Associates Limited ("Park Row" or "the Firm"); and

(2) impose a financial penalty of £49,000 on Mr Sprung, pursuant to section 66 of the Act.

1.2. This penalty is proposed in respect of breaches of Statement of Principle 7 of the FSA's Statements of Principle for Approved Persons between 1 January 2007 and 20 January 2009 ("the Relevant Period").

1.3. Mr Sprung has given an undertaking that he will not perform, or make any application to the FSA to be approved for, any significant influence function (as defined in the FSA Handbook) at any authorised person, exempt person, or exempt professional firm for a period of five years.

1.4. Mr Sprung agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £70,000.

1.5. Mr Sprung confirmed on 24 December 2009 that he will not be referring the matter to the Financial Services and Markets Tribunal.

## 2. REASONS FOR THE ACTION

2.1. The FSA has decided to impose the financial penalty on Mr Sprung for breaches of the FSA's Statement of Principle for Approved Persons 7 in his role as Chief Executive of Park Row during the Relevant Period by failing, as an approved person performing significant influence functions, to take reasonable steps to ensure that the business of Park Row, for which he was responsible in accordance with his controlled functions, complied with the relevant requirements and standards of the regulatory system.

2.2. During the Relevant Period, Mr Sprung held Controlled Functions CF1 (Director) and CF3 (Chief Executive).

2.3. During the Relevant Period, Mr Sprung's conduct fell short of the FSA's prescribed regulatory standards for approved persons in that he:

(1) failed to take sufficient steps to ensure that Park Row and its advisers properly evidenced the suitability of sales and, in some cases, that sales were suitable, in particular with regard to pension advice; advisers providing advice without

authorisation; and the risk of selecting products based on higher commission; and

(2) failed to ensure that systems and controls were adequate to manage the risk of the business and ensure suitability of advice through compliance checks conducted by Park Row's Desk Based Monitoring ("DBM") checks.

2.4. The following considerations are relevant to the seriousness with which the FSA views Mr Sprung's failings:

(1) Mr Sprung failed to ensure that advisers gathered and retained sufficient information throughout the Relevant Period and he failed to recognise that this was systemic in nature;

(2) due to the inadequate recording of customers' personal and financial information (including evidence and reasons for recommendations), it was not possible for Mr Sprung to demonstrate that Park Row advisers had considered the interests of its customers or that its customers had been treated fairly in terms of the suitability of recommendations without extensive remediation exercises being undertaken;

(3) Mr Sprung had been made aware of deficiencies in systems and controls and potential risks to consumers on several occasions and his action was insufficient; and

(4) the potential impact on customers was significant; Park Row and its parent company Royal Liver Assurance Limited ("Royal Liver") has agreed to provide redress to customers, which is estimated to be in the region of £5m to £7.8m.

2.5. Although Park Row did take some steps to rectify the concerns identified by the reports, including restructuring and resourcing its compliance department, these did not adequately address the issues identified.

2.6. By virtue of the matters referred to above, the FSA has concluded that in all the circumstances, it is appropriate to impose a financial penalty on Mr Sprung and to

withdraw the approval given to him to perform the exercise of any significant influence function in relation to Park Row.

## 3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

3.1. The FSA's statutory objectives are as set out in section 2(2) of the Act. The relevant objectives for the purpose of this case are the protection of consumers and maintaining confidence in the financial system.

3.2. The FSA has the power pursuant to section 63 of the Act to withdraw approval from an individual if it considers that the person in respect of whom it is given is not a fit and proper person to perform the function to which the approval relates.

3.3. Section 66 of the Act provides:

*"(1) The Authority [The FSA] may take action against a person under this section if-*

*(a) it appears to the Authority that he is guilty of misconduct; and*

*(b) the Authority is satisfied that it is appropriate in the circumstances to take action against him.*

*(2) A person is guilty of misconduct if, while an approved person –*

*(a) he has failed to comply with a statement of principle issued under section 64…..*

*(3) If the Authority is entitled to take action under this section against a person, it may –*

*(a) impose a penalty on him of such amount as it considers appropriate…"*

3.4. The FSA issued statements of principle under section 64 of FSMA to codify the conduct expected of approved persons.

3.5. Statement of Principle 7 provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm

for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

3.6. APER 4.7 in the FSA Handbook sets out guidance relating to the application of Statement of Principle 7. APER 4.7 states that, inter alia, the following types of conduct do not comply with Statement of Principle 7:

(1) Failing to take reasonable steps to implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of regulated activities and, in certain cases, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls (APER 4.7.3E).

(2) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities (APER 4.7.7E), including, but not limited to:

(a) unreasonably failing to implement recommendations for improvements in systems and procedures; and

(b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner (APER 4.7.8E).

3.7. The FSA's general approach to determining whether to impose a financial penalty and the appropriate level of any such penalty is set out in the Decision Procedures and Penalties Manual ("DEPP"), which is part of the FSA Handbook.

3.8. As set out in DEPP 6.1.2G the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating, generally, to firms and approved persons, the benefit of compliant behaviour.

3.9. DEPP 6.5.2G sets out a non-exhaustive list of thirteen factors that may be relevant to determining the appropriate level of financial penalty. In considering whether to impose a financial penalty and the amount of the penalty to impose, the FSA has also had regard to the provisions of the Enforcement Manual ("ENF") which were also in force during the Relevant Period.

3.10. Guidance relating to withdrawal of approval is contained in the Enforcement Guide ("EG") at EG 9. EG 9.2 provides that the FSA's effective use of the power under section 63 of FSMA to withdraw approval from an approved person will help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function.

3.11. EG 9.9 provides that in deciding whether to withdraw approval the FSA will consider all the relevant circumstances including whether other enforcement action should be taken (EG 9.3). A non-exhaustive list of nine relevant circumstances is given, including:

> *"…*
>
> *(2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);*
>
> *(3) whether and to what extent the approved person has:*
>
> *(a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;*
>
> *(5) The relevance and materiality of any matters indicating unfitness;*
>
> *(7) The particular controlled functions the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and*
>
> *(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system".*

3.12. The FSA Handbook also sets out guidance relating to the Fit and Proper Test for Approved Persons ("FIT"). FIT 1.3.1 G and 1.3.2 G provide as follows:

*"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 will be the person's:*

*(1) honesty, integrity and reputation;*

*(2) competence and capability; and*

*(3) financial soundness"*. (FIT 1.3.1 G)

*"In assessing fitness and propriety, the FSA will also take account the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates."* (FIT 1.3.2 G)

3.13. FIT 2.2.1 G provides that in determining a person's competence and capability, the FSA will have regard to all relevant matters including but not limited to whether the person has demonstrated by experience and training that he is able to perform the controlled function.

## 4. FACTS AND MATTERS RELIED ON

4.1. Mr Sprung is the Chief Executive of Park Row, a national independent financial adviser network; he became authorised as CF1 of Park Row on 1 February 2005 and as CF3 on 2 February 2006. During the Relevant Period Park Row had up to 535 advisers and completed 37,409 regulated sales to approximately 23,688 customers. Park Row is a wholly owned subsidiary of Royal Liver.

4.2. During the Relevant Period, Mr Sprung sat on the following committees in relation to Park Row:

(1) Park Row Group Board (as Chief Executive);

(2) Royal Liver Board (as Director);

(3) Senior Management Team;

(4) Risk Mitigation Programme Steering Group;

(5) Risk Mitigation Programme Working Party; and

(6) Risk Review Committee (although Mr Sprung did not appear to be a permanent member).

***SUITABILITY OF ADVICE***

4.3. During the Relevant Period Mr Sprung received several reports that Park Row did not have sufficient controls in place to ensure that customer files properly demonstrated the suitability of sales and the advice it gave to customers was suitable. The reports alerted Mr Sprung to the risk that the firm was providing customers with unsuitable advice and was not treating customers fairly.

4.4. The DBM function at Park Row performed compliance checks to review and assess the suitability of advice given to customers. DBM performed a sample of post-sale checks based on the risk rating of the product and the adviser.

4.5. The FSA made Mr Sprung aware of its concerns after a Supervisory visit carried out between 23 August and 19 September 2006. The visit resulted in the FSA issuing Park Row with an extensive Risk Mitigation Programme ("RMP") on 18 December 2006 requiring improvements in a number of areas including:

(1) a reduction in the level of DBM backlog and actions to mitigate a DBM backlog occurring again;

(2) a review of training and competence to ensure that the competency of advisers could be maintained;

(3) taking steps to ensure treating customers fairly was implemented;

(4) a review of risk management processes to ensure emerging risks were identified;

(5) actions to ensure that the compliance function was effective and fully embedded;

(6) actions to ensure that management information was adequate to identify weaknesses in the business; and

(7) actions to ensure an adequate internal audit function was in place.

4.6. The Park Row board was also required to provide the FSA with written assurances that these actions had been completed. These written assurances were provided to the FSA on 28 February and 2 April 2007 and were signed by Mr Sprung.

4.7. In 2007 Park Row was required by the FSA to appoint a skilled person ("Skilled Person 1") under section 166 of the Act to review pensions advice cases and a selection of cases which had been rated low and medium risk by Park Row and were therefore subjected to less frequent monitoring. The scope of the review included the adequacy of corporate governance and internal controls relating to the issues identified in the RMP. Skilled Person 1 issued a draft report on 26 July 2007. The draft report showed that not all the required actions in the RMP had been implemented or embedded yet and a further review by Skilled Person 1 was required. A final report was issued on 17 January 2008; the findings of the file review are outlined below:

(1) Skilled Person 1 reviewed 23 high risk cases completed by the Park Row pension and investment specialists, all of which were passed by Park Row compliance checks. Skilled Person 1 found that 12 (52%) of these cases should have been categorised as a fail, as there was insufficient information on file to pass the case. Skilled Person 1 could not conclude whether the sales in the failed cases were suitable or unsuitable. Further, Skilled Person 1 found that 3 (13%) of these cases should have been rejected due to the advice being unsuitable on the evidence provided.

(2) Skilled Person 1 also reviewed 56 low to medium risk cases as categorised by Park Row. Skilled Person 1 found that 19 (34%) of these cases should have been categorised as fail as the DBM check failed to identify issues fundamental to the advice given and therefore led Skilled Person 1 to conclude that not all cases had been checked in a competent manner. Again, Skilled Person 1 could not conclude whether the sales were suitable or unsuitable.

4.8. Mr Sprung stated in relation to the Skilled Person 1 report that he believed that he was responsible as CEO for the implementation of action points.

4.9. The FSA conducted a further Supervisory visit the following year between 11 and 14 March 2008. Following a review of 9 customer files, which raised concerns regarding the quality of compliance file reviews, adviser documentation and the suitability of investments, the FSA requested Park Row appoint an external consultant ("the Consultant") to conduct a quality assurance exercise to review 50 client files. The Consultant completed the review on 5 June 2008, and their findings are outlined below:

(1) the Consultant found that in 13 cases (26%) the advice was suitable;

(2) the Consultant found that in 20 cases (40%) the advice was likely to be suitable but there were gaps in the documentation;

(3) the Consultant found that in 15 cases (30%) there was insufficient evidence to conclude whether the advice given to the customer had been suitable or unsuitable; and

(4) the Consultant found one case (2%) where the advice was likely to be unsuitable.

4.10. Park Row undertook further work on the sample of 50 and the number of cases where advice was unsuitable increased to three (6%).

4.11. The FSA issued an RMP on 1 August 2008 requiring improvement in a number of areas including: actions to ensure Park Row files included appropriate documentation and that its advisers were demonstrating they were treating customers fairly; and improvement of treating customers fairly management information to enable senior management to effectively manage the business. The FSA also required Park Row to appoint an additional skilled person ("Skilled Person 2"). The scope of the review included the quality of the DBM process, the suitability of advice given by Park Row and the effectiveness of senior management in assessing the suitability of advice. The cases for review were selected by the FSA and represented a sample of business written between January 2008 and September 2008.

4.12. Skilled Person 2 reported on 6 January 2009, and the findings of their file review are outlined below:

(1) In 44 (44%) of cases the advice was broadly suitable but the file had failings in terms of documentation. In 12 (12%) of the cases reviewed there was insufficient information on the file to determine if suitable advice had been given to the customer.

(2) In a further 23 (23%) of the cases another product may have been more suitable for the customer.

(3) In 5 (5%) of the cases the evidence on file did not prove the sale to be suitable and 3 (3%) of the cases were deemed to have a high probability of consumer detriment.

4.13. Mr Sprung stated in relation to the Skilled Person 2 report that he was responsible for the implementation of action points from the report.

4.14. A Steering Group and Working Party were established in response to the FSA's RMP dated 18 December 2006 both of which were chaired by Mr Sprung. The Steering Group and the Working Party were established to ensure an adequate response by Park Row to the issues raised. Following subsequent Skilled Person reports and the additional FSA RMP of August 2008, the Steering Group and Working Party sought to address the issues raised in these reports.

4.15. Mr Sprung stated that he gave challenge at the Working Party meeting to the progress of action points, but the FSA has not found evidence of this challenge.

4.16. During the Relevant Period Mr Sprung was made aware, via the FSA RMPs and reports, that it did not have sufficient controls in place to ensure the suitability of advice it was giving to customers. This included pensions advice, advisers providing advice when not authorised and the risk of commission influencing the selection of products.

***Advising when not competent or authorised***

4.17. During the Relevant Period, Park Row identified that there were instances when advisers gave advice when they did not have the required FSA permission to do so or had not been signed off, under Park Row's internal procedures, as competent to undertake such sales. During the period January 2007 to December 2007 Park Row relied on DBM to detect cases where this may have occurred. Advisers in products such as occupational pension transfers required specific training and qualifications to ensure that they could advise competently. Despite being on notice of this risk, by the FSA's RMP dated 1 August 2008, cases that were not checked by DBM were not subject to further checks to identify where advice may have been given on products in which the adviser was not authorised. Where Park Row did identify instances when an adviser gave advice without the required permission or competence, it did not always conduct a review of other cases written by the adviser to determine whether other instances had occurred. The commission made by the adviser on cases where they were not authorised or not assessed as competent was not always clawed back, which did not send the correct message to advisers regarding the seriousness of the breach.

4.18. In an interview with the FSA on 4 August 2009 Mr Sprung stated that he would not expect advisers to keep the commission but he did not believe there were systems and controls in place to claw back the commission.

***Suitability letters***

4.19. As part of the implementation of a new IT system Park Row purchased suitability letters from a third party supplier. These were introduced in January 2008 at the same time as the introduction of the new IT system. Park Row also issued guidance to advisers on the requirements of the suitability letter in a compliance department bulletin, in the context of Self Invested Personal Pension ("SIPP") advice. Mr Sprung stated that he also sent an email to advisers regarding personalisation of the suitability letters. This guidance stated that the template suitability letter for SIPP advice was not sufficient in isolation to demonstrate suitability and it was necessary for advisers to explain in specific terms in any letter issued to the customer why the product was suitable for the customer. Park Row did not recognise that this raised wider issues. In June 2008 the review by the Consultant identified that the suitability letters used by

Park Row advisers did not always demonstrate which products had been discounted and why the product recommended was suitable.

4.20. Despite suitability letters being reviewed by Park Row compliance prior to their use by advisers, Park Row did not identify that the template suitability letter was not adequate to demonstrate suitability of advice. Notwithstanding the fact that it was aware of issues regarding the adequacy of suitability letters in relation to SIPP advice after implementation in January 2008, Park Row failed to take adequate steps to ensure that the suitability letter was used appropriately.

4.21. Mr Sprung sent an email at the end of January 2008 confirming that the suitability letters had to be personalised from the facts gathered on the fact find. Mr Sprung was therefore aware at the end of January that the suitability letter may not have been adequate but he failed to follow up whether the suitability letter was being used appropriately after January. It was only as a result of an FSA required review by the Consultant that issues with the use of the suitability letters were escalated and rectified.

***Commission influence***

4.22. In response to the findings by the Consultant, dated 5 June 2008, Mr Sprung sent an email to advisers dated 25 June 2008, stating there was evidence of advisers seeking higher commission paying pension plans, suggesting commission bias may have occurred. The email made it clear that this was wholly unacceptable and that any adviser found to have done so would be dealt with severely. In addition, Park Row removed the option in the sales process to select the product with the highest paying commission. Park Row did not conduct any further work to determine whether advisers may have selected this option inappropriately and whether there may have been other instances of commission influencing a sale. The report by Skilled Person 2, dated 6 January 2009, concluded that in 19 cases (19%) the level of commission may have influenced the sale. Park Row relied solely on the DBM function to identify instances of commission influence and it did not produce any further management information to monitor where this could be occurring in the business.

4.23. Mr Sprung was aware that advisers may have sought higher commission paying plans but failed to take adequate steps to determine the extent of the problem, whether systems and controls were adequate to detect its occurrence and whether this led to advice to customers being unsuitable.

***Pensions Advice***

4.24. Park Row undertook two compliance audits of pensions advice in October 2007 to review the suitability of SIPP recommendations and personal pension transfer advice. The findings of the SIPP recommendations report were that the vast majority of cases did not demonstrate the customer would use the facilities of the SIPP and the customer may have been more suited to another product, suggesting unsuitable advice could have occurred. The personal pensions transfer advice report found that in some instances there was potentially unsuitable advice or insufficient documentation on file to demonstrate suitable advice. As a result Park Row put future pensions advice on 100% post sale DBM review. It was suggested in the SIPP recommendations report that because recommendations could not be reversed, only future transactions need be placed on pre-approval. There was no wider retrospective review of cases that were not reviewed under the audit. No further work was completed at the time to consider whether unsuitable advice may have occurred elsewhere.

4.25. Despite the SIPP recommendations report of October 2007 which suggested that unsuitable advice may have occurred, the board minutes in January 2008 stated in relation to the SIPP review *"there is no evidence of any mis-selling"*. Given the findings of the compliance audit report, the FSA would not have expected the Park Row Board to have been informed that no mis-selling had occurred. Mr Sprung was a recipient of the compliance audit reports and was in attendance at the Board meeting in January 2008 when the Board was informed of the SIPP review findings. Mr Sprung failed to ensure that the Board was correctly informed of the findings of the SIPP report, namely that customers may have been more suited to another product. Mr Sprung failed to take adequate steps following the findings of the compliance audit reports to ensure that customers had been given suitable advice and had been treated fairly.

4.26. Park Row is now conducting a review of a wider sample of pensions advice following the results of another external review which concluded that of a sample of 94 pension cases 24 (26%) were unsuitable.

***ADEQUACY OF SYSTEMS AND CONTROLS***

***Adviser risk ratings***

4.27. For Park Row's risk based model of case selection to have been fully effective, the results of the DBM checks on individual advisers should have fed back into the cases selected for review so that if it was found that an adviser was not selling compliantly, their sales would be targeted for increased review. Adviser risk ratings were established when a new IT system was launched in January 2008, however they were not updated for 18 months until June 2009.

4.28. Mr Sprung stated that updating adviser risk ratings was not a priority because of the ability to place an adviser on enhanced supervision. Enhanced supervision involved increased DBM checks if an adviser's training and competence supervisor deemed it necessary. However, Park Row's process and procedures setting out the circumstances under which an adviser would be placed on enhanced supervision arising from risk issues were inadequate and unclear; this was also noted by Skilled Person 1. Mr Sprung's reliance on enhanced supervision did not adequately mitigate the need to update adviser risk ratings. Mr Sprung was also unable to adequately explain to the FSA the circumstances in which adviser would be placed on enhanced supervision.

4.29. Mr Sprung was specifically made aware, by a Royal Liver Internal Audit report in October 2008, of the risks Park Row faced by not updating adviser risk ratings. Despite this Mr Sprung did not take reasonable steps to ensure that DBM was adequately selecting advisers for compliance checks based on results of previous checks. Therefore the checks based on adviser risk ratings were not risk based, and the effectiveness of the firm's controls were undermined.

4.30. In his capacity as CF1 and CF3 Mr Sprung was responsible for systems and controls at Park Row but he failed to ensure that the updating of adviser risk ratings was

updated in a timely manner to ensure Park Row advisers were competent and capable of providing customers with suitable advice.

***Remedial work***

4.31. The DBM process required that if a DBM checker failed a case because of insufficient or inadequate documentation then the case would be sent back to that adviser for remedial action, which had to be completed before the file was resubmitted for review by DBM. However the review of files by Skilled Person 2 indicated that the DBM team did not always ensure that remedial work was undertaken by the adviser and cases were often closed without remedial work having been completed or checked. It is the FSA's understanding that in these circumstances the transaction continued to completion without remedial action unless the product required pre-sale approval.

4.32. Mr Sprung stated in response to the concerns raised by Skilled Person 2 *"[Skilled Person 2] may have been perceiving them as being closed because the case had been passed over to the T&C team"*. Further Park Row's response to the Skilled Person 2 report dated 10 June 2009 states that Park Row made revisions to the remedial action procedure to ensure cases involving remedial action were closed only when full and final documentation has been received and checked by DBM, this indicates that revisions were made because Park Row recognised that cases were closed before remedial work had been completed. Mr Sprung took inadequate steps during the Relevant Period to ensure that the advice given by Park Row was supported by information on file to demonstrate suitability of advice.

***Commission claw back***

4.33. In March 2007 Park Row proposed the claw back of commission from advisers when remedial work was not undertaken in a timely manner. Park Row agreed to implement this control in June 2007, however, the IT system in place at the time did not support the ability to claw back commission automatically. Park Row therefore committed to implement the control with the introduction of a new IT system in January 2008. However, a number of IT issues arose which delayed implementation of the control until September 2008. In some instances the adviser was given 90 days to complete remedial work before commission was clawed back. This meant that

advisers had little incentive to ensure documentation supported advice given. During the Relevant Period there was an absence of alternative controls to the claw back of commission at Park Row to ensure that advisers completed remedial work and that files contained sufficient information to demonstrate suitability of advice.

4.34. Mr Sprung was a member of the Senior Management Team that agreed to the claw back of commission with the implementation of the new IT system. Mr Sprung stated that the Senior Management Team approved the principles of the system and the implementation was delegated to an individual member of the Senior Management Team. The Consultant's report refers to the timetable of commission claw back as confirmed by the Senior Management Team. Mr Sprung did not take adequate steps to ensure that automated commission claw back was possible which led to significant delays in the implementation of the control. If the control had been implemented when intended, advisers would have been required to complete remedial work or forfeit commission. Effective implementation would also have allowed the DBM team more time to complete new case checks instead of chasing advisers to complete remedial work.

4.35. In his capacity as CF1 and CF3 Mr Sprung was responsible for systems and controls at Park Row but he failed to ensure the timely implementation of commission claw back, a key control to ensure remedial work was completed.

***Review of sales backlog***

4.36. During 2006 Park Row had a substantial back log of up to 3,200 cases requiring DBM checks. This concern formed part of the FSA's RMP in 2006, and Park Row cleared the backlog by June 2007 by using outsourced case checkers. Mr Sprung wrote to the FSA on 2 April 2007 stating that the board had taken steps to ensure that no similar backlog of case checking would reoccur. In July 2008 a further backlog of cases developed. Park Row attempted to clear the backlog by using internal resource during July 2008 but outsourced again in August 2008 when it became apparent that internal resource was insufficient to address the issue. The backlog was not cleared until November 2008.

4.37. In his capacity as CF1 and CF3 Mr Sprung was responsible for systems and controls at Park Row and despite his assurance to the FSA on 2 April 2007 he failed to take reasonable steps to ensure that Park Row's systems and controls were adequate to ensure a further backlog would not reoccur. Further when the second backlog occurred Mr Sprung did not take adequate steps to address it in a timely manner.

***Level of checks reduced***

4.38. In July 2008, Park Row took the decision to reduce the level of DBM case checks from approximately 35% to 25% of the cases submitted. Part of the reason for this decision was resource constraints in the DBM team, which had also led to the case backlog referred to above. This decision was taken against the background of ongoing issues with DBM compliance checks, and the poor results from the suitability reviews, as highlighted by the FSA and reports.

4.39. Mr Sprung was aware of concerns with the DBM compliance checks from the FSA and the reports, in particular that files failed to contain information to support the advice given. Despite these concerns Mr Sprung allowed the DBM checking levels to be reduced. Mr Sprung stated that a reassessment of the risk selection of cases for DBM checks was the reason for the decision to reduce the level of checks, not resource constraints. The Board minutes for 15 September 2008 included a discussion of the level of checks DBM undertake. The minutes record while the 25% proposed was deemed to be a fair risk-based sample, the need to review the level of checks was because the existing level of checks was difficult to achieve given resource levels in DBM.

4.40. In his capacity as CF1 and CF3 Mr Sprung was responsible for systems and controls at Park Row but he failed to ensure that the level of checks undertaken by the DBM team was adequate effectively to monitor the quality and suitability of advice to customers, posing the risk that unsuitable advice was given and not picked up by the DBM process.

## 5. ANALYSIS OF BREACHES

5.1. The failures summarised above represent a failure by Mr Sprung to comply with Statement of Principle 7 for Approved Persons, as he did not take reasonable steps to

ensure that the business of Park Row for which he was responsible in his controlled function complied with the relevant requirements and standards of the regulatory system.

5.2. The findings of the reports over a sustained period demonstrate that despite his role as the Chief Executive and Chair of the Steering Group and the Working Party, Mr Sprung failed to take reasonable steps to implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system, in particular:

(1) Mr Sprung did not take adequate steps to ensure that systems and controls in place were adequate to demonstrate suitability of advice and that customers were treated fairly. Where files were checked by DBM Mr Sprung failed to ensure that the checks were adequate to detect unsuitable advice;

(2) Mr Sprung was on notice via the FSA's RMP dated 1 August 2008 of concerns regarding advisers giving advice when not authorised to do so. In his capacity as CF1 and CF3 Mr Sprung was responsible for systems and controls at Park Row but he failed to ensure robust systems and controls were introduced and in place to detect cases that may not have been identified by DBM checks or through other controls. Mr Sprung failed to ensure that where instances were identified of advisers giving advice when not authorised, steps were taken to identify whether there were further occurrences. Mr Sprung did not ensure that commission was clawed back from the advisers;

(3) Mr Sprung was aware at the end of January 2008 that suitability letters may not have contained sufficient information to demonstrate suitability of advice. Mr Sprung failed to take reasonable steps to tackle this;

(4) Mr Sprung was aware of advisers seeking plans paying higher commission and did not take adequate steps to determine whether this occurred elsewhere and whether customers were not being treated fairly;

(5) Mr Sprung was aware that unsuitable advice and insufficient documentation to support advice was occurring with regard to pension advice. Mr Sprung failed

to ensure that he took reasonable steps to understand what systems or procedures failed and the reason for those failures;

(6) Mr Sprung was on notice via the Royal Liver Internal Audit report in October 2008 that adviser risk ratings had not been updated. Despite this Mr Sprung failed to ensure that adviser risk ratings were updated in a timely manner and his reliance on enhanced supervision did not adequately mitigate the failure to update the adviser risk ratings;

(7) Mr Sprung did not take adequate steps to ensure that where advisers were required to complete remedial work, sufficient systems and controls were in place to ensure this was completed prior to a case being closed;

(8) Mr Sprung formed part of the Senior Management team that agreed to the implementation of commission claw back in January 2008. However, it was not until September 2008 that the control was actually implemented. Mr Sprung failed to ensure that the commission claw back control was implemented in a reasonable amount of time;

(9) Mr Sprung gave an assurance to the FSA on 2 April 2007 that adequate steps had been taken to ensure no backlog of case checking would reoccur. Mr Sprung failed to ensure that adequate systems and controls were in place as a further backlog did reoccur in July 2008; and

(10) Despite increased regulatory scrutiny and the reports suggesting DBM checks were not adequate, Mr Sprung failed to ensure that the level of DBM checks conducted was appropriate to manage the risk of the Park Row.

5.3. In concluding that Mr Sprung failed to comply with Statement of 7 for Approved Persons, the FSA considers that his conduct falls well below the standard expected of approved persons performing significant influence functions.

## 6. ANALYSIS OF THE SANCTION

6.1. In concluding that Mr Sprung failed to comply with Statement of Principle 7 for Approved Persons, the FSA considers that his conduct falls well below the standard expected of approved persons performing significant influence functions.

6.2. For the reasons set out above, Mr Sprung did not demonstrate the degree of competence expected under the regulatory system in carrying out his controlled functions. Such failings seriously undermined the protection and fair treatment of Park Row's customers and confidence in the financial services industry.

6.3. Accordingly, the FSA considers it necessary to impose a financial penalty on Mr Sprung and to withdraw the approval given to him to perform the exercise of any significant influence function in relation to Park Row.

*Withdrawal of approval*

6.4. As set out at paragraphs 3.10 to 3.13 above, in considering whether to withdraw Mr Sprung's approval to perform the exercise of any significant influence function in relation to Park Row, the FSA has had regard to the provisions of the FSA's Enforcement Guide ("EG") and in particular the provisions of EG 9.9. The FSA has also had regard to the provisions of its Handbook in force during the Relevant Period.

6.5. The FSA considers that in breaching Statement of Principle 7 for Approved Persons in the manner described Mr Sprung has demonstrated a lack of competence in relation to the performance of his significant influence controlled functions.

6.6. As a result, having regard to the provisions of FIT, the FSA concludes that Mr Sprung is not a fit and proper person to perform a significant influence function in relation to Park Row.

6.7. Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA therefore considers it necessary to withdraw the approval given to Mr Sprung to perform the exercise of any significant influence function (as defined in the FSA Handbook) at Park Row. In addition, Mr Sprung has given an undertaking that he will not perform, nor make any application to the FSA to be approved for, any

significant influence function (as defined in the FSA Handbook) at any authorised person, exempt person, or exempt professional firm for a period of five years from the issue of the Final Notice.

*Financial penalty*

6.8. As referred to at paragraphs 3.7 to 3.9 above, the FSA's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook and came into force on 28 August 2007. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"). The FSA has had regard to both DEPP and ENF as both manuals applied at separate times during the Relevant Period. Both manuals set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have committed breaches from committing further breaches and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

6.9. In determining whether a financial penalty is appropriate, and, if so, its level, the FSA is required to consider all relevant circumstances of a case. The FSA will consider a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty.

6.10. The FSA considers that the following factors are particularly relevant in this case.

**Deterrence**

6.11. A financial penalty would deter Mr Sprung from further breaches of regulatory rules and Principles. Equally, Senior Management in other firms will be deterred from following Park Row's practices and this will promote the message to the industry that the FSA expects Senior Management to maintain high standards of regulatory conduct.

**The nature, seriousness and impact of the breach in question**

6.12. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious or systemic failings in Park Row's systems and controls and the number of customers who were affected and/or placed at risk of loss. For the reasons set out at paragraph 2.4 above, the FSA considers that the breaches identified in this case are of a serious nature.

6.13. During the Relevant Period, there were up to 535 advisers within the Park Row umbrella. In the Relevant Period, Park Row completed 37,409 regulated sales to approximately 23,688 customers. The net commissions and fees generated by Park Row during the Relevant Period amounted to approximately £10,385,000.

**The extent to which the breach was deliberate or reckless**

6.14. The FSA has considered the extent to which Mr Sprung's actions were reckless or deliberate. The FSA has not determined that Mr Sprung deliberately or recklessly contravened regulatory requirements.

**Financial resources and other circumstances of the individual**

6.15. In determining the level of penalty, the FSA has been mindful of Mr Sprung's financial circumstances. The FSA considers that a penalty of £49,000 (reduced from £70,000 as a result of a discount of 30% for early settlement) is appropriate. There is no indication that Mr Sprung is unable to afford the financial penalty.

**The amount of benefit gained or loss avoided**

6.16. Mr Sprung received remuneration of approximately £233,000 from Park Row during the Relevant Period.

**Conduct following the breach**

6.17. Mr Sprung has co-operated fully with the FSA's investigation and has given an undertaking that he will not perform, nor make any application to the FSA to be approved for, any significant influence function (as defined in the FSA Handbook) at

any authorised person, exempt person, or exempt professional firm for a period of five years from the issue of the Final Notice.

**Disciplinary record and compliance history**

6.18. Mr Sprung has not previously been subject to disciplinary action by the FSA.

**Other action taken by the FSA**

6.19. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour**.**

## 7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

## 8. IMPORTANT

8.1. This Final Notice is given to Mr Sprung in accordance with section 390 of the Act.

**Manner of and time of payment**

8.2 The financial penalty must be paid in full by Mr Sprung to the FSA by no later than, 14 days from the date of the Final Notice.

**If the financial penalty is not paid**

8.2. If all or any part of the financial penalty is outstanding on 10 March 2010, the FSA may recover the outstanding amount as a debt owed by Mr Sprung due to the FSA.

**Publicity**

8.3. 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 a 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 Mr Sprung or prejudicial to the interests of consumers.

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

**FSA contacts**

8.5. For more information concerning this matter generally, you should contact Suzanne Burt of the Enforcement and Financial Crime Division of the FSA (direct line: 020 70661062).

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Georgina Philippou
FSA Enforcement and Financial Crime Division