This decision notice has been referred to the Upper Tribunal to determine whether to dismiss the reference or remit it to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

DECISION NOTICE

To:	**Robert Finch**
IRN:	**RAF01127**
Date:	**4 July 2025**

1. ACTION

1.1. For the reasons given in this Decision Notice the Authority has decided to:

(1) publish a statement of Robert Finch's misconduct for breaching Statement of Principle 1, pursuant to section 66 of the Act; and

(2) make an order prohibiting Robert Finch from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, pursuant to section 56 of the Act.

1.2. The Authority considers that Robert Finch's misconduct merits the imposition of a financial penalty. Had Robert Finch not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship, the Authority would have imposed a financial penalty of £169,800 on him.

2. SUMMARY OF REASONS

2.1. Robert Finch was appointed a director and Chief Executive of AFL Insurance Brokers Limited ("AFL") (now known as Ambon Brokers Limited ("Ambon")) on 22 January 2009 and resigned from this position on 4 May 2020.

2.2. Robert Finch also held the CF1 Director controlled function at AFL from 19 February 2009 until 1 August 2019.

2.3. AFL was a wholesale insurance broker and its customers were other brokers. AFL was authorised by the Authority on 14 January 2005 and remains authorised by the Authority (as Ambon). AFL had permission to carry out a number of regulated activities in respect of insurance, consumer credit, and investments and was permitted to hold and control client money.

2.4. On 14 September 2017, Robert Finch's father, ("Alec Finch"), sold 58% of the share capital of AFL, which he owned, to Next Generation Holdings Limited ("NGHL") for £2,119,900. Whilst his father was divesting himself of his shares, Robert Finch's own shareholding increased and by 2 January 2018, he held 22% of the share capital of AFL.

2.5. On 21 August 2020, after the discovery of a significant deficit in AFL's client money account, AFL and NGHL commenced High Court proceedings against Robert Finch (and others) for loss and damages. The claim centered on the allegations that NGHL was the victim of fraud by Robert Finch (and others) and that a false picture was given of AFL's financial position. A list of debtors provided before the sale overstated the sums then owed to AFL. It was claimed that a list of debtors provided to NGHL before the sale overstated the sums then owed to AFL and that, contrary to the company accounts, there was a deficit of £3.51m in AFL's client money account.

2.6. On 27 September 2023, HHJ Johns KC handed down judgment in the claim in the High Court. The key findings from the Judgment are as follows:

(1) there was a significant deficit in the client money account of AFL;

(2) the significant deficit was there at the time Alec Finch sold his shares to NGHL in 2017 and Robert Finch was aware of the deficit at the time of the sale (as was Alec Finch);

(3) AFL was insolvent from at least 30 June 2014;

(4) there was a "*major fraud*" by Robert Finch (and others) on NGHL;

(5) Robert Finch (and others) wrongfully used client money and made "*improper withdrawals*" from the account, moving money "*illegitimately*" to AFL's office account in order to pay business expenses;

(6) there was a series of false accounting accruals which Robert Finch was "*intimately involved in the detail of*" which served to distort and improperly inflate the stated income and the balance sheet of AFL;

(7) Robert Finch acted dishonestly and made fraudulent misrepresentations to NGHL in 2017 about AFL's debtors and that the debts were real and recent, and these misrepresentations induced NGHL to purchase Alec Finch's shares;

(8) Robert Finch knew by using client money to pay business expenses that AFL was not conducting its business in accordance with the Authority's regulations;

(9) Robert Finch breached section 172(1) Companies Act 2006 (duty to promote the success of the company) with regards to AFL;

(10) NGHL and AFL suffered loss and damage as a result of Robert Finch's "*unlawful actions*" and Robert Finch deliberately acted with others to injure NGHL; and

(11) Robert Finch (with Alec Finch) was the "*driving force*" behind all elements of the fraud.

2.7. Robert Finch produced evidence to the Authority not available to HHJ Johns KC which he claimed showed that the figure of £130,000 was incorrect as accounts of AFL produced after the trial indicated that sums larger than £130,000 remained in the client account. The Authority considers that, whether that assertion is correct or not, there remained a significant deficit in the client account once funds had been paid in and it relies on the finding of HHJ Johns KC that following the payment there was a deficit which the Authority considers is significant. This is the case whether the amount left was £130,000 or the higher amount indicated in the accounts.

2.8. This Notice focuses on misconduct from 30 June 2014, the point in time from when HHJ Johns KC determined AFL to have been insolvent, and 14 September 2017, the date of the transaction referred to in paragraph 2.4 (the period between these dates being "the Relevant Period").

2.9. As a result of his conduct during the Relevant Period, Robert Finch failed to act with integrity and breached Statement of Principle 1. The Authority has decided to publish a statement of Robert Finch's misconduct, pursuant to section 66 of the Act. It would have imposed a financial penalty of £169,800 for this breach, had he not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship.

2.10. The Authority considers that Robert Finch is not a fit and proper person because he lacks honesty and integrity, and he poses a risk to consumers and to the integrity of the UK financial system. The Authority has decided to make an order prohibiting Robert Finch from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, pursuant to section 56 of the Act.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

"accruals" means a method of recording an expense that was incurred in one accounting period but not paid until a future accounting period;

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

"AFL" means AFL Insurance Brokers Limited, which changed its name to Ambon on 13 April 2021;

"Ambon" means Ambon Brokers Limited;

"the Authority" means the Financial Conduct Authority;

"CASS" means the Client Assets Sourcebook, part of the Handbook;

"DEPP" means the Decision Procedure and Penalties Manual part of the Handbook;

"ENFG" means the Authority's Enforcement Guide set out in the Handbook;

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

"the Judgment" means the judgment from HHJ Johns KC in (1) Next Generation Holdings Limited (2) Ambon Brokers Limited -and- (1) Alec Finch (2) Robert Finch and (3) another, dated 27 September 2023;

"NGHL" means Next Generation Holdings Limited;

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"the Relevant Period" means the period between 30 June 2014 and 14 September 2017;

"Statements of Principle" means the Statements of Principle and Code of Practice for Approved Persons;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"the Warning Notice" means the Warning Notice issued to Robert Finch dated 19 December 2024.

4. FACTS AND MATTERS

4.1. The following facts and matters are taken from the Judgment of HHJ Johns KC, dated 27 September 2023, referred to above. The Authority relies upon the findings in the Judgment in support of its action with the caveat referred to in paragraph 2.7.

4.2. AFL was a wholesale insurance broker. Its customers were other insurance brokers. AFL would place risks with insurers in the Lloyds market for retail brokers unable to place risk themselves.

4.3. AFL's main source of revenue was from commission. Typically, AFL would receive a premium from a retail broker (often after deduction of the retail broker's commission), deduct its own commission, and pass the resulting net premium onto the insurer.

4.4. To be able to conduct its business AFL was required to be authorised by the Authority. As part of that authorisation, AFL was required when handling client money to comply with Chapter 5 of CASS. Client money is held on statutory trusts and CASS 5 required, amongst other things, client money to be held separately from the company's own money (unless otherwise permitted), and that the total amount of client money held for each client was positive; that is, sufficient amount held for that client to meet that client's entitlement. Further, and as part of those requirements, client money calculations were to be carried out at least every 25 days, with any surplus revealed being paid out to AFL and any deficit revealed being made good by a payment in by AFL to the client account.

4.5. NGHL wished to purchase shares in AFL in 2017, making an offer to Alec Finch on 14 April 2017 which was followed by a period of due diligence. As part of the due diligence process, Robert Finch, as the Chief Executive of AFL, had a meeting with NGHL on 6 July 2017. NGHL and AFL entered into a share purchase agreement on 14 September 2017 pursuant to which Alec Finch sold 58% of the share capital of AFL, which he owned, to NGHL for £2,119,900.

4.6. In April and May 2020, an employee of AFL (who joined the firm in 2019 and who had not worked at AFL in the period before NGHL purchased its shareholding), who was working on the company accounts, identified that accruals of income had been incorrectly posted in AFL's financial records. The employee also identified that client money calculations had been consequentially amended to enable transfers from AFL's client account to its office account. The result of these actions was a significant deficit in the client money account.

4.7. The shortfall in the client money account was present before the sale of shares to NGHL in 2017, but was not known to NGHL at the time. It was, however, known to Robert Finch.

4.8. The client money was being taken by means of a series of false accruals, being accruals which had no proper basis, which were then used in the client money calculations resulting in the transfer of money to AFL's office account, and later replacement of these accruals with even larger ones. The false accruals were hidden by a misleading netting off process when the accruals were made which meant that huge debtor figures were not seen in the accounts (and therefore not visible to auditors or potential buyers or investors).

4.9. An example of a false accrual was described in HHJ Johns KC's Judgment:

> "*There was an accrual entered on 16 December 2015 in the sum of 42,000 EUR. Board minutes from the following June [2016] referred to: "business wins on the Danish pig product". The broker concerned … asked by email on 27 July 2016 for this reference to be removed as the account had not been won. But AF [Alec Finch] emails BF [Robert Finch] that same day to say, "I think we need the minute to justify the accrual". I conclude from those emails, and the fact there is no evidence of any income received referable to this accrual, that there was no proper basis for this accrual. It is also apparent from the emails that that was known to BF and AF.*"

4.10. The consequence of the false accruals was money would have been taken out of the client money account as commission which never became properly due and was not replaced. AFL had in fact been cash flow and balance sheet insolvent since at least 30 June 2014 and it was only the false accruals and wrongful extraction of client money which prevented this from being detected.

4.11. When Robert Finch, in his capacity as director and Chief Executive for AFL, met NGHL as part of the due diligence process on 6 July 2017, NGHL was provided with details of AFL's debtors that were not genuine and which were in fact untrue. This fact was known to Robert Finch as he had been involved in the preparation of the information and he knew that the debts were not actual debts and that the money the debts referred to was not in fact owed to AFL.

4.12. Following the discovery of the significant deficit in the client money account (referred to at paragraph 4.6 of this Notice), NGHL and AFL commenced legal proceedings against Robert Finch and others on 21 August 2020. The legal bases on which the claim was put were: (i) dishonest and fraudulent breach of warranty; (ii) fraudulent misrepresentations; (iii) breach of duties owed to AFL; and (iv) unlawful means conspiracy.

4.13. Between July and October 2020, AFL raised a sum totalling £3.64m which was required to make good the shortfall in cash held on trust for customers in the client account. This money was then paid into the client account to address the shortfall with funds being paid out to insurance creditors. With all creditors being paid, it was found that there was just £130,000 remaining in the client account by the end of the exercise and it was possible to determine the size of the deficit in the client account, £3.51m.

4.14. Parts of AFL's business have since been sold and the remainder is in solvent wind-down.

4.15. On 27 September 2023, HHJ Johns KC determined the legal claim against Robert Finch in NGHL's and AFL's favour, finding Robert Finch liable in respect of each of the heads of claim that related to his actions (as listed at paragraph 4.12 above).

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

Breach of Statement of Principle 1

5.2. By reason of the facts and matters above, during the Relevant Period and whilst holding controlling function CF1, Robert Finch breached Statement of Principle 1.

5.3. Robert Finch failed to act with honesty and integrity in his role at AFL as, amongst other things, and at a time AFL was insolvent, he was engaged in a major fraud, misused client money, oversaw the creation of false accruals, acted dishonestly and made fraudulent misrepresentations as to the financial position of AFL to NGHL and AFL's accountants and auditors, and knew by using client money to pay business expenses that AFL was not conducting its business in accordance with the Authority's regulations.

Not fit and proper

5.4. The Authority considers Robert Finch's actions during the Relevant Period, as described in this Notice, demonstrate that he lacks fitness and propriety because he lacks honesty and integrity.

6. SANCTION

Financial penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct 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 that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. The Authority has not identified any financial benefit that Robert Finch derived directly from the breach.

6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach. "Employment" includes, but is not limited to, employment as an advisor, director, partner or contractor (DEPP 6.5B.2G(1)).

6.6. The period of Robert Finch's breach was from 30 June 2014 to 14 September 2017. The Authority considers Robert Finch's relevant income for this period to be £212,366.

6.7. 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 40%. 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%

6.8. 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.

<u>Impact of the breach</u>

6.9. DEPP 6.5B.2G(8) sets out factors relating to the impact of the breach. Of these, the Authority considers the following factor to be relevant to Robert Finch's breaches: the breach caused a significant loss to NGHL and AFL (DEPP 6.5B.2G(8)(c)).

<u>Nature of the breach</u>

6.10. DEPP 6.5B.2G(9) sets out factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to Robert Finch's breaches:

(1) the Authority's CASS rules are an essential aspect of the Authority's regulatory framework and designed to protect client money (DEPP 6.5B.2G(9)(a) and (n));

(2) the breaches were frequent and prolonged, taking place over many years (DEPP 6.5B.2G(9)(b);

(3) Robert Finch facilitated a large-scale fraud (DEPP 6.5B.2G(9)(c) and (d));

(4) Robert Finch failed to act with integrity (DEPP 6.5B.2G(9)(e)); and

(5) Robert Finch was an experienced industry professional holding a senior position of trust at AFL which he abused (DEPP 6.5B.2G(9)(f), (j) and (k)).

6.11. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(1) the breach caused a significant loss to NGHL and AFL/Ambon (DEPP 6.5B.2G (12)(a));

(2) a large-scale fraud was committed by Robert Finch (DEPP 6.5B.2G(12)(b));

(3) Robert Finch failed to act with integrity (DEPP 6.5B.2G(12)(d));

(4) Robert Finch abused a position of trust (DEPP 6.5B.2G(12)(e)); and

(5) the breach was committed deliberately (DEPP 6.5B.2G(12)(g)).

6.12. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 and 3 factors'. The Authority considers none of these factors apply.

6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £212,366.

6.14. Step 2 is therefore £84,946.

Step 3: mitigating and aggravating factors

6.15. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.16. The Authority has not identified any such factors. The Step 3 figure is therefore £84,496.

Step 4: adjustment for deterrence

6.17. Pursuant to DEPP 6.5B.4G, if the Authority 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 Authority may increase the penalty.

6.18. The Authority has considered the seriousness of the misconduct, including that Robert Finch was engaged in a major fraud, misused client money, oversaw the creation of false accruals, acted dishonestly and made fraudulent misrepresentations as to the financial position of AFL to NGHL and AFL's accountants and auditors, and knew by using client money to pay business expenses that AFL was not conducting its business in accordance with the Authority's regulations. Given these factors, the Authority considers that the figure arrived at after Step 3 does not represent a sufficient deterrent to Robert Finch and others and considers that the Step 3 figure of £84,496 should be increased, applying a deterrence uplift of a multiple of 2, to £169,893 to represent a sufficient and credible deterrent.

6.19. The Step 4 figure is then rounded down to the nearest £100, and therefore £169,800.

Serious financial hardship

6.20. Pursuant to DEPP 6.5D.2G, the Authority may reduce the amount of a penalty if appropriate, if an individual will suffer serious financial hardship as a result of having to pay a penalty.

6.21. Robert Finch has provided verifiable evidence to satisfy the Authority that the payment of a financial penalty of any amount would cause him serious financial hardship. The Authority considers it appropriate to take Robert Finch's financial position into account and the financial penalty of £169,800 (to be reduced by 100%).

6.22. As a result of serious financial hardship, the penalty figure at Step 4 is therefore £0, reducing the Step 5 figure to £0 for serious financial hardship.

Step 5: settlement discount

6.23. Pursuant to DEPP 6.5B.5G, if the Authority 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 Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1 (in this case there is no disgorgement).

6.24. There has been no settlement between the Authority and Robert Finch and no discount applies to the Step 4 figure.

6.25. However, in the light of Robert Finch's serious financial hardship, Step 5 is £0.

Penalty

6.26. The Authority therefore has not imposed a financial penalty on Robert Finch for breaching Statement of Principle 1. Pursuant to DEPP 6.4.2G, the Authority hereby issues a statement of misconduct to Robert Finch in the form of this Notice.

Prohibition

6.27. The Authority has power to prohibit an individual under section 56 of the Act if it appears to the Authority that the individual is not a fit and proper person.

6.28. Considering the serious nature of Robert Finch's misconduct, involving a lack of honesty and integrity, the Authority considers that Robert Finch is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional form. The Authority considers that it is therefore appropriate and proportionate in the circumstances to impose a prohibition order on Robert Finch under section 56 of the Act in those terms.

6.29. In imposing a prohibition order on Robert Finch, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority considers that the seriousness of Robert Finch's misconduct, which involved him, amongst other things, engaging in fraud and illegitimately using client money causing a significant deficit, is such that Robert Finch poses a serious risk to confidence in the UK financial system and a risk to consumers. The Authority considers that it is appropriate to impose a prohibition order on Robert Finch in order to advance the Authority's operational objectives of protecting and enhancing the integrity of the UK financial system and protecting consumers.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by Robert Finch, in response to the Warning Notice and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken account of all of the representations made by Robert Finch, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to Robert Finch under sections 57 and 67 and in accordance with section 388 of the Act.

8.2. The following statutory rights are important.

Decision maker

8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

https://www.fca.org.uk/about/committee/regulatory-decisions-committee-rdc

The Tribunal

8.4. Robert Finch has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Robert Finch has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gov.uk).

8.5. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

8.6. A copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Gareth Buttrill at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

8.7. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

8.8. Section 394 of the Act applies to this Notice.

8.9. The person to whom this Notice is given has the right to access:

(1) the material upon which the Authority has relied in deciding to give this

Notice; and

(2) any secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

8.11. The Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. A Decision Notice or Final Notice may contain reference to the facts and matters contained in this Notice.

Authority contacts

8.12. For more information concerning this matter generally, contact Gareth Buttrill at the Authority (email: gareth.buttrill@fca.org.uk).

Alison Potter
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Authority's operational objectives, set out in section 1B(3) of the Act, include securing the appropriate degree of protection for consumers (section 1C of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).

2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that they are guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against them. A person is guilty of misconduct if, while an approved person, they have failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

Relevant regulatory provisions

Statements of Principle and Code of Practice for Approval Persons

4. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act and, from 7 March 2016, section 64A.

5. Statement of Principle 1 states:

   "*An approved person must act with integrity in carrying out his accountable functions.*"

6. During the Relevant Period, accountable functions are in summary: the Authority's controlled functions; the Prudential Regulatory Authority's controlled functions; and any other functions in relation to the carrying on of a regulated activity; in relation to the authorised persons in relation to which that person is an approved person.

The Fit and Proper Test for Approved Persons

7. The part of the Authority's Handbook entitled "*The Fit and Proper Test for Approved Persons*" ("FIT") sets out the criteria that the Authority will consider when 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.

8. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person, as more particularly described in FIT 2. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

9. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the Authority will have regard to all relevant matters, including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the UK or elsewhere.

10. FIT 2.1.3G sets out a non-exhaustive list of the matters referred to in FIT 2.1.1G which the Authority will have regard to in determining a person's honesty and integrity, including the following:

    (2) whether the person has been subject to any adverse finding of any settlement in civil proceedings, particularly in connection with investment of other financial business, misconduct, fraud or the formation or management of a body corporate;

    (5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies; and

    (10) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censure or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately.

Enforcement Guide

11. The Authority's policy in relation to prohibition orders is set out in Chapter 5 of ENFG.

12. ENFG 5.1G states that the Authority may exercise this power where it considers that, to achieve any of its statutory 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.

13. ENFG 5.2G sets out the Authority's general policy on making prohibition orders. In particular:

    - ENFG 5.2.1G states that the Authority will consider all relevant circumstances;

    - ENFG 5.2.3G states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant; and

    - ENFG 5.2.4G states that the scope of a prohibition order will depend on, among other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.

14. ENFG 5.3.5G sets out examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person, including the following: (3) severe acts of dishonesty.

15. ENFG 5.4.1G states that where the Authority is considering making a prohibition order against an individual who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory

objectives.

16. ENFG 5.4.1G provides that, when considering whether to exercise its power to make a prohibition order against an individual who is not an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in ENFG 5.3.2G. Those factors include: (2) whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2, and 2.3); (5) the relevance and materiality of any matters indicating unfitness; (6) the length of time since the occurrence of any matters indicating unfitness; and (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

DEPP

17. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

ANNEX B

Robert Finch's Representations

1. A summary of the key representations made by Robert Finch, and of the Authority's conclusions in respect of them (in bold type), is set out below.

Reliance on the Judgment

2. Robert Finch acknowledged the decisions made within the judgment from HHJ Johns KC in (1) Next Generation Holdings Limited (2) Ambon Brokers Limited [together "the Claimants"] -and- (1) Alec Finch (2) Robert Finch and (3) another ("Ms D"), dated 27 September 2023 ("the Judgment")[1] and the outcome of these proceedings. Robert Finch asserted that it is inappropriate for the Authority to solely rely on the outcome of a civil case in these particular circumstances when considering the allegations of misconduct and the proposed enforcement outcome.

3. It was inappropriate for the Authority to simply rely on the Judgment to justify its findings without carrying out its own fair and independent enquiries. The Authority has been aware of significant unresolved issues which are set out below. Some straightforward investigatory steps, separate from solely relying on the Judgment, should have been undertaken by the Authority, including: (1) interviewing Alec Finch and Robert Finch; (2) questioning the roles of individuals central to the allegations against Alec Finch and Robert Finch who had not been produced as witnesses in the court proceedings; and (3) considering the substantial body of material that had been unheard and unresolved.

4. Robert Finch asserted that the Authority has independent duties but its unwavering reliance on the Judgment, together with the dismissal of Robert Finch's concerns with the flawed reasoning within the Judgment, suggests a lack of objectivity and a potential confirmation bias. The Authority has adopted a stance more akin to an ordinary litigant rather than, as it is required, to assist the Tribunal to reach the correct outcome in the public interest. This includes calling relevant evidence, even if it might exculpate the individuals under investigation. The stance, of simply adopting the findings of a private civil dispute without further investigation, falls short of this crucial obligation. Robert Finch considered that this lack of objectivity and fairness has similarities for which the Authority had been previously criticised by the Tribunal in other cases[2].

5. Whilst Robert Finch accepted that it is permissible for the Judgment to be utilised as evidence to support the Authority's findings, it is not acceptable and unsafe for it to be relied upon in the way that has occurred in this case by the Authority due to the significant unresolved matters; misunderstood and ignored expert evidence; and compelling new evidence, which are set out below.

6. Robert Finch asserted that the Judgment was flawed for a number of reasons. These include the following: (1) The Court made an error in its finding that there was a client money deficit of £3.51m; (2) Unhelpful parts of Ms D's evidence, in respect of the existence and amount of any client money hole, were ignored; (3) Robert Finch's

[1] [2023] EWHC 2383 (Ch). https://www.bailii.org/ew/cases/EWHC/Ch/2023/2383.html
[2] Robert Finch referred to: *(1) Hussein v Financial Conduct Authority [2016] UKUT 0549 (TCC); (2) Alistair Burns v Financial Conduct Authority; [2019] UKUT 0019 (TCC); (3) Forsyth v Financial Conduct Authority and another [2021] UKUT 0162 (TCC) and (4) Seiler and another v Financial Conduct Authority [2023] UKUT 00270 (TCC).*

expert evidence was misunderstood, or entirely disregarded, by the Court; (4) The Court failed to properly consider AFL's internal investigation and its impact on the claim that was brought; (5) The Court wrongly excluded the possibility that post-sale conduct under new management could have led to the client money hole (if there was one); (6) The Court made an error in finding that fictitious income accruals were recorded; and (7) The Court made an error in finding that the Finches had knowledge of the fictitious accruals.

7. Robert Finch asserted that the Judgment was based largely on the flawed and unreliable oral testimony of Ms D, and she was the principal witness against the Finches. She had entered into a Settlement Agreement with NGHL and Ambon following receipt of a threatening and bullying letter, and as a result, on pain of proceedings being recommenced against her, her evidence was self-serving, coerced and highly scripted. Her evidence, and language, was very different between her testimony during an initial telephone "ambush" with the solicitors for NGHL, when she was not fluent and unable to express herself clearly, to the subsequently succinct, precise language in her witness statements. The RDC was referred to the transcripts of the oral evidence before HHJ Johns KC which formed part of Robert Finch's written representations.

8. Robert Finch asserted that the most likely reasons for the discrepancy in the client account monies was due either to the maintenance of uncertain debtor balances in the Company's accounts to disguise poor performance or to a lack of competence to know they were there and needed reversing. The discrepancies and the disputes only arose after the Finches gave notice of their desire to exit the businesses.

9. Robert Finch applied for permission to appeal against the Judgment to the Court of Appeal but this was rejected as the Appellant Court was "*reluctant to interfere with a trial judge's findings*". He considered that these remain unresolved issues, and the underlying evidence for the findings in the Judgment was not sufficient in itself to justify the Authority's conclusions.

10. Robert Finch applied on 23 April 2025, pursuant to CPR Rule 52.30 (Reopening Final Appeals), to the Court of Appeal to have the Judgment overturned on the grounds (inter alia) that important new evidence has now come to light which was not known at the time of the Judgment. The new evidence included the information contained within AFL's accounts, in particular the 2023 accounts, and Ambon's litigation against another company, Company S.

11. On 4 June 2025, the application was refused as the Court of Appeal ruled that the application failed to meet the high threshold for CPR Rule 52.30. Robert Finch is taking advice on re-submitting the application referenced in paragraph 10 of Annex B pursuant to the principles in *Takhar v Gracefield Developments Ltd [2020][3].*

12. **Under the regulatory framework the Authority is required to take into consideration adverse findings and criticisms made in the courts:**

    FIT 2.1.1G
    In determining a person's honesty, integrity and reputation, the FCA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G

[3] Takhar v Gracefield Developments Ltd [2020] AC 450.

FIT 2.1.3G
The matters referred to in FIT 2.1.1G to which the FCA will have regard, and to which a firm should also have regard, include, but are not limited to:
(2) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
(10) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately;

13. **The Judgment made a number of findings of fact relating to the conduct of Alec Finch and Robert Finch. The Authority considers that it is appropriate to rely on the Judgment in concluding that Robert Finch has committed misconduct for the following reasons notwithstanding that he has continued to dispute key findings of fact within the Judgment.**

14. **The leading case in the area of subsequent reliance on civil judgments is the Court of Appeal judgment in *the Secretary of State for Trade and Industry v Bairstow [2003]*[4]. The Vice-Chancellor stated, inter alia, that *"A collateral attack on an earlier decision of a court of a competent jurisdiction may be but is not necessarily an abuse of the process of the court"* and *"If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge or jury in the earlier action if (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or (ii) to permit such re-litigation would bring the administration of justice into disrepute".*[5]**

15. **The Authority was not a party to these civil proceedings. Accordingly, it would only be an abuse of process for Robert Finch to challenge the factual findings and conclusions made in the Judgment if it would either be manifestly unfair to the Authority that the same issue should be relitigated or if to permit such re-litigation would bring the administration of justice into disrepute.**

16. **With the exception of the material contained in the "New Evidence" section below, there has been no new evidence of note submitted by Robert Finch in support of his written and oral representations. The Judgment, dated 27 September 2023, followed an 11-day trial between 15-30 June 2023 ("the trial") where the Court had had the benefit of receiving written and oral evidence from several witnesses, including Alec Finch, Robert Finch, Ms D, and two expert witnesses[6]. Alec Finch and Robert Finch were represented throughout the proceedings by a firm of solicitors and Leading Counsel. Robert Finch sought permission to appeal from the Court of Appeal, the**

[4] https://www.casemine.com/judgement/uk/5a8ff7b560d03e7f57eb161e paragraph 38.
[5] The Secretary of State had sought a disqualification order under section 8 of the Company Directors Disqualification Act 1986, and sought to rely on the findings made by previous judgments arising out of an unsuccessful wrongful dismissal claim brought by Mr Bairstow against his employer.
[6] Robert Finch provided the Authority with full transcripts from the trial.

grounds of appeal essentially being the reasons Robert Finch still considers were flaws in the Judgment and referenced in paragraph 6 of Annex B.

17. **The Court of Appeal dismissed the relevant grounds for Appeal on 20 December 2023 noting that "*This Court is, however, slow to interfere with a trial judge's findings of fact*", and stating that "*In the present case, there is no real prospect of the appellants [Alec Finch and Robert Finch] persuading this Court that the findings to which grounds 1-5 relate should be overturned. There was clearly ample basis in the evidence for the findings which the Judge made. [Ms D] gave direct evidence that a client money hole existed and of the appellants' knowledge of it. There was also other evidence supporting the Judge's conclusions. There is no question of the Judge's findings being vulnerable on any of the bases identified by Lord Reed[7].*"**

18. **The Authority considers that Robert Finch has sought, in these regulatory proceedings, to make the same arguments again and/or place increasing significance on matters not found to be significant by the Court. The Court made its findings based on the evidence before it, and after having considered the closing submissions of Leading Counsel for Robert Finch. The Court assessed the credibility of the witnesses, particularly the credibility of Ms D[8], together with the contemporaneous documentation and communication. The Court of Appeal stated that there was "*ample basis in the evidence*" for the findings made by the Court.**

19. **The Authority has no reason to doubt the fairness of the proceedings in the Civil Case. Taking into account all the matters and circumstances in this case, including the clarity of the reasoning and findings within the Judgment, the transcripts of the trial, the decision of the Court of Appeal, and the matters set out in paragraph 17 of Annex B, the Authority considers that to permit relitigating the factual findings (and therefore reconsidering matters determined by the Court) would bring the administration of justice into disrepute.**

20. **As indicated in *Henton v Financial Services Authority (No.1[9] and No.2)*, the Authority is entitled to rely on the findings of the Judge as evidence of Robert Finch's lack of fitness and propriety, but Robert Finch is also permitted to adduce evidence and put forward arguments relevant to the issue of whether he is a fit and proper person within the meaning of section 56 of the Act. The evidence and submissions put forward by Robert Finch in these regulatory proceedings were considered and taken into account by the RDC on behalf of the Authority.**

21. **The RDC accepts that the Authority has not, inter alia, (1) interviewed Alec Finch and Robert Finch; (2) questioned the roles of individuals not produced**

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[7] The Court of Appeal referenced Henderson v Foxworth Investments Limited [2014] 1 WLR 2600 and Lord Reed's explanation as at paragraph 67 of "*It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.*"

[8] The Court stated in paragraph 73 of the Judgment that Leading Counsel had "*worked hard to cast doubt on the evidence of Ms D and…. that it was unlikely that she has somehow been trapped into now concocting a story*".

[9] No. 1 (Preliminary Decision) dated 20 April 2007, No. 2 dated 24/25 September 2007.

as witnesses; and (3) re-considered the material placed before the Court. The RDC considers that, on the facts and circumstances in this case, it was not necessary for the Authority to carry out these additional investigatory steps to reach its decision. The RDC does not accept that, by deciding to carry out the investigation in this way, the Authority has not carried out a fair and reasonable investigation. This Decision Notice adopts the language used by the Court in the Judgment and makes it clear, in paragraph 4.1 of the Decision Notice, that the RDC is relying on the findings made by the Court in support of its action. The RDC considers that this is an appropriate approach in all the circumstances of the case.

22. **The Court of Appeal stated, in its reasons for the refusal of permission to appeal, that *"in any case, the fresh evidence simply does not show that 'there is a powerful probability that [the Judge's decision] was wrong' or, more generally, that 'it is necessary to [reopen] in order to avoid real injustice'. In their letter to the Court of 30 May 2025, [the solicitors for the Claimants] argued persuasively that the new accounts are entirely consistent with the Judge's findings and that the proceedings against [Company S] are of no real relevance. Further, the Judge's findings did not depend on just £130,000 remaining in the client account. In particular, the Judge relied on 'clear witness evidence that there was a client money deficit from the person acting as financial controller and then CFO' ".***

23. **In any event, the Authority considers that, if Robert Finch does re-submit his application to obtain permission from the Court of Appeal, pursuant to CPR 52.30 (Reopening Final Appeals)[10], the existence of such an unresolved application should not prevent the Authority from following its standard procedure in carrying out its regulatory processes and should not serve to undermine the strength or veracity of the evidence as it currently stands. Unless or until such time as the Judgment is set aside, it is evidence on which the Authority is entitled to rely in carrying out its functions. The possible re-submission of the application to the Court of Appeal to obtain permission should not prevent this; or prevent or delay the Authority from carrying out its functions in compliance with its operational objectives as set out in section 1B(3) of the Act, including the requirement to secure an appropriate degree of protection for consumers (the consumer protection objective)[11] and protecting and enhancing the integrity of the UK financial system (the integrity objective)[12].**

<u>New Evidence</u>

24. Robert Finch stated that one of the key limbs underpinning the Judgment was the reliance on the legitimacy of the figure of £130,000 remaining in the client account. He referred to paragraph 39 of the Judgment: "…*when around £3.6M was paid into the client account to address the apparent problem, only £130,000 remained. This is something of a litmus test… when the clock was stopped by the company being run down, any surplus or deficit would be revealed. What that stopping of the clock showed*

[10] CPR 52.30 (1): The Court of Appeal or the High Court will not reopen a final determination of any appeal unless (a) it is necessary to do so in order to avoid real injustice; (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and (c) there is no alternative remedy.
[11] Section 1C of the Act.
[12] Section 1D of the Act.

was that, despite an injection of around £3.6M into the client account, the account was all but emptied by paying out sums owed to insurance creditors".

25. Robert Finch considered this number of £130,000 had never been a safe number notwithstanding the figure being so critical in underpinning the reasoning within the Judgment.

26. Robert Finch stated that since the trial, financial information disclosed at Companies House by Ambon for the years 2020 to 2023 demonstrated that three years later, approximately £1.5m remained within the client account. Ambon's accounts were published in July 2023 and the 2023 accounts in October 2024. This new evidence contradicts the assertion made that the accounts had been run off and £130,000 remained. An auditor's opinion on client assets for Ambon was obtained for the years ending 2022, 2023 and 2024[13] ("the CASS Audit Reports"). The CASS Audit Reports demonstrate that Ambon was still holding client money. This new information suggests that the Judge was unaware of Ambon's true financial position. This finding was an important part of the reasoning and accordingly, the new evidence casts significant doubt on the safety and fairness of the Judgment.

27. Robert Finch considered that the criteria for admitting the new evidence, as set out in *Ladd v Marshall*[14] was satisfied, namely: (1) the evidence could not have been obtained with reasonable diligence for use at the trial; (2) the evidence would probably have had an important influence on the result of the case; and (3) the evidence must be credible though not incontrovertible. Robert Finch considered that satisfying the *Ladd v Marshall* criteria is another factor suggesting that there are significant matters of substance unheard and unresolved which should have been considered by the Authority rather than relying solely on the Judgment to reach its conclusions on Robert Finch's fitness and propriety.

28. Robert Finch also stated that, shortly after the Judgment was handed down and permission to appeal was rejected, AFL commenced proceedings against Company S. AFL asserted in its pleadings that commissions were earned at the point at which the risk was placed, rather than the time at which it was paid – this being the opposite of the case advanced by the Claimants during their case against the Finches. This claim with Company S was subsequently settled. Robert Finch asserted that this pleading, and the proceedings against Company S, call into question the entire basis of the fraud allegations against the Finches. Robert Finch considered that this is another factor when assessing the safety and fairness of the Judgment, and the appropriateness of the Authority to have relied on the Judgment in this way.

29. **As set out above, the Authority considers that the existence of an extant but unresolved application to obtain permission from the Court of Appeal, pursuant to CPR 52.30 (Reopening Final Appeals) should not prevent the Authority from following its standard procedure in carrying out its regulatory processes.**

30. **In any event, and for the avoidance of doubt, the Authority does not consider that the financial information disclosed at Companies House by Ambon, referred to above, contradicts its finding as set out in this Decision Notice that, following the payment of £3.64m into the client account to address the**

[13] These documents were provided to Robert Finch in May and June 2025.
[14] [1954] 1 W.L.R. 1489.

shortfall in 2020, and the subsequent payment to creditors, there remained a significant deficit in AFL's client money account. In addition, the Authority considers that the CASS Audit Reports[15] (reporting on the adequacy of the systems and controls during a particular period) have no bearing on the key findings in the Judgment. Accordingly, whether or not the criteria for admitting the new evidence, as set out in *Ladd v Marshall*, has been satisfied, does not affect the Authority's conclusions as to Robert Finch's fitness and propriety.

31. **The Authority does not consider that Robert Finch's view as to the significance of AFL taking proceedings against Company S, following the handing down of the Judgment, should alter its findings in this Decision Notice in relation to Robert Finch's fitness and propriety.**

Conflation

32. The actions of Alec Finch and Robert Finch have been inappropriately conflated, creating a distorted and inaccurate portrayal of the individual roles and responsibilities. This "convenience of conflation" allowed the Claimants and the Authority to inaccurately paint a broad-brush picture of collective responsibility without considering the nuances of individual actions and knowledge. During the Relevant Period, Alec Finch was a non-executive director of Ambon, and was not involved in day-to-day operations at the business. During the Relevant Period, Robert Finch did not share an office with Alec Finch and Ms D and had no direct knowledge of private discussions or arrangements between the two. Robert Finch was not a party to the transaction referred to in paragraph 2.4 of this Decision Notice and never sold any of his shares. Attributing the cumulative action and knowledge of both Alec Finch and Robert Finch to each allowed the Claimants to advance their allegations significantly further than they should have been permitted had they been required to litigate against separate defendants. Robert Finch considered that the Authority has inappropriately continued with this convenience of conflation, and it is unfair for the Authority to impute actions and knowledge from Alec Finch to Robert Finch and vice-versa.

33. **This Decision Notice follows the decision from the Court on the individual roles and responsibilities of Alec Finch and Robert Finch. The Court was aware of the different roles and responsibilities of Alec Finch and Robert Finch and, having heard all of the evidence (which included oral evidence from both of them), held that both were "*intimately involved in the detail of the accruals*[16]"; "*plainly both knew the misrepresentations made were false. That is because they both knew that these were not actual debts, not money owed to AFL*[17]". The Court ordered Alec Finch and Robert Finch to be jointly and severally liable for the financial losses and damages awarded. The Authority considers that the Court made a clear finding that their misconduct was largely interchangeable, and that it is reasonable for it to follow the Court's findings.**

[15] Prepared as required by SUP 3.10.4R.
[16] Paragraph 93 of the Judgment.
[17] Paragraph 109 of the Judgment.

34. **Accordingly, the Authority does not consider that it has unfairly and inappropriately conflated and created a distorted and inaccurate portrayal of the roles and responsibilities of Alec Finch and Robert Finch.**

Sanction

35. The proposed prohibition does not take into account mitigating factors, these being that Robert Finch was not a qualified accountant and relied heavily on Ms D at all times to manage AFL's finances. In addition, the proposed prohibition completely prevents him from earning a living in his profession and providing for his young family. The proposed prohibition and financial penalty are unjust and disproportionate.

36. **The Authority does not consider that Robert Finch's asserted mitigation holds any weight given the nature and seriousness of his misconduct. The Authority has decided that, considering the seriousness of the findings it has made of his dishonesty and lack of integrity, it is reasonable and proportionate to impose the prohibition order and financial penalty set out in the Decision Notice. In particular, the Authority considers it is reasonable and proportionate to increase the penalty at Step 4 of the penalty calculation, as it does not consider that the Step 3 figure would have represented a sufficient deterrent to Robert Finch and others.**