

Mr Frensham has referred this Decision Notice to the Upper Tribunal (the Tribunal) where he and the FCA will each present their cases. The Tribunal will determine what, if any, is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate for giving effect to its determination. The Tribunal's decision will be made public on its website. Accordingly, the proposed action outlined in this Decision Notice will have no effect pending the determination of the case by the Tribunal.

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DECISION NOTICE

To: **Jon Frensham (formerly known as Jonathan James Hunt)**

Individual
Reference
Number: **JJH00031**

Date: **1 October 2020**

1. ACTION

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

1.1.1. withdraw, pursuant to section 63 of the Act, the current approval given to Mr Frensham under section 59 of the Act to perform the SMF3 (Executive Director), SMF16 (Compliance Oversight) and SMF17 (Money Laundering Reporting Officer) senior management functions; and

1.1.2. make an order, pursuant to section 56 of the Act, prohibiting Mr Frensham from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2. SUMMARY OF REASONS

2.1. As set out in more detail in the facts and matters described below, Mr Frensham was convicted of attempting to meet a child following sexual grooming. He committed this offence whilst he was an approved person.

- 2.2. Given the nature and circumstances of his offending, the Authority considers that Mr Frensham is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt persons or exempt professional persons. This is because he lacks the necessary integrity and reputation.
- 2.3. As a result of his lack of integrity and reputation, Mr Frensham poses a risk to consumers and to confidence in the financial system. Therefore, it is appropriate, in order to advance the Authority's statutory objectives (which include protecting consumers and the integrity of the UK financial system), to withdraw his approval to perform senior management functions and to impose a prohibition order on him, as detailed above.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority;

"EG" means the Authority's Enforcement Guide;

"Firm A" means the authorised firm at which Mr Frensham is currently the director and is currently approved to perform senior management functions;

"FIT" means the Authority's Fit and Proper Test for Employees and Senior Personnel;

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

"Mr Frensham" means Mr Jon Frensham (formerly known as Jonathan James Hunt);

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

"SMF3" means the "*Executive Director*" senior management function at an authorised firm;

"SMF16" means the "*Compliance Oversight*" senior management function at an authorised firm;

"SMF17" means the "*Executive Director*" senior management function at an authorised firm; and

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

4. FACTS AND MATTERS

Background

- 4.1. Firm A is an authorised financial advice firm, with a Part 4A permission to advise on pensions, mortgages and investments. Mr Frensham is the sole director of Firm A and is approved to perform the following senior management functions: SMF3; SMF16; and SMF17. He also has Responsibility for Insurance Distribution and Responsibility for MCD Intermediation. Mr Frensham is a financial adviser.
- 4.2. In September 2016, Mr Frensham communicated online on a number of occasions with someone whom he believed to be a 15-year-old girl. Mr Frensham's messages were sometimes sexual in nature. He offered to buy gifts for the person with whom he was communicating and encouraged her to lie to her mother. Mr Frensham arranged to meet her and, on 14 September 2016, travelled to meet her with the intention of engaging in sexual activity. She was, in fact, an adult woman posing as a child. The police were called and Mr Frensham was arrested.
- 4.3. On 10 March 2017, Mr Frensham was convicted by a jury of attempting to meet a child following sexual grooming, contrary to section 1(1) of the Criminal Attempts Act 1981.
- 4.4. On 27 March 2017, Mr Frensham was sentenced to 22 months' imprisonment, suspended for 18 months. As part of his suspended sentence, he was required to take part in a rehabilitation requirement to address his sexual offending and attitudes. The sentencing judge commented that Mr Frensham "*showed no remorse about your decision to meet a 15-year-old girl. The damage even of a non-sexual meeting could well have been incalculable*". He was made subject to

an indefinite Sexual Harm Prevention Order and also a requirement to sign the sex offenders register.

Lack of Fitness and Propriety

- 4.5. The statutory and regulatory provisions relevant to this Notice are set out in detail in Annex A.
- 4.6. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing an individual's fitness and propriety. These include having regard to the individual's integrity and reputation.
- 4.7. An approved person, a financial adviser and indeed any person carrying out functions in relation to regulated activities should be a person of integrity because consumers, the market and the Authority must be able to trust that they will conduct themselves in accordance with the requirements and standards of the regulatory system.
- 4.8. The nature and circumstances of Mr Frensham's offending show that he lacks integrity. Mr Frensham sought to exploit a child for his own sexual gratification. His conduct amounted to a criminal offence and was also in breach of pre-existing bail conditions (relating to a different allegation with which he was ultimately not charged), the terms of which specifically prohibited him from having *"unsupervised contact with any person under 18 years without parental consent given in the knowledge of the investigation"*. Mr Frensham therefore demonstrated a deliberate and criminal disregard for appropriate standards of behaviour.
- 4.9. The Authority further considers that the nature of Mr Frensham's offence and, separately, the associated publicity following his conviction, is such that he does not have the requisite reputation to perform functions in relation to regulated activities. His lack of repute means that he is likely to damage the reputation of any regulated firm at which he is required to perform such functions. Further, he poses a risk of damage to the reputation of, and public confidence in, the financial services sector.

- 4.10. For the reasons set out above, the Authority considers that Mr Frensham is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

Prohibition/Withdrawal of Approval

- 4.11. EG 9.1.2 states that the power to withdraw approval to perform a controlled function will be exercised where a person is not fit and proper to perform that function. EG 9.1.1 provides that the power to prohibit an individual will be exercised by the Authority in order to achieve its statutory objectives, which include both securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. The Authority will have regard to all relevant circumstances, including the criteria listed at EG 9.3.2 (as applicable).
- 4.12. As discussed above, Mr Frensham is not fit and proper (EG 9.3.2(2)). He also poses a risk to consumers (EG 9.3.2(8)) because there is a risk that an individual who has demonstrated such a lack of integrity will treat consumers inappropriately and/or otherwise conduct his business in a way which puts at risk their interests. This is especially so in the case of a financial adviser, whose role involves direct contact with, and advice to, consumers.
- 4.13. Mr Frensham's lack of integrity and requisite reputation is such that he poses a risk to public confidence in the financial system (EG 9.3.2(8)). There is a risk of an erosion of public confidence if those who seek to exploit and breach the trust of other individuals and radically deviate from legal and ethical standards, or do not have the requisite reputation, are permitted to continue working in the financial services industry.
- 4.14. Taking into account all relevant circumstances, the Authority therefore considers it is appropriate to withdraw Mr Frensham's current approval to perform senior management functions. Further, the Authority considers it is also appropriate to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 4.15. These actions support the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system (sections 1C and 1D of the Act, respectively).

5. REPRESENTATIONS

- 5.1 Annex B contains a brief summary of the key representations made by Mr Frensham 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 into account all of the representations made by Mr Frensham, whether or not set out in Annex B.

6. PROCEDURAL MATTERS

- 6.1. This Notice is given to Mr Frensham pursuant to section 57 and section 63(3), and in accordance with section 388, of the Act. The following paragraphs are important.

Decision maker

- 6.2. 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/committees/regulatory-decisions-committee-rdc>

The Tribunal

- 6.3 Mr Frensham 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, Mr Frensham 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: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). 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>

- 6.4 A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Tania Dratcu at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.
- 6.5 Once any 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

- 6.6 Section 394 of the Act applies to this Notice.
- 6.7 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. There is no such material.

Confidentiality and publicity

- 6.8 This Notice may contain confidential information and should not be disclosed to another 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 may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 6.9 The Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Frensham should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contact

- 6.10 For more information concerning this matter generally, contact Tania Dratcu at the Authority (direct line: 020 7066 6764 / email: tania.dratcu@fca.org.uk).

A handwritten signature in black ink that reads "Tim Parkes". The signature is written in a cursive style with a large initial 'T' and 'P'.

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. Section 1B of the Act provides that in discharging its general functions, the Authority must, so far as is reasonably possible, act in a way which is compatible with its strategic objective and advances one or more of its operational objectives.
2. The Authority's strategic objective is to ensure that "*relevant markets function well*" (section 1B(2) of the Act) and its operational objectives include securing an 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).
3. Section 56 of the Act provides:
 - (1) "*The [Authority] may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by:*
 - (a) *an authorised person,*
 - (b) *a person who is an exempt person in relation to that activity, or*
 - (c) *a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.*"
 - [...]
 - (3) "*A prohibition order may relate to –*
 - (a) *a specified regulated activity, any regulated activity falling within a specified description or all regulated activities*".
4. Section 63 (1) of the Act provides:

"The [Authority] may withdraw an approval under section 59, given by the [Authority] or the PRA in relation to the performance by a person of a function if the [Authority] considers that the person is not a fit and proper person to perform the function".

RELEVANT REGULATORY PROVISIONS

5. In exercising its powers to make a prohibition order and to withdraw an approved person's approval, the Authority must have regard to guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the actions specified above are set out below.

The Enforcement Guide

6. The Authority's policy in relation to exercising its powers to issue a prohibition order and withdraw approval is set out in EG.
7. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's regulatory objectives. It also explains that the effective use of the power to withdraw approval will help ensure high standards of regulatory conduct.

8. EG 9.2 sets out the Authority's general policy on making prohibition orders and withdrawing approval. In particular—
 - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action should be taken or has been taken already against the individual by the Authority or other enforcement agencies;
 - (b) EG 9.2.2 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
 - (c) EG 9.2.3 states that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
9. EG 9.3.2 states that, when the Authority decides to make a prohibition order against an approved person and/or withdraw their approval, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to:
 - a) 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);
 - b) the relevance and materiality of any matters indicating unfitness;
 - c) the length of time since the occurrence of any matters indicating unfitness;
 - d) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
 - e) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
10. EG 9.3.4 states that owing to the "*diverse nature of activities and functions which the [Authority] regulates, it is not possible to produce a definitive list of matters which the [Authority] might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm*".

Fit and Proper Test for Employees and Senior Personnel

11. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
12. FIT 1.3.1BG states that the most important considerations when assessing the fitness and propriety of a person will be the person's: (1) honesty, integrity and reputation; (2) competence and capability; and (3) financial soundness. A person only has to be deemed lacking in one of the three areas in order to be deemed not fit and proper.
13. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. The FCA will consider the circumstances only where relevant to the requirements and standards of the regulatory system. It states (referring specifically to an application for approval, though still applicable in the present context) that:

"... conviction for a criminal offence will not automatically mean an application will be rejected. The [Authority] treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation."

14. FIT 2.1.2G states *"...the Authority will look at whether the person's reputation might have an adverse impact upon the firm for which the controlled function is or is to be performed and at the person's responsibilities."*
15. FIT 2.1.3G(1) states *"whether the person has been convicted of any criminal offence (our emphasis)...particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom."*
16. FIT 2.1.3G(4) states *"...whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings."*
17. FIT 2.1.3G(13) states *"...whether, in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards."*

ANNEX B

REPRESENTATIONS

1. Mr Frensham's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

The FIT test - integrity

2. *The Authority has wrongly applied the FIT test to the facts of Mr Frensham's case. If the Authority properly applied the guidance in FIT 2.1.1G and 2.1.3G and had regard to all relevant matters when considering Mr Frensham's integrity and reputation, it should conclude that he should not be made subject to a prohibition order.*
3. *Mr Frensham accepts that the offence for which he was convicted was serious. He regrets and is ashamed of his actions. He has shown real remorse and the Authority can be assured that his conduct will not be repeated.*
4. *However, the fact that Mr Frensham carried out acts which lacked integrity over a short period of time in 2016 does not mean that in 2020 he is a person who lacks integrity. The circumstances of the offence should be taken into account. Mr Frensham was under serious strain in his personal life and he was under arrest for a separate crime which he knew he had not committed and for which he was never charged. Further, each person must be considered in the round, having regard to the totality of the evidence. A conviction is a snapshot of a person's integrity and should not be relied on as the sole determining factor in understanding their whole character. Mr Frensham has provided evidence going to his overall integrity, by way of character references and testimonials from clients and a family member who had full knowledge of his conviction.*
5. *Mr Frensham's conviction has no bearing upon, and is irrelevant to, his competence as a financial adviser. Mr Frensham has hitherto enjoyed a successful career as a financial adviser spanning 30 years, during which time he has not been subject to any complaints regarding the quality of his advice or personal conduct. Mr Frensham has always acted with integrity in his professional life and there is no real risk of his integrity being called into question in any way which is relevant to his professional work. His criminal offence did not involve financial dishonesty and is not amongst those listed at FIT 2.1.3G(1) as offences to which the Authority will give particular consideration in considering a person's fitness and propriety.*

6. The Authority does not accept that it has wrongly applied the guidance in FIT. It has given careful thought to the relevant factors in FIT, as well as those in EG, and their application to Mr Frensham's particular circumstances, in reaching the conclusion that Mr Frensham lacks fitness and propriety due to a lack of integrity and reputation, poses a risk to consumers and to confidence in the financial system, and so should be prohibited.
7. The relevant factors considered by the Authority include those mentioned in FIT 2.1.1G: the seriousness of, and circumstances surrounding, the offence; the explanation offered by the convicted person; the relevance of the offence to the proposed role; the passage of time since the offence was committed; and evidence of the individual's rehabilitation. These factors need to be considered on a case-by-case basis and do not need to be given equal weight. The Authority considers that it is appropriate to give most weight to the seriousness of Mr Frensham's offence, which involved exploitation, an abuse of a position of trust and a deliberate and criminal disregard for appropriate standards of behaviour.
8. The Authority notes Mr Frensham's stated remorse and regret for his actions, but also considers it to be relevant that the sentencing judge commented that he showed no remorse about his decision to meet a 15-year-old girl. In addition, the Authority considers that Mr Frensham's explanation regarding the circumstances of the offence does not mitigate the seriousness of his conduct or give the Authority confidence that he poses little or no risk to consumers.
9. In fact, the Authority considers that Mr Frensham's offence is aggravated by the surrounding circumstances. At the time of his offending, Mr Frensham was the sole approved person of an authorised firm; he provided financial advice to potentially vulnerable customers and would have been aware that the requirements of honesty, integrity and reputation were fundamental to his fitness and propriety. He also committed his offence knowing this was in breach of bail conditions that he was made subject to as part of an investigation into a separate matter.
10. The Authority agrees that each person's integrity should be assessed in the round and, as is explained in paragraphs 25 and 27 below, has had regard to the testimonials provided by Mr Frensham. However, the Authority considers that the serious nature of the offence and its surrounding circumstances must be given much greater weight and that in all the circumstances the only reasonable conclusion it can reach is that Mr Frensham lacks integrity.

11. The Authority does not agree that Mr Frensham's conviction is irrelevant to his role as a financial adviser. As a financial adviser, Mr Frensham is in a position of trust as regards his customers, who rely on his advice when making significant financial decisions and need to be able to trust that he will act appropriately. In addition, in order to maintain public confidence in the financial services industry, the Authority and the public are entitled to expect that approved persons and financial advisers are individuals with integrity and of good reputation. Even though Mr Frensham's offence was not committed at work and did not involve financial dishonesty, it involved him deviating from legal and ethical standards and seeking to exploit those more vulnerable than himself, which in the Authority's view is fundamentally incompatible with his role as a financial adviser.

The FIT Test - reputation

12. *Much of the Authority's concerns about risk to consumers, damage to the reputation of Firm A, and damage to the public's trust in financial services, is speculative. Mr Frensham changed his and his firm's name partly due to his conviction but also because it was the right time in his personal life to do so. Mr Frensham has been working post-conviction at Firm A for three and a half years and there is no evidence of reputational damage to it or the financial sector. However, a prohibition would harm Firm A and also the financial services industry's reputation due to the negative impact on his clients.*
13. *Approximately 30 clients ceased to instruct Mr Frensham after his conviction but he remains the trusted adviser to about 63 clients. He accepts that he did not proactively inform his clients of his conviction, as he did not view it as part of his professional discussions with his clients, although he was frank about his offending when asked and offered to introduce those who asked to an alternative adviser. When this occurred, around five clients decided to seek advice elsewhere and around seven decided to keep instructing him.*
14. *Mr Frensham's alleged lack of reputation does not mean that he is incapable of performing regulated functions. His circumstances cannot be compared to the example of Paul Flowers, the ex-Chairman of the Co-operative Bank, the only precedent case cited by the Authority's Enforcement case team. Mr Frensham has no public profile, no positions of responsibility beyond his own firm and his reputation is so marginal that it cannot possibly be said to have any impact on the reputation of the financial services industry as a whole. In addition, Mr Frensham's misconduct was very different as it was a one-off instance of poor judgment, rather*

than a pattern of serious misconduct committed over three years. His position is therefore not remotely equivalent to that of Mr Flowers, yet his case is the only comparison cited.

15. It is plain that Mr Frensham's conviction has caused him to lack reputation and this is demonstrated by the negative publicity after he was convicted. The fact that Mr Frensham changed not only his own name but that of his firm following his conviction shows he is aware of this and also that he poses a reputational risk to Firm A. Part of the reason he took these steps must have been to distance himself from the negative public reaction to his own behaviour and conviction which would doubtless have had a detrimental impact upon his livelihood. The Authority does not agree that more harm would be caused to the reputation of the financial services industry by prohibiting him; instead, it considers there is a risk of erosion of public confidence if individuals who have committed such misconduct and do not have the requisite reputation are permitted to continue working in the financial services industry.
16. The fact that about one third of Mr Frensham's clients chose to leave his firm following his conviction strongly suggests that, due to his reputation, many consumers had and would have concerns with him acting as their financial adviser. The fact that Mr Frensham did not proactively inform clients of his offending also undermines his submissions regarding the reputational impact of his conviction. Although Mr Frensham stated that he would confirm the fact of his conviction when prompted by clients, this was reliant on clients conducting their own research, and raising this with him. Mr Frensham's conviction might not come to any new client's knowledge without being mentioned by him, especially as Mr Frensham changed both his and his firm's name after his conviction, so there is a risk that new clients will not be in a position to make an informed decision about whether to instruct him.
17. The Authority accepts that Mr Frensham's public profile is very different to that of Mr Flowers. The Authority cited the case of Mr Flowers as a precedent to point out that it has previously taken action against an individual in relation to non-financial misconduct which affected the individual's integrity and reputation. The fact that the Authority has not previously taken action for similar misconduct to that committed by Mr Frensham does not mean that it is inappropriate for it to do so now.

Any risk is managed by the criminal justice system's measures

18. *Mr Frensham has already been punished by the criminal justice system. As part of his sentence, Mr Frensham is to remain on the sexual offences register until March 2027 and subject to a Sexual Harm Prevention Order (SHPO) indefinitely. The stringent terms of his SHPO restrict Mr Frensham's use of electrical devices unless he notifies the police and allows them access for inspection. A breach of the SHPO carries a maximum term of imprisonment of five years. The deterrent effect of the criminal justice system's safeguarding mechanisms should sufficiently address any of the Authority's concerns about risk to consumers.*
19. *The sentencing judge took into account Mr Frensham's remorse, and the steps he had taken to address his failings prior to and after his conviction, and concluded that Mr Frensham could be rehabilitated. Mr Frensham has since completed his court-ordered rehabilitation programmes. The sentencing judge had the benefit of hearing all the evidence in Mr Frensham's case and did not impose an immediate custodial sentence upon him. Mr Frensham's suspended sentence indicates that he has a real chance of rehabilitation and there has been no further wrongdoing since. The Authority would be curtailing that path to rehabilitation, were it to make a prohibition order.*
20. The statutory objectives of the Authority require it to manage the risk posed by those who lack the requisite honesty, integrity and reputation to hold controlled functions or work in the regulated sector. That Mr Frensham remains subject to a SHPO indefinitely and will remain on the sexual offenders register until 2027 indicates that the criminal justice system deems that he will remain a risk to others for some considerable time in the future. Those restrictions exist because there is an ongoing risk to be managed and in the Authority's view are a significant barrier to concluding that he has the requisite integrity and reputation for the purposes of FIT.
21. The Authority notes that the sentencing judge deemed Mr Frensham to have crossed the custody threshold in sentencing him to a suspended term of imprisonment. Mr Frensham's conviction does not become spent whilst the SHPO remains in force. The Authority considers that the judge's sentencing remarks do not provide evidence of the likelihood of subsequent rehabilitation that is sufficient to allow the Authority to conclude that Mr Frensham has the necessary integrity and reputation to hold controlled functions or work in the regulated sector. The existence of the notification requirements and the SHPO and the fact that his

conviction does not become spent whilst the SHPO remains in force, clearly indicate that the criminal justice system considers that the end of his suspended sentence period does not mean that rehabilitation has been achieved and that Mr Frensham no longer presents a risk to society.

Impact on clients, family members, Mr Frensham and the public purse

22. *The positive testimonials from his clients show that Mr Frensham is relied on by many people in relation to their financial affairs and that clients are willing to retain him as their financial adviser notwithstanding his conviction. A prohibition order would be detrimental to his clients, who would be denied Mr Frensham's services and would have to switch to another financial adviser. These testimonials are demonstrative of the real public interest – they show what real consumers think about the conviction as regards his integrity and reputation. The public are in favour of maintaining Mr Frensham's employment in the financial services industry; any suggestion otherwise would be speculative.*
23. *Mr Frensham's personal circumstances were difficult in the run-up to, and as a result of, his offending. Despite this, a family member has also spoken positively about Mr Frensham's integrity in a character reference. That person would be deprived of financial support from Mr Frensham were any prohibition order to be made against him. Prohibition would also have a devastating impact on Mr Frensham's financial position.*
24. *The public purse would also be deprived of the tax generated from Mr Frensham's income. The public purse would also have to bear the responsibility of supporting Mr Frensham, if Mr Frensham were prohibited and unable to find employment.*
25. The Authority has had regard to the witness statements provided by three of Mr Frensham's clients but considers it is not appropriate to place too much weight on this limited evidence in reaching conclusions regarding the wider public interest which is not confined to Mr Frensham's clients. The Authority also considers that Mr Frensham's reliance on these testimonials is undermined by the fact that about one third of his clients sought another adviser after learning of his conviction. Notwithstanding that there has already been negative publicity following Mr Frensham's conviction which referred to the fact that he was a financial adviser, the Authority considers there is a risk that public confidence would be undermined, if a prohibition order were not made against a financial adviser and approved person in the circumstances of this case.

26. The Authority recognises that Mr Frensham's clients may have to seek an alternative financial adviser, were a prohibition order to be made. The Authority considers this to be a natural consequence of such an order, and would expect Mr Frensham to have contingency plans in place for his clients, in the event that he ceases to be an approved person and/or is prohibited from involvement in financial services. The Authority considers that any inconvenience to clients is outweighed by the risk to consumers and to public confidence in the financial system of the Authority not taking action against Mr Frensham.
27. The Authority has taken into account the family member's witness statement, but considers it carries limited weight, given the family member's personal and financial connection to him. The Authority recognises that a prohibition order will also have a financial impact on Mr Frensham and the family member, and has not taken the decision to prohibit him lightly, but considers it is appropriate to take this action given its conclusion that he lacks fitness and propriety and poses a risk to consumers and to public confidence in the financial system.
28. The Authority considers Mr Frensham's submissions regarding the effect on the public purse to be speculative and in any case to carry no weight in the assessment that it has to make as to whether it is appropriate to make a prohibition order against him.

Lapse of time since Mr Frensham's conviction

29. *Mr Frensham kept the Authority informed about the criminal proceedings prior to his conviction, and fully updated the Authority in April 2017 about his conviction, but the Authority did not take any steps against Mr Frensham or even contact him again with regard to this matter until January 2019. The lack of urgency on the part of the Authority in taking action undermines the need for a prohibition order.*
30. *Over three and a half years have elapsed since the events underlying the conviction, during which time no criticism has been made of Mr Frensham. The Authority should not ignore this evidence of good conduct on the part of Mr Frensham. In addition, other than this matter, as far as he is aware he has never been the subject of a complaint, investigation or disciplinary procedure by the Authority, Chartered Insurance Institute (CII) or Financial Services Ombudsman, or any other professional body.*

31. *Had Mr Frensham been informed earlier that the Authority intended to limit or prohibit his practice, he would not have dedicated considerable effort and expense in updating his processes to comply with MiFID II.*
32. The Authority acknowledges that it could have taken action to prohibit Mr Frensham sooner, but considers that this is not relevant to the question of whether he is fit and proper and poses a risk to consumers and to confidence in the financial system.
33. Although Mr Frensham has stated that he kept the Authority updated about the conviction, the Authority considers that Mr Frensham has not been open and transparent with it on a number of occasions, as he is required to be by the Authority's regulatory requirements. Mr Frensham did not inform the Authority of either his earlier arrest in respect of a separate matter which led to the bail conditions being imposed or of his arrest in respect of the offence which led to his conviction. He also did not tell the Authority that, whilst on remand pending trial for five weeks, he was not in a position to discharge his controlled functions or ensure compliance by his firm with its regulatory obligations and so had arranged for locum cover. Further, the Authority is aware that the CII refused to renew his Statement of Professional Standing and then recently decided to expel him from its membership. Mr Frensham did not inform the Authority of either of these matters, and his submissions give the impression that no disciplinary action had been taken by the CII against him. These matters undermine Mr Frensham's submission that he is a person of integrity.
34. The Authority acknowledges that no criticism has been made of Mr Frensham's behaviour since his conviction, but does not consider that this demonstrates that Mr Frensham has been fully rehabilitated, such that he no longer presents a risk to consumers or to confidence in the financial system, especially given the seriousness of his offending. The Authority also considers that the passage of time since the conviction is not sufficient to assuage its concerns relating to Mr Frensham's offending and surrounding circumstances.
35. The Authority acknowledges the efforts Mr Frensham has made to comply with MiFID II, on his assumption that the Authority was not going to take any action, but considers that in the absence of any such confirmation from the Authority, this was an erroneous interpretation of the Authority's correspondence.

A prohibition order should not be made

36. *Other regulators do not automatically strike off individuals who fall under their regulatory remit for serious convictions. A prohibition order should not be made against Mr Frensham at all, or should only be made for a limited time, and his approval to perform controlled functions should not be withdrawn.*
37. The Authority considers the approach of other regulators to be of limited relevance, as each regulator is required to take action in accordance with its own statutory objectives, policies and procedures, but nevertheless notes that its action is consistent with that taken by other regulators for similar offences. The Authority has decided that in all the circumstances it is appropriate to make a full prohibition order and withdraw Mr Frensham's current approvals. To do otherwise would undermine the integrity of the financial services industry and public confidence in the financial system. The Authority does not have the power to issue a time-limited prohibition order. It does not consider it appropriate in the circumstances to issue a prohibition order with an indication that it be revoked after a period of time. To give such an indication would not adequately address the risks posed by Mr Frensham's lack of integrity and reputation. It is open to Mr Frensham to apply to the Authority to revoke the prohibition order in the future, if he considers that he is able to satisfy the Authority of his fitness and propriety at that stage.