
FINAL NOTICE

To: **Alexander David Osborne Stuart**

**Individual
Reference
Number:** **ADS01214**

Address: **Flat 12
22 Brook Mews North
London
W2 3BW**

Date: **26 March 2018**

ACTION

1. For the reasons given in this Final Notice, the Authority hereby:
 - (a) imposes on Mr Stuart, pursuant to section 66 of the Act, a financial penalty of £34,000; and
 - (b) makes an order, pursuant to section 56 of the Act, prohibiting Mr Stuart from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.
2. Mr Stuart agreed to settle at an early stage of the Authority's investigation. Mr Stuart therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £48,584 on Mr Stuart.

SUMMARY OF REASONS

3. The RDR, launched by the Authority in 2006, was a wide ranging review of the retail investment market. On 31 December 2012, the Authority implemented a new set of rules stemming from that review. Under those rules, the minimum level of qualification for all retail investment advisers was raised (to the Level 4 Qualification), and all individual retail investment advisers were required to hold an SPS. An SPS is evidence that an accredited body that meets the Authority's criteria (such as the CII) has independently verified that the retail investment adviser holds an appropriate qualification, has satisfied the appropriate continuing professional development requirement and has met the required ethical standards.
4. Individuals who are trainee retail investment advisers (as Mr Stuart was during the Relevant Period) do not need to have an SPS, but must be directly supervised by an individual who has obtained the Level 4 Qualification, and the trainee must obtain the Level 4 Qualification within 30 months of their appointment as a trainee.
5. The CII also issues personalised Learning Statements, which provide a record of the units and resultant credits an individual holds which can be used towards completing CII qualifications (such as the Level 4 Qualification). This includes both CII units and examinations obtained through other awarding bodies about which the individual has told the CII. Importantly, it also sets out in simple terms the requirements necessary to complete a qualification the individual is working towards and the qualifications the individual has completed.
6. The Authority considers that during the Relevant Period, and whilst approved by the Authority to perform the CF30 (Customer) controlled function at SJP, Mr Stuart:
 - (a) made false and misleading statements to SJP and to the CII about his passing of examinations to attain the Level 4 Qualification (namely, the CII's Diploma in Regulated Financial Planning);
 - (b) falsified a Learning Statement which purported to be a genuine statement that had been issued by the CII of the examinations he had passed; and
 - (c) provided the falsified Learning Statement to SJP on 8 December 2015, and to the CII on 13 January 2016, with the intention of misleading SJP and the CII into believing that he had passed all the examinations in relation to the CII's Diploma in Regulated Financial Planning (which is a Level 4 Qualification), and was therefore fully qualified to provide retail investment advice and eligible for an SPS.
7. Mr Stuart had not in fact passed all the examinations referred to in the false Learning Statement.
8. Mr Stuart's behaviour therefore amounted to a failure to act with honesty and integrity in contravention of Statement of Principle 1.
9. In light of this contravention, the Authority hereby imposes on Mr Stuart a financial penalty of £34,000, pursuant to section 66 of the Act.

10. In addition, as a result of his conduct, Mr Stuart is not a fit and proper person, and he poses a risk to consumers and to the integrity of the financial system. The Authority hereby makes an order prohibiting Mr Stuart from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm, pursuant to section 56 of the Act.

DEFINITIONS

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

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

“APER” means the Statements of Principle and Code of Practice for Approved Persons;

“the Authority” means the Financial Conduct Authority;

“the CII” means the Chartered Insurance Institute;

“the CII’s Diploma in Regulated Financial Planning” means the CII’s RQF Level 4 diploma qualification which meets the Authority’s qualification requirements for retail investment advisers (i.e. the Level 4 Qualification), and develops core technical knowledge and financial planning capabilities across six compulsory units:

- R01 - Financial services, regulation and ethics;
- R02 - Investment principles and risk;
- R03 - Personal taxation;
- R04 - Pensions and retirement planning;
- R05 - Financial protection; and
- R06 - Financial planning practice.

Holders of R01 are authorised to advise under supervision while they work towards the full Diploma;

“CWM” means Clearwater Wealth Management;

“DEPP” means the Decision Procedure and Penalties Manual section of the Handbook;

“EG” means the Enforcement Guide;

“FIT” means the Fit and Proper Test for Approved Persons and specified significant-harm functions section of the Handbook;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Level 4 Qualification” means a qualification which meets the Authority’s qualification requirements/criteria for retail investment advisers as set out in Training and Competence manual of the Handbook;

“the Relevant Period” means the period between 3 December 2014 and 3 February 2016;

“the RDR” means the Retail Distribution Review;

“SJP” means St James’s Place Wealth Management Plc;

“SPS” means Statement of Professional Standing;

“the Statements of Principle” means the Statements of Principle as set out in APER;

“Mr Stuart” means Alexander David Osborne Stuart; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

12. On 4 April 2014, Mr Stuart was approved by the Authority to perform the CF30 (Customer) controlled function at SJP, as a result of his relationship with CWM, an Appointed Representative of SJP.
13. On 3 December 2014, Mr Stuart, during a meeting with his supervisor at SJP, deliberately attempted to mislead his supervisor by stating he had passed the R04 examination, knowing that this was not true. In fact, Mr Stuart had not sat the R04 examination.
14. On 1 April 2015, Mr Stuart, during a meeting with his supervisor at SJP, deliberately attempted to mislead his supervisor by stating that he had passed the R02 examination. Mr Stuart had not at that stage passed the R02 examination.
15. On 11 November 2015, Mr Stuart, during a telephone conversation with the CII, deliberately attempted to mislead the CII by stating that he had passed the R06 examination and that he had received a Learning Statement from the CII which did not contain all the examinations that he had passed. In fact, Mr Stuart had not sat the R06 examination.
16. On 8 December 2015, Mr Stuart falsified a Learning Statement which purported to be a genuine statement that had been issued to him by the CII setting out the examinations he had passed. The falsified Learning Statement included information which showed that Mr Stuart had passed the R03, R04, R05 and R06 examinations, when in fact Mr Stuart had not passed any of those examinations, and that he had completed the CII’s Diploma in Regulated Financial Planning. Also on 8 December 2015, Mr Stuart provided the false Learning Statement to SJP, and in doing so, Mr Stuart deliberately attempted to mislead SJP into believing that he had attained the Level 4 Qualification (i.e. the CII’s Diploma in Regulated Financial Planning) such that he was eligible for an SPS.

17. On 13 January 2016, Mr Stuart, during a telephone conversation with the CII, deliberately attempted to mislead the CII by stating that he had a CII Learning Statement which specified all the examinations that he had passed, which included the R03, R04, R05 and R06 examinations. Mr Stuart had never sat the R03, R04 and the R06 examinations, and he had sat, but failed, the R05 examination. Also on 13 January 2016, Mr Stuart provided to the CII the false Learning Statement that he had created on 8 December 2015.
18. On 14 January 2016, the CII sent a Letter of Enquiry to Mr Stuart, which set out a number of allegations against Mr Stuart, including that he had falsified a Learning Statement. Also on 14 January 2016, Mr Stuart provided the Letter of Enquiry from the CII to SJP.
19. On 15 January 2016, CWM suspended Mr Stuart.
20. At a meeting with CWM and SJP on 3 February 2016, Mr Stuart tendered his resignation.
21. On 5 February 2016, the CII submitted a Retail Investment Adviser (RIA) Professional Standards alert to the Authority in relation to Mr Stuart, on the basis that the CII had identified that Mr Stuart had falsified documentation (namely a Learning Statement), which showed that he had passed examinations which he had not in fact passed, and that he had used the falsified documentation to apply for an SPS.
22. Mr Stuart's approval with the Authority in relation to CWM and SJP ceased on 3 February 2016, after the Authority accepted an application from SJP dated 11 February 2016, requesting the withdrawal of Mr Stuart's approval to perform the CF30 controlled function in relation to SJP, with effect from 3 February 2016.
23. On 18 May 2016, following the conclusion of its investigation into Mr Stuart's conduct, the CII, amongst other sanctions, reprimanded and expelled Mr Stuart from the membership of the CII.
24. On 7 September 2016, the Authority conducted a compelled interview with Mr Stuart using its statutory powers. During the interview, Mr Stuart admitted that he:
 - (a) made false and misleading statements to SJP, and to the CII, about his passing of examinations to attain the Level 4 Qualification (namely, the CII's Diploma in Regulated Financial Planning);
 - (b) falsified the Learning Statement on 8 December 2015; and
 - (c) provided the falsified Learning Statement to SJP on 8 December 2015, and to the CII on 13 January 2016, with the intention of misleading SJP and the CII into believing that he had passed all the examinations in relation to the CII's Diploma in Regulated Financial Planning (which is a Level 4 Qualification), and was therefore fully qualified to provide investment advice to retail customers (and eligible for an SPS), when he had not in fact passed all the examinations referred to in the false Learning Statement.

FAILINGS

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

*Failing to act with honesty and integrity in carrying out a controlled function:
Statement of Principle 1*

26. During the Relevant Period, Mr Stuart, whilst approved to perform the CF30 (Customer) controlled function, acted in breach of Statement of Principle 1 by failing to act with honesty and integrity, in that he made numerous false statements to SJP and to the CII, and he falsified a Learning Statement which he provided to SJP and to the CII, in order to attempt to mislead SJP and the CII into believing that he had obtained the appropriate qualifications to provide investment advice to retail customers, when he had not.

Not fit and proper

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

SANCTION

Financial penalty

28. Given Mr Stuart's breaches of Statement of Principle 1, the Authority hereby imposes a penalty on him pursuant to section 66 of the Act. The Authority's policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to that guidance.
29. Changes to DEPP were introduced on 6 March 2010. Given that Mr Stuart's breaches occurred after that date, the Authority has had regard to the provisions in force after that date.
30. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to Mr Stuart's breaches of Statement of Principle 1.
31. In determining the financial penalty to be attributed to Mr Stuart's breaches, the Authority has had particular regard to the following matters as applicable:
- (a) the need for credible deterrence;
 - (b) the nature, seriousness and impact of the breach;
 - (c) the aggravating factors relating to the breach; and
 - (d) the settlement discount for agreeing to settle at an early stage of the Authority's investigation.
32. The penalty calculation in relation to Mr Stuart is set out in Annex B to this Notice. Having regard to all the circumstances, the Authority considers that

£34,000 (after discount for settlement at an early stage of the Authority's investigation) is the appropriate financial penalty to impose on Mr Stuart.

Prohibition

33. The Authority considers that Mr Stuart is not a fit and proper person as he lacks honesty and integrity, and poses a serious risk to consumers and to confidence in the financial system. Consequently, the Authority hereby makes an order prohibiting Mr Stuart from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

34. This Notice is given to Mr Stuart under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

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

Manner and time for payment

36. The financial penalty must be paid by Mr Stuart to the Authority as follows:
- (i) £3,500 by close of business on the date of issue of this Notice;
 - (ii) a further £1,500 by 28 April 2018;
 - (iii) a further £1,500 by 28 May 2018;
 - (iv) a further £1,500 by 28 June 2018;
 - (v) a further £1,500 by 28 July 2018;
 - (vi) a further £1,500 by 28 August 2018; and
 - (vii) a final £23,000 by 28 September 2018.

If the financial penalty is not paid

37. If all or any of the financial penalty is outstanding on 28 September 2018, the Authority may recover the entire outstanding amount as a debt owed by Mr Stuart and due to the Authority.

Publicity

38. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority

may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Stuart or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

40. For more information concerning this matter generally, contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

Bill Sillett
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's 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).
2. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that the person is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him/her. Misconduct includes failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

RELEVANT REGULATORY PROVISIONS

4. In exercising its power to make a prohibition order, 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 action specified above are set out below.

The Enforcement Guide

5. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
6. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's statutory objectives.
7. EG 9.2 sets out the Authority's general policy on making prohibition orders. In particular:
 - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (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
 - (c) EG 9.2.3 states that the scope of a prohibition order will depend on, amongst 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.

8. EG 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.
9. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: 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); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

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

10. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
11. APER 2.1A.3P, which applies from 1 April 2013, sets out Statement of Principle 1 which states that an approved person must act with integrity in carrying out his accountable functions.
12. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
13. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
14. APER 4.1.3G provides that deliberately misleading (or attempting to mislead) by act or omission a firm is, in the opinion of the Authority, conduct that does not comply with Statements of Principle 1 (APER 4.1.3G(2)).
15. APER 4.1.4G sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. An example of such conduct is falsifying documents (APER 4.1.4G(1)) and providing false and misleading information to the firm (APER 4.1.4G(10)).

Fit and Proper Test for Approved Persons

16. The Authority has issued guidance on the fitness and propriety of individuals in FIT.

17. FIT 1.3.1BG(1) states that the most important considerations when assessing the fitness and propriety of a person to perform a controlled function include that person's honesty, integrity and reputation.
18. 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, which includes whether the person has contravened any of the requirements or standards of the regulatory system (FIT 2.1.3G(5)).

ANNEX B

PENALTY ANALYSIS

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

1. 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.
2. The Authority has not identified any financial benefit that Mr Stuart derived directly from his breach.
3. Step 1 is therefore £0.

Step 2: Seriousness of the breach

Relevant Income

4. 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.
5. The period of Mr Stuart's breach was from 3 December 2014 to 3 February 2016. The Authority considers Mr Stuart's relevant income for this period (being the income he received from the advice he gave to customers) to be £121,460.
6. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 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%

7. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considered the following factors to be relevant:
 - a. whilst there was no actual detriment to consumers as a result of the misconduct, there was a risk of loss to consumers if the misconduct had not been detected, in that Mr Stuart would have obtained an SPS despite not having attained the Level 4 Qualification, and Mr Stuart would have then been able to give retail investment advice without the requirement to be directly supervised. This could have resulted in SJP's customers incurring losses as a consequence of investing in unsuitable investment products;
 - b. Mr Stuart failed to act with integrity; and
 - c. Mr Stuart committed the breach deliberately.
8. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority does not consider those factors to be relevant in relation to Mr Stuart's breach.
9. The Authority also considers that the following factors are relevant:
 - DEPP 6.5B.2G(9)(a) – Mr Stuart's falsification of a Learning Statement and his subsequent provision of the false Learning Statement to his principal firm and to his professional body, shows that he knowingly sought to mislead his principal firm and his professional body into believing that he had passed all the examinations relating to the CII's Diploma in Regulated Financial Planning, when he had not.
 - DEPP 6.5B.2G(9)(b) – Mr Stuart has admitted that he intended to mislead SJP and the CII on multiple occasions (including in conversations with his supervisor at SJP and the CII, and in providing the Learning Statement he had falsified to SJP on 8 December 2015 and to the CII on 13 January 2016). Mr Stuart's first instance of misconduct occurred on 3 December 2014 and the final instance of misconduct occurred on 13 January 2016. Therefore, there were multiple instances of misconduct which occurred over an extended period of time of over 13 months, until the misconduct was detected.
 - DEPP 6.5B.2G(9)(g) – Mr Stuart acted in breach of the CII's professional code of conduct.
 - DEPP 6.5B.2G(10) – Mr Stuart has admitted deliberately attempting to mislead SJP and the CII, including falsifying a Learning Statement and providing it to SJP and the CII, and he stated in interview that he foresaw that it was a likely consequence that the Authority would have been provided with a copy of an SPS had one been issued by the CII, in the event that the CII had not detected that the Learning Statement was false. Mr Stuart's misconduct was also driven by the need to demonstrate to SJP that he had achieved the Level 4 Qualification before the 30 month deadline on 31 March 2016.

10. Taking all of these factors into account, the Authority considers the seriousness of Mr Stuart's breach to be level 5, and so the Step 2 figure is 40% of £121,460.
11. Step 2 is therefore £48,584.

Step 3: Mitigating and aggravating factors

12. 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 disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.
13. Having regard to the factors set out in DEPP 6.5B.3G, the Authority considers that there are no factors that aggravate or mitigate Mr Stuart's breach so the Authority has not increased/decreased the penalty at Step 3.
14. Step 3 is therefore £48,584.

Step 4: Adjustment for deterrence

15. Under DEPP 6.5B.4G, if the Authority considers that 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. The Authority considers that the figure at Step 3 is sufficient to act as a deterrent to Mr Stuart and others, so the Authority has not increased the penalty at Step 4.
16. Step 4 is therefore £48,584.

Step 5: Settlement discount

17. 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.
18. The Authority and Mr Stuart reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
19. Step 5 is therefore £34,008.80.

Penalty

20. The Authority therefore imposes a total financial penalty of £34,000 (the Step 5 figure rounded down to the nearest £100) on Mr Stuart for breaching Statement of Principle 1.