Financial Services Authority

FINAL NOTICE

To: Aspray Limited

FRN: 466101

Address: Unit 402 Daisyfield Business Centre
Appleby Street
Blackburn
BB1 3BL

Date: 18 March 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty:

1. THE PENALTY

1.1. The FSA give Aspray Limited ("Aspray") a Decision Notice dated 18 March 2009 ("the Decision Notice"), which notified Aspray that pursant to section 206 of the Financial Services and Markets Acr 2000 ("the Act"), the FSA had decided to impose on it a financial penalty of £21,000. This penalty is in respect of breaches of Principles 3, 7 and 11 of the FSA's Principles for Businesses ("the Principles") between 19 July 2007 and 6 May 2008 ("the Relevant Period").

1.2. Aspray has confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accoringly, for reasons set out below and having agreed with Aspray the facts and matters relied on, the FSA imposes a financial penalty on Aspray of £21,000.

1.4. Aspray agreed to settle at an early stage of the FSA's investigation and has, therefore, qualified for a 30 percent (Stage 1) discount under the FSA's executive settlement

procedures. Were it not for this discount, the FSA would have otherwise sought to impose a financial penalty of £30,000 on Aspray.

2. REASONS FOR THE PENALTY

2.1. The FSA has concluded that, during the Relevant Period, Aspray failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, failed to pay due regard to the information needs of its clients, and communicate information to them in a way which was clear, fair and not misleading and failed to deal with the FSA in an open and cooperative way.

2.2. The FSA has made the following findings.

(1) Aspray failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3, in that it failed to establish and maintain appropriate systems and controls in relation to the recruitment, training and monitoring of its Appointed Representatives ("ARs");

(2) Aspray failed to pay due regard to the information needs of its clients, and communicate information to them in a way which was clear, fair and not misleading, in breach of Principle 7, in that it:

(a) misled clients over the circumstances under which they would incur a cost for utilising Aspray's services;

(b) told clients that all contractors were carefully screened and only quality local tradesman were used by Aspray when most contractors were found using sources such as "Yell.com" and were not properly vetted.

(c) failed to inform customers about the Financial Ombudsman Service ("FOS") and their right to refer complaints to FOS.

(3) Aspray failed to deal with the FSA in an open and cooperative way, in breach of Principle 11, in that it misled the FSA by stating in its Retail Mediation Activities Return ("RMAR") that it had completed compliance visits to all its ARs, had reviewed files and made financial checks on all 24 ARs. Aspray had performed none of these procedures.

2.3. The FSA has taken into account the following steps taken by Aspray which are regarded as mitigating factors:

(1) Aspray has been open and cooperative with the FSA's investigation;

(2) Aspray accepted there had been management and control failures during the relevant period, and appointed external compliance consultants and implemented a series of remedial changes to its practices and procedures; and

(3) there is no evidence that Aspray have sought to profit or avoid a loss as a result of the identified failings.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers.

3.2. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed on him by or under the Act.

Principles for Businesses

3.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles breached are as follows:

(1) Principle 3 (Management and control): A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

(2) Principle 7 (Communications with clients): A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

(3) Principle 11 (Relations with regulators): A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

3.4. Further details of the guidance to which the FSA has had regard, are set out in Annex 1 to this Warning Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Aspray is an insurance intermediary which provides claims management services, specialising in project managing insurance-related property repairs. Its head office is in Blackburn, Lancashire. Aspray was authorised by the FSA from 19 July 2007.

4.2. Aspray currently has 24 registered ARs around the United Kingdom and has one approved person at Head Office holding the CF 8 (Apportionment and Oversight) controlled function. The ARs are not approved persons.

4.3. The ARs are responsible for sourcing their own business. Head Office manages the central booking system, provides training and gives sales support. As Principal, it is also responsible for its ARs' compliance with FSA regulations.

Conduct in issue

Recruitment, monitoring and training of Appointed Representatives

Recruitment

4.4. Aspray recruits its ARs by placing advertisements in national newspapers or franchise magazines and attending franchise roadshows. Prospective ARs were asked to complete an application form. The form simply asked for details of education, qualifications, previous employment and two referees. No further information or declarations, such as financial information and disciplinary or regulatory history, were requested.

4.5. Prospective ARs would then have an informal interview with Aspray's management. The management would explain the split of responsibilities between Head Office and the ARs, and would discuss the candidates' CVs. However, there was no formal assessment of the candidates' capability and suitability to work in a regulated environment.

Training

4.6. Most ARs received an initial two-week training period. The training appeared to concentrate on the sales process and Aspray's IT systems. The training also included Aspray management attending the ARs' first couple of client visits.

4.7. As part of their initial training ARs were not provided with any information in relation to FSA regulation and their responsibilities, and it was not made clear to them which parts of Aspray's processes were necessary to comply with regulatory requirements. One AR informed the FSA that he did not understand what role the FSA performed, how this related to his work and what his responsibilities were as a result of working for an authorised firm.

4.8. Following their induction, the further training provided to the ARs focused on building issues, such as asbestos and damp proofing, and did not include any compliance or regulatory updates. The ARs were allowed to select and complete the training they believed they required. Aspray management did not complete reviews in order to ensure that the ARs' training needs were being appropriately met.

Monitoring

4.9. Aspray did not complete audit visits to its ARs and did not perform formal monitoring of its ARs. The Operations Manager, responsible for training and support, had informal meetings with the ARs. These meetings were sales, rather than training, focused and took place on an ad hoc basis.

4.10. ARs were monitored on an informal and irregular basis. It was up to the ARs to contact Aspray's management if they had any problems or training needs.

4.11. One AR informed the FSA that Aspray's management tended to monitor matters such as conversion rates from enquires to confirmed work rather than doing spot checks to ensure that the ARs followed procedures.

Failure to communicate with clients in a way that was clear, fair and not misleading

Promotional material

4.12. Aspray's promotional material stated that they provide a free of charge service. The internal training manual stated that at the initial meetings with clients, the ARs should inform them that the service is free of charge and there is no cost to the client at any stage. Aspray's website also stated that "Aspray provide a totally free of charge service". However, the standard client mandate, used by all ARs, gives Aspray the right to charge reasonable fees in the event of the customer cancelling the agreement after repair work has commenced. In addition, it was left to the discretion of each AR whether to collect the insurance excess from each customer. This is inconsistent with the declarations to customers that the service is free of charge.

4.13. The promotional material also states that Aspray project manage the claim from start to finish, handle all the paperwork, assess the damage, negotiate with the insurer, supply and pay for quality local tradesmen and carefully screen their contractors. However, during the ARs' initial training, they were told to source contractors from the local free papers such as Yellow Pages and only limited checks were performed and, therefore, Aspray did not carefully screen its contractors.

Complaints

4.14. Aspray provided the ARs with a "Customer Comments Procedure" document to give to clients, which set out how clients could make complaints. The document advised customers to telephone or email Aspray and stated that the complaint would be investigated thoroughly and that Aspray would "write back within 10 days". The document contained no information about the Financial Ombudsman Service ("FOS") and the right of customers to refer complaints to the FOS.

4.15. The ARs were aware that they should inform Head Office of all complaints. However, since no central list was maintained of complaints prior to the FSA visit, and the FSA is aware that complaints did arise as copies were retained on the ARs client files but were not reported to head office, the ARs did not follow this procedure.

4.16. During the Relevant Period, Aspray provided no guidance or procedures for ARs to follow in the event of receiving a complaint, aside from informing Head Office.

Submission of false and misleading information to the FSA

4.17. In Aspray's RMAR submission it stated that it had appropriate systems and procedures to ensure that the ARs were monitored and controlled, that it had carried out compliance monitoring visits to all 24 ARs, and that it had reviewed files and made financial checks on all 24 ARs.

4.18. The FSA investigation has shown that Aspray had performed no compliance visits, that it had not reviewed any client files nor made any financial checks on its ARs.

5. ANALYSIS OF THE SANCTION

5.1. The FSA's policy on the imposition of financial penalties as at the date of this Notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore during part of the relevant period.

5.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

5.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The factors include:

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

5.4. No clients appeared to have suffered any loss as a result of the breaches and the risk of loss to any client was low.

5.5. However, the FSA has considered the widespread nature of the breach which affected all 24 of Aspray's ARs and, therefore, potentially its entire client base.

DEPP 6.5.2.G(6): The amount of benefit gained or loss avoided

5.6. The FSA is not aware that Aspray obtained any financial benefit or avoided any loss as a result of the breaches.

DEPP 6.5.2G(8): Conduct following the breach

5.7. The FSA has taken into account Aspray's co-operation with the FSA's investigation and its willingness to take all reasonable steps to satisfy the FSA that regulatory requirements will be met in the future.

DEPP 6.5.2G(9): Disciplinary record and compliance history

5.8. The FSA has taken into account the fact that Aspray has not been the subject of previous disciplinary action by the FSA.

DEPP 6.5.2G(10): Other action taken by the FSA

5.9. The FSA has taken into account penalties imposed on other Authorised Persons for similar and more serious conduct and also previous cases where Private Warnings were given to Authorised Persons for less serious conduct.

5.10. The FSA, having regard to all the circumstances, considers the appropriate level of financial penalty to be £30,000 before any discount for early settlement.

6. DECISION MAKERS

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

7. IMPORTANT

7.1. This Final Notice is given to Aspray in accordance with section 390 of the Act.

Manner of and time for Payment

7.2. The financial penalty must be paid in full by Aspray to the FSA by no later than 1 April 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.3. If all or any of the financial penalty is outstanding on 1 April 2009, the FSA may recover the outstanding amount as a debt owed by Aspray and due to the FSA.

Third party rights

7.4. There are no third party rights.

Publicity

7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

FSA contacts

7.6. For more information concerning this matter generally, you should contact Paul Howick at the FSA (direct line: 020 7066 7954 /email: paul.howick@fsa.gov.uk).

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Jonathan Phelan

Head of Department
Enforcement Division,

ANNEX 1: Relevant rules and guidance

The FSA's approach to taking disciplinary action is set out in Chapter 2 of the Enforcement Guide ("EG"). In deciding to take the action the FSA has also had regard to the appropriate provisions of the Enforcement Manual ("ENF") which was in force until 27 August 2007, and therefore during part of the relevant period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.

The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:

(a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach

(b) DEPP 6.2.1G(2): The conduct of the person after the breach

(c) DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person

(d) DEPP 6.2.1G(4): FSA guidance and other published materials

(e) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases

The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

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

(b) DEPP 6.5.2G(6): The amount of benefit gained or loss avoided;

(c) DEPP 6.5.2G(8): Conduct following the breach;

(d) DEPP 6.5.2G(9): Disciplinary record and compliance history; and

(e) DEPP 6.5.2.G(10): Other action taken by the FSA.