
FINAL NOTICE

To: Christine Whitehurst
Address: 2 Alma Road, Stockport, Cheshire SK4 4PU
Date: 23 October 2017

1. ACTION

- 1.1. For the reasons given in this Notice and pursuant to section 56 of the Act, the Authority has made an order prohibiting Mrs Christine Whitehurst from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 1.2. Mrs Whitehurst has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to her.
- 1.3. Accordingly, the Authority has today made a Prohibition Order in respect of Mrs Whitehurst.

2. SUMMARY OF REASONS

- 2.1. The Authority considers that Mrs Whitehurst 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 because her

conduct as a director of First Step demonstrates a serious lack of honesty and integrity.

2.2. First Step was a debt management firm providing a full and final settlement product to its customers whereby First Step held significant amounts of client money before making a full and final settlement offer on behalf of its customers to their creditors.

2.3. The Authority considers that in the period from 24 July 2009 to 18 October 2013 (the "Relevant Period"), when she was a director of First Step (and its sole director from 28 July 2009), Mrs Whitehurst was reckless and lacked integrity in that, despite knowing that First Step was required to hold client money in a segregated client account separate from its own money and that the failure to do so created a risk of loss to customers in the event of insolvency:

(a) In the period from 24 July 2009 to 25 November 2009, Mrs Whitehurst failed to take reasonable steps to ensure that First Step segregated any client money in the client account; and

(b) In the period from 26 November 2009 to 18 October 2013, Mrs Whitehurst failed to take reasonable steps to ensure that First Step segregated all client money in the client account.

2.4. The Authority considers that in the Relevant Period Mrs Whitehurst was dishonest and lacked integrity in that:

(a) In the period from 1 December 2009 to 18 October 2013, Mrs Whitehurst, together with her husband, Adrian Whitehurst, misappropriated at least £2.75 million of client money, which they have not repaid. Mrs Whitehurst made or authorised drawings through her director's loan account to facilitate this misappropriation and they used the client money to fund a luxury lifestyle. In particular:

(i) They spent over £500,000 on holidays at five star hotels, restaurants, bars and entertainment;

(ii) They spent in excess of £200,000 on vehicles, including a Bentley and a Range Rover;

- (iii) They spent more than £50,000 on luxury brand goods, including items from Louis Vuitton and Hermes; and
 - (iv) Mrs Whitehurst withdrew over £365,000 in cash and authorised cash withdrawals and transfers totalling over £1.1 million to Mr Whitehurst;
 - (b) In the period from 14 January 2010 to 18 October 2013, Mrs Whitehurst permitted First Step to advance over £1 million of client money to entities associated with Mrs Whitehurst's family. This money was not repaid; and
 - (c) Mrs Whitehurst permitted First Step to use an amount, estimated to exceed £2.2 million, of client money to fund the operating expenses of First Step.
- 2.5. At all times during the Relevant Period, Mrs Whitehurst knew that First Step was not permitted to spend client money for its own benefit. Mrs Whitehurst knew that by spending client money she was causing a client money shortfall.
- 2.6. By 30 November 2009, First Step had a client money shortfall of £466,134. Thereafter, the shortfall increased each year and by 18 October 2013, when Mrs Whitehurst resigned as a director of First Step and ceased to be involved in the firm, the shortfall exceeded £6 million. When it subsequently went into administration in May 2014, First Step should have been holding client money for over 4,000 customers and there was a client money shortfall of over £7 million.
- 2.7. The Authority considers that due to the seriousness of the matters referred to in this Notice, Mrs Whitehurst is not a fit and proper person. The Authority has therefore made the Prohibition Order. This action will advance the Authority's regulatory objectives, in particular the objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

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

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

“the 2013 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013;

“the Authority” means the Financial Conduct Authority;

“the CCA” means the Consumer Credit Act 1974;

“client account” means a bank account, separate from an office bank account, into which client money is paid and segregated from a firm’s own money;

“client money” means money paid by customers to a firm which is held by that firm on trust for its customers;

“client money shortfall” means (i) the shortfall between the amount of money in First Step’s client money bank account and the client money liability of First Step to its customers, or (ii) for the period prior to 8 July 2009, the client money liability of First Step to its customers;

“DEPP” means the Authority’s Decision Procedure and Penalties manual;

“Determination to Revoke Notice” means the notice issued to First Step under section 34(3) of the CCA dated 14 November 2012;

“EG” means the Authority’s Enforcement Guide;

“First Step” means First Step Finance Limited (dissolved on 23 February 2016);

“FIT” means the Fit and Proper Test for Approved Persons section of the Authority’s Handbook;

“Form of Disqualification Undertaking” means an undertaking in accordance with the Company Directors Disqualification Act 1986 given to the Secretary of State for Business Innovation and Skills;

“full and final settlement” means a model in which a consumer credit firm holds money on behalf of its customer and does not distribute that money promptly to creditors, but instead retains the money pending negotiation of a settlement with the customer’s creditors;

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

“Mr Whitehurst” means Adrian Lee Whitehurst, husband of Mrs Whitehurst;

“Mrs Whitehurst” means Christine Whitehurst;

“office account” means the bank account, separate from a client bank account, into which funds of First Step, and not client money, was to have been held and segregated from client money;

“OFT” means the Office of Fair Trading;

“the OFT’s Guidance” means either or both of the following guidance which was applicable during the Relevant Period: the OFT’s Debt Management Guidance

issued in September 2008 and the OFT's Debt Management (and Credit Repair Services) Guidance issued in March 2012;

"Prohibition Order" means an order prohibiting Mrs Whitehurst, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm;

"Relevant Period" means the period from 24 July 2009 to 18 October 2013;

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

"the Warning Notice" means the warning notice given to Mrs Whitehurst dated 15 August 2017.

4. FACTS AND MATTERS

Regulation of First Step and its business model

- 4.1. First Step was incorporated on 28 September 2007 and commenced trading on or about 13 November 2007. First Step offered a debt reduction service (a form of debt management) to its customers. Mr and Mrs Whitehurst established First Step and were initially its shareholders, until Mr Whitehurst transferred his shareholding to Mrs Whitehurst sometime between 1 December 2009 and 28 September 2010.
- 4.2. On 26 November 2007, the OFT issued a consumer credit licence to First Step. That licence, issued under the CCA, permitted First Step to conduct debt counselling and debt adjusting services.
- 4.3. On 1 April 2014, consumer credit regulation transferred from the OFT to the Authority. On that date firms holding a consumer credit licence issued by the OFT were, on application, automatically granted interim permission to continue trading under Article 56 of the 2013 Order. First Step did not have a licence from the OFT at that date and accordingly was not granted interim permission by the Authority.
- 4.4. A standard debt management plan is an informal arrangement conducted on behalf of customers by a debt management firm. The firm usually seeks to freeze interest and charges on its customer's debts. Customers make monthly payments to the firm from which the firm's fee is deducted. The balance of each monthly payment is paid by the firm on a pro-rata basis to the customer's creditors. It may take many years for the debts to be paid off. However, with each monthly payment the customer's debts should be reduced.

- 4.5. First Step offered its customers a different model of debt reduction. First Step sought to reduce the total indebtedness of each customer by: challenging the enforceability of the debt contracts; seeking to set off mis-selling claims (payment protection insurance or others) against certain debts on behalf of the customer; and negotiating a compromise of the customer's debts overall. As First Step undertook this process it received monthly payments from its customers but made no, or only token, payments to creditors.
- 4.6. With this model, First Step was supposed to use its customers' monthly payments, less fees due to First Step, to build up a "pot" of money for each customer. The money in this pot was client money and should have been used to make an offer of full and final settlement of the debts with each of the customer's creditors. The client money was not to be used by First Step for any purpose other than paying the customer's creditors or for repayment to the customer.
- 4.7. Mrs Whitehurst, along with Mr Whitehurst, was involved in devising the First Step debt reduction model. Mr Whitehurst explained that in setting up First Step he and Mrs Whitehurst wanted to help the public and be "champions of the people".
- 4.8. Mr Whitehurst was the sole director of First Step from 2 October 2007 to 23 July 2009 and resigned as a director on 27 July 2009. Mrs Whitehurst was appointed as a director of First Step on 24 July 2009 and was the sole director from 28 July 2009 until 18 October 2013. As a director of First Step, Mrs Whitehurst had responsibility for all the financial affairs of the firm during the period of her appointment.
- 4.9. Prior to her appointment as a director, Mrs Whitehurst worked at First Step assisting with administrative tasks, with a particular focus on human resources.

OFT investigation and revocation of First Step's licence

- 4.10. On 30 November 2009, the OFT visited First Step following receipt of a number of customer complaints. It reviewed First Step's business and on 6 December 2010 issued First Step with a notice stating that it was minded to revoke its licence. The OFT contended, amongst other things, that First Step had engaged in business practices appearing to be deceitful, oppressive or otherwise unfair or improper.

- 4.11. In response, First Step provided information and made representations to the OFT. However on 14 November 2012, the OFT issued a notice of a determination to revoke First Step's licence. This was based on findings that First Step had engaged in deceitful, oppressive, improper and unfair business practices.
- 4.12. First Step referred the Determination to Revoke Notice to the First-Tier Tribunal General Regulatory Chamber (Consumer Credit) on 7 December 2012, but withdrew the reference on 27 July 2013. Its licence was revoked on 29 July 2013 and, subject to requirements, First Step was permitted to continue carrying out its licensed activities until 4pm on 18 October 2013. Mrs Whitehurst resigned as a director and sold her interest in First Step on 18 October 2013.
- 4.13. From 18 October 2013, First Step was operated and controlled by new management. Although the customers of First Step were to have been transferred to another company from that date, the transfer did not take place. First Step continued to receive payments from existing clients until it was placed into administration in May 2014.

First Step's bank accounts

- 4.14. From the start of trading on 13 November 2007 until 8 July 2009, First Step traded without a client account. Its customers made payments directly into First Step's office bank account. First Step did open a client account on 9 July 2009, but it did not instruct its customers to make payments into that account and accordingly payments continued to be made into First Step's office account.
- 4.15. Rather than receive customer payments into the client account, First Step decided to receive all client money into its office account (co-mingling its own monies and client monies). At various times client money was transferred from the office account to the client account. This was known as the "sweep".
- 4.16. The first sweep of client money to the client account took place on 26 November 2009. However, as a result of payments made from First Step's office account, including loans paid to Mr and Mrs Whitehurst (see paragraph 4.24 below), the amount of money in the office account was less than the amount of client money that First Step should have been holding on trust for its customers. Mr and Mrs Whitehurst's subsequent misappropriation of client money (see paragraph 4.25 below) meant that this continued to be the case. Consequently, neither that

sweep, nor subsequent sweeps, resulted in the transfer of all of the client money that First Step should have been holding on trust for its customers to the client account. There was therefore a client money shortfall as shown in the table at paragraph 4.18 below.

4.17. First Step's customers were informed that the money they paid to First Step would be placed into a ring-fenced account. This was untrue.

Client money shortfall

4.18. By no later than 30 November 2008 First Step had a client money shortfall. That shortfall, as recorded in First Step's accounting records, increased each year as follows:

Date	Client money shortfall £
30 November 2008	82,933
30 November 2009	466,134
30 November 2010	1,687,838
30 November 2011	3,869,472
30 November 2012	5,761,943
31 October 2013	6,119,716

4.19. At all relevant times during the Relevant Period, Mrs Whitehurst was aware of First Step's bank balances and of the client money shortfall.

OFT Guidance

4.20. Both versions of the OFT's Guidance stated that client money held by licensed firms was to be held in a client account and separate from the firm's own money. The version of the OFT's Guidance issued in March 2012 specifically noted that the purpose of holding client money in a separate ring-fenced account was to protect customers in the event the firm ceased to trade and that it was unlawful for a firm to spend client money on its own account.

Failure to segregate client money

- 4.21. Mrs Whitehurst was, at all relevant times during the Relevant Period, aware that First Step was required to operate a client account and keep client money separate from First Step's money. When she was appointed as a director, on 24 July 2009, First Step had already opened a client account. However, no client money was held in that account at that time and no funds were deposited into that account until 26 November 2009. Accordingly, in the period from 24 July 2009 to 25 November 2009, First Step failed to segregate any client money.
- 4.22. From 26 November 2009 to 18 October 2013, First Step failed to hold all client money it had received in the client account, which meant there was a client money shortfall. Mrs Whitehurst was aware of the shortfall and that First Step was not segregating client money as required by the OFT's Guidance, but failed to take reasonable steps to ensure that all client money was segregated. As a result, the customers of First Step were at risk of losing their money in the event of insolvency. In the event, when First Step was placed into administration on 28 May 2014 that risk crystallised with a client money shortfall exceeding £7 million.

Mrs Whitehurst's misappropriation of client money

- 4.23. First Step failed to use all of the client money it received for the benefit of its customers. At all times during the Relevant Period, Mrs Whitehurst knew that First Step was not permitted to spend client money for its own benefit.
- 4.24. First Step's financial statements for the year ending 30 November 2009 showed loans to Mr and Mrs Whitehurst (as directors and/or participators) with an outstanding balance of £676,413. These payments were made from First Step's office account during a period when client money was paid into that account and not transferred to the client account, and contributed to First Step having a client money shortfall of £466,134 by 30 November 2009.
- 4.25. In the period from 1 December 2009 to 18 October 2013, Mrs Whitehurst, together with Mr Whitehurst, misappropriated more than £2.75 million of client money. Mrs Whitehurst made or authorised drawings through her director's loan account to facilitate this misappropriation and they used the client money to fund a luxury lifestyle. This expenditure was in addition to the salary, exceeding

£680,000, drawn by Mrs Whitehurst from First Step during that period. In particular:

- (a) over £500,000 was spent on holidays, including stays at five star luxury hotels and resorts in Marbella, Venice, Vienna and Greece, bars, restaurants and other entertainment;
- (b) over £200,000 was used to pay for luxury motor vehicles, including a Bentley, a Range Rover and a Ducati motorbike;
- (c) over £50,000 was spent on luxury brands, including goods from Hermes and Louis Vuitton; and
- (d) Mrs Whitehurst withdrew over £365,000 in cash and authorised cash withdrawals and transfers totalling over £1.1 million to Mr Whitehurst.

4.26. Mr and Mrs Whitehurst have not repaid the client money that they misappropriated. Mrs Whitehurst knew that by spending client money she was contributing to the client money shortfall. She was aware that the OFT had issued the Determination to Revoke Notice in November 2012 but continued to spend client money in any event.

4.27. In addition, in the period from 26 January 2010 to 18 October 2013, Mrs Whitehurst allowed First Step to use client money to advance over £1 million to entities associated with her family. This money was not repaid to First Step. Mrs Whitehurst knew that by allowing First Step to use client money to make those loans she was acting contrary to the beneficial interests of First Step's customers.

4.28. Mrs Whitehurst also allowed First Step to use client money to fund the business expenses of First Step. The Authority estimates that over £2.2 million was used to fund those operating costs, which included Mr and Mrs Whitehurst's remuneration. This remuneration exceeded £1.1 million over the course of First Step's trading.

4.29. By 18 October 2013, when Mrs Whitehurst resigned as a director and sold her interest in First Step, the client money shortfall exceeded £6 million.

4.30. First Step traded for approximately seven months after Mrs Whitehurst ceased to be a director of First Step. By the time First Step was placed into administration on 28 May 2014 there were no funds available for distribution to creditors. As a

result, over 4,000 customers of First Step have not had returned to them any of the client money that First Step should have been holding on their behalf in a segregated account.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. In light of the facts and matters described above, the Authority considers that Mrs Whitehurst's conduct was reckless and dishonest and that she lacks integrity. Accordingly, she lacks the fitness and propriety to perform any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.
- 5.3. Mrs Whitehurst knew that client money received by First Step should have been held in a separate client account and that the failure to do so created a risk of loss to customers in the event of insolvency. However, despite knowing this, during the Relevant Period, when she was a director of First Step, Mrs Whitehurst failed to take reasonable steps to ensure that First Step segregated client money. No client money was segregated in the client account in the period from 24 July 2009 to 25 November 2009, and First Step failed to segregate all client money in the client account thereafter. The Authority considers that Mrs Whitehurst thereby acted recklessly and that her failure demonstrates a lack of integrity.
- 5.4. Mrs Whitehurst knew that client money held by First Step was only to be used for the benefit of its customers: to pay the customers' creditors or to be returned to the customers. Notwithstanding this, during the Relevant Period, Mrs Whitehurst misappropriated client money to fund a luxury lifestyle that she enjoyed with her husband, to advance funds to entities associated with her family and to fund the operating costs of First Step. At all times she was aware that she was spending client money and she knew that it was wrong to do so. Further, she knew that by spending client money she was a direct cause of the client money shortfall and was causing the shortfall to increase. The Authority considers that Mrs Whitehurst's conduct during the Relevant Period was dishonest and demonstrates a lack of integrity.

- 5.5. Given the serious nature of Mrs Whitehurst's misconduct the Authority is of the view that she poses a serious risk to consumers.

6. SANCTION

- 6.1. The Authority considers that Mrs Whitehurst has acted recklessly and dishonestly and that she lacks integrity. It therefore considers it appropriate and proportionate in all the circumstances to make the Prohibition Order. This action will advance the Authority's consumer protection and market integrity objectives.
- 6.2. In deciding to make the Prohibition Order, the Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A to this Notice).

7. PROCEDURAL MATTERS

- 7.1. This Notice is given under, and in accordance with, section 390 of the Act.

Decision maker

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

Publicity

- 7.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates 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 Mrs Whitehurst or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.4. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contacts

- 7.5. For more information concerning this matter generally, contact Andrew Baum (direct line: 020 7066 8898 / andrew.baum@fca.org.uk) of the Enforcement and Market Oversight Division of the Authority.

Bill Sillett

Head of Department, Enforcement and Market Oversight Division

Financial Conduct Authority

ANNEX A

1. Relevant statutory and regulatory provisions

- 1.1. By virtue of Article 56 of the 2013 Order licensees holding consumer credit licences issued by the OFT as at 31 March 2014 were granted interim permission by the Authority. Article 56(9) of the 2013 Order provides that an interim permission is to be treated as a Part 4A permission (except in certain circumstances not relevant to this Notice).
- 1.2. The Authority's statutory objectives, set out in section 1B of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 1.3. The Authority has power, under section 56 of the Act, to 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 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. Such an order may relate to specific regulated activity, any regulated activity falling within a specified description, or all regulated activities.

The Authority's policy for exercising its powers to make a prohibition order

- 1.4. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in paragraphs 9.5.1 and 9.5.2 (referencing paragraph 9.3.2) of Chapter 9 of EG. In making a prohibition order the Authority's considers all relevant circumstances and the scope of the prohibition will take into account the reasons why the individual is not a fit and proper person and the severity of the risk the person poses to consumers or the market generally.
- 1.5. EG paragraph 9.3.2 includes the following: "*When the [Authority] decides whether 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 those set out below.*

9.3.2 (2) *Whether the individual is fit and proper to perform functions in*

relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).

- (5) *The relevance and materiality of any matters indicating unfitness.*
- (8) *The severity of the risk which the individual poses to consumers and to confidence in the financial system.*
- (9) *The previous disciplinary record and general compliance history of the individual including whether the [Authority], any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual."*

1.6. EG paragraph 9.5.1 states: *"Where the [Authority] is considering making a prohibition order against an individual other than an individual referred to in paragraphs 9.3.1 to 9.3.7 [in respect of 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."*

1.7. EG paragraph 9.5.2 states *"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, where appropriate, the factors set out in paragraph 9.3.2."*

Fit and Proper Test for Approved Persons

1.8. The Authority has issued guidance on the fitness and propriety of individuals in FIT. Paragraph 9.3.2 of EG references the provisions of FIT.

1.9. FIT 1.3.1G(1) states that the most important considerations when assessing the fitness and propriety of a person include that person's honesty, integrity and reputation. FIT 2.1.1 provides that in determining honesty, integrity and reputation the matters in FIT 2.1.3 may be considered.

- 1.10. FIT 2.1.3(7) notes that the Authority can consider whether the person has ever been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body.
- 1.11. FIT 2.1.3(9) notes that the Authority can have regard to whether the person has been a director or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.

OFT Guidance

- 1.12. The version of the OFT's Guidance issued in September 2008 states at paragraph 2.23:

"Any monies held on behalf of consumers must be kept in a client account not usable by the [debt management company] for the purposes of its own business. This includes, in particular, any deposit which under the contract may be returned to the client at any date in the future and any monies received by the company for payment to creditors."

- 1.13. The version of the OFT's Guidance issued in March 2012 states at paragraph 3.42:

"Any monies held on behalf of consumers should always be kept in a separate ring-fenced client bank account and not be used by the licensee for its own purposes..... It is unlawful for a licensee to spend consumer client's money on its own account since it is held in trust on behalf of the consumer client and is not the licensee's to spend..... We would expect consumer client monies to be held in a separate ring-fenced bank account in such a way as to be "protected" in the event of a licensee holding such monies ceasing to trade...."