
FINAL NOTICE

To: **Philip Condon**

Date: **11 April 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you final notice about an order prohibiting you, Mr Philip Condon, from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that you are not a fit and proper person.

1. THE ORDER

- 1.1 The FSA gave you, Mr Philip Condon, a decision notice dated 5 March 2008 which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm ("the Prohibition Order") on the grounds that you are not a fit and proper person.
- 1.2 As you have not referred this matter to the Financial Services and Markets Tribunal, the FSA hereby makes the Prohibition Order against you.

2. REASONS FOR THE ORDER

Summary

- 2.1 The FSA has, having had regard to the written representations made your behalf that are summarised below, concluded that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person,

exempt person or exempt professional firm and that it should take the action set out above.

- 2.2 As is set out more fully below, the reasons for this action relate to your conviction, in October 2007, of one count of conspiracy to defraud.¹ You were found guilty of conspiring to defraud by dishonestly withholding claims data from external actuaries of Independent Insurance Company Limited (the “Company”). The FSA has reached its decision to give this Final Notice solely on the basis of your criminal conviction.
- 2.3 Accordingly, the FSA has concluded that you are not fit and proper because you have failed to demonstrate appropriate standards of honesty and integrity.

3. RELEVANT STATUTORY PROVISIONS

- 3.1 The FSA is authorised by the Act to make a prohibition order in circumstances where it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by any authorised person, exempt person or exempt professional firm. A prohibition order may prohibit that individual from performing a specified function in relation to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities (section 56 of the Act).

4. RELEVANT GUIDANCE

- 4.1 In making this prohibition order, the FSA has had regard to guidance published in the FSA Handbook, in particular at FIT 2 and ENF 8:²
- FIT 2: the FSA has considered its guidance in relation to considering fitness and propriety. The FSA has serious concerns about your honesty, integrity and reputation³.
 - ENF 8: the FSA has considered its guidance in relation to the prohibition of individuals. Having considered the relevant factors set out at ENF 8 in relation to the prohibition of individuals who are not approved persons, the FSA has concluded that you are not fit and proper to perform any functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and that a prohibition order is appropriate.

¹ The FSA agreed to postpone its consideration of whether to give a Decision Notice until the conclusion of the criminal proceedings.

² The Enforcement Manual was in force until 27 August 2007.

³ FIT 2.1 & ENF8.5.2G(1)(a). *Honesty, integrity and reputation* is a phrase which encompasses a wide range of potential factors. The FSA’s assessment of an individual’s conduct may have regard to any one, or to any combination, of the three individual elements.

5. FACTS AND MATTERS RELIED ON

Reserving

The Company's Stated Policies

- 5.1 As an insurance company, the Company was required to maintain reserves in relation to the claims for which it expected to make payments under the policies it had written.
- 5.2 The Company's reserves included components for (1) claims that had already been reported to the Company but had yet to be paid ("Outstanding Claims"); (2) claims in relation to insured events that had already occurred but had not yet been reported to the Company ("IBNR" or "Incurred But Not Reported"); and (3) claims that had not yet occurred but it was anticipated would arise out of future events during the currency of policies already written by the Company ("Unexpired Risks"). In the case of the Company, the component for Unexpired Risks was not significant.
- 5.3 The Company's stated policy in respect of reserving for Outstanding Claims was set out in a Claims Handling Guide (the "Guide"). The Guide stated, amongst other things:
- "We have a distinctive reserving philosophy which is a major pillar of our claims philosophy P.A.M (Proactivity, Accurate Reserving and Management). Our technical reserves at any given time must realistically reflect the total of our claims liabilities at that time. There cannot be any deficiencies or surpluses in our technical reserves which would ultimately affect the Company's profitability.*
- As a result, accuracy of reserve is imperative at all times and should be based upon the anticipated result in negotiation. The reserves should be realistic and reflect the most probable settlement figure of the claim along with a provision for fees.... As the claim progresses, the reserve should be carefully reviewed and altered if required....*
- "Whenever new information warrants either an increase or a reduction in reserve, this should be acted upon immediately."*
- 5.4 The Company's stated policy therefore was to maintain an estimate of what each of the Outstanding Claims was ultimately likely to cost the Company (known collectively as "Case Estimates"), to review Case Estimates on an ongoing basis and to alter the Case Estimates where appropriate.
- 5.5 From 1994, the Company's overall level of reserves was subject to review by an independent firm of actuaries (the "Actuaries"). The Actuaries prepared a certificate, which Independent Insurance Group plc (the "Group") included within its published accounts, attesting to the adequacy of the Company's reserves. Each year during the relevant period, the Actuaries' report to the Company, which formed the basis for that certificate, included the following statement:

“Reported Claims

[The Company] aims to identify and pay claims quickly. All reported claims are reserved on a case estimate basis. The case estimates are based on all known information and updated as and when new information becomes available.”

The Company’s Actual Practice

- 5.6 From about May 1997, and on an increasing basis from about July 1999, until it entered provisional liquidation in June 2001, the Company did not follow the policies set out in the Guide and which the Actuaries believed that the Company was following. The Company did not update its Case Estimates “*as and when new information [became] available*”.
- 5.7 Instead, in addition to the Case Estimates that were recorded on the Company’s computer system (the “System”), the Company developed lists where other information was recorded, but not input onto the System (the “Off-Claims System Lists”). These Off-Claims System Lists comprised:
- 5.7.1 **Reserve Increase Lists** – These lists contained details of cases in which the estimate of the cost of the claim, and therefore its Case Estimate requirement, had increased. The required increases to Case Estimates detailed on these lists were not input onto the System in a timely manner or at all. Further, as part of the drive to reduce the Company’s Case Estimates, audits (known as “1-4-1 Audits”) were used to identify reductions in Case Estimates. Following a 1-4-1 Audit, decreases to Case Estimates were input onto the System, but increases were not. Instead, the increases were added to the Reserve Increase Lists.
- 5.7.2 **Whiteboards** – The Whiteboards held details of new cases with large potential losses. The Case Estimates required for these cases were not input onto the System in a timely manner or at all.
- 5.8 By 12 April 2001, the total amount of the increases to Case Estimates that were held on Reserve Increase Lists but which had not been input onto the System was £35.312 million and the total amount of Case Estimates that were held on Whiteboards but which had not been input onto the System was £42.498 million.
- 5.9 When the Company calculated its overall reserves each year, it based its calculations on the Case Estimates that were contained on the System and did not take into account the Reserve Increase Lists or the Whiteboards.
- 5.10 When the Actuaries reported on and certified the adequacy of the Company’s overall reserves, they did not take into account the Reserve Increase Lists or the Whiteboards, because they were not told about them.
- 5.11 As set out above, the Company’s overall reserves included (1) the total of the Case Estimates; and (2) a provision for IBNR. That provision for IBNR was calculated by means of an extrapolation exercise conducted by reference to, amongst other things, the Company’s Case Estimates. Thus, any understatement in the Company’s Case

Estimates, that was not compensated for, affected the IBNR calculation and resulted in both of these components of the Company's overall reserves being understated.

- 5.12 The practices set out above resulted in the certificates provided by the Actuaries in relation to the Company's reserves, and included in the Group's published accounts for at least the years 1999 and 2000, being made on a false basis because the Company's Case Estimates were not, as the Actuaries believed them to be, updated as and when new information became available.

Your Knowledge

- 5.13 The use of Off-Claims System Lists as set out above was contrary to the Company's stated policies and good practice. The FSA has considered, in particular, the extent to which you knew that Off-Claims System Lists (1) were being maintained; (2) were not being taken into account in calculating the Company's overall reserves; and (3) were not disclosed to the Actuaries.

- 5.14 The FSA has concluded that you were fully aware, from late 1997, and certainly from July 1999 until the Company entered into provisional liquidation in June 2001, that Off-Claims System Lists were being maintained in that:

5.14.1 During the course of 1997, when Company staff informed you that reviews of Case Estimates, such as 1-4-1 Audits, had identified some Case Estimates where an increase was warranted, and some Case Estimates where a decrease was warranted, you would ask for the decreases to be input onto the System but would question the validity of the increases. Company staff were required to send you lists of required increases on certain classes of business for your approval.

5.14.2 On 7 August 1998, you were copied in on a memo to Mr Bright, the Company's Managing Director, from a senior Company employee which stated *"During the [1-4-1 Audit] [a senior Company employee] will provide regular reports which we will need to meet too [sic] discuss including how to manage the reserves through."*

5.14.3 On 1 September 1998, you were sent a memo by a senior Company employee which stated that *"no audit increases [in a certain class of business would] be input until further discussion in the 4th quarter."*

5.14.4 On 12 November 1998, you were copied in on a memo from a senior Company employee to Mr Bright which stated that Company staff were *"keeping lists of increases which will not be processed and this will be 'managed' through in conjunction with [a senior Company employee and Mr Condon]."*

5.14.5 In July 1999, the process of Off-Claims System Lists became more formalised. On 21 July 1999, you were copied in on a memo from a senior Company employee to Mr Bright which stated, in relation to certain categories of insurance claims, *"the following instructions have been issued:- ... All reserve increases which are identified on pending claims (and do not relate to*

payments) will be put on a weekly spreadsheet and sent to me. Each week, I will, therefore, receive a list of all proposed reserve increases on pending claims and a separate summary of the audit activity. I will report to you on a weekly basis. I trust this is in order.”

5.14.6 You did not in any way disapprove of or criticise the proposal contained in the memo of 21 July 1999.

5.14.7 You were sent the first weekly report envisaged by the memo described in paragraph 5.14.5 above on 26 July 1999. The report clearly indicated that the Company staff’s review had identified more Case Estimates where increases were required than Case Estimates where decreases were required. That report specifically stated that *“the savings have been input – the deficits are outstanding.”*

5.14.8 From July 1999 onwards, you were regularly updated in relation to the extent of the Off-Claims System Lists. For example:

(a) On 18 August 1999, you were sent a memo which indicated that the 1-4-1 Audit activity had revealed that the Company’s reserves were understated by £3.7 million on the claims reviewed.

(b) On 6 January 2000, you sent a memo to the Company’s Finance Director, Mr Lomas, which stated:

“I refer to the report dated 4th January. I notice that this particular month accentuates a lot of big movements in the month, effectively at settlement, with many reserves left at woefully inadequate levels prior to settlement date.

“We both know why this occurs but, surely, it cannot be what we want to see reflected.

“Perhaps we can discuss.”

(c) By the end of February 2000, you were aware that the Case Estimates held on Reserve Increase Lists amounted to over £13 million. In particular, on or about 21 February 2000 you, with Mr Bright, discussed a list entitled “Outstanding Reserve Increases” with another senior employee. That list showed outstanding reserve increases amounting to £13.25 million.

(d) On 19 July 2000, you were sent a memo from the senior Company employee who had written the memo of 21 July 1999, stating that the format of the regular updates was being changed so that they showed, on separate spreadsheets (1) Reserve Increase Lists alone; and (2) Reserve Increase Lists plus all Whiteboard cases. You were informed that the Reserve Increase Lists alone amounted to £13.948 million and the Reserve Increase Lists and Whiteboard together amounted to £32.130 million.

- (e) On 24 October 2000, you were sent a memo attaching spreadsheets showing that the outstanding Whiteboard claims in one area of the Company's business amounted to £36.188 million.
- (f) On 14 November 2000, you were sent a spreadsheet showing that the cumulative total of the outstanding reserves not entered onto the System was £79.991 million.
- (g) On 18 December 2000, you were sent a memo from a senior Company employee showing that the outstanding Whiteboard claims in one area of the Company's business amounted to £34.993 million and an e-mail showing that the outstanding Whiteboard claims in another area amounted to £28.318 million.
- (h) On 2 March 2001, you were sent an e-mail attaching a copy of the Whiteboard for one area of the Company's business showing that outstanding Whiteboard cases in this area amounted to £28.725 million. On the same day you also received a copy of the Whiteboard for another area of business showing that outstanding Whiteboard cases in that area amounted to £20.046 million.
- (i) On 12 March 2001, you were sent a memo relating to the Whiteboards, stating that, as at 26 February 2001, the outstanding Whiteboard cases amounted to £56.137 million.
- (j) On 27 March 2001, you were sent a memo by a senior Company employee about the results of an audit on property related claims. That memo stated that the savings identified by the audit had been entered onto the Company's systems but that the deficits identified had not been and asking you what should be done with those deficits.

5.14.9 Throughout 1999 and 2000, you personally prevented Company employees from inputting Case Estimates held on the Off-Claims System Lists on to the System. You also sought to persuade staff to identify Case Estimate decreases rather than Case Estimate increases. For example:

- (a) You responded to the memo of 26 July 1999 (see paragraph 5.14.5 above) with a memo of 28 July 1999 which stated:

"I refer to your memo of 26 July 1999 addressed to Mr Bright.

"I have spoken to you since on a couple of occasions, and you will not be surprised to note that I am disappointed by the content of your memo.

...

"I have arranged for you to come and see me on my return from holiday when you can perhaps explain to me why it is that your views appear to contradict the evidence that I am seeing."

- (b) You responded to the memo of 12 March 2001 (see paragraph 5.14.8(i) above), by a memo of the same date which stated *“I refer to our meeting this morning and will stress to you the principal objective here is to clear all savings that are possible in respect of outstanding claims, so that we can manage our claims expectations throughout the coming 12 months...All property claims including the under £10,000 cases must be reviewed and we have agreed that savings will be shown.”*

Your Concealment of the Company’s Actual Practice and Misleading the Actuaries

5.15 The FSA has also concluded that you were fully aware from late 1997, and certainly from July 1999 until the Company entered provisional liquidation in June 2001, that the information contained in the Off-Claims System Lists was not being taken into account in calculating the Company’s overall reserves and was not being disclosed to the Actuaries. In fact, you took positive steps to mislead the Actuaries and to conceal the existence of the Off-Claims System Lists from them in that:

5.15.1 Between January 1997 and February 2000 you (together with Mr Lomas) represented the Company at meetings with the Actuaries. You effectively ran the meetings on behalf of the Company.

5.15.2 In November 1997, you attended a meeting with the Actuaries at which you informed them that there had been no major changes to the Company’s claims estimating procedures. When further pressed on the issue by the Actuaries, you wrote to them on 24 March 1998, to state, *“I can confirm that all Case Estimates are based on all new information and updated as soon as new information is received.”*. You knew, as a result of the matters set out at paragraph 5.14.1 above, that this statement was untrue and therefore you made this statement dishonestly.

5.15.3 On 12 November 1998, you attended a meeting with the Actuaries and either represented or did not correct the representation that *“top management do not directly interfere with the setting of individual case estimates. The policy in handling claims has not changed. ... Estimates are updated as soon as new information comes in.”* You knew, as a result of the matters set out at paragraphs 5.14.1 to 5.14.4 above, that this statement was untrue and you acted dishonestly in making or failing to correct this statement.

5.15.4 On 3 February 1999, you wrote to the Actuaries inviting them *“in formulating [their] projections...to rely to a great extent on the verbal assurances of both Dennis Lomas and myself that actions have been taken and are complete whereby administration is up-to-date, claims handling and technical procedures are fully implemented and, in particular, the same basic underwriting disciplines which have served us so well within the Provincial account are fully implemented.”* You knew, as a result of the matters set out at paragraphs 5.14.1 to 5.14.4 above, that these assurances were untrue and you made them dishonestly.

5.15.5 At a meeting on 18 February 2000, the Actuaries asked how the same reserving process could have resulted in such a low figure for 1999 compared with 1998. You responded that the Company was “*being very hard on reserve increases.*” However, you failed to refer to either the Whiteboard or the Reserve Increase Lists in your explanation for the reduction. In the light of your knowledge at the time, and, in particular, your understanding as recorded in your memo of 6 January 2000 referred to at paragraph 5.14.8(b) above, you acted dishonestly in failing to inform the Actuaries of the practices involving the Off-Claims System Lists.

Misleading Company Staff and Frustrating the Operation of Internal Audit

5.16 The FSA has also concluded that you took deliberate steps to conceal the practices involving the Off-Claims System Lists from Company staff and frustrated the proper operation of the Company’s internal audit function in that:

5.16.1 You informed the Company employees who were involved in preparing the Off-Claims System Lists that (1) the Case Estimate increases being maintained on those lists would be taken into account by Mr Lomas in calculating the Company’s overall reserves; and (2) the Actuaries would be warned about the increases to Case Estimates maintained on the Off-Claims System Lists which were not taken into account in that way. You knew that neither of these statements was true and therefore you made them dishonestly.

5.16.2 On 5 October 2000, the Company’s internal audit department requested your authorisation to conduct an internal audit of the London Market Claims Department. On 27 October 2000, you declined to give that authorisation stating that there you saw little point in reporting that certain data was not entirely reported or accounted when this was already known and being acted upon. You suggested that the audit should take place in January/February 2001 instead.

5.16.3 On 21 November 2000, the Head of the Company’s internal audit department informed Mr Lomas that he was very unhappy about the postponement of the London Market Claims audit until January. He said that, when the audit took place in January, he intended to concentrate on all reserving issues including going through every Whiteboard case.

5.16.4 On 6 December 2000, you stated that you were not going to authorise the internal audit because January was a busy time for the London Market Claims Department and you would prefer that the internal audit was delayed until April, after the very busy first quarter had been concluded and the reorganised claims management team was settled and established.

5.16.5 The Head of the Company’s internal audit department complained to the Chairman of the Company’s Audit Committee, at a meeting of 27 February 2001, about your continued postponement of the internal audit of the London Market Claims Department. The Chairman of the Company’s Audit Committee said that he would speak with you and, following that discussion,

on 22 March 2001, you gave permission for the Internal Audit to go ahead. Subsequently, at an internal audit debrief on 26 April 2001, it was reported that outstanding reserves for 1997 and prior claims amounted to £24.8 million and unreserved Whiteboard claims stood at £25.1 million.

5.16.6 You knew, particularly once the Head of the Company's internal audit department declared an intention to concentrate on all reserving issues, including going through every Whiteboard case, that it was highly probable that the internal audit would reveal the practices surrounding the Off-Claims System Lists and their concealment from the Actuaries. You sought to postpone the internal audit in order to prevent those matters being discovered.

5.17 In the circumstances, the FSA considers that throughout a sustained period, you (1) were aware that the Company's overall reserves were understated; (2) dishonestly concealed material information from and positively misled the Actuaries, knowing that this would result in the Actuaries' certificate as to the adequacy of the Company's overall reserves being provided on a false basis; and (3) dishonestly misled Company staff in relation to the Company's practices surrounding the Off-Claims System Lists.

6. CONVICTION FOR CONSPIRACY TO DEFRAUD AND REPRESENTATIONS

Conviction for Conspiracy to Defraud

6.1 You were convicted on 23 October 2007 of conspiracy to defraud by dishonestly withholding claims data from the Company's actuaries.

6.2 You were sentenced to three years imprisonment for the one count of conspiracy to defraud, and you were disqualified as a company director for ten years.

6.3 In sentencing Judge Rivlin made the following observations in relation to your conduct:

"Phillip Condon, you ... are by no means a weak character and you were understandably regarded as Mr Bright's right-hand man in the Company, although the evidence before the court is that you would invariably take his lead. You knew perfectly well what was going on and agreed to it. Moreover, I am satisfied that your part in this fraud did not evaporate in early 2000 as you claim. There are many indications of your continuing involvement not least, I believe, being the repeated postponement of the Company's internal audit in which you played a full part and which I have no doubt was motivated by the need to hide the fraud that was continuing.

"You ignored the pleas of one Senior Manager who felt obliged to resign that you should do something about the situation. I am satisfied that you were aware of and involved in the fraud all the way through. Indeed it could hardly have succeeded without your agreement and active involvement. I accept, however, that the fraud was neither of your devising; nor were you particularly enthusiastic about it. But you very foolishly felt a greater loyalty to your old friend and mentor Mr Bright than you did to

all the many, many innocent people to whom you owed a far greater duty and who so badly needed your protection....”

- 6.4 The FSA notes this conviction and your disqualification as a company director for ten years.

Representations on the Warning Notice

- 6.5 In written representations on the Warning Notice, you indicated that you agreed that it was appropriate for the FSA to only rely on the conviction against you for conspiracy to defraud if the FSA decided to prohibit you. You indicated that should the FSA seek to rely on more than the conviction in seeking to prohibit you, you would seek to make further representations.
- 6.6 The FSA does not think it is necessary to rely on more than the conviction against you for conspiracy to defraud and does not do so in this Final Notice. While the FSA has not made a final decision in relation to the facts and matters set out in the Warning Notice, the FSA is not aware of any materials which substantially undermine them. Indeed, the FSA notes that the facts and matters set out in the Warning Notice are much the same as those out of which the criminal conviction against you arose.

7. CONCLUSIONS

- 7.1 The FSA has concluded that in the light of the matters set out above you have demonstrated a failure to act with honesty and integrity in functions for which you would, under the Act, need approval to perform.
- 7.2 Consequently, the FSA has reached the conclusion that you lack honesty and integrity and are not, therefore, fit and proper to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm and that a prohibition order is appropriate. In reaching this conclusion, the FSA has considered the fact that you were not an Approved Person when you were employed by the Company.
- 7.3 The FSA has also had regard to ENF 8. This indicates that, in deciding whether to make a prohibition order, the FSA will consider the FSA’s regulatory objectives and the provisions of FIT 2. The FSA has therefore had regard to the criteria for fitness and propriety set out at FIT 2 and the regulatory objectives of the FSA as set out in section 2 of the Act.

8. DECISION MAKER

- 8.1 The decision that gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

9. IMPORTANT

- 9.1 This Final Notice is given to you under section 56 and in accordance with section 390 of the Act. The following statutory rights and obligations are important.

Publicity

- 9.2 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 these 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 consider 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.
- 9.3 The FSA intends to publish this Final Notice and such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.4 For more information concerning this matter generally, you should contact Helena Varney at the FSA (direct line: 020 7066 1294/fax: 020 7066 1295).

.....

Tracey McDermott
Head of Department

FSA Enforcement Division