
FINAL NOTICE

To: Mr Derek Jones Which Mortgage Limited

Individual Reference Number: DRJ01066 301962

Address: 12 Dunscore Brae
Hamilton ML3 9DH.

Date 29 April 2013

ACTION

1. For the reasons given in this notice, the Authority hereby:
 - (a) withdraw, pursuant to section 63 of the Act, the approval granted to Mr Jones under section 59 of the Act to perform controlled functions in relation to Which Mortgage; and
 - (b) make an order, pursuant to section 56 of the Act, prohibiting Mr Jones from performing any functions within the definition of the Authority's Handbook of significant influence functions in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm on the basis that

he is not a fit and proper person because he lacks competence and capability. This order takes effect from 29 April 2013.

2. The Authority had sought to impose on Mr Jones a financial penalty of £11,200 pursuant to section 66 of the Act, for breaches of Statement of Principle 6. Mr Jones has provided verifiable evidence that imposing a financial penalty would cause him serious financial hardship. The Authority therefore has not imposed a financial penalty on Mr Jones.

SUMMARY OF REASONS

3. During the relevant period Mr Jones was a CF1 director and a mortgage adviser at Which Mortgage.
4. Mr Jones breached Statement of Principle 6 by failing to act with due skill, care and diligence by failing to ensure that the Firm had appropriate controls to verify information submitted by clients to support mortgage applications which led to the Firm being used to facilitate financial crime, through the submission of false payslips to high street lenders.
5. Mr Jones's conduct was particularly serious because his failings:
 - (a) allowed the Firm to be used for purposes connected with financial crime, specifically mortgage fraud; and
 - (b) led high street lenders to offer mortgages to customers on the basis of false and misleading information.
6. As a result of the nature and seriousness of these matters, Mr Jones has failed to meet the minimum regulatory standards in terms of competence and capability and is not a fit and proper person to perform any functions within the definition of the Authority's Handbook of significant influence functions in relation to any regulated activities carried on by an authorised person. The Authority

considers that the sanction is necessary and proportionate, and it supports the Authority's regulatory objectives of:

- (a) reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime; and
- (b) ensuring greater confidence in the mortgage market.

DEFINITIONS

7. The definitions below are used in this Final Notice.

- (a) the "Act" means the Financial Services and Markets Act 2000;
- (b) the "Authority" means "the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority";
- (c) the "client files" means the sample of 38 mortgage application client files submitted to high street lenders reviewed by the Authority;
- (d) "DEPP" means the Decision Procedure and Penalties Manual;
- (e) The "directors" means Mr Derek Jones and Mr Douglas Jones;
- (f) "EG" means the Enforcement Guide, applying with effect from 28 August 2007;
- (g) "FIT" means Fit and Proper test for Approved Persons;
- (h) the "Handbook" means the Authority's Handbook of Rules and Guidance;
- (i) "HMRC" means Her Majesty's Revenue and Customs;
- (j) "Mr Jones" means Derek Jones;

- (k) the "relevant period" means 26 March 2010 to 14 October 2011;
- (l) the "Settlement Decision Makers" means two members of the Authority's senior management who have jointly made the decisions which gave rise to the obligation to give this notice;
- (m) the "Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons;
- (n) "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and
- (o) "Which Mortgage/the Firm" means Which Mortgage Limited.

FACTS AND MATTERS

Background

8. Which Mortgage is a mortgage and insurance intermediary firm based in Glasgow. It was incorporated on 7 September 1995 and became authorised on 31 October 2004 to undertake regulated activities. The Firm's businesses comprised residential mortgage contracts, buy-to-lets, commercial loans and general insurance. Approximately a third of its businesses consisted of residential mortgage contracts.
9. During the relevant period the Firm consisted of two directors, namely, Mr Jones and his father, Douglas Jones, and two self-employed mortgage advisers, neither of whom were approved persons. Mr Jones was approved to perform the controlled function of CF1 (Director) and was responsible for insurance mediation. He also provided mortgage advice to clients. Mr Jones resigned as a director of Which Mortgage in May 2012. He subsequently left the financial services industry.

The Firm's failure to identify false and misleading information on payslips

10. A high street lender raised concerns with the Firm about the submission of a payslip in support of a mortgage application made by Client A in September 2011. It appeared to the high street lender that the single payslip accompanying the application contained false and misleading information. The high street lender rejected the application and removed Which Mortgage from their panel of mortgage intermediaries. The high street lender reported the Firm to the Authority and informed the Authority of its findings and its decision to remove the Firm from its panel.
11. The Authority subsequently obtained and reviewed 38 client files, which contained payslips which had been used in support of the client's application.
12. The Authority found that 11 of the client files contained payslips in a single standard format even though each client worked for different employers. The Authority subsequently obtained information from HMRC in relation to these applications, which showed that each payslip from these 11 files contained false and misleading information about both the clients' income and employment. Only applications submitted by the directors were found to contain false and misleading information. Applications submitted by the Firm's advisers were not found to be defective.
13. Mr Jones carried out no checks to verify the information set out in the payslips he received from clients and Mr Jones accepted that the Firm had deficiencies and had no effective systems and controls in place to counter financial crime. As a result of these failings, he did not detect the pattern of false payslips, financial information and employment details being submitted by a number of his clients and

had thereby allowed fraudulent information to be submitted to high street lenders.

14. Paragraphs 15 to 24 below set out the Authority's findings in relation to three example cases where Mr Jones failed to carry out basic verification checks on the information contained in identically formatted payslips and thereby failed to recognise a pattern of false and misleading information. Similar failings occurred in relation to each of the 11 client files reviewed by the Authority.

Client A

15. In September 2011, Client A applied for a mortgage with a high street lender through Which Mortgage. The client intended to borrow £121,000 for purchasing a property valued at £142,500.
16. The mortgage application contained, in support of the client's income information, a single payslip which purported to evidence that Client A's income was £33,000 per annum. The format of this payslip was identical to the format of 10 other payslips contained in different client files. HMRC records showed that Client A's actual income for the relevant year was, in fact, £12,532.

Client B

17. In March 2011, Client B applied for a mortgage from a high street lender through Which Mortgage. The client intended to borrow £135,000 in order to purchase a property valued at £160,000.
18. The mortgage application and the payslip stated that Client B was employed as an accountant at a firm with an income of £34,348 per annum. The format of Client B's payslip was identical to the format of 10 other payslips contained in different client files. HMRC records showed that Client B worked as a self-employed driving instructor on a part-time basis with an annual income of £12,000-£13,000 for the same financial year.

Client C

19. In May 2011, Client C applied for a joint mortgage from a high street lender through Which Mortgage. The client intended to borrow £168,700 in order to purchase a property valued at £198,500.
20. The mortgage application and the payslip stated that Client C was employed as an area manager at a company with an annual income of £43,158 during the financial year 2011-2012. The format of Client C's payslip was identical to the format of 10 other payslips contained in different client files. HMRC records showed that Client C worked on a self-employed basis for a company with an annual income of £7,280 during the same financial year.
21. Mr Jones took no steps to verify the information contained in any of the payslips provided by Clients A, B or C in support of their mortgage applications and all of which were found to be false. He did not seek to obtain any other information to support income or employment details nor did he verify the information provided. He failed to take any steps to alert himself to a pattern of false payslips and false financial information being submitted through the Firm by its clients.

Conclusion

22. The failure to have appropriate controls allowed false payslips containing misleading information to be submitted through the Firm to high street lenders.
23. Mr Jones admitted that the systems and controls of the Firm were deficient and that at no stage did he seek to verify the information contained in any payslip submitted by any client in support of an application for a mortgage.
24. Mr Jones acted without due skill, care and diligence in failing to ensure that there were appropriate controls in place to check the

source or veracity of the information being submitted to the Firm by its clients in support of their mortgage applications and thereby did not alert himself to a pattern of false payslips. He was not dishonest, or knowingly concerned, in the clients' submission of false and misleading information.

FAILINGS

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

Mr Jones's failure to identify false and misleading information on payslips: Statement of Principle 6

26. By reason of the facts and matters referred to in paragraphs 10-24 above, Mr Jones acted without due skill, care and diligence and therefore lacked competence and capability, in carrying out his controlled functions. In particular, Mr Jones failed to ensure that the Firm had appropriate controls to verify information submitted by clients to support mortgage applications. This led to the Firm being used to facilitate financial crime, through the submission of false payslips to lenders, who offered mortgages to clients on the basis of false information.

Fitness and Propriety

27. The facts and matters identified above led the Authority to the conclusion that Mr Jones fell seriously short of the minimum regulatory standards required for approved persons performing controlled functions. Mr Jones has failed to act with competence and capability and is not a fit and proper person to perform any functions within the definition of the Authority's Handbook of significant influence functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.

SANCTION

Financial penalty

28. The Authority has imposed a financial penalty on Mr Jones for breaching Statement of Principle 6. As the misconduct took place after 6 March 2010, the Authority's new penalty regime applies.
29. The principal purpose of 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.
30. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the serious nature of the breaches and the need to send out a strong message of deterrence to others.

Calculation of financial penalty under DEPP

31. 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

32. 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.

33. The Authority has not identified any financial benefit that Mr Jones derived directly from his breaches.
34. Step 1 is therefore £0.

Step 2 – the seriousness of the breach

35. 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.
36. Mr Jones's misconduct took place between March 2010 and September 2011, during which Mr Jones's relevant income was £18,753.96.
37. In deciding on the percentage of 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.
38. 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%

39. 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.
40. Factors relating to the nature of a breach by an individual include, amongst others:
 - (a) the nature of the rules, requirements or provisions breached; and
 - (b) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.
41. Mr Jones is guilty of a Level 3 breach for the purposes of Step 2 because:
 - (a) he acted without due skill, care and diligence in failing to detect patterns of suspicious payslips being submitted to the Firm; and
 - (b) he allowed mortgage applications to be submitted to lenders through the Firm without applying his mind to the possibility that they contained false and misleading information.
42. A Level 3 breach equates to 20% of Mr Jones's relevant income. The penalty figure for this breach after Step 2 is therefore £3,750.80.

Step 3 – mitigating and aggravating factors

43. 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 to be disgorged in accordance with Step 1) to take into account factors which aggravate or mitigate the breach.
44. The Authority has not identified any aggravating or mitigating factors in this case.
45. Step 3 is therefore £0.

Step 4 – adjustment for deterrence

46. Pursuant to DEPP 6.5B.4G, if the Authority considers 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.
47. In the interests of credible deterrence it is appropriate to increase the penalty because:
 - (a) Mr Jones failed to appreciate the possibility that the Firm was being used to facilitate financial crime;
 - (b) he failed to take any steps to help prevent the Firm from being used to commit mortgage fraud; and
 - (c) his conduct led high street lenders to offer mortgages to customers on the basis of false and misleading information.
48. The Authority has applied a multiplier of 3 to the figure reached at Step 2 and set the total penalty figure at Step 4 at £11,252.38, which we have rounded down to £11,200.

Step 5 – settlement discount

49. 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.

50. The Authority is proposing not to impose any financial penalty on Mr Jones. Therefore Step 5 is not applicable.

Serious Financial Hardship

51. Under normal circumstances and considering the seriousness of Mr Jones's conduct in this case, the Authority would have sought to impose a financial penalty of £11,200 upon him in addition to a prohibition order. However, the Authority has taken into account the fact that imposing a financial penalty would cause Mr Jones serious financial hardship (having regard to the evidence that he has provided in relation to his current financial position). It is for this reason only that the Authority has decided not to impose any financial penalty upon Mr Jones in this case.

Prohibition

52. It is appropriate and proportionate in all the circumstances to make an order prohibiting Mr Jones from performing any functions within the definition of the Authority's Handbook of significant influence functions in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm because he is not a fit and proper person in terms of competence and capability.
53. Mr Jones has demonstrated a lack of competence and capability. In the interests of consumer protection it is appropriate to impose a prohibition order on Mr Jones in the terms set out above.

PROCEDURAL MATTERS

Decision maker

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

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

Publicity

56. 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

58. For more information concerning this matter generally, Mr Jones should contact Paul Howick (direct line: 020 7066 7954 or email paul.howick@fca.org.uk) at the Enforcement and Financial Crime Division of the Authority.

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Bill Sillett

Head of Department, Retail

Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is re-named as the Financial Conduct Authority.
2. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
3. Section 56 of the Act provides that the Authority may make a prohibition order prohibiting an individual from performing a specified function.
4. Section 66 of the Act provides that the Authority may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the Authority that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

Handbook provisions

5. In exercising its power to impose a financial penalty, the Authority must have regard to relevant provisions in the Authority Handbook of rules and guidance. The main provisions relevant to the action specified above are set out below.

Statements of Principle and the Code of Practice for Approved Persons

6. The Statements of Principle set out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
7. Statement of Principle 3.1.3G states 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 to be expected in that function.
8. Statement of Principle 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
9. Statement of Principle 3.1.6G provides that Statement of Principle (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statement of Principle.
10. The Statement of Principle relevant to this matter is Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

The Fit and Proper Test for Approved Persons

Rules and guidance effective until 31 March 2013

11. FIT sets out and describes the criteria that are relevant in assessing the continuing fitness and propriety of approved persons.
12. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:
 - (a) honesty, integrity and reputation;
 - (b) competence and capability; and
 - (c) financial soundness.
13. FIT 2.2.1G states that in determining a person's competence and capability, the Authority will have regard to all relevant matters including but not limited to:
 - (a) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform;
 - (b) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function; and
 - (c) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.

Rules and guidance effective from 1 April 2013

14. FIT sets out and describes the criteria that are relevant in assessing the continuing fitness and propriety of approved persons.

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16. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:
 - (a) honesty, integrity and reputation;
 - (b) competence and capability; and
 - (c) financial soundness.
17. FIT 1.3.2G states that in assessing fitness and propriety, the Authority will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates.
18. FIT 2.2.1G states that in determining a person's competence and capability, the Authority will have regard to all relevant matters including but not limited to:
 - (a) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform;
 - (b) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function;
 - (c) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.
19. 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 2.1.3 G which may have arisen either in the United Kingdom or elsewhere. The Authority should be informed of these matters but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. This guidance includes:

- (a) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and ;
- (b) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

DEPP guidance since 6 March 2010

- 20. The Authority has had regard to the guidance on the imposition and amount of penalties set out in Chapter 6 of the current version of DEPP. All references to DEPP in this subsection of the Notice refer to the current DEPP guidance.
- 21. DEPP 5.1.1G provides that a person subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the Authority. The fact that he does so will not usually obviate the need for a statutory notice recording the Authority's decision to take that action. Where, however, the person subject to enforcement action agrees not to contest the content of a proposed statutory notice, the decision to give that statutory notice will be taken by senior Authority staff. The decision will be taken jointly by two members of the Authority's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level. At least one of the Settlement Decision

Makers will not be from the Enforcement and Financial Crime Division. The other settlement decision maker will usually be, but need not be, from the Enforcement and Financial Crime Division. Consistent with section 395(2) of the Act, a Settlement Decision Maker will not have been directly involved in establishing the evidence on which the decision is based.

22. DEPP 6.4.1G provides that the Authority will consider all the relevant circumstances of the case when deciding whether to impose a financial penalty.
23. DEPP 6.5B.1G sets out the five steps for calculating financial penalties for individuals in non-market abuse cases.

Step 1 - disgorgement

24. The Authority will seek to deprive an individual of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this.

Step 2 – the seriousness of the breach

25. The Authority will determine a figure which will be based on a percentage of an individual's "relevant income". "Relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred (the "relevant employment"), and for the period of the breach.
26. This approach reflects the Authority's view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The Authority also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The Authority recognises that in some cases an individual may be approved for only a small part of the work he

carries out on a day-to-day basis. However, in these circumstances the Authority still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a controlled function.

27. Having determined the relevant income the Authority will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the Authority will consider the seriousness of the breach and choose a percentage between 0% and 40%.
28. In deciding which level is most appropriate to a case against an individual, the Authority will take into account various factors which will usually fall into the following four categories:
 - (a) factors relating to the impact of the breach;
 - (b) factors relating to the nature of the breach;
 - (c) factors tending to show whether the breach was deliberate; and
 - (d) factors tending to show whether the breach was reckless.
29. Factors relating to the impact of a breach committed by an individual include whether the breach had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.
30. Factors relating to the nature of a breach by an individual include:
 - (a) the nature of the rules, requirements or provisions breached;
 - (b) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;

- (c) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the breach;
- (d) whether the individual failed to act with integrity;
- (e) whether the individual is an experienced industry professional;
- (f) whether the individual held a senior position with the firm; and
- (g) whether the individual took any steps to comply with the Authority's rules, and the adequacy of those steps.

Step 3 – mitigating and aggravating factors

31. The Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

Step 4 – adjustment for deterrence

32. If the Authority considers 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. Circumstances where the Authority may do this include:
 - (a) where the Authority considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence;
 - (b) where previous Authority action in respect of similar breaches has failed to improve industry standards;

- (c) where the Authority considers it is likely that similar breaches will be committed by the individual or by other individuals in the future; and
- (d) where a penalty based on an individual's income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

Step 5 – settlement discount

- 33. The Authority and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, 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 concerned reached an agreement.

Serious Financial Hardship

- 34. DEPP 6.5D sets out the Authority's approach to imposing a penalty where that penalty would subject an individual to serious financial hardship.
- 35. DEPP 6.5D.1G states that the Authority's approach to determining penalties is intended to ensure that financial penalties are proportionate to the breach. The Authority recognises that penalties may affect persons differently, and that the Authority should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.
- 36. DEPP 5.5D.2G states that there may be cases where, even though the individual has satisfied the Authority that payment of the financial penalty would cause him serious financial hardship, the Authority considers the breach to be so serious that it is not

appropriate to reduce the penalty. The Authority will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

- (a) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
- (b) the individual acted fraudulently or dishonestly with a view to personal gain;
- (c) previous Authority action in respect of similar breaches has failed to improve industry standards; or
- (d) the individual has spent money or dissipated assets in anticipation of Authority or other enforcement action with a view to frustrating or limiting the impact of action taken by the Authority or other authorities.

Enforcement Guide

- 37. The Authority's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007.
- 38. The Authority's approach to financial penalties and public censures is set out in Chapter 7 of EG.
- 39. EG 7.3 states that the Authority has measures available to it where it considers it is appropriate to take protective or remedial action.
- 40. EG 7.6 states that the Authority's policy in relation to reducing a penalty because its payment may cause a person serious financial hardship is set out in DEPP 6.5D.
- 41. The Authority's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of EG.
- 42. EG 9.1 states that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out

controlled functions in relation to regulated activities helps the Authority to work towards achieving its statutory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

43. EG 9.3 states that in deciding whether to make a prohibition order the Authority will consider all the relevant circumstances.
44. EG 9.4 sets out the general scope of the Authority's power in this respect. The Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
45. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, whether, and to what extent, the approved person has failed to comply with the Statement of Principle issued by the Authority with respect to the conduct of approved persons.
46. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order. The examples include providing false or misleading information to the Authority (EG 9.12(1)).
47. EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.