
FINAL NOTICE

To: Ewan King
IRN: EXK01229
Date of Birth: 25 August 1981
Dated: 30 January 2014

PROPOSED ACTION

1. For the reasons given in this Final Notice, the Authority hereby:
 - (a) imposes on Ewan King ("Mr King"), pursuant to section 66 of the Act, a financial penalty of £19,900; and
 - (b) makes an order against Mr King, pursuant to section 56 of the Act, prohibiting Mr King from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 30 January 2014.
2. Mr King agreed to settle at an early stage of the Authority's case. Mr King therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £25,734 on Mr King.

SUMMARY OF REASONS

3. The Retail Distribution Review, launched by the Authority in 2006, was a wide ranging review of the retail investment market. From the beginning of 2013, the Authority implemented a new set of rules stemming from that review. Under those rules, the minimum level of qualification for all retail investment advisers was raised, and all individual retail investment advisers were required to hold a Statement of Professional Standing. A Statement of Professional Standing is evidence that an accredited body that meets the Authority's criteria has independently verified that the retail investment adviser holds an appropriate qualification, has satisfied the appropriate continuing professional development requirement and has met the requisite ethical standard.
4. The Authority considers that Mr King, whilst approved to perform the CF30 Customer function as an Appointed Representative of an FCA authorised firm (the "Firm"), fabricated two Statements of Professional Standing, in order to give the Firm the impression that he had obtained the appropriate qualifications from the Chartered Insurance Institute to provide investment advice to retail customers, when, in fact, he had not.
5. The Authority considers that Mr King's behaviour amounted to a failure to act with integrity in contravention of Statement of Principle 1 of the Authority's Statements of Principle and Code of Practice for Approved Persons (the "Statements of Principle").
6. The Authority considers that Mr King poses a risk to consumers and to the financial system and that the nature and seriousness of the breach outlined above warrants the imposition of a financial penalty and the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt person or exempt professional firm.

DEFINITIONS

7. The following definitions are also used in this Warning Notice:

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

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the CII" means the Chartered Insurance Institute;

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

"EG" means the Enforcement Guide part of the Handbook;

"FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

"the Handbook" means the Authority's Handbook of rules and guidance;

"the relevant period" means the period between 14 February 2013 and 12 June 2013;

"the RDR" means the Retail Distribution Review;

"SPS" means Statement of Professional Standing;

“TC” means the Authority’s Training and Competence section of the Handbook;
and

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

FACTS AND MATTERS

8. On 16 May 2011, Mr King, as a sole trader, became an Appointed Representative of the Firm. On 24 May 2011, the Authority approved Mr King to perform the CF30 Customer function on behalf of the Firm. On 12 June 2013, following an application by the Firm, the Authority withdrew Mr King’s approval to perform the CF30 function.

The RDR

9. The Authority launched the RDR in June 2006. The RDR was a wide ranging review of the retail investment market. The proposals stemming from it were intended to ensure that financial advice is given by appropriately qualified financial advisers free from bias, and to ensure that the costs of their advice are clear to customers.
10. On 31 December 2012, the Authority implemented the RDR, in part through the introduction of new requirements in the TC. These new rules raised the benchmark qualification level for all retail investment advisers and introduced an overarching standard for continuing professional development, in order to raise professional standards. All individual investment advisers were required to reach the Qualifications Credit Framework (QCF) Level 4 or equivalent, hold an SPS, and provide the SPS to their firm. An SPS is evidence that an accredited body, such as the CII, has independently verified that the retail investment adviser holds an appropriate qualification, has satisfied the appropriate continuing professional development requirement and has met the requisite ethical standard.

Mr King’s provision of two fabricated SPSs to the Firm

11. Mr King was a retail investment adviser. In early 2013, Mr King led the Firm to believe that the CII would issue him with an SPS. Notwithstanding what he told the Firm, however, Mr King was not eligible for an SPS, and did not apply to the CII for one, because, having taken and failed the relevant examinations on more than one occasion, Mr King had not obtained the necessary qualifications.
12. On 13 February 2013, the Firm asked Mr King by email to chase the CII for his SPS, and to provide a copy to the Firm by 28 February 2013. On the same day, Mr King replied that he was “still chasing them for it”.
13. On 14 February 2013, Mr King sent the Firm by email a fabricated document. This purported to be an SPS issued by the CII in respect of Mr King on 13 February 2013, which would remain valid until 28 February 2013, the date by which Mr King was required to renew his CII membership.
14. On 8 April 2013, as the fabricated SPS purported to have expired, the Firm asked Mr King for an up to date SPS. On 24 April 2013, Mr King sent the Firm another fabricated document. This purported to be an SPS issued by the CII on 1 March 2013 in respect of Mr King, which would remain valid until 28 February 2014.
15. On 21 May 2013, following enquiries by the Authority about the validity of Mr King’s qualifications, the CII informed the Authority that it had no record of Mr King applying for, or being issued with, an SPS. The CII also informed the Authority that Mr King had not obtained the necessary Level 4 QCF qualification in order to provide retail investment advice.

16. On 8 August 2013, following an internal investigation, Mr King admitted to the Firm that he had failed some of the examinations required for the Level 4 QCF qualification. That same day, the Firm suspended Mr King. On 12 August 2013, the Firm terminated its contract with Mr King.

Mr King's conduct

17. On 16 October 2013, the Authority conducted a compelled interview with Mr King using its statutory powers. During the interview, Mr King said that:
 - a. contrary to what he told the Firm, he did not possess the appropriate qualifications to provide retail investment advice, and he never applied to the CII for a SPS;
 - b. he fabricated his SPSs by editing a template version of a CII SPS which he found on the internet, in order to mislead the Firm into believing that he had attained the qualifications necessary to be deemed competent to provide retail investment advice;
 - c. in providing retail investment advice without the appropriate qualifications to three customers during the relevant period, there was a risk that his advice could have been unsuitable.

FAILINGS

18. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.
19. During the relevant period, Mr King, whilst approved to perform the CF30 Customer function as an Appointed Representative of the Firm, acted in breach of Statement of Principle 1 by failing to act with integrity, in that he fabricated two SPSs, in order to mislead the Firm into believing that he had obtained the appropriate qualifications to provide investment advice to retail customers, when he had not.
20. The Authority therefore considers that Mr King is not a fit and proper person as he lacks honesty and integrity, and that he poses a risk to consumers and to confidence in the financial system.

SANCTIONS

Financial penalty

21. The Authority hereby imposes a financial penalty on Mr King for breaching Statement of Principle 1.
22. The financial penalty is determined by a five-step framework, set out in DEPP, having regard to all the circumstances of the case. The penalty therefore consists of:

Step 1 – disgorgement

23. 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.
24. Mr King's direct financial benefit from his breach was £6,339 i.e. the sums that Mr King received for advice which he was not properly qualified to give. The Step 1 figure is therefore £6,339.

Step 2 – the seriousness of the breach

25. 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. As the breach lasted less than 12 months, DEPP 6.5B.2G(2) states that the relevant income is the amount earned in the 12 months preceding the last day of the period of misconduct.
26. The last day of the period of misconduct was 12 June 2013. Mr King's relevant income in relation to the misconduct was £48,489.
27. 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. For penalties imposed on individuals there are the following five levels:
 - Level 1 – 0%
 - Level 2 – 10%
 - Level 3 – 20%
 - Level 4 – 30%
 - Level 5 – 40%
28. 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.
29. DEPP 6.5B.2(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - (a) the breach caused a significant loss or risk of loss to individual consumers, investors or other market users;
 - (b) the individual failed to act with integrity; and
 - (c) the breach was committed deliberately or recklessly.
30. The Authority considers Mr King's failings to be Level 5 factors for the purposes of Step 2 because:
 - (a) in providing retail investment advice to three clients after 31 December 2012 without the appropriate qualifications, there was a significant risk that Mr King's advice would have been unsuitable, which could have caused those clients significant financial loss;
 - (b) Mr King admitted to the Authority in interview that he failed to act with integrity during the relevant period, in that he fabricated two SPSs in order to mislead the Firm about his suitability to provide retail investment advice to customers.
31. Taking these factors into account, the Authority considers the seriousness of the failings to be level 5 on the scale of seriousness. The Step 2 figure is therefore 40% of £48,489, which is £19,395 (rounded down to the nearest £1).

Step 3 – mitigating and aggravating factors

32. 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.
33. The Authority considers there to be no mitigating or aggravating circumstances. The penalty figure after Step 3 is therefore £19,395.

Step 4 – adjustment for deterrence

34. 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.
35. The Authority considers that the penalty is sufficient for the purposes of credible deterrence. Therefore, after including disgorgement of £6,339, the penalty figure at Step 4 is £25,734 (rounded down to the nearest £1).

Serious financial hardship

36. Pursuant to DEPP 6.5D.2G, the Authority may reduce the proposed penalty if appropriate, if the penalty would cause the individual serious financial hardship.
37. The Authority considers that the proposed penalty would not cause Mr King serious financial hardship. The Step 4 figure therefore remains at £25,734.

Step 5 – settlement discount

38. 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.
39. The Authority and Mr King have reached an agreement at Stage 1. As a result a 30% reduction applies to the financial penalty. The penalty figure at Stage 5 is therefore £19,900 (rounded down to the nearest £100).

Proposed financial penalty

40. The Authority therefore proposes to impose a financial penalty on Mr King of £19,900 for breaching Statement of Principle 1.

Prohibition

41. The Authority considers that Mr King is not a fit and proper person and that he poses a serious risk to consumers and to confidence in the financial system. The Authority therefore considers it appropriate to prohibit Mr King from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

Decision Maker

42. The decision which gave rise to the obligation to give this Warning Notice was made by the Settlement Decision Makers.
43. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

44. The financial penalty must be paid by Mr King to the Authority in the following instalments:
 - 1) £3,000 by no later than 27 February 2014, 28 days from the date of the Final Notice;
 - 2) £3,000 by no later than 29 August 2014;
 - 3) £4,000 by no later than 27 February 2015; and
 - 4) £9,900 by no later than 26 February 2016.

If the financial penalty is not paid

45. If all or any of the instalments are outstanding on 28 February 2014, 30 August 2014, 28 February 2015 or 27 February 2016, the Authority may recover the outstanding amount as a debt owed by Mr King and due to the Authority.

Publicity

46. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr King or prejudicial to the interests of consumers.
47. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

48. For more information concerning this matter contact Alexander Banerjea at the Authority (direct line: 0207 066 7206).

Bill Sillett

Enforcement and Financial Crime Division

ANNEX**RELEVANT STATUTORY PROVISIONS**

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority. 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.
2. The Authority has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

RELEVANT HANDBOOK PROVISIONS**Fit and Proper Test for Approved Persons (FIT)**

4. The section of the Authority's Handbook entitled FIT sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
5. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.
6. FIT 2.1.1G provides that in determining a person's honesty and integrity, the Authority will have regard to all relevant matters.

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

7. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
8. APER 2.1.2P sets out Statement of Principle 1. This states that an approved person must act with integrity in carrying out his controlled function.
9. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case,

the characteristics of the particular controlled function and the behaviour expected in that function.

10. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
11. APER 4.1 sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. An example of such conduct is falsifying documents (APER 4.1.4E).

OTHER RELEVANT REGULATORY PROVISIONS

The Authority's policy on the imposition of financial penalties

12. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook.
13. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market 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.
14. The Authority will consider the full circumstances of each case when determining whether or not to impose a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to impose a financial penalty, which include the following: -
 - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
 - (b) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority, the degree of co-operation the person showed during the investigation of the breach, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority; and
 - (c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.
15. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
16. DEPP 6.5B sets out the five steps for calculation of financial penalties to be imposed on individuals.

The Authority's policy for exercising its power to make prohibition orders

17. EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to

regulated activities helps the Authority to work towards achieving its regulatory 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.

18. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include 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.
19. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
20. EG 9.17 provides guidance on the Authority's approach to making prohibition orders against an individual other than an individual referred to in EG 9.8 to 9.14 (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 regulatory objectives.
21. When considering whether to exercise its power 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, where appropriate the factors set out in EG 9.9.
22. EG 9.9 states that, when deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);
 - (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
23. 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.