
FINAL NOTICE

To: **Gaenor Clayton**

Of: **Orion Direct Limited (“Orion”) and Peppercom Plc (“Peppercom”)**

Individual Ref No: **GAC01084**

Dated: **1 April 2009**

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, Gaenor Clayton, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1. THE ACTION

- 1.1. The FSA gave you a Decision Notice on 1 April 2009 which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), 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”).

- 1.2. The misconduct described in this notice, in the FSA's opinion, merits a financial penalty. Were it not for your current personal financial difficulties and the evidence that you have provided which verifies the potential serious financial hardship that would arise, the FSA would have sought to impose a financial penalty upon you in the amount of £35,000.
- 1.3. You confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 1 April 2009.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded that you are not fit and proper to perform functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm and should be prohibited from doing so because you have failed to demonstrate competence and capability in exercising the controlled functions you were approved to perform. You did not understand, and took no steps to understand, Orion and Peppercom's regulatory obligations as authorised firms or your own as an approved person.
- 2.2. You are approved to perform controlled function 1 (Director), which is a significant influence function, on behalf of Orion and Peppercom. You failed to exercise due skill, care and diligence in managing the business of both Orion and Peppercom for which you were responsible in the performance of these functions. You delegated the performance of your controlled functions to Barrie Duncan Aspden ("Mr Aspden"), who acted as the Managing Director of both companies, although he was not an approved person. You did not exercise any oversight of Mr Aspden.
- 2.3. Orion failed to pass on client premiums to brokers and insurers which posed a risk of consumer detriment by potentially leaving several hundred customers uninsured. Mr Aspden used money from the Orion client fund account to set up "Click the Pepper",

a trading name of Peppercom. This occurred in the period from September to November 2007 when a large amount of capital resource was used to fund the new business enterprise. During this period you took no steps to satisfy yourself that Orion and Peppercom's business was being conducted in accordance with regulatory requirements.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory Provisions

- 3.1 The FSA's statutory objectives as set out in section 2(2) of the Act include the reduction of financial crime, protection of consumers and maintenance of market confidence.

Prohibition

- 3.2 The FSA has the power pursuant to section 56 of the Act to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, an exempt person, and/or an exempt professional firm. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

Financial Penalty

- 3.3 The FSA has the power pursuant to section 66 of the Act the FSA to impose a financial penalty on an approved person if it appears to the FSA that the person is guilty of misconduct and if the FSA is satisfied that it is appropriate in all the circumstances. Under section 66(2)(a) of the Act, a person is guilty of misconduct if, while an approved person, that person has failed to comply with a statement of principle issued under section 64 of the Act.

Regulatory Requirements and Guidance

- 3.4 In deciding on the action, the FSA has had regard to the relevant rules and guidance published in the FSA Handbook and accompanying regulatory guides, in particular in

the Enforcement Guide (“EG”), the Decision, Procedure and Penalties Manual (“DEPP”) and The Fit and Proper Test for Approved Persons (“FIT”), and the Statements of Principle and Code of Practice for Approved Persons (“APER”). The relevant rules and guidance that apply to this case are set out in the Annex.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 Orion became authorised on 14 January 2005, and Peppercom became authorised on 24 April 2007. Both firms were authorised to conduct the following activities with regard to general insurance:
- (a) advising on non-investment insurance contracts (except pension transfers/opt outs);
 - (b) agreeing to carry on a regulated activity;
 - (c) arranging (bringing about) deals in non-investment insurance contracts;
 - (d) assisting in the administration of non-investment insurance contracts;
 - (e) dealing in non-investment insurance contracts as an agent; and
 - (f) making arrangements for non-investment insurance contracts.
- 4.2 Orion and Peppercom are general insurance intermediary firms which have the same directors. Orion specialises in providing commercial insurance to taxi drivers, driving instructors, social clubs and restaurants. Peppercom specialises in providing insurance to learner drivers.
- 4.3 In February 2008 the FSA became aware that customers of Orion had paid premiums to the firm but these premiums had not been received by the brokers providing agency facilities or the insurers. This potentially left several hundred customers uninsured.
- 4.4 In March 2008 both firms went into administration and their books of business were sold by the administrators. On 21 May 2008, at the request of the FSA, the administrators signed a Voluntary Variation of Permission to the effect that both Orion and Peppercom would cease conducting all regulated activities for which they

had Part IV permission. The administrators applied to cancel Orion and Peppercom's authorisation on 3 October 2008. Both firms' Part IV permission was cancelled on 15 December 2008.

Your role at Orion and Peppercom

- 4.5 You were a director of both Orion and Peppercom. Specifically, on 14 January 2005, you became an approved person as a CF1 director of Orion and were also responsible for insurance mediation. On 24 April 2007 you obtained the same approvals for Peppercom. On 24 May 2007 you became a CF1 Director (AR) for Orion. You remained a director of both firms until they went into administration on the 11 March 2008.
- 4.6 You oversaw the day to day running of the Orion office and dealt with the staff. This was because Mr Aspden and Orion's two other Directors were very rarely in the office. You had no involvement in the financial side of the business, with the exception of writing cheques for providers and general business use with Mr Aspden's consent. You were never aware of and did not involve yourself in Orion's bank accounts to any degree. You had no decision-making responsibility at Orion, instead delegating this role to Mr Aspden. You took no steps to supervise this delegation of your role.
- 4.7. You were not involved in managing or otherwise working for Peppercom despite holding the CF1 Director controlled function for Peppercom. You delegated your role in the Peppercom business to Mr Aspden. You were never actively involved in Peppercom's decision making process. This lack of involvement meant that you failed to take reasonable steps to ensure that the business of Peppercom complied with the relevant requirements and standards of the regulatory system.

Client Money Deficit

- 4.8. Between September 2007 and November 2007 Mr Aspden withdrew over £300,000 from Orion's client money account to fund the development of Peppercom.

- 4.9. As a director holding CF1 for Orion you had a responsibility to ensure that client funds were not used for purposes other than that for which they were provided but you failed to adequately monitor the client money reconciliations that were performed by Mr Aspden.
- 4.10. You admitted that as a director you should have been more involved in the business of both Orion and Peppercom. You became a director for the wrong reasons, and did not have the necessary experience and took no steps to obtain the necessary experience to fulfil that role. Your main reason for becoming a director was that Mr Aspden believed he could not hold the relevant significant influence controlled functions himself. You lacked the necessary competence and capability to carry out the CF1 Director controlled function.

5. ANALYSIS OF THE BREACHES

- 5.1 The FSA has considered whether you complied with APER and whether you are a fit and proper person to continue to perform functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance referred to in section 3 above. In assessing your competence and capability for the purpose of considering whether you are a fit and proper person, the FSA has had regard to and highlights the following:
- (1) you failed to take reasonable steps adequately to inform yourself about your responsibilities as an approved person. You have no knowledge of what controlled functions you are approved to perform and little understanding of your responsibilities as an approved person. You delegated your functions as a director that holds CF1 to Mr Aspden (who is not approved) and took no part in ensuring that Orion and Peppercom met and continued to meet their regulatory obligations, in contravention of Statement of Principle 6 of APER; and
 - (2) you failed to take reasonable steps to ensure that the business of the firms for which you were responsible were run prudently. In particular, your lack of awareness about the regulatory requirements and standards of the regulatory

system in respect of the regulated activities undertaken by Peppercom and Orion demonstrates that you did not ensure that there were adequate and appropriate systems of control in place to comply with them. This is in contravention of statement of Principle 7 of APER.

- 5.2 In the light of the facts and matters set out above, the FSA considers that you have breached APER 6 and APER 7. You have failed, in the performance of your significant influence function, to exercise due skill, care and diligence in managing the business of Orion and Peppercom for which you are responsible and to take reasonable steps to ensure compliance with the requirements and standards of the regulatory system.

6. ANALYSIS OF THE SANCTION

- 6.1 Your failings are serious, and resulted in several hundred customers of Orion being potentially uninsured. However, in mitigation you have admitted your failings to the FSA and do not intend to work in financial services again. The FSA has not taken action against you previously.
- 6.2 Under normal circumstances and considering the seriousness of your conduct in this case, the FSA would have sought to impose a financial penalty upon you in addition to a prohibition order. However, the FSA has taken into account the fact that you are unable to meet a financial penalty (and having regard to the evidence that you have provided in relation to your current financial position) without suffering unjustifiable hardship and it is for this reason only that the FSA has decided not to impose any financial penalty upon you in this case.
- 6.3 The FSA considers that in breaching APER 6 and 7 in the manner described you have demonstrated a serious lack of competence and capability in relation to the performance of your controlled function. The FSA therefore considers that it is necessary to make a prohibition order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

7. DECISION MAKERS

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

8. IMPORTANT

8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

8.2 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 those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA Contacts

8.4 For more information concerning this matter generally, you should contact Paul Howick of the Enforcement Division of the FSA (direct line: 020 7066 7954).

Signed:

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Georgina Philippou

Project Sponsor

FSA Enforcement Division

