
FINAL NOTICE

To: **Grace Nmadibechi Ada Ukala**

Individual reference number: **GNU01000**

Dated: **19 August 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (the “FSA”) gives you, Grace Nmadibechi Ada Ukala, final notice about the imposition of a financial penalty and 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

1. THE ACTIONS

1.1. The FSA gave you a Decision Notice on 17 August 2009 which notified you that the FSA had decided to:

- (1) make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 (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 (the “Prohibition Order”); and
- (2) impose a financial penalty, pursuant to section 66 of the Act, of £70,000 on you for failing to comply with Statement of Principle 1 of the Statements of Principle and Code of Practice for Approved Persons (the “Statements of Principle”).

1.2. You confirmed on 4 August 2009 that you would not refer the matter to the Financial Services and Markets Tribunal.

- 1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA has today imposed on you a financial penalty of £70,000 and made 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 takes effect from 19 August 2009.
- 1.4. You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. The FSA would otherwise have imposed a financial penalty of £100,000 on you.

2. REASONS FOR THE ACTIONS

- 2.1. On the basis of the facts and matters set out below, the FSA has concluded that you, while acting in your capacity as director of Goldsparkle Consulting Services Limited ("Goldsparkle"):
 - (1) knowingly submitted two unregulated mortgage applications in your own name to lenders based on false and misleading employment and income details;
 - (2) failed to disclose accurately your earnings from Goldsparkle to Her Majesty's Revenue and Customs ("HMRC");
 - (3) breached Statement of Principle 1 as you failed to act with integrity while performing controlled functions in that you:
 - (a) knowingly misled lenders in relation to three regulated mortgage contracts submitted through Goldsparkle; and
 - (b) misused funds that belonged to Goldsparkle to meet your personal mortgage repayments.
- 2.2. As a result of the seriousness, nature and extent of your misconduct, the FSA has concluded that you are failing to meet the minimum regulatory standards required in terms of honesty and integrity, and are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA has made a Prohibition Order against you.
- 2.3. In addition, since the FSA has concluded that you breached Statement of Principle 1 while you were an approved person at Goldsparkle, you are guilty of misconduct under section 66(2) of the Act. The FSA has therefore imposed a financial penalty of £70,000 on you.
- 2.4. These actions support the FSA's statutory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

- 3.1. The relevant statutory provisions, regulatory guidance and policy are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were the sole director of Goldsparkle, a small retail mortgage intermediary, which operated in South East London. Goldsparkle was authorised by the FSA on 31 October 2004 to conduct regulated mortgage business and was permitted from 14 January 2005 to carry on insurance mediation business.
- 4.2. With effect from 31 October 2004 you were approved by the FSA to perform the following controlled functions at Goldsparkle: CF1 (Director), CF3 (Chief Executive), CF8 (Apportionment and Oversight), CF13 (Finance), CF14 (Risk Assessment) and CF17 (Significant Management – Other Business Operations). From 14 January 2005 you became responsible for insurance mediation at Goldsparkle, and from 1 November 2007 you performed the controlled functions of CF28 (Systems and Controls) and CF29 (Significant Management). You were the only adviser at Goldsparkle.
- 4.3. Goldsparkle's authorisation was cancelled on 6 February 2009. On the same date, you ceased to be an approved person.

The misconduct

- 4.4. Following an investigation, the FSA has determined that you are not a fit and proper person in terms of your honesty and integrity and that you have also failed to act with integrity in breach of Statement of Principle 1. You knowingly submitted five mortgage applications in your own name to lenders based on false and misleading employment and income details, failed to disclose accurately your earnings from Goldsparkle to HMRC and misused funds that belonged to Goldsparkle to meet your personal mortgage repayments.

False and misleading mortgage applications

- 4.5. You certified employment and income details on five personal mortgage applications which did not correspond either with each other, with your income as reported in Goldsparkle's financial statements or with your earnings as declared to HMRC. Of the five applications submitted by you, three were regulated mortgage contracts. The remaining two applications were not regulated mortgage contracts as one pre-dated FSA regulation of mortgage business as it was submitted before 31 October 2004 and the other related to a buy-to-let mortgage.

Application to Lender A

- 4.6. In or around November 2002 you submitted an unregulated mortgage application in your own name to Lender A. You stated that you had been self employed at

Goldsparkle for one year and one month. Your total annual income on the application was certified by you as £56,100; consisting of £50,000 from Goldsparkle (being your share of the net profits over the last year) and £6,100 from a pension.

- 4.7. Goldsparkle's financial statements for the year ending 31 December 2002 reported that Goldsparkle had at that stage only been trading for four months and had made a trading loss of £44,124. The financial statements did not disclose any director's remuneration or dividend payment, and it therefore appears that Goldsparkle did not pay you a salary during this period.
- 4.8. This corresponds with HMRC records for the tax year ending 5 April 2003. These show that you declared no earnings from Goldsparkle in that period. Instead, HMRC records for this period show that you declared earnings of £19,877.23. This related predominately to your previous employment as a teacher.
- 4.9. In an interview with the FSA, you stated that you had retired from teaching in August 2002 and that Goldsparkle had only been trading for three months when the application was submitted to Lender A. You explained that the self certified income figure of £56,100 represented an amalgamation of your various earnings during the previous year from teaching, writing and pensions. You accepted during the interview that this figure was inflated and stated that the net profit figure of £50,000 on the application to Lender A was a projection of what you expected to earn from Goldsparkle in the future.

Application to Lender B

- 4.10. In or around May 2005 you applied for a regulated mortgage contract in your own name with Lender B through Goldsparkle. You stated that you were self employed at Goldsparkle Commercial Loans Express and that your income from the last three trading years was £77,410 in 2002, £80,726 in 2003 and £84,359 in 2004. Your total personal income was certified by you as £84,359 per annum on the application to Lender B.
- 4.11. According to HMRC records, you declared earnings of £19,877.23 for the tax year ending 5 April 2003, no earnings for the tax year ending 5 April 2004 and earnings of £7,323.86 for the tax year ending 5 April 2005. These declared earnings did not include income through your self employment with Goldsparkle Commercial Loans Express.

Applications to Lender C

- 4.12. In or around December 2005 you submitted two applications through Goldsparkle in your own name to Lender C, one for a regulated mortgage contract and the other for an unregulated buy-to-let mortgage. You stated that you were self employed at a business called Grace Ukala. Your total gross income was certified by you as £92,450 on both applications to Lender C.

- 4.13. According to HMRC records, you declared earnings of £7,547.39 for the tax year ending 5 April 2006. These declared earnings did not include income from your property rentals, Goldsparkle or a business called Grace Ukala.
- 4.14. In an interview with the FSA you explained that the self certified income figure of £92,450 represented an amalgamation of your various earnings from Goldsparkle, property rentals and pension income. You also stated that the figure was inflated and represented Goldsparkle's turnover for the period.

Application to Lender D

- 4.15. In or around August 2007 you applied for a regulated mortgage contract in your own name with Lender D through Goldsparkle. You stated that you were self employed at Mortgages and Estates Consultancy Services and that your income for the trading years 2005 and 2006 was £100,000 and £117,600 respectively.
- 4.16. According to HMRC records, you declared earnings of £7,547.39 for the tax year ending 5 April 2006 and £7,749.95 for the tax year ending 5 April 2007. There was no self employed income declared in relation to Mortgages and Estates Consultancy Services.

Income details reported in financial statements and declared to HMRC

- 4.17. Your income as reported in Goldsparkle's financial statements did not correspond with your earnings as declared to HMRC.
- 4.18. Goldsparkle's financial statements for the year ending 31 December 2003 reported that you received a director's remuneration of £2,500. However, you declared no earnings to HMRC for the tax year ending 5 April 2004.
- 4.19. Goldsparkle's financial statements reported that you received a director's remuneration of £32,300 for the year ending 31 December 2004, £14,500 for the year ending 31 December 2005 and £23,300 for the year ending 31 December 2006. However, none of your income from Goldsparkle was declared to HMRC in the tax years ending 5 April 2005 to 5 April 2007. Earnings declared by you to HMRC for this period related solely to your teaching work and pension payments.

Misuse of company funds

- 4.20. In an interview with the FSA, you confirmed that you had used company funds to meet monthly mortgage repayments for mortgages taken out in your personal capacity. You claimed that mortgage repayments met by Goldsparkle offset a director's loan that you had previously provided to Goldsparkle. However, this statement was inconsistent with the information reported in Goldsparkle's financial statements for the years ending 31 December 2002 to 31 December 2006. These statements showed no repayment of any director's loan.

Conclusion

4.21. The FSA has concluded that you:

- (1) knowingly submitted five personal mortgage applications, three of which were in relation to regulated mortgage contracts, based on false and misleading information about your employment and income to meet the lenders' mortgage criteria;
- (2) failed to make accurate and honest tax returns to HMRC relating to your earnings from Goldsparkle in the tax years ending 5 April 2004 to 5 April 2007, and consequently you may have evaded potential tax liabilities; and
- (3) misused funds that belonged to Goldsparkle to meet your personal mortgage repayments.

5. ANALYSIS OF THE MISCONDUCT

5.1. The FSA has considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory guidance and policy referred to in Annex A.

5.2. In assessing your honesty and integrity for the purpose of determining whether you are a fit and proper person, the FSA has had regard to the following:

- (1) you knowingly submitted two unregulated mortgage applications to lenders in your own name based on false and misleading employment and income details, demonstrating a lack of honesty and integrity (in contravention of FIT 2.1);
- (2) you failed to disclose accurately your earnings from Goldsparkle to HMRC, demonstrating a lack of honesty and integrity (in contravention of FIT 2.1);
- (3) you knowingly misled lenders in relation to three regulated mortgage contracts submitted on your own behalf through Goldsparkle (in contravention of Statement of Principle 1 and FIT 2.1); and
- (4) you misused funds that belonged to Goldsparkle to meet mortgage repayments for mortgages taken out in your personal capacity (in contravention of Statement of Principle 1 and FIT 2.1).

5.3. The FSA has concluded that the nature of these matters, the period of time over which they occurred and their gravity directly impugns your honesty and integrity. They demonstrate that you have failed to meet the minimum regulatory standards in terms of honesty and integrity, and 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.

5.4. The FSA considers that you pose a serious risk to lenders, to consumers and to the FSA's statutory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

6. ANALYSIS OF THE SANCTIONS

Imposition of a financial penalty

Deterrence

- 6.1. The principal purpose of imposing 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. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.
- 6.2. The FSA considers that the imposition of the proposed financial penalty is appropriate as it supports the FSA's stance on credible deterrence, both in terms of discouraging you and others from acting dishonestly and without integrity and encouraging you and others to observe regulatory standards and requirements.

The nature, seriousness and impact of the breach in question

- 6.3. The FSA has had regard to the seriousness of the breaches, the nature of the requirements on you, the number of the breaches and the period over which they occurred, the extent to which the breaches demonstrate a lack of honesty and integrity and the number of lenders exposed to a risk of loss.

The extent to which the breach was deliberate or reckless

- 6.4. The FSA considers that you acted in a deliberate manner.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 6.5. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors, including the impact such a penalty might have on your financial resources and the need for credible deterrence.

Conduct following the breach

- 6.6. You have co-operated with the FSA's investigation.

Previous action taken by the FSA

- 6.7. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons and approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions.

Conclusion

- 6.8. The FSA considers it appropriate to impose a financial penalty. The reasons for imposing the financial penalty on you under section 66 of the Act are that while performing controlled functions as an approved person at Goldsparkle you:
- (1) submitted three regulated mortgage contracts in your own name to lenders through Goldsparkle based on false and misleading employment and income details; and
 - (2) misused funds that belonged to Goldsparkle to meet mortgage repayments for mortgages taken out in your personal capacity.
- 6.9. In determining the level of the proposed financial penalty, the FSA has considered the need specifically to impose a penalty on you as well as deter others from engaging in this type of activity. Accordingly, the FSA has imposed a financial penalty of £70,000 on you, which incorporates a 30 % stage 1 discount for early settlement.

Imposition of a prohibition order

- 6.10. The FSA considers it necessary to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm in order to achieve its statutory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

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.

Manner of payment

The financial penalty of £70,000 must be paid in full by you to the FSA.

If the financial penalty is not paid

- 8.2. If all or any of the financial penalty is outstanding, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 8.3. 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 FSA must publish such information about the matter to which this Final 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.

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

FSA contact

- 8.5. For more information concerning this matter generally please contact Anna Hynes of the Enforcement Division at the FSA (direct line: 020 7066 9464).

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Tom Spender
Head of Department
FSA Enforcement Division

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**1. Statutory provisions**

- 1.1. The FSA's statutory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.
- 1.2. Section 56 of the Act provides that the FSA may make a prohibition order if 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 an authorised person.
- 1.3. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA 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 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

2. Regulatory provisions

- 2.1. In exercising its power to make a prohibition order and in determining the level of the financial penalty, the FSA has had regard to relevant regulatory guidance and policy published in the FSA's Handbook.
- 2.2. The FSA's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007. Although the references in this Warning Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded DEPP and EG and applied during part of the relevant period.
- 2.3. The guidance and policy that the FSA considers relevant to this case is set out below.

Fit and Proper Test for Approved Persons ("FIT")

- 2.4. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be a person's honesty, integrity and reputation.
- 2.6. FIT 1.3.3G provides that it would be impossible to produce a definitive list of all the matters which would be relevant to a determination of a particular person's fitness and propriety.

- 2.7. FIT 1.3.4G provides that if a matter comes to the FSA’s attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important it is.
- 2.8. FIT 2.1.1G provides that in determining a person’s honesty, integrity and reputation, the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G, including:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G(5)); and
 - (2) 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)).

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

- 2.9. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.
- 2.10. APER 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.
- 2.11. APER 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.
- 2.12. APER 3.1.6G provides that APER (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 Statements of Principle.
- 2.13. The Statement of Principle relevant to this matter is Statement of Principle 1. Statement of Principle 1 provides that an approved person must act with integrity in carrying out his controlled function.
- 2.14. APER 4.1 lists types of conduct which, in the opinion of the FSA, does not comply with Statement of Principle 1.

2.15. APER 4.1.3E(3) states that deliberately misleading (or attempting to mislead) a client, the firm or the FSA by act or omission is conduct that does not comply with Statement of Principle 1. APER 4.1.4E(9) states that such conduct includes, but is not limited to, providing false or inaccurate documentation or information.

2.16. APER 4.1.10E states that deliberately misusing the assets or confidential information of a client or his firm is conduct that does not comply with Statement of Principle 1.

Enforcement Guide (“EG”)

2.17. The FSA’s approach to exercising its power to make a prohibition order under section 56 of the Act is set out in Chapter 9 of EG.

2.18. EG 9.1 states that the FSA’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 FSA to work towards achieving its regulatory objectives. The FSA 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.

2.19. EG 9.4 sets out the general scope of the FSA’s power in this respect. The FSA 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.

2.20. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned 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.

2.21. EG 9.9 provides that when deciding whether to make a prohibition order, the FSA will consider all the relevant circumstances of the case. This may include, but are not limited to, the following:

- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
- (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons (EG 9.9(3)(a));
- (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7)); and
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
- 2.22. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include:
- (1) severe acts of dishonesty, for example which may have resulted in financial crime (EG 9.12(3)); and
 - (2) serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients, consumers or third parties (EG 9.12(5)).
- 2.23. EG 9.23 provides that in appropriate cases the FSA 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.

Decision Procedure and Penalties Manual (“DEPP”)

- 2.24. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.
- 2.25. 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. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.
- 2.26. DEPP 6.5.1G provides that the FSA 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.
- 2.27. DEPP 6.5.2 sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 2.28. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

- 2.29. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach and the loss or risk of loss caused to consumers, investors or other market users.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

- 2.30. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

- 2.31. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the same resources as a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

- 2.32. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty. The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

- 2.33. The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach, and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.34. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

- 2.35. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.