
FINAL NOTICE

To: David Martin Holland

Date of Birth: 20 May 1946

Dated: 17 December 2007

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about 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 ACTION

- 1.1. The FSA gave you a Decision Notice on 11 December 2007 which notified you that the FSA has decided to make a prohibition order against you, David Holland pursuant to section 56 of the Financial Services and Markets Act 2000 (the Act).
- 1.2. You confirmed on 8 November 2007 that you will not be referring 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 imposes on you a prohibition order. The terms of the prohibition order are that you shall be prohibited 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).
- 1.4. The Prohibition Order shall be without limit of time.

2. REASONS FOR THE ACTION

- 2.1. This action by the FSA arises from your conduct from September 2005 until May 2007 (the relevant period), while acting as the sole director of Flett Sinclair Insurance Brokers Limited (FSIB) and the sole director of Petsure Limited (Petsure). This conduct, when considered with reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that you are not fit and proper to perform functions in relation to regulated activities carried on by authorised persons, exempt persons or exempt professional firms.
- 2.2. FSIB sold a pet insurance scheme through its Appointed Representative, Petsure, to retail customers. The scheme was provided by FSIB under an agency agreement between FSIB and the underwriter's intermediary.
- 2.3. During the relevant period you were an FSA approved person performing Controlled Functions 1 (Director) and 8 (Apportionment and Oversight) at FSIB and in performing these functions you had significant influence over all the affairs at FSIB. Further, you performed Controlled Function 1 (Director) at Petsure and were directly engaged in selling pet insurance policies to retail customers in your role as a broker.
- 2.4. You marketed and sold Petsure pet insurance policies during the relevant period but failed to comply with the agreement in place between FISB and the underwriter's intermediary. In particular, the FSA is concerned that you:
 - (1) directed those premiums paid by customers by direct debit to your personal bank account and used this money for personal expenditure;
 - (2) failed to hold those premiums paid by customers by direct debit in trust for the underwriter's intermediary in a designated account for client premiums; and
 - (3) failed to prepare and submit a bordereau to the underwriter's intermediary each month together with payment of premiums, less your agreed commission.
- 2.5. The FSA considers that you have failed to act with integrity and breached Principle 1 of the FSA's Statements of Principle for Approved Persons in performing your controlled functions at FSIB and Petsure. This is particularly demonstrated by your behaviour in paying those premiums paid by customers by direct debit into your own personal bank account rather than into the Petsure designated account for client premiums. You retained 100% of these premiums which were received during the relevant period, resulting in the sum of not less than £162,000 being owed by you to the underwriter's intermediary by March 2007.
- 2.6. Further, the FSA considers that you have failed to act with due skill, care and diligence and breached Principle 2 of the FSA's Statements of Principle for Approved Persons in that you failed to provide adequate control over your customers assets by breaching the terms of the agreement between FSIB and the underwriter's intermediary and failed to take prompt action to stop the collection of premiums paid by customers by direct debit when the agreement with the insurance intermediary was terminated.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Relevant Statutory Provisions

- 3.1. In relation to the making of a prohibition order, section 56 of the Act provides:

“(1) Subsection (2) applies if it appears to the Authority 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.

(2) The Authority may make an order (“a prohibition order”) prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to-

(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;

(b) authorised persons generally or any person within a specified class of authorised person.”

The Fit and Proper Test

- 3.2. In determining whether to issue this Prohibition Order and its extent the FSA has had regard to the guidance in the FSA’s Handbook in the part entitled “*FIT – The Fit and Proper test for Approved Persons*”, in the High Level Standards sourcebooks.
- 3.3. The FSA assesses whether a person is fit and proper to perform a particular controlled function by reference to a number of factors. Among the most important of these are a person’s honesty, integrity and reputation.

Honesty and Integrity

- 3.4. The assessment of an approved person’s honesty and integrity can be made, in part, by reference to the non-exhaustive list of matters detailed in FIT 2.1.3 G. Among those matters which are relevant to the conduct at issue in this notice are:

“(5) 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;

(11) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar...”

Competence and capability

- 3.5. Paragraph 2.2.1G of FIT is also relevant. It states that, in determining a person’s competence and capability, the FSA will have regard to whether the person has

demonstrated by experience and training that the person is able to perform his controlled function.

Enforcement Guidance

- 3.6. The FSA’s policy in exercising its powers to make a prohibition order is set out in the FSA’s Enforcement Guide (EG), at Chapter 9. The purpose of prohibition orders is provided for in EG 9.1:

“The FSA'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 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 function in relation to regulated activities or from being employed by any firm, or to restrict the functions which he may perform.”

- 3.7. The guidance at EG 9.4 states that 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. It may seek to prohibit individuals from performing any class of relevant activity or it may limit the prohibition order to specific functions in relation to specific regulated activities. EG 9.5 states that the scope of a prohibition order will depend on the range of functions which the individual concerned performs, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or the market generally.
- 3.8. EG 9.9 outlines some relevant factors which the FSA will consider in the exercise of the power to make a prohibition order against an approved person. These include such matters as:

- (1) whether the person is fit and proper to perform functions in relation to regulated activities, judged by reference to the criteria in the FSA's Fit and Proper test for Approved Persons (FIT);
- (2) whether and to what extent the approved person has failed to comply with a Statement of Principle;
- (3) the particular controlled function(s) the approved person performed; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

The Statements of Principle and Code of Practice for Approved Persons

- 3.9. The FSA’s Statements of Principle for Approved Persons are issued under section 64(1) of the Act and are set out in the FSA’s Handbook in Chapter 2 of the Code of Practice for Approved Persons (APER). APER is issued under section 64 of the Act for the purpose of helping to determine whether or not an approved person's conduct complies with a Statement of Principle.

3.10. The Principles relevant to the findings of fact detailed in this notice are:

“Statement of Principle 1 - An approved person must act with integrity in carrying out his controlled function.

Statement of Principle 2 - An approved person must act with due skill, care and diligence in carrying out his controlled function.”

3.11. APER is used by the FSA to assess whether an approved person’s conduct is in breach of a Statement of Principle. When the FSA decides whether to make a prohibition order against an approved person, it will consider all the relevant circumstances of the case which may include 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).

3.12. An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person’s conduct was deliberate or where the approved person’s standard of conduct was below that which would be reasonable in all the circumstances (APER 3.1.4 G).

4. FACTS AND MATTERS RELIED UPON

Background

4.1. You are the sole director of:

- (1) FSIB, a general insurance intermediary, which began trading in May 2001; and
- (2) Petsure, an appointed representative of FSIB.

On 1 July 2004 you established a new pet insurance scheme (the Scheme) which was sold by Petsure and provided by FSIB.

4.2. The FSA became responsible for the regulation of general insurance firms on 14 January 2005. FSIB became an FSA authorised firm from this date, and Petsure became its appointed representative. FSIB was permitted to hold and control client premiums in respect of non-investment insurance contracts, and to operate a statutory trust client account.

4.3. On 14 January 2005 you became an approved person responsible for insurance mediation at FSIB and the performance of the following significant influence controlled functions:

- (1) CF1 (director of FSIB);
- (2) CF8 (apportionment and oversight at FSIB); and
- (3) CF1 (AR) (director of Petsure).

- 4.4. On 12 January 2005 FSIB entered into an agency agreement with the underwriter's intermediary (the Agreement) in respect of the Scheme.
- 4.5. Under the terms of the Agreement, FSIB were permitted to deduct 17.5% of the premiums received as commission before forwarding the premiums to the underwriter's intermediary (the Intermediary).
- 4.6. The Agreement required that:
- (1) a bordereau detailing all insurance transactions in respect of the Scheme together with payment of the net premium due to the Intermediary be sent to the Intermediary no later than 15 days after the month end; and
 - (2) premiums be held in trust for the Intermediary in a designated account for client premiums.
- 4.7. You were directly engaged in selling Petsure pet insurance policies to customers in your role as a broker.

Failure to submit monthly bordereaux

- 4.8. From January 2005 to September 2005 you submitted the monthly bordereaux and payment of premiums later than the period stipulated by the Agreement.
- 4.9. The Intermediary wrote to you on 26 September 2005 by special delivery, seeking to terminate the Agreement with effect from 27 September 2005. The intention of the Intermediary was that there would be a 12 month run-off period to allow existing policies to expire and that no further policies would be issued by FSIB from 27 September 2005. There is no record of this letter having been sent.
- 4.10. Between 27 September 2005 and 6 February 2007 you continued to arrange new and renewed pet insurance policies under the Scheme.
- 4.11. From 15 October 2005 you failed to notify the Intermediary of monthly premiums received and due to be paid to it. After further correspondence with the Intermediary, in February 2006 you submitted bordereaux for the period September 2005 to December 2005.
- 4.12. During the period January 2006 to February 2007 you failed to provide any bordereaux to the Intermediary. You provided a bordereaux for this period in June 2007.

Failure to pay over customer premiums

- 4.13. In October 2005 you stopped paying over customer premiums to the Intermediary and you retained all the customer premiums you received in respect of the Scheme for the remainder of the relevant period.
- 4.14. Between September 2005 and February 2007 you received client premiums paid by customers by direct debit totalling approximately £197,000 into your personal bank account. Of this amount only approximately £35,000 was due to you in commission

payments. The remaining amount should have been passed to the Intermediary. You treated these client premiums as drawings from the company and used them for your everyday living expenses.

- 4.15. As a part of legal proceedings against you by the Intermediary, one of your personal accounts and two of your business accounts have been frozen. In addition, a charging order has been obtained over your share of the equity retained in your home for a maximum of £189,588, including interest and costs awarded by the court.

Failure to hold premiums in trust in a designated client account

- 4.16. Under the terms of the Agreement, 17.5% of the premiums received would have been legitimately due to FSIB as commission payments. However, you instructed the premium collection agency to pay the full amount of the premiums collected by direct debit to your personal bank account, rather than to the Petsure designated account for client premiums.
- 4.17. After the termination of the Agreement (see paragraph 4.18), premiums continued to be collected by direct debit and paid into your personal bank account. These additional premiums amounted to at least £18,198.

Termination of the scheme

- 4.18. In January 2007, you entered into discussions with the Intermediary over the amount of premiums FSIB owed. The Intermediary wrote to you on 7 February 2007, terminating the Agreement. Upon receipt of this letter you failed to instruct the premium collection agency to stop taking direct debits from customers whose policies were due for renewal on or after 7 February 2007. However, between 7 February 2007 and 1 May 2007, you did write to policyholders informing them that you were no longer able to provide renewal of existing pet insurance policies.
- 4.19. The underwriter has met claims made by policyholders of those policies renewed by you between 27 September 2005 and 6 February 2007.

5. BREACH OF THE STATEMENTS OF PRINCIPLE

Failure to act with integrity (Principle 1)

- 5.1. The FSA has established, in the light of the facts and matters detailed above, that you have failed to act with integrity. You deliberately misused your customers' assets by wrongly paying all premiums received by direct debit from the customers of Petsure and FSIB into your personal bank account over the duration of the relevant period and using those premiums for personal expenditure.
- 5.2. In total, you retained not less than £162,000 during the period September 2005 and February 2007 which was due to the Intermediary. Because of your failure to pay over premiums paid by customers by direct debit, the Intermediary terminated your appointment as its agent.

Failure to exercise due skill, care and diligence (Principle 2)

- 5.3. The FSA has established, in the light of the facts and matters detailed above, that you failed to act with due skill care and diligence in the performance of your controlled functions. You repeatedly breached the Agreement and failed to take prompt action to stop the collection of premiums by direct debit when the Agreement was terminated.
- 5.4. Your actions meant that you failed to provide adequate control over your customers' assets.

6. MITIGATION

- 6.1. The FSA has noted that you have begun to compensate policyholders from whom you received premiums by direct debit after the termination of the Agreement on 7 February 2007 and that you have met any claims made by customers who paid premiums during this period.
- 6.2. It is also recognised that you have not previously been the subject of any Enforcement action.

7. CONCLUSION

- 7.1. As a consequence of the facts and matters described above and having regard to the relevant Enforcement guidance also detailed above, the FSA considers that you have breached Principles 1 and 2 of the FSA's Statements of Principle for Approved Persons. Your conduct has demonstrated that you are not fit and proper and lack the honesty and integrity and competence and capability to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 7.2. Having regard to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, the FSA considers it necessary to impose this Prohibition Order on you. This will prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

8. DECISION MAKER

- 8.1. 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.

9. IMPORTANT

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

Publicity

- 9.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under 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.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

- 9.3 For more information concerning this matter generally, you should contact Bill Sillett, at the FSA (direct line: 020 7066 5880).

Signed

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WILLIAM AMOS
FSA Enforcement Division