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**FINAL NOTICE**

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To: **John Douglas Leslie**

Individual ref: JDL00011

Address: 2 Lavender Sweep, London, SW11 1HA

Date: 26 July 2013

**1. ACTION**

1.1. For the reasons given in this Notice, the Authority hereby:

- a) imposes on Mr Leslie a financial penalty of £28,000;
- b) withdraws the approval granted to Mr Leslie to perform CF4 (Partner), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) at Leslie & Nuding; and
- c) makes an order prohibiting Mr Leslie from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

- 1.2. Mr Leslie agreed to settle at an early stage of the Authority's investigation. He 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 £40,000 on Mr Leslie.

## **2. SUMMARY OF REASONS**

- 2.1. The Authority sanctions Mr Leslie for breaches of Statement of Principle 6 in performing the significant influence controlled functions CF4 (Partner) and CF10 (Compliance Oversight) during the relevant period. Mr Leslie also held CF11 (Money Laundering Reporting) during the relevant period.
- 2.2. Mr Leslie breached Statement of Principle 6 by failing to discharge adequately his responsibility to control the distribution of prospectuses for three UCISs to retail investors and thereby failing to exercise due skill, care and diligence in managing the business of Leslie & Nuding.
- 2.3. As a direct result of his incompetent approach to his responsibilities, prospectuses were issued to approximately 2,900 retail investors without an adequate assessment of their eligibility for UCIS promotions having been made. In total, approximately 880 investors invested €38 million in the three UCISs on a non-advised basis. The UCISs fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.
- 2.4. Mr Leslie has failed to meet minimum regulatory standards in terms of performing significant influence functions with due skill, care and diligence. He is not fit and proper to perform significant influence functions at any authorised person, exempt person or exempt professional firm. Accordingly, the Authority has decided to impose the Prohibition Order on him.
- 2.5. This action supports the Authority's regulatory objectives of protecting consumers and enhancing the integrity of the financial system.

## **3. DEFINITIONS**

- 3.1. The definitions below are used in this Final Notice.
  - a) "Act" means the Financial Services and Markets Act 2000;
  - b) "AdminCo" means the non-Authority authorised management services company which facilitated sales of the three UCISs;

- c) "APER" or the "Statements of Principle" means the Statements of Principle and Code of Conduct for Approved Persons set out in the Authority and Authority's Handbook;
- d) "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
- e) "Authority's Handbook" means the Authority's Handbook of Rules and Guidance;
- f) "Burlington" means Burlington Associates Limited;
- g) "CF" means controlled function;
- h) "EG" means the Authority's Enforcement Guide;
- i) "ENF" means the Authority's Enforcement Manual, which was in force between 1 December 2004 and 27 August 2007;
- j) "FIT" means the Authority's Fit and Proper Test for Approved Persons;
- k) "IFA" means independent financial adviser;
- l) "Leslie & Nuding" means the small IFA firm based in London which is now named Leslie & Swallow;
- m) "Mr Leslie" means John Douglas Leslie;
- n) "Prohibition Order" means the order to be made pursuant to section 56 of the Act prohibiting Mr Leslie from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;
- o) "relevant period" means the period between 1 April 2005 and 31 December 2005;
- p) "Settlement Decision Makers" means two members of the Authority's senior management who have jointly taken the decision which gave rise to the obligation to give this Notice;
- q) "UCIS" means unregulated collective investment scheme;
- r) "three UCISs" means the three unregulated collective investment schemes promoted by Leslie & Nuding which invested in property developments in Croatia, Bulgaria and Montenegro; and

s) "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

#### **4. FACTS AND MATTERS**

- 4.1. Mr Leslie was a partner in Leslie & Nuding (now named Leslie & Swallow), a small IFA based in London. During the relevant period, Mr Leslie was approved to perform CF4 (Partner), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF21 (Investment Adviser) at Leslie & Nuding.
- 4.2. In around April 2005, Mr Leslie was approached by Burlington for advice on the statutory restrictions around the promotion of UCISs to retail investors. Burlington was planning to play a role in selling three UCISs to UK investors. The objective of the three UCISs was to raise money to invest in land and property developments in Croatia, Bulgaria and Montenegro. Burlington approached Mr Leslie for advice because Leslie & Nuding had previous experience of overseeing sales of UCISs by an appointed representative.
- 4.3. Through his previous experience, Mr Leslie was familiar with the statutory restrictions around how UCISs could be promoted to the general public. He advised Burlington about the difference between the general advertising of an investment opportunity and the act of specifically promoting investments in the three UCISs.
- 4.4. Mr Leslie agreed with Burlington that Leslie & Nuding would take responsibility for sending prospectuses to prospective investors who had signed an eligibility certificate, and for providing advice to investors who did not certify themselves as eligible. After MarketingCo, the property marketing company which sent out email advertisements and held sales seminars (assisted by Burlington) in relation to the three UCISs, had generated interest in the schemes, Leslie & Nuding would:
  - a) review the certificates sent by interested investors confirming themselves as eligible to receive UCIS promotions, either as a self-certified sophisticated investor or a certified high net worth investor; and
  - b) issue promotional prospectuses only to those investors who had been certified as eligible.
- 4.5. Mr Leslie delegated the administrative aspect of these duties to AdminCo, a non-Authority authorised firm with links to Burlington which operated from the same office building as Burlington, but he retained the responsibility for checking that prospectuses were only sent to customers who had provided eligibility certificates. During the relevant period, AdminCo received thousands of prospectus request forms, collated eligibility certificates and issued prospectuses in the name of Leslie & Nuding.

- 4.6. Leslie & Nuding received approximately £65,000 in commission for its role in promoting investments in the three UCISs. AdminCo covered all of the administrative and staff costs associated with issuing the prospectuses.
- 4.7. Mr Leslie was the only person at Leslie & Nuding involved in this line of business. In his role as a significant influence function holder, he was personally responsible for ensuring that prospectuses were only sent to eligible investors.

Inadequate record keeping for investor certification

- 4.8. Mr Leslie gave Burlington and AdminCo access to Leslie & Nuding's records management system and requested that they upload eligibility certificates and other documents so that he could control the investor certification process from his office. In the event, the firms failed to provide the records, meaning that Mr Leslie was not in a position to oversee the distribution of prospectuses as planned. He periodically visited Burlington / AdminCo's offices to spot check a sample of eligibility certificates, but this was not a sufficient step to ensure that he could adequately carry out his duties. Mr Leslie did not obtain the records until 2011, when investors began to submit complaints to Leslie & Nuding about its role in the UCIS sales.

Inadequate oversight of investor certification

- 4.9. Potential investors who attended the sales seminars were encouraged to request a promotional prospectus to learn more about the schemes and ultimately apply to invest. In order to receive a prospectus, potential investors were asked to sign certificates confirming their eligibility for UCIS promotions, either as a sophisticated investor or a high net worth investor.
- 4.10. It was Mr Leslie's responsibility to ensure a controlled distribution of prospectuses to eligible investors only. He should have verified that prospectuses were issued only to investors who had certified themselves as eligible.
- 4.11. However, Mr Leslie failed to check that prospectuses were only sent to investors who had submitted eligibility certificates. He made only very cursory spot checks on certificates either before or after prospectuses had been issued. This created a significant risk that investors could receive a promotional prospectus without anyone checking that they had properly signed an eligibility certificate.

#### Provision of unclear information to investors

- 4.12. One of Mr Leslie's motivations for involving Leslie & Nuding in the promotion of the three UCISs was the potential to generate advised sales. He anticipated that any investor who could not be certified as sophisticated or high net worth could be referred to Leslie & Nuding. He would then assess the investor's individual circumstances and needs, and potentially recommend the UCISs to the investor on an advised basis.
- 4.13. Alongside the prospectus, Mr Leslie authorised AdminCo to issue the following documents to potential investors on behalf of Leslie & Nuding:
- a) an initial disclosure document ("IDD");
  - b) terms of business;
  - c) a key facts document about costs; and
  - d) a covering letter.
- 4.14. Even though Mr Leslie knew that the vast majority of investors would invest in the UCISs on a non-advised basis, each of these accompanying documents contained misleading references to an advised service. For example, the IDD stated that Leslie & Nuding would "advise and make a recommendation for you after we have assessed your needs". The terms of business began: "We offer independent advice [...]" with the customer declaration stating "I am agreeable to you acting as my financial adviser [...]".
- 4.15. In the early stages of the three UCISs being promoted, Mr Leslie spotted the error in the IDD and asked AdminCo to send out a revised version. However, he did not take any steps to ensure the error was corrected and AdminCo continued to send out the incorrect IDD to potential investors.
- 4.16. Mr Leslie negligently authorised the use of his firm's sales documentation, creating a risk that potential investors were unclear or misled as to the service they were receiving and the regulatory protections which might be available to them (ultimately no advised sales flowed to Mr Leslie from this process).

#### Impact of inadequate oversight

- 4.17. Without Mr Leslie's knowledge, the three UCISs were promoted by MarketingCo and Burlington to an unrestricted audience of thousands of retail investors, by both unsolicited email mailshots and in person at sales seminars and workshops, using urgent timescales and highly attractive forecasts on returns. As a result there was a risk that

investors who would not certify themselves as eligible would be keen to invest in the three UCISs.

- 4.18. Mr Leslie's passive approach to his duties allowed AdminCo to issue promotional prospectuses to approximately 2,900 retail consumers with minimal oversight. Hundreds of investors informed Burlington or AdminCo that they felt they could not be certified as sophisticated or high net worth. Unbeknownst to Mr Leslie, the firms assessed these investors as eligible to receive a prospectus, using a risk questionnaire which was inadequate for that purpose.
- 4.19. In total, approximately 880 investors invested €38 million in the three UCISs on a non-advised basis. The three UCISs fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.

## **5. FAILINGS**

- 5.1. The relevant regulatory provisions are referred to in the Annex to this Notice.

### Breach of Statement of Principle 6

- 5.2. Mr Leslie has breached Statement of Principle 6 by failing to act with due skill, care and diligence in managing the business of Leslie & Nuding, on the basis of the specific failings detailed below.
- 5.3. As a holder of a number of significant influence functions at Leslie & Nuding, Mr Leslie was responsible for governing the activities of the firm, including by supervising and monitoring adequately any agent to whom it had delegated business activities.
- 5.4. Mr Leslie agreed with Burlington and AdminCo that Leslie & Nuding would take on responsibility for ensuring that prospectuses for the three UCISs were only sent to investors who had completed eligibility certificates. He entered into a business arrangement with Burlington and AdminCo, to whom he delegated the task of sending out the prospectuses and related documents. Mr Leslie failed to discharge his responsibility, only carrying out limited spot checks in a way that did not allow him to ensure that prospectuses were only sent to eligible investors.
- 5.5. This allowed AdminCo to issue prospectuses to thousands of potential investors without adequate supervision by Mr Leslie.
- 5.6. Mr Leslie also failed to adequately oversee AdminCo's activities, with the result that investors were sent potentially misleading information about the service that they were receiving from Leslie & Nuding.

- 5.7. Through this careless approach to his responsibilities Mr Leslie failed to show due skill, care and diligence in breach Statement of Principle 6.

**Not fit and proper**

- 5.8. Mr Leslie's conduct demonstrated a lack of competence and capability such that he is not fit and proper to perform any significant influence function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm.

**6. SANCTION**

**Financial penalty**

- 6.1. The Authority hereby imposes a financial penalty on Mr Leslie for the breach of Statement of Principle 6.
- 6.2. The Authority's policy on the imposition of financial penalties for the misconduct in this case is set out in Chapter 13 of ENF, which was in force between 1 December 2004 and 27 August 2007 and formed part of the Authority's Handbook. The relevant sections of ENF are set out in more detail in the Annex to this Notice.
- 6.3. 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.
- 6.4. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in Chapter 13 of ENF, a financial penalty is an appropriate sanction in this case, given the serious nature of the breach and the need to send out a strong message of deterrence to others.
- 6.5. ENF 13.3.3G 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.

The seriousness of the misconduct or contravention – ENF13.3.3G(1)

- 6.6. In determining the appropriate sanction, the Authority had regard to the seriousness of the contravention in question, including the duration of the contravention, the number of retail investors affected, the risks to which those investors were exposed and the significant sums they have lost.



The extent to which the breach was deliberate or reckless – ENF13.3.3G(2)

6.7. Mr Leslie did not act deliberately or recklessly.

Whether the person on whom the penalty is to be imposed is an individual, and the financial resources and other circumstances of the individual – ENF13.3.3G(3)

6.8. The Authority recognises that the financial penalty imposed on Mr Leslie is likely to have a significant impact on him as an individual, but it is considered to be proportionate in relation to the seriousness of the misconduct and to Mr Leslie's position as an approved person performing significant influence functions at Leslie & Nuding.

6.9. The financial penalty is appropriate, having taken account of all relevant factors, including the impact such a penalty might have on Mr Leslie's financial resources and the need for credible deterrence.

Disciplinary record and compliance history – ENF13.3.3G(6)

6.10. There has been no previous disciplinary action against Mr Leslie.

Previous action taken by the Authority – ENF13.3.3G(7)

6.11. In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other approved persons for similar misconduct.

6.12. Having considered all the circumstances set out above, £40,000 is an appropriate financial penalty to impose on Mr Leslie for the breach of Statement of Principle 6. After applying the 30% discount for early settlement, the penalty to be paid is £28,000.

**Prohibition**

6.13. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that Mr Leslie be prohibited from performing any significant influence function. The relevant provisions of EG are set out in the Annex of this Notice.

6.14. Given the nature and seriousness of the failures outlined above, Mr Leslie's conduct demonstrated a serious lack of competence such that he is not fit and proper to perform any significant influence function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose the Prohibition Order on Mr Leslie in the terms set out above.

## **7. CONCLUSION**

- 7.1. Mr Leslie's conduct at Leslie & Nuding fell short of the minimum regulatory standards required of an approved person. He has breached Statement of Principle 6 and is not fit and proper to hold any significant influence function. Having regard to all the circumstances, it is appropriate and proportionate to impose a financial penalty of £28,000 on Mr Leslie and to make the Prohibition Order against him.

## **8. PROCEDURAL MATTERS**

### **Decision maker**

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

### **Manner of and time for payment**

- 8.3. Mr Leslie must make a payment of £7,000 to the Authority within 14 days from the date of this Final Notice, followed by a second payment of £21,000 within 12 months of the date of this Final Notice.

### **If the financial penalty is not paid**

- 8.4. If all or any of the financial penalty becomes overdue for payment, the Authority may recover the outstanding amount as a debt owed by Mr Leslie and due to the Authority.

### **Publicity**

- 8.5. 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 Mr Leslie or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 8.6. The Authority will publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contact**

- 8.7. For more information concerning this matter generally, contact Rachel West at the Authority (direct line: 020 7066 0142 / fax: 020 7066 0143).

**Bill Sillett**

Head of Department – Enforcement and Financial Crime Division

for and on behalf of the Authority

## **ANNEX**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory provisions**

1. Section 1A of the Act provides that the body corporate previously known as the Financial Services Authority is renamed the Financial Conduct Authority.
2. The Financial Conduct Authority's regulatory objectives are set out in section 1B to 1L of the Act and include protecting and enhancing confidence in the financial system and securing an appropriate degree of protection for consumers.
3. Section 56 of the Act provides that the Authority may make a prohibition order 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. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.
4. Section 63 of the Act provides that the Authority may withdraw an individual's approval to carry out a controlled function if it considers that the person in respect of whom the approval was given is not a fit and proper person to perform the function to which the approval relates.
5. 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.
6. Section 390 of the Act provides that a final notice about a penalty must state the amount of the penalty and the matter and period in which the penalty is to be paid. A final notice about an order must set out the terms of the order and the date from which the order has effect.

#### **Handbook provisions**

7. In exercising its power to impose a financial penalty, the Authority must have regard to relevant provisions in the Authority's Handbook of rules and guidance (the "Authority's

Handbook"). The main provisions relevant to the action specified above are set out below.

### **Statements of Principle and the Code of Practice for Approved Persons ("APER")**

8. APER sets 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. APER 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.
9. 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.
10. 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.
11. 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.
12. 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.

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

13. 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.
14. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's competence and capability.

## **The Enforcement Manual (“ENF”) and Enforcement Guide (“EG”)**

### Prohibition orders

15. 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 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.
16. EG 9.3 states that in deciding whether to make a prohibition order the Authority will consider all the relevant circumstances.
17. 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.
18. 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.
19. 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, the following:
  - (a) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons 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));
  - (b) whether, and to what extent, the approved person has:
    - (i) failed to comply with the Statement of Principle issued by the Authority with respect to the conduct of approved persons; or
    - (ii) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) (EG 9.9(3));

- (c) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (d) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
- (e) 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
- (f) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

20. 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 a serious lack of competence (EG 9.12(3)).

21. 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.

22. In summary, the relevant considerations are whether, in terms of honesty, integrity, competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by him. Having established these matters, it can be determined whether prohibition will be necessary to achieve the Authority's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

#### Financial penalties

23. Section 69 of the Act requires the Authority to issue a statement of its policy with respect to the imposition of penalties on approved persons. Between 1 December 2004 and 27 August 2007, the Authority's policy in this regard was contained in ENF 13. In deciding whether to exercise its power under section 66 in the case of any particular act of misconduct, the Authority had regard to this statement.

24. ENF 13 stated that the principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour.

25. ENF 13.3.1G provided that the Authority would 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.

26. ENF 13.3.3G set 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:

*The seriousness of the misconduct or contravention – ENF13.3.3G(1)*

27. The Authority recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. Relevant factors include the duration, frequency and impact of the misconduct, and the loss or risk of loss caused to consumers.

*The extent to which the breach was deliberate or reckless – ENF13.3.3G(2)*

28. In determining whether a contravention or misconduct was deliberate, the Authority may have regard to whether an approved person's behaviour was intentional, in that they intended or foresaw the consequences of their actions. If the Authority decides that behaviour was deliberate or reckless, it may be more likely to impose a higher penalty on a firm or approved person than would otherwise be the case.

*Whether the person on whom the penalty is to be imposed is an individual, and the financial resources and other circumstances of the individual – ENF13.3.3G(3)*

29. The Authority may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the firm or approved person were to pay the level of penalty associated with the particular contravention or misconduct. The Authority 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.

*Conduct following the contravention – ENF13.3.3G(5)*

30. The Authority may take into account the conduct of the approved person, including the degree of co-operation the person showed during the Authority's investigation and any remedial steps the person took after the contravention was identified.



*Disciplinary record and compliance history – ENF13.3.3G(6)*

31. The previous disciplinary record and general compliance history of the approved person may be taken into account. This will include whether the Authority (or any previous regulator) has taken any previous formal disciplinary action resulting in adverse findings against the approved person, or whether the Authority has previously required the person to take remedial action.

*Previous action taken by the Authority– ENF13.3.3G(7)*

32. The action that the Authority has taken previously in relation to similar behaviour by other approved persons may be taken into account. The Authority will seek to ensure consistency when it determines the appropriate level of penalty. If it has taken disciplinary action previously in relation to a similar contravention or misconduct, this will clearly be a relevant factor.