
FINAL NOTICE

To: **Mrs Janice Susan Whiteley**

Date of birth 1 June 1946

Date: **2 November 2006**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a decision to publish a public statement about your misconduct.

1. THE ACTION

- 1.1 Having agreed with Janice Susan Whiteley ("Mrs Whiteley") the facts and matters below and pursuant to section 205 of the Financial Services and Markets Act 2000 ("the Act"), and the FSA having issued a Decision Notice on 19 September 2006 the FSA has decided to issue a statement of misconduct in respect of Mrs Janice Susan Whiteley ("Mrs Whiteley") for failing to comply with Statement of Principle 2 and Statement of Principal 7 of the FSA's Code of Conduct for Approved Persons (APER) issued under Section 64 of the FSMA.

Terms of the Statement of Misconduct

Mrs Whiteley was a partner in Whiteley Insurance Consultants ("WIC") together with her husband Mr Christopher Edward Whiteley ("Mr Whiteley").

Mrs Whiteley was an approved person within WIC and had a partner controlled function. Mr Whiteley accepted day to day responsibility for the affairs of WIC and was responsible for the controlled functions of apportionment and oversight and was responsible for insurance mediation.

WIC acted in breach of its Part IV permissions as it effected contracts of insurance as a principal (which it was not authorised to do) as it failed to ensure that various travel insurance policies issued to consumers were properly underwritten, thereby placing consumers at risk of loss.

On 15 June 2005 WIC was wound up by an order of the High Court following the presentation of a winding up petition by the FSA.

This public statement of misconduct relates to breaches of the Code of Conduct for Approved Persons (APER) that Mrs Whiteley was subject to as a partner of WIC.

Specifically by failing to take an active role in the affairs of WIC as required by her status as an approved person exercising a partner controlled function Mrs Whiteley breached Statement of Principle 2 of APER by failing to act with due skill, care and diligence and Statement of Principle 7 by failing to ensure that WIC complied with the relevant requirements and standards of the regulatory regime.

Ordinarily the FSA would seek to impose a financial penalty in the region of £20,000 upon Mrs Whiteley in respect of these breaches. This penalty has not been imposed due to the insolvency of WIC and any such penalty may reduce the assets available to creditors of WIC and therefore have an adverse impact upon consumers.

2. REASONS FOR THE ACTION

Background

- 2.1 This notice is issued to Mrs Whiteley due to her status as an approved person within WIC for which she was responsible for exercising a partner controlled function.
- 2.2 Mrs Whiteley confirmed to the FSA in an interview that her involvement in the management of WIC's affairs was relatively limited and she did not know what her responsibilities were as an approved person as she did not involve herself in FSA regulatory issues.
- 2.3 The FSA is concerned that Mrs Whiteley has failed to comply with the code of conduct for Approved Persons (APER) in that she failed to take sufficient, or any steps to comply with the code and thereby breached Statements of Principle 2 and 7 by omission. The FSA considers that approved persons should take sufficient steps to inform themselves and prevent activities of the authorised firm that breach or may breach the requirements of FSMA.
- 2.4 In reaching its decision the FSA has also taken account of Mrs Whiteley's full co-operation in the course of the investigation, her previous compliance history and her acceptance that she has committed breaches of Statements of Principle 2 and 7 of APER. Were it not for these considerations a more severe sanction would have been imposed.

3. RELEVANT STATUTORY PROVISIONS

- 3.1 Section 66 (Disciplinary Powers) of the FSMA provides-

66(1) The Authority may take action against a person under this section if-

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

66(2) A person is guilty of misconduct if, while an approved person –

(a) he has failed to comply with a statement of principle issued under section 64; or

(b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.

66(3) If the Authority is entitled to take action under this section against a person, it may–

(a) impose a penalty on him of such amount as it considers appropriate; or

(b) publish a statement of his misconduct.

3.2 Section 64(1) of the FSMA provides that the Authority may issue statements of principle with respect to the conduct expected of approved persons.

4. RELEVANT GUIDANCE

4.1 In deciding to take the action described above the FSA has had regard to guidance published in the FSA Handbook, in particular at:

4.2 ENF 12.1.1 provides that:

The FSA may issue a public statement of misconduct on an approved person under section 66 of the Act (Disciplinary Powers) where it considers that he is guilty of misconduct; misconduct is defined in the Act as a failure to comply with a Statement of Principle issued by the FSA under section 64 of the Act (Conduct: statements and codes), or being knowingly concerned in a contravention by a firm of a requirement imposed on that firm by or under section 66 of the Act.

4.3 ENF 12.3.3 provides that:

The criteria for determining whether it is appropriate to issue a public censure or public statement rather than impose a financial penalty are similar to those for determining the level of financial penalty listed in ENF 3 (Discipline of firms and approved persons: financial penalties). The starting point is that the FSA will consider all of the relevant circumstances of the case. Some particular considerations may be relevant when the FSA determines whether to impose a public censure or public statement rather than a financial penalty. The following list is not exhaustive (not all of these factors may be relevant in a particular case, and there may be other factors that are relevant):

(1) if the firm or approved person has made a profit or avoided a loss as a result of the breach or misconduct, this may be a factor in favour of a financial penalty, on the basis that a firm or approved person should not be permitted to benefit from its breach or misconduct;

- (2) if the breach or misconduct is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach or misconduct; other things being equal, the more serious the breach or misconduct, the more likely the FSA is to impose a financial penalty;
- (3) if the firm or approved person has admitted the breach or misconduct and provides full and immediate co-operation to the FSA, and takes steps to ensure that consumers are fully compensated for any losses arising from the contravention, this may be a factor in favour of a public censure or statement of misconduct, rather than a financial penalty, depending upon the nature and seriousness of the breach or misconduct;
- (4) if the firm or approved person has a poor disciplinary record or compliance history (for example, where the FSA has previously brought disciplinary action resulting in adverse findings in relation to the same or similar behaviour), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
- (5) the FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public statement; and
- (6) if the firm or approved person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their breach or misconduct would otherwise attract, this may be a factor in favour of a lower level of financial penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to impose a public statement rather than a financial penalty, if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:
 - (a) verifiable evidence that an approved person would suffer serious financial hardship if the FSA imposed a financial penalty; and
 - (b) verifiable evidence that the firm would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level.

5. FACTS AND MATTERS RELIED ON

- 5.1 WIC was a partnership between Mr and Mrs Whiteley and was formed in 1983. WIC operated from offices in Halifax, Yorkshire. WIC also traded under the name of "Kingfisher Travel Insurance" ("Kingfisher"). There does not appear to have been a written Partnership Agreement between Mr and Mrs Whiteley.
- 5.2 WIC promoted and sold single trip and multi-trip ("Annual Travel Cover") policies of travel insurance. WIC also offered general household insurance. WIC sold its travel policies through travel agents and tour operators, and sold policies directly to members of the public through its web-site.

- 5.3 Mr Whiteley was also the sole director and holder of one of the two issued shares in a limited company, Kingfisher Assistance Limited (“KAL”). KAL was used to provide medical and emergency assistance services for the holders of policies of travel insurance sold by WIC. KAL was wound up by an order of the High Court on 15 August 2005, on a creditor’s petition presented by Mr Whiteley.
- 5.4 On 14 January 2005 Mr Whiteley became an Approved Person under the Act responsible for the following controlled functions: partner; apportionment and oversight; responsible for insurance mediation. Mrs Whiteley became an Approved Person under the Act at the same date responsible for the following controlled function: partner.
- 5.5 There were no other Approved Persons involved in the running of WIC which employed approximately 40 staff.

Insolvency Proceedings in respect of WIC

- 5.6 The FSA issued a petition for the winding up of WIC on 26 April 2005 and applied to have Provisional Liquidators appointed to take charge of the affairs of WIC on public interest grounds and to protect the interests of consumers. Mr Daniel Yoram Schwarzmann and Mr Nicholas Edward Reed of PricewaterhouseCoopers LLP were subsequently appointed as Joint Provisional Liquidators of WIC until the conclusion of the hearing of the Petition or further Order.
- 5.7 The FSA's petition to wind up WIC was heard before Mr Registrar Simmonds on 15 June 2005. Neither Mr nor Mrs Whiteley filed any evidence in opposition to the petition, and neither they nor representatives for them or WIC appeared at the hearing. The Joint Provisional Liquidators provided a report to the Court that confirmed (amongst various matters) their findings that:-
- (1) WIC had effected and/or carried out contracts of insurance as principal without authorisation (prior to 14 January 2005) in that it contracted to provide policies of travel insurance, and in some cases administered claims, in circumstances where the policy of travel insurance was not underwritten by an authorised insurer;
 - (2) WIC (after 14 January 2005) undertook similar regulated activities which went beyond WIC’s permissions to act as an insurance intermediary, and was therefore to be taken by section 20 of FSMA to have contravened a requirement imposed by the FSA under that Act;
 - (3) the number of consumer policyholders effected was estimated to be approximately 42,000;
 - (4) WIC’s records were poor; and
 - (5) the Joint Provisional Liquidators were at the time unable to determine whether WIC was solvent or insolvent.
- 5.8 The Secretary of State subsequently appointed Mr Schwarzmann and Mr Reed as Joint Liquidators of WIC (“the Liquidators”) with effect from 15 June 2005. They have continued to report to the FSA on the conduct of the Liquidation. The Joint

Provisional Liquidators have taken over day to day control of the affairs of WIC in the ordinary course of the liquidation of the business. The Joint Liquidators have provided a report to the FSA setting out matters of which they have become aware during the course of the liquidation.

FSA Interview and requests for information from Mrs Whiteley

- 5.9 On 20 July 2005 Mrs Whiteley was interviewed by the FSA, in order to ascertain and clarify her degree of involvement in the affairs of the partnership.
- 5.10 During her interview with the FSA, Mrs Whiteley described her actual role within the partnership as being more akin to that of an employee than a partner, although she would on occasion sign cheques or deal with issues as a partner if Mr Whiteley was not available. Mrs Whiteley stated that she did not speak to insurers and was not involved in any negotiations with them as this was left to Mr Whiteley.
- 5.11 Mrs Whiteley explained that Mr Whiteley had completed her application to be an Approved Person under the Act and simply gave it to her to sign. She had signed the application form when Mr Whiteley gave it to her, although she could not recall the exact circumstances in which she signed the form.
- 5.12 Mrs Whiteley was not able to explain, in interview, what her responsibilities as an Approved Person were, as Mr Whiteley had assumed responsibility for dealing with regulatory matters.

Breach of Principle 2 of the FSA's Code Of Conduct for Approved Persons (Failing to act with due skill, care and diligence)

- 5.13 By reason of the facts and matters set out in paragraphs numbered 1 to 12 above Mrs Whiteley has failed to act with due skill, care and diligence as an approved person by:
 - (1) failing to apprise herself of the relevant FSA regulations and her obligations as an approved person;
 - (2) failing to take reasonable steps to ensure that WIC complied with the requirements of FSMA at all times;
 - (3) similarly failing in particular to take reasonable steps to ensure that she was aware of the day to day activities being carried out by WIC in breach of its permissions post 14 January 2005, and to prevent those activities being carried on by the partnership of which she was a partner.

Breach Of Principle 7 of the FSA's Code Of Conduct for Approved Persons (Failing to ensure that the business of the firm complied with the relevant requirements and standards of the regulatory system)

- 5.14 Mrs Whiteley performed a significant influence function within WIC and therefore was required to comply with Statement of Principle 7. APER 4.7.3-4.7.4 sets out evidential provisions relating to Statement of Principle 7.
- 5.15 By reason of the facts and matters set out in paragraphs numbered 5.1 to 5.12 above Mrs Whiteley has breached Principle 7 in that she failed to take sufficient, or any,

steps to ensure that WIC did not engage in regulated activities in breach of its Part IV permissions.

Conduct During The Investigation

- 5.16 The FSA acknowledges that Mrs Whiteley has been open and co-operative in her dealings with FSA's investigation and has agreed to the contents of this Notice. She has also co-operated with the Joint Liquidators of WIC.

Compliance History

- 5.17 Mrs Whiteley has not been subject to any previous regulatory action.

6. DECISION MAKERS

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

7. IMPORTANT

- 7.1 This Final Notice is given to Mrs Whiteley in accordance with section 390 of the Act.

Publicity

- 7.2 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.
- 7.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.4 For more information concerning this matter generally, you should contact Mrs Angela Stephens (Tel: 020 7066 4714/Fax 020 7066 4715) or Mr Peter Wright (Tel: 020 7066 2866/Fax 020 7066 2867) of the Enforcement Division of the FSA.

Jonathan Phelan
Head of Department - Retail
Enforcement Division