
FINAL NOTICE

To:	Michele Louise King	To:	HD Administrators LLP (in liquidation)
IRN:	MLK01025	FRN:	465359
Date of Birth	20 June 1973	Address:	The Official Receiver Public Interest Unit The Insolvency Service 2nd Floor, 3 Piccadilly Place London Road Manchester M1 3BN
Date:	28 November 2012		

ACTION

1. For the reasons given in this notice, the FSA hereby:
 - (a) censures Ms King publicly for failing to comply with Statement of Principle 6 pursuant to section 66 of the Act;
 - (b) withdraws Ms King's approval to perform the controlled function of CF4 at HDA, pursuant to section 63 of the Act; and
 - (c) prohibits Ms King from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, pursuant to section 56 of the Act.
2. Ms King agreed to settle the matter with the FSA at an early stage in the investigation.

3. Ms King's misconduct merits a financial penalty. Were it not for Ms King's current financial difficulties and verifiable evidence that the imposition of such a penalty would result in serious financial hardship, the FSA would have imposed a financial penalty of £20,000.
4. The public censure will be issued on 28 November 2012 and will take the form of this Final Notice, which will be published on the FSA's website.
5. The withdrawal of approval and prohibition will take effect from the date of this Final Notice.

SUMMARY OF REASONS

6. Ms King was approved to perform the controlled function of CF4 (Partner), a significant influence function, at HDA from 21 August 2008. During the relevant period, Ms King breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of HDA for which she was responsible in the performance of her controlled function.
7. Specifically, Ms King breached Statement of Principle 6 by failing to:
 - (a) understand, or take reasonable steps to understand, her regulatory responsibilities as an approved person. She sought and obtained FSA approval as CF4 without any comprehension of the specific regulatory responsibilities attaching to that function; and
 - (b) discharge, or take reasonable steps to discharge, her regulatory responsibilities as an approved person. In particular, she did not:
 - (i) understand, or take steps to inform herself of, the nature of the business conducted by HDA, including the basic function, operation and management of the pension scheme operated by the firm;
 - (ii) understand or take steps to inform herself of HDA's regulatory obligations; and

- (iii) involve herself in, or keep herself informed of, management decisions at HDA and the day-to-day operation of the firm.
- 8. In committing this misconduct, Ms King has demonstrated that she is not a fit and proper person to perform controlled functions in relation to regulated activities carried out by an authorised person, exempt person or exempt professional firm. She does not meet the minimum regulatory standards in terms of competence and capability necessary for remaining an approved person.
- 9. Individuals with approval to perform controlled functions, and in particular those involving the exercise of significant influence, must ensure that they understand their regulatory obligations in order to be able to adequately discharge them and thereby ensure the safe and compliant operation of the firm for which they are responsible. This is necessary to safeguard the interests of consumers and the market generally. Ms King failed to take any steps to understand her responsibilities as CF4 and, as a result, could not adequately discharge her regulatory obligations as an approved person.
- 10. This action supports the FSA's regulatory objectives of securing the appropriate degree of protection for consumers and maintaining confidence in the financial system.

DEFINITIONS

- 11. The definitions below are used in this Final Notice:
 - (a) the "Act" means the Financial Services and Markets Act 2000;
 - (b) "APER" or the "Statements of Principle" means the part of the FSA Handbook relating to the Statements of Principle and Code of Conduct for Approved Persons;
 - (c) "CF4" means the FSA's controlled function 4 (Partner);
 - (d) "DEPP" means the Decision Procedures and Penalties Manual in the FSA Handbook;
 - (e) "EG" means the FSA's Enforcement Guide;

- (f) “FIT” means the FSA’s Fit and Proper Test for Approved Persons as set out in the FSA Handbook;
- (g) the “FSA” means the Financial Services Authority;
- (h) the “FSA Handbook” means the FSA Handbook of rules and guidance;
- (i) “HDA” means HD Administrators LLP, being the limited liability partnership at which Ms King was an approved person;
- (j) the “HD SIPP scheme” means the SIPP scheme operated and administered by HDA;
- (k) “HMRC” means Her Majesty’s Revenue and Customs;
- (l) “Ms King” means Ms Michele Louise King;
- (m) “Part IV Permission” means the permission to carry on regulated activities granted to HDA by the FSA under Part IV of the Act;
- (n) the “relevant period” means the period between 21 August 2008 and 22 March 2012;
- (o) a “significant influence function” means a controlled function which is likely to result in the person responsible for its performance exercising a significant influence on the conduct of a firm’s affairs in relation to a regulated activity of that firm;
- (p) a “SIPP” means a self invested personal pension;
- (q) the “Threshold Conditions” means the FSA’s minimum standards for becoming and remaining authorised, as set out in Schedule 6 of the Act; and
- (r) the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

Background

12. HDA is the operator of a personal pension scheme, the HD SIPP, which comprised approximately 422 members. HDA was authorised by the FSA to establish, operate and wind up a personal pension scheme on 26 April 2007. On 22 March 2012, the FSA varied the permission granted to HDA by removing the activities in its permission. On 25 June 2012, HDA entered into liquidation.
13. Ms King became a partner at HDA in, or around, June 2008, following the resignation of one of the two partners. Ms King's prior employment history was as an accounts administrator. Prior to becoming a partner she had performed some minor administrative tasks in relation to HDA.

Failure to understand her responsibilities as an approved person

14. Prior to her approval on 21 August 2008, Ms King had no knowledge or understanding of the FSA's Approved Persons regime or the significance of applying for approval to perform a controlled function at an authorised firm. Ms King did not thereafter take any steps to inform herself of the nature of her newly acquired responsibilities. This was despite her having read and signed the approval application form submitted to the FSA on her behalf by HDA.
15. Ms King did not take any steps to find out for herself what her regulatory responsibilities might be, for example by reference to the FSA Handbook and the Statements of Principle. In fact, Ms King stated in interview that she had little understanding of the purpose and function of the FSA itself, and had until then never heard of the Approved Persons regime or the Statements of Principle. Ms King held the significant influence function of CF4 for a period of four years without any basic understanding of her role and responsibilities.

Failure to discharge her responsibilities as an approved person

Understanding the nature of HDA's business

16. At the time of obtaining FSA approval, and throughout the relevant period, Ms King

also had very limited knowledge of the purpose and function of SIPP schemes generally, despite being a senior manager at a SIPP operator. In particular, Ms King did not understand, nor make efforts to inform herself as to, the function, responsibility and purpose of the various entities involved in the administration of the HD SIPP, including the scheme operator and the registered scheme administrator. Ms King was also unaware of the role of the scheme trustee, despite having been appointed a director of the HD SIPP scheme trustee company. Ms King's understanding of the technical requirements of operating a SIPP scheme was similarly lacking; for instance, she had no knowledge of the investment types allowable under HMRC rules, when and how investors can receive benefits from their SIPPs, or the nature of the investments held within the HD SIPP specifically.

Understanding HDA's regulatory obligations

17. Ms King also failed to inform herself, upon approval or at any stage subsequently, of HDA's specific regulatory responsibilities. At the most basic level, Ms King did not seek to inform herself of the scope of the permission granted by the FSA to HDA. She therefore had no understanding of HDA's permission to carry out its regulated activities or to hold client money (or any limitation thereon).

Involvement in the management and day-to-day operation of HDA

18. After joining the partnership, and obtaining approval as CF4, Ms King did not seek to increase her level of involvement in the management of HDA or its day-to-day running. Ms King did not request that partner meetings take place at which she could be present and she did not ask to see HDA's audited accounts.
19. Ms King conducted only a small number of administrative tasks in relation to the scheme while continuing to function in her original role as an administrator employed by another company. Even when regular administration meetings were held in relation to the HD SIPP, Ms King did not seek to be involved.

FAILINGS

20. The statutory provisions and regulatory requirements relevant to this Final Notice are referred to in the Annex.

21. Ms King breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of HDA, for which she was responsible in her controlled function. Ms King had a responsibility to participate fully in the management and oversight of the firm as an approved person. However, because she failed to turn her mind to the nature of the responsibilities attaching to her role as CF4, and consequently failed to embed herself in the business of HDA, she was not equipped to discharge her regulatory responsibilities.
22. Ms King read and signed the application form for her approval as CF4 and provided important personal information to the FSA in support of that application. She should have been on notice, owing to the nature of the application process itself, of the serious implications attaching to FSA approval. Instead, Ms King paid no attention to the nature of the role she had taken on. She should have considered the meaning and effect of the approval for which she had agreed to apply, and even limited enquiry, for example on the FSA's website, would have enabled her to identify the significance of her role. She could then have taken steps to address the deficiencies in her understanding and to equip herself properly to discharge her regulatory responsibilities.
23. It is vital that persons seeking and obtaining approval to perform a controlled function fully understand their responsibilities and obligations.

Not fit and proper

24. Ms King's conduct is significantly short of the minimum regulatory standards of competence and capability required for approved persons performing controlled functions, and in particular those performing significant influence functions. As such, she is not fit and proper to perform any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

SANCTION

Public censure

25. The FSA issues a public censure to Ms King for breaching Statement of Principle 6.

26. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. The relevant sections of DEPP are set out in more detail in the Annex. Since the gravamen of Ms King's failings occurred before the change in the regulatory provisions governing the determination of financial penalties and public censures on 6 March 2010, the FSA has applied the provisions that were in place before that date. All references to DEPP in this Notice are references to the version that was in force prior to 6 March 2010.
27. In addition, the FSA has had regard to the corresponding provisions of Chapter 7 of EG in force during the relevant period.
28. The principal purpose of issuing a public censure or imposing a financial penalty is to promote high standards of conduct by deterring persons who have committed regulatory breaches from committing further breaches, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A public censure is a tool that the FSA may employ to help it achieve its regulatory objectives.
29. In determining whether a financial penalty or public censure is appropriate, the FSA is required to consider all the relevant circumstances of the case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considers that a public censure is an appropriate sanction.
30. In deciding to issue a public censure, the FSA considered that the factors below were particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1))

31. In deciding to publish a statement of Ms King's misconduct the FSA has had regard to the need to ensure that those who are approved persons are fit and proper and fully engage with their regulatory responsibilities. The FSA considers that a public censure should be imposed to demonstrate to Ms King and others the seriousness with which the FSA regards her behaviour.

The seriousness of the breach in question (DEPP 6.4.2G(3))

32. Despite being an approved person and holding a significant influence function, Ms King did not engage with the running of the firm at any time and over an extended period.

Conduct following the breach (DEPP 6.4.2G(5))

33. Ms King admitted that she did not engage with the business of the firm and provided full and immediate co-operation to the FSA.

Previous action taken by the FSA (DEPP 6.4.2G(7))

34. In determining the appropriate sanction, the FSA took into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

The financial impact on the person concerned (DEPP 6.4.2G(8))

35. The FSA views Ms King's misconduct as very serious and would have imposed a financial penalty of £20,000. However, the FSA has taken into account in determining that it is appropriate to issue a public censure, rather than impose a financial penalty, that Ms King has provided verifiable evidence that she would suffer serious financial hardship if the FSA imposed a financial penalty.
36. For these reasons, it is appropriate to publicly censure Ms King, but not to impose a financial penalty on her.

Withdrawal of approval and prohibition

37. It is appropriate and proportionate in all the circumstances to withdraw the approval given to Ms King to perform the controlled function of CF4 at HDA because she is not competent or capable of performing this function, and to make an order prohibiting Ms King from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because she is not a fit and proper person in terms of competence and capability.

38. Ms King has demonstrated that she is not competent to manage the business of an authorised person. In the interests of consumer protection, and to maintain confidence in the financial system, it is appropriate to impose a prohibition order on Ms King in the terms set out above.

PROCEDURAL MATTERS

Decision maker

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

Publicity

41. 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 Ms King or prejudicial to the interests of consumers.
42. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

43. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142; fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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Bill Sillett
Head of Retail Enforcement
FSA Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers.
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. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.
3. Section 63 of the Act provides that the FSA may withdraw an individual's approval to carry out a controlled function given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
4. Section 66 of the Act provides that the FSA may publish a statement of a person's misconduct where it appears to the FSA 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.

Handbook provisions

5. In exercising its power to impose a public censure, the FSA must have regard to relevant provisions in the FSA 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

6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
12. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:

- (a) whether he exercised reasonable care when considering the information available to him;
 - (b) whether he reached a reasonable conclusion which he acted on;
 - (c) the nature, scale and complexity of the firm's business;
 - (d) his role and responsibility as an approved person performing a significant influence function; and
 - (e) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
13. APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6.
 14. APER 4.6.3E states that failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible is conduct that does not comply with Statement of Principle 6.
 15. APER 4.6.12(1)G states that it is important for an approved person performing a significant influence function to understand the business for which they are responsible, and they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

DEPP guidance before 6 March 2010

16. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period. Where the gravamen of the misconduct occurred before 6 March 2010, the FSA considers that the provisions of DEPP which applied before that date should apply.
17. DEPP 6.1.2G provides that the principal purpose of imposing a public censure 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. Public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

18. DEPP 6.4.1G provides that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.
19. DEPP 6.4.2G sets out a non-exhaustive list of factors that may be relevant to determining whether a public censure or financial penalty is appropriate to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.4.2G(1)

20. When determining whether to issue a public censure rather than a 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.

Benefit resulting from the breach: DEPP 6.4.2G(2)

21. The FSA will consider whether the person has made a profit or avoided a loss as a result of the breach, on the basis that a person should not be permitted to benefit from the breach.

The nature, seriousness and impact of the breach in question: DEPP 6.4.2G(3)

22. The FSA will consider the nature, seriousness and impact of the breach on the basis that the sanction should reflect the seriousness of the breach. The more serious the breach, the more likely the FSA is to impose a financial penalty.

Co-operation with FSA and action since the breach: DEPP 6.4.2G(5)

23. The FSA will consider whether the person has admitted the breach, provided full and immediate co-operation to the FSA or taken steps to ensure that those who have suffered loss due to the breach are fully compensated for that loss. Actions of this kind

taken by the person suggest that it may be more proportionate to issue a public censure than a financial penalty.

Other action taken by the FSA (or a previous regulator): DEPP 6.4.2G(7)

24. 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.

Impact on the person: DEPP 6.4.2G(8)

25. The FSA will also consider the impact on the person of a financial penalty. In exceptional circumstances only, the FSA may decide, based verifiable evidence, that the person does not have adequate resources with which to pay a financial penalty and may therefore, in those exceptional circumstances, lower the level of penalty or issue a public censure instead.

Enforcement Guide

26. The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007.
27. The FSA's approach to financial penalties and public censures is set out in Chapter 7 of EG.
28. EG 7.1 states that the effective and proportionate use of the FSA's powers to enforce the requirements of the Statements of Principle plays an important role in pursuit of the FSA's regulatory objectives. Imposing public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.
29. EG 7.2 states that the FSA has the power to publish a statement against an approved person under section 66 of the Act.
30. EG 7.3 states that the FSA has measures available to it where it considers it is appropriate to take protective or remedial action, including the withdrawal of an

individual's status as an approved person and/or the prohibition of an individual from performing a specified function in relation to a regulated activity.

31. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.
32. 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.
33. EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
34. EG 9.3 states that in deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the FSA will consider all the relevant circumstances.
35. 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.
36. 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.
37. In circumstances where the FSA has concerns about the fitness and propriety of an

approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

38. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA 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 Statements of Principle; 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 for Businesses 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)).

39. 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 severe acts of dishonesty, which may have resulted in financial crime and serious lack of competence (EG 9.12(3)).
40. EG 9.14 states that where the FSA considers it is appropriate to withdraw an individual's approval to perform a controlled function within a particular firm, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.
41. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.