FINAL NOTICE

To: **Motorcare Elite (2008) Limited (in liquidation)**

FSA Reference Number: **501443**

Address: **1-2 Commercial Street**
Llantwit Major
South Glamorgan
CF61 1RB

Date: **15 January 2013**

ACTION

1. For the reasons given in this notice, the FSA hereby cancels the Part IV Permission of Elite to carry on regulated activities pursuant to section 45 of the Act.

2. Elite agreed to settle at an early stage of the FSA's investigation.

SUMMARY OF REASONS

3. Elite does not meet the FSA's Threshold Conditions, as it lacks adequate resources (Threshold Condition 4) and is not suitable (Threshold Condition 5).

4. Elite lacks adequate financial resources because:

   (a) between August 2008 and March 2011 Mr Panesar, the sole director of the firm between April 2010 and December 2010, misappropriated over £181,000.

   (b) in May 2010 it took on a debt of over £400,000 to cover arrears owed by its predecessor firm, Warranties; and

   (c) it paid out significant monies to Warranties to fund:

      (i) Warranties' defence of a claim by its underwriter, Templeton. Warranties lost this litigation and was unable to repay those monies to Elite; and

      (ii) payments to Warranties' customers to cover their claims that had been rejected as a result of the Templeton litigation.

5. Elite is not fit and proper to carry out regulated activities because it is connected to an individual that is not fit and proper, namely its former director, Mr Panesar.

6. Mr Panesar is not fit and proper because he:

   (a) misappropriated funds from the business;

   (b) was criticised in the Templeton litigation for failings at Warranties and has been found in contempt of court; and

   (c) operated Elite with reckless disregard for the interests of customers and regulatory requirements, as a consequence of which customers were exposed to a serious risk of financial loss by:

      (i) failing to report policies accurately to Elite's underwriters;

      (ii) selling policies that were outside the scope of the cover which had been authorised by Elite's underwriters;

(iii) continuing to sell policies with one of Elite's underwriters after Elite's facility with that underwriter had ended; and

(iv) designing and selling the Supreme Plus policy which fundamentally failed to meet customers' needs.

7. Mr Panesar also lacks financial soundness. He has recently been discharged from bankruptcy, which had come about partly as a result of the Templeton judgment by which the court found Mr Panesar personally liable to Templeton for over £3m.

8. Elite is not fit and proper as it lacks integrity because it acted with reckless disregard for the needs of customers and regulatory requirements, in the ways outlined above. Elite also recklessly continued to sell the Supreme Plus product (which was dependent upon Elite renewing a series of fixed term policies on its customers' behalf in order to provide customers with cover for the duration of their ownership of the insured vehicle), for three months after it knew it was insolvent when it had no prospect of being able to renew the fixed term policies.

9. Elite failed to report at least 3,700 policies to its underwriters, sold at least 1,700 policies which were outside the scope of its authority and sold at least 1,060 Supreme Plus policies, 166 of which it sold after it knew that it was insolvent

10. As a result of these failures, Elite does not meet the FSA's minimum requirements to remain authorised.

11. Cancelling the firm's Part IV Permission supports the FSA's regulatory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

DEFINITIONS

12. The definitions below are used in this Final Notice.

(a) the "Act" means the Financial Services and Markets Act 2000;

(b) "COND" means the part of the FSA's handbook relating to the Threshold Conditions;

(c) "DEPP" means the FSA's Decision Procedure and Penalties Manual;

(d) "EG" means the FSA's Enforcement Guide;

(e) "Elite" means Motorcare Elite (2008) Limited (in liquidation), a firm authorised from 1 April 2010 to 15 January 2013;

(f) the "FSA" means the Financial Services Authority;

(g) the "FSCS" means the Financial Services Compensation Scheme;

(h) "Mr Panesar" means Mr Harbinder Panesar;

(i) "Part IV Permission" means the permission granted to Elite by the FSA under Part IV of the Act to carry on regulated activities;

(j) the "Settlement Decision Makers" means the two members of the FSA's senior management who have jointly taken the decision which gave rise to the obligation to give this Notice;

(k) the "Supreme Plus policy" means the motor breakdown insurance product which was sold by Elite on the basis it would provide customers with mechanical breakdown cover for the entire time that they owned the vehicle;

(l) "Templeton" means Templeton Insurance Limited;

(m) the "Templeton litigation" means the litigation initiated by the underwriter Templeton against Warranties and Mr Panesar in July 2008;

(n) the "Threshold Conditions" means the FSA's minimum standards for becoming and remaining authorised set out in Schedule 6 of the Act; and

(o) "Warranties" means Motorcare Warranties Limited (in liquidation), a firm authorised from 1 January 2005 to 25 May 2010. Warranties ceased to trade when the business was transferred to Elite and entered into liquidation on 7 July 2011.

FACTS AND MATTERS

Background

13. Elite was an insurance intermediary that provided motor breakdown insurance through a distribution chain of 531 motor dealers acting as appointed representatives.

14. The firm was incorporated in July 2008 and became authorised on 1 April 2010. Mr Panesar was solely responsible for the management of the firm until 1 December 2010 when another person took on this role. Mr Panesar was also the managing director of Elite's predecessor firm, Warranties. Warranties ceased to be authorised on 25 May 2010.

15. When Elite became authorised, it took over Warranties' insurance policies and its relationships with authorised representatives. It also assumed Warranties' management structure, systems and controls, offices and staff.

16. Between July 2008 and March 2011 Warranties and/or Elite were party to:

    (a) an agency agreement between Warranties (subsequently transferred to Elite) and Underwriter A from 31 July 2008 to 17 June 2010;

    (b) an agency agreement between Warranties (subsequently transferred to Elite) and Underwriter B from 1 October 2008 to 1 September 2009; and

    (c) an agency agreement between Elite and Underwriter C from 1 April 2010 to 18 March 2011.

17. Elite went into liquidation on 12 December 2011. On 14 December 2011, the FSA approved Elite's application to vary its permission so as to cease all regulated activity.

Inadequate resources

18. Between 1 August 2008 and 18 March 2011 Mr Panesar, Elite's sole director and a controller of the firm between April 2010 and December 2010, misappropriated

funds from the business totalling £181,444 from Elite's bank accounts by writing company cheques to himself and not disclosing these payments to the firm's accountant. These funds were in addition to and not reflected in either the salary or dividend payments he received. He applied these funds to meet his own living expenses.

19. Between April 2010 and December 2010 Elite came under further financial pressure because:

(a) Elite had taken on a debt owed by Warranties to Underwriter A in respect of unpaid premiums, totalling over £400,000 by May 2010. Elite was already over £35,000 in arrears by 2 August 2010; and

(b) Mr Panesar personally authorised ex gratia payments to Elite customers whose claims had been rejected by the relevant underwriter.

20. In July 2008 Templeton initiated civil litigation against Warranties and its directors. Templeton alleged that Warranties had failed to pass on premiums to it and had sold policies that were outside the scope of its agency agreement with Templeton. The litigation was decided in Templeton's favour on 3 December 2010. Elite funded Warranties' legal costs in the proceedings and made payments to customers whose claims could no longer be paid as a result of the litigation. Elite recorded these payments in its accounts as an intercompany debt, which by 31 July 2010 totalled £665,300. Warranties was not capable of repaying this debt.

21. As a result of these events Elite was left insolvent, and a winding up order was made against Elite on 12 December 2011.

Suitability of Elite – connection to individuals

Mr Panesar

22. Mr Panesar was Elite's managing director until the role was taken over in the last few months of the business. Mr Panesar lacks fitness and propriety in terms of integrity and competence. His connections to Elite cause the firm to similarly lack fitness and propriety.

Integrity

23. Mr Panesar lacks integrity. Firstly, and as set out in paragraph 18 above, Mr Panesar misappropriated funds from Elite. He was able to do this because of his position at Elite as its managing director and a signatory to the Elite bank accounts. Secondly Mr Panesar was personally criticised in the judgment in the Templeton litigation which implicated him in the forgery of documents and was found to be "*fully aware and party to the dishonest representation*" that Warranties made to Templeton. The court also found that Mr Panesar caused Warranties' to disregard its obligation to pay premium to Templeton and that the failure was caused by a "*persistently casual approach to its contractual obligations and a wholly disorganised system for accounting for premium*".

Under-reporting and sales outside scope of Elite's authority

24. Mr Panesar allowed Elite to continue to under-report policies to its underwriters and to sell policies outside the scope of its authority, in the knowledge that these problems had been prevalent and systemic at Warranties, as a consequence of which customers were exposed to the serious risk of financial loss.

25. Warranties persistently under-reported policies to its underwriters and failed to ensure that policies were sold within the terms of its authority. These failings were included in Templeton's allegations.

26. On three occasions following these allegations (July 2009, January 2010 and May 2010) Underwriter A raised concerns with Mr Panesar about the underreporting of policies written by Warranties and Warranties' sale of policies that were outside the scope of its agency agreement (e.g. high value vehicles, taxis and policies over the duration or claim limit agreed with the underwriter) or were sold by appointed representatives whom the underwriter had expressly prohibited from selling its policies. These policies were subsequently taken on by Elite in April 2010.

27. On 10 May 2010 Underwriter A sent an auditor to Elite's offices to carry out an audit of these policies. The auditor found that between December 2009 and April 2010 Warranties had failed to report 480 policies. Underwriter A subsequently

identified that at least 300 of such policies had been sold between July 2008 and June 2010. This exposed customers to the risk of loss, as underwriters would not accept claims if they had not received a premium from Warranties for the relevant customer.

28. The business model at Elite operated exactly the same way as it had at Warranties. Mr Panesar made no material changes to the operating model or practice of the business when Elite took over the business from Warranties. As a result Elite also under-reported a significant number of policies and sold policies outside the scope of its agreement with underwriters. In early 2011 Underwriter C conducted a review of Elite's sales. It found that between April 2010 and March 2011 Elite had failed to report over 3,700 policies. It identified a discrepancy of at least 30% between the number of policies that Elite reported to the underwriter and the number of policies recorded on Elite's own system during this period. Underwriter C also found that between April 2010 and March 2011 Elite sold over 1,700 policies that were outside the scope of its authority. As a result the underwriter refused to pay some claims.

29. Mr Panesar was aware that the under-reporting of policies and sale of policies outside the scope of Elite's authority were serious problems at the firm. He knew this from:

(a) the concerns raised by Templeton and Underwriter A about these issues at Warranties;

(b) his knowledge that practices at Elite had not changed to address these issues;

(c) the concerns subsequently raised by Underwriter C about under-reporting at Elite; and

(d) the refusal of underwriters to pay some claims, as a result of which Mr Panesar personally authorised ex-gratia payments to be made out of the business' own funds in circumstances where valid claims had been made on unreported policies.

30. Despite knowledge of these serious and unresolved failings, Mr Panesar allowed

Elite to continue to sell policies to customers and sell policies that were outside the scope of its authority, and took no action to stop these practices continuing.

Sale of policies after cancellation of agency agreement with Underwriter B

31. On 1 September 2009 Mr Panesar cancelled Warranties' facility with Underwriter B. However, as Mr Panesar knew, Elite took up the sale of policies for Underwriter B and continued to sell policies underwritten by Underwriter B after 31 August 2009 until late October 2010. Customers who were sold these policies after the facility had been cancelled were left with invalid insurance cover.

The Supreme Plus policy

32. Mr Panesar was responsible for creating the Supreme Plus policy. Warranties sold this product from 2004 and, when Elite became authorised, it took over the administration of those policies that Warranties had sold which were still active and continued to sell the policy.

33. The Supreme Plus policy was a motor breakdown insurance policy. Elite's authorised representatives sold it to customers when they purchased a vehicle on the basis that, in exchange for a single payment, it would provide mechanical breakdown cover for as long as they owned that vehicle, subject to certain conditions in relation to servicing and mileage.

34. Mr Panesar intended the policy to provide cover for the duration of customers' ownership of their vehicles by Elite entering into a series of 12 month or 36 month fixed term policies on behalf of Supreme Plus customers, using the additional premium that they had paid for Supreme Plus cover to renew the policies when each fixed term ended. This would supposedly continue for as long as the purchaser of the policy retained the insured vehicle. Mr Panesar calculated the single premium paid by the customer on the assumption that customers kept their cars for an average of 2.7 years. Mr Panesar informed the brokers who were in contact with Elite's underwriters of the nature of this business.

35. The way in which Mr Panesar operated the business meant that the Supreme Plus policy fundamentally failed to meet customer needs. The Supreme Plus policy was

dependent on the timely renewal of customers' fixed term policies, which was in turn dependent on Elite having sufficient funds to meet the costs of renewal. Elite:

(a) had no system which enabled it to ensure it renewed all customers' policies on time;

(b) did not charge premiums sufficient to cover all renewals; and

(c) such funds that it did keep were mixed up with Elite's own money.

36. This was exacerbated by the fact that, throughout the time that Mr Panesar was a director at Elite, the business was under considerable financial strain:

(a) Elite had funded Warranties' legal costs in the Templeton litigation and made payments to customers to cover their claims that had been rejected as a result of the litigation. Elite recorded these payments in its accounts as an intercompany debt, which by 31 July 2010 totalled £665,300;

(b) Elite had taken on a debt owed by Warranties to Underwriter A in respect of unpaid premiums, totalling over £400,000 by May 2010. Elite was already over £35,000 in arrears by 2 August 2010;

(c) Mr Panesar was misappropriating substantial funds from the business; and

(d) Mr Panesar personally authorised ex gratia payments from Elite's funds to Elite customers whose claims had been rejected by the relevant underwriter, which further diminished the firm's resources.

37. As a result Elite was often left with insufficient funds to pay for renewals and only 10% of the renewals that Elite should have effected took place. This left many customers without insurance cover.

38. Elite's records do not show the total number of customers who purchased the Supreme Plus policy. However, the product has been described by staff at Elite as central to the firm's business. Records recovered from Elite by Underwriter C show that between 8 April 2010 and 14 March 2011 Elite sold at least 1,060 Supreme Plus policies underwritten by Underwriter C. Over 140 customers have claimed

compensation to date from the FSCS in relation to these policies**.**

Financial soundness

39. Finally, Mr Panesar lacks financial soundness. On 3 December 2010, the day after Mr Panesar resigned as director and approved person, the court made an order (which was finalised on 29 March 2012) that Mr Panesar, Warranties and another defendant were jointly liable to pay £3,250,000 in relation to the Templeton litigation. Mr Panesar was declared bankrupt on 3 May 2011 and was discharged from bankruptcy in May 2012.

40. On 28 March 2012 Mr Panesar was declared in contempt of court for breaching the freezing order secured by Templeton against Warranties' assets and in July 2012 the court sentenced him to 9 months' imprisonment. Mr Panesar appealed this decision on 25 September 2012 and due to personal mitigating factors the sentence was suspended.

Suitability – the integrity of Elite

41. Elite itself was aware (see further paragraphs 24-38 above) through the knowledge of Mr Panesar, that

(a) it was not recording or reporting adequately the policies that it had sold;

(b) it was selling policies that were outside the scope of its agency agreements;

(c) it was continuing to sell policies after its agreement with the relevant underwriter had come to an end; and

(d) the Supreme Plus policy was inherently flawed and that Elite was administering it in a way that frequently left customers without insurance.

42. Elite knew, again through the knowledge of Mr Panesar, that there was a significant risk that these practices would expose customers to financial loss. However, Elite recklessly continued these practices and the risk of consumer detriment which crystallised on numerous occasions.

43. Elite's former accountant expressed concerns about the solvency of the business in June 2010. Elite's knowledge of its financial difficulties crystallised in December 2010, when Elite's accountants made it aware of the fact that it was effectively insolvent following the judgment in the Templeton litigation. However, Elite continued to sell policies until 18 March 2011, when its final underwriter terminated its agency agreement with Elite.

44. Customers who purchased a Supreme Plus policy were at particular risk after Elite became insolvent, as Elite was unable to make the renewal payments that would be required to provide customers with continued cover. However, Elite failed to stop sales of the Supreme Plus policy after it knew that it had become insolvent, and instead continued to sell the product until 14 March 2011. During this period Elite sold 166 Supreme Plus policies. Elite only informed the FSA that it was insolvent on 9 March 2011.

FAILINGS

45. The regulatory provisions relevant to this Final Notice are set out in the Annex.

46. Elite does not meet Threshold Condition 4 and Threshold Condition 5 because it failed to maintain adequate resources in relation to its regulated activities, and has failed to remain suitable.

Threshold Condition 4: Adequate resources

47. Elite lacks adequate financial resources because it is insolvent. It was put into this insolvent position because Mr Panesar misappropriated funds from the business, it took on a significant debt owed to one of Warranties' underwriters which was never repaid, made ex gratia payments to customers, and paid significant amounts in legal fees and payments to customers on behalf of Warranties, which Warranties failed to repay.

Threshold Condition 5: Suitability

48. Elite is not suitable as it is connected to individuals who are not fit and proper, namely Mr Panesar.

49. Further, Elite has, through the actions of Mr Panesar, failed to conduct its business with integrity.

50. Elite recklessly continued to fail to report and record adequately the premiums that it had received from customers and to enter into agreements outside the scope of its authority, despite the fact that it was aware through the knowledge of Mr Panesar that its practices had been criticised in litigation. This put customers at risk and this risk crystallised regularly with Elite having to make ex-gratia payments to customers because the underwriter had no record of the sale or had refused the claim because it was not an authorised type of cover.

51. Elite recklessly sold the Supreme Plus policy, a product which was inherently flawed and could not meet customer needs. The product depended on Elite having sufficient funds available to renew the policies, and on Elite ensuring that these renewals were timely so as to avoid the customer being left without cover. Elite had no system which enabled it to ensure that it renewed all customers' policies on time. It did not ensure that it kept premiums sufficient to cover all renewals and such funds that it did keep were mixed up with Elite's own money. This put customers at serious risk of loss which crystallised on numerous occasions.

52. Elite should have stopped selling policies to customers after Elite's facility with the relevant underwriter had come to an end, but failed to do so. It also should have taken immediate steps to stop sales of its Supreme Plus policy once the firm was aware that it was insolvent and Elite knew therefore that it could not renew customers' fixed term policies, which was a key feature of the Supreme Plus policy. However, Elite only discontinued the Supreme Plus product and informed the FSA that it was insolvent in March 2011, eight months after it was first aware that it was at serious risk of insolvency, and three months after it knew that it was insolvent.

53. These failures have resulted in significant detriment to Elite's customers and underwriters. Elite lacks adequate human and financial resources (Threshold Condition 4) and is not suitable to remain authorised (Threshold Condition 5).

SANCTION

54. In the circumstances it is appropriate to cancel the Part IV permissions of Elite to carry on regulated activities for failing to satisfy Threshold Condition 4 and Threshold Condition 5 because it does not meet the minimum requirements that a firm must satisfy in order to become and remain authorised.

55. Elite is in liquidation and so no financial penalty is being imposed.

PROCEDURAL MATTERS

Decision maker

56. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

57. This Final Notice is given under and in accordance with section 390 of the Act.

Publicity

58. 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.

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

FSA contacts

60. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142) 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. Section 41 and Schedule 6 to the Act set out the Threshold Conditions, which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.

2. Paragraph 4 of Schedule 6 to the Act states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on (Threshold Condition 4: Adequate Resources).

3. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).

4. The FSA is authorised, pursuant to section 45(2) of the Act, to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions.

FSA's policy on exercising its power to cancel a Part IV permission

5. The FSA's policy on exercising its power to cancel a Part IV permission is set out in Chapter 8 of EG.

6. EG 8.13(1) states that the FSA will consider cancelling a firm's Part IV permission in circumstances including where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

7. EG 8.14 sets out general grounds for the exercise of the section 45 power to cancel a Part IV permission. It states that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the Act are

set out in section 45(1) (which includes, where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the Threshold Conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission).

Guidance on Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

8. COND gives guidance on the Threshold Conditions set out in Schedule 6 to the Act (COND 1.2.1G).

9. COND 2.4.1UK states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.

10. COND 2.4.2G(2) provides that the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.

11. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

12. COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which includes at (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.

Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5

13. COND 2.5.1UK states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

14. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

15. COND 2.5.3G(1) further provides that the emphasis of the Threshold Conditions is on the suitability of the firm itself (the suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime). However, COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm, including a firm's controllers, its directors or partners, other persons with close links to the firm and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

16. COND 2.5.4G provides that in determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters arising including whether a firm has or will have a competent and prudent management (COND 2.5.4G(2)(b)) and whether it can demonstrate that it conducts, or will conduct, its business with integrity, with due skill, care and diligence and in

compliance with proper standards (COND 2.5.4G(2)(a) and (c)).

17. COND 2.5.6G, in giving guidance on the interpretation of whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, gives examples of relevant matters which include:

    (a) whether the firm has been open and co-operative in all its dealings with the FSA, and is ready willing and organised to comply with the requirements under the regulatory system (COND 2.5.6G(1));

    (b) whether the firm has contravened, or is connected with any person who has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and

    (c) whether the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6G(6)).

18. COND 2.5.7G provides guidance on the matters that are relevant to determining a firm satisfying and continuing to satisfy Threshold Condition 5 in respect of it having competent and prudent management and exercising due skill, care and diligence. Such matters include whether the firm has conducted enquiries that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system (COND 2.5.7G(9)).

DEPP guidance since 6 March 2010

19. The FSA has had regard to the guidance on the imposition and amount of penalties set out in Chapter 6 of the current version of DEPP. All references to DEPP in this subsection of the Notice refer to the current DEPP guidance.

20. DEPP 5.1.1G provides that a person subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the FSA. The fact that he does so will not usually obviate the need for a statutory notice recording the FSA's decision to take that action. Where, however, the person

subject to enforcement action agrees not to contest the content of a proposed statutory notice, the decision to give that statutory notice will be taken by senior FSA staff. The decision will be taken jointly by two members of the FSA's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level. At least one of the Settlement Decision Makers will not be from the Enforcement and Financial Crime Division. The other settlement decision maker will usually be, but need not be, from the Enforcement and Financial Crime Division. Consistent with section 395(2) of the Act, a Settlement Decision Maker will not have been directly involved in establishing the evidence on which the decision is based.