
FINAL NOTICE

To: Paul David Cable
Address: Bickley Park Road, Bromley, BR1 2AY
IRN: PDC01098
Dated: 19 July 2013

ACTION

1. For the reasons listed below, the Authority hereby:
 - (a) imposes on Mr Cable, pursuant to section 66 of the Act, a financial penalty of £140,000 in respect of Mr Cable's breaches of Statement of Principle 1 (integrity) of the Authority's Statements of Principle and Code of Practice for Approved Persons ("Statement of Principle 1"); and
 - (b) makes an order, pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), prohibiting Mr Cable from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the "Prohibition Order").
2. The Authority issued a Decision Notice to Mr Cable on 3 June 2013 which notified him that it had decided to take the above action. Mr Cable has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to him.

SUMMARY OF REASONS

3. Mr Cable, whilst acting in his capacity as the sole approved person at an authorised firm, Media and Entertainment Insurance Services Limited ("M&E") (FRN 313675), failed to act with honesty and integrity, in breach of Statement of Principle 1, by deliberately:

- (a) failing to put in place insurance policies for a client of M&E (the "Client") and pass on to insurers premiums received from the Client, with the result that no insurance was put in place; and
 - (b) misleading the Client repeatedly into believing that insurance cover was in place or being put in place.
4. The Authority considered that the nature and seriousness of the breaches outlined above warranted the imposition of a financial penalty.
5. Further, in October 2010 Mr Cable was prohibited by the Authority from performing any controlled function, having admitted attempting to overcharge a client. Mr Cable was aware of the Authority's investigation into that matter during the events set out in this Notice. The Authority considers it to be an aggravating factor that Mr Cable acted without integrity towards a client when he had done so on a previous occasion and knew that he was being investigated for this. Even in the face of action being taken against him by the Authority for a lack of integrity, and having told the Authority that such behaviour was an isolated incident, Mr Cable repeatedly acted with a lack of integrity, as set out in this Notice.
6. As a result of the misconduct set out above, the Authority has concluded that Mr Cable fails to meet the criteria for fitness and propriety set out in the Fit and Proper Test for Approved Persons ("FIT") contained in the Authority's Handbook. The Authority considers that Mr Cable is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the Authority has decided to impose the Prohibition Order on Mr Cable.

DEFINITIONS

7. The definitions below are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

"M&E" means Media and Entertainment Insurance Services Limited

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

FACTS AND MATTERS

8. On 14 January 2005, Mr Cable, who was the sole director of M&E, became the sole approved person in relation to M&E. Mr Cable was approved to perform the CF1 Director and CF8 Apportionment and Oversight controlled functions, and was also responsible for insurance mediation.
9. On 2 December 2011, the Client informed the Authority that Mr Cable had failed to ensure that the premiums M&E had received from the Client for four policies were passed on to insurers, and that Mr Cable had made false statements and provided misleading documents to the Client, misleading the Client into believing that insurance cover had been arranged in relation to the four policies, when it had not. The Client also informed the Authority that the Client had requested repayment of the premiums from Mr Cable but that these had never been repaid, and that Mr Cable had also asked the Client not to report the matter to the Authority.

Policy 1

10. On 7 November 2008, the Client contacted Mr Cable to enquire as to the cost of purchasing an Errors and Omissions ("E&O") insurance policy ("Policy 1") in relation to the production of a film ("Film 1"). On the same day, Mr Cable obtained non-binding terms indicating the costs for Policy 1 from an insurer ("Insurer 1"). Mr Cable then contacted the Client to confirm the Client's proposed premium of \$10,500 plus tax, which the Client then accepted, noting that cover would not need to be put in place until the end of production or just after.
11. On 27 April 2009, the Client contacted Mr Cable to inform him that the production of Film 1 was coming to an end and that Policy 1 would need to be put in place. Mr Cable responded to the Client with a quote of \$10,500 plus tax for three years cover. On 22 May 2009 the Client requested an invoice in respect of Policy 1, and on 25 May 2009 the Client confirmed that cover would be required for three years. On 25 May 2009, Mr Cable invoiced the Client \$11,025 for the premium for Policy 1 (being \$10,500 premium plus \$525 tax).
12. On 27 July 2009, the Client transferred the sum of £6,809.76 (being the sterling equivalent of \$11,025 as at that date) to M&E by way of payment of the premium for Policy 1. M&E never passed this sum on to Insurer 1.
13. On 11 February 2010, Mr Cable provided the Client with a certificate falsely stating that Policy 1 was in place up to a limit of \$1,000,000 for any one claim and \$3,000,000 'in the aggregate'. The term of Policy 1 was stated as being from 1 June 2009 to 31 May 2012 and the underwriter named as Insurer 1.

Policies 2 and 3

14. On or around 29 May 2009, the Client contacted Mr Cable to obtain a quotation for a production insurance policy in relation to another film ("Film 2").
15. On 1 June 2009, Mr Cable emailed the Client and provided a quotation of £1,050.00, purportedly obtained by him from an insurer for a production insurance policy in relation to the production of Film 2. Mr Cable stated that this policy could be purchased in two stages ("Policy 2" and "Policy 3"), each costing £525.
16. On 9 June 2009, Mr Cable invoiced the Client £525 for the premium for Policy 2, and provided the Client with documents bearing Mr Cable's electronic signature falsely certifying that Policy 2 had been effected with a named insurer ("Insurer 2"), and providing a policy number for the insurance. He also provided the Client with a document containing a summary of events covered under the non-existent Policy 2.
17. On 7 July 2009, the Client transferred the sum of £525 to M&E by way of payment of the premium for Policy 2. M&E never passed this sum on to Insurer 2.
18. On 2 November 2009, the Client contacted Mr Cable stating that it would now need to purchase Policy 3 for Film 2. On 5 November 2009, Mr Cable requested that Insurer 2 provide M&E with a quote in relation to Policy 3.
19. Just prior to contacting Insurer 2 for the quote on 5 November 2009 however, Mr Cable had responded to the Client stating that the cost for Policy 3 had increased from £525 to £1,680 including tax. The Client accepted this change following a further conversation with Mr Cable.
20. On 9 November 2009, after Mr Cable had already provided a quote to the Client, Insurer 2 responded to Mr Cable's request for a quote, providing an indicative quote for Policy 3 of £2,400 plus tax. On 11 November 2009, Mr Cable requested

that Insurer 2 reconsider the quote provided to M&E. On 12 November 2009, Insurer 2 provided Mr Cable with a revised indicative quote of £1,600 for Policy 3. However, no full quotation document was provided to Mr Cable by Insurer 2, and Insurer 2 received no instructions from Mr Cable to bind coverage in respect of Policy 3.

21. On 12 November 2009, Mr Cable provided the Client with a document bearing Mr Cable's electronic signature falsely certifying that Policy 3 had been effected with Insurer 2, and providing a policy number for Policy 3. He also provided the Client with a document containing a false summary of events purportedly covered under the non-existent Policy 3.
22. On 10 December 2009, Mr Cable invoiced the Client £1,680 for the premium for Policy 3. On 14 December 2009, the Client transferred the sum of £1,680 to M&E by way of payment of the premium for Policy 3. M&E never passed this sum on to Insurer 2. In a document dated 16 April 2010, Mr Cable provided the Client with a false summary of the events purportedly covered by Insurer 2 under Policy 3 which had been amended by Mr Cable, at the request of the Client, to reflect an extended period of cover due to a change in the delivery date of the production.
23. On 3 March 2011, following a query from the Client in relation to what type of transport for delivering the production was covered by Policy 3, Mr Cable falsely stated in his email response to the Client that Policy 3 (which in fact had never actually been placed on risk) had ceased to have effect on the creation of the master copy of the production.

Policy 4

24. Between 2 and 3 November 2009, Mr Cable exchanged correspondence with the Client in relation to taking out an E&O policy in relation to Film 2 ("Policy 4"). On 5 November 2009 Mr Cable informed the Client that the premium for Policy 4 would be \$12,500 plus tax, attaching a document, on M&E headed paper, purporting to be a draft certificate for an E&O policy (Policy 4), stating that Insurer 1 would provide worldwide cover for the Client's media production from 1 December 2009 to 20 November 2012, with a single claim limit of \$1,000,000 and an aggregate limit of \$3,000,000. Shortly afterwards on 5 November 2009, Mr Cable then contacted Insurer 1 requesting a quote for Policy 4.
25. On 6 November 2009, Insurer 1 responded to Mr Cable indicating that the premium for Policy 4 for 3 years cover would be \$12,500 excluding tax. On 23 November 2009, Insurer 1 confirmed to Mr Cable that the indicated premium for Policy 4 would be the same despite revisions to the proposal by the Client. There was no further correspondence between Insurer 1 and Mr Cable following this communication.
26. Between 16 November 2009 and 10 December 2009, Mr Cable made various statements, including in relation to proposed amendments to the period of cover required, to the Client in relation to the content of Policy 4, leading the Client to believe that Policy 4 was to be put in place.
27. On 10 December 2009, Mr Cable invoiced the Client \$13,125 for the premium for Policy 4, being \$12,500 premium plus \$625 tax. On 23 December 2009, the Client transferred the sum of £8,437.80 (being the sterling equivalent of \$13,125 as at that date) to M&E by way of payment of the premium for Policy 4. M&E never passed this sum on to Insurer 1.
28. On 20 September 2010, Mr Cable made further statements to the Client regarding Policy 4 in response to queries about exclusions applicable to Policy 4, and the level of excess on the policy in relation to cover required for 3 additional individuals. Mr

Cable stated that cover for the additional 3 individuals would not result in an increase in the level of the excess on Policy 4. The Client subsequently requested that Mr Cable amend the policy to reflect this.

29. On 1 October 2010, Mr Cable made a statement to the Client in which he confirmed that the requested amendments to Policy 4 had been made, and that cover would begin from October 2010.

Discovery of lack of cover

30. On 2 September 2011, Insurer 1 and Insurer 2 confirmed to the Client that they had received no payments or instructions from Mr Cable in relation to Policy 1, Policy 2, Policy 3 or Policy 4. The Client was uninsured against any of the risks it had paid Mr Cable to insure it against. When the Client challenged Mr Cable on 13 September 2011, he maintained that "...I instructed insurers to issue cover when requested but never received a policy as far as I am concerned you are insured..." Mr Cable further maintained to the Client that Policies 1 and 4 had been arranged with the insurers and also stated that Policies 2 and 3 had lapsed. When asked by the Client if the policies had been paid for, Mr Cable stated "Not an excuse but because of the extreme pressure I have been under during this time probably not."
31. On 14 September 2011, the Client stated to Mr Cable that it was considering reporting the matter to the authorities. Mr Cable responded "Clearly I would prefer the matter was not raised with the FSA/Financial Ombudsmen [sic] as clearly this would most certainly end my career in the industry...I would not be able to support my family and may result in a custodial sentence."
32. On 16 September 2011, after receiving confirmation from Insurer 1 that they had received no payment or instructions from M&E or Mr Cable to bind coverage in respect of Policy 1 or Policy 4, Mr Cable asked whether Insurer 1 would be able to provide retroactive cover. Insurer 1 did not respond to this request.
33. On 27 September 2011, the Client requested that Mr Cable return the premiums paid over for Policies 1-4. Mr Cable did not return the monies to the Client.
34. On 25 March 2013, Insurer 1 confirmed to the Authority that documents provided to the Client by Mr Cable in relation to Policy 1 and Policy 4 did not relate to any E&O insurance provided by Insurer 1.
35. Also on 25 March 2013, Insurer 2 confirmed to the Authority that no discussions took place with Mr Cable, and that no documentation was provided to M&E, in respect of Policy 2. Insurer 2 also confirmed that it had no record of receiving instructions to bind cover in relation to Policy 2 and that it had received no payment from M&E in respect of Policy 2. Insurer 2 also confirmed that it had no record of receiving instructions to bind cover in relation to Policy 3 and that it had received no payment from M&E in respect of Policy 3.
36. Insurer 2 further confirmed to the Authority that the policy documents issued by Mr Cable to the Client in respect of Policy 2 and Policy 3 were not genuine and that it had no record of underwriting Policy 2 or Policy 3. Insurer 2 stated that the insurance policy number quoted on the documents provided to the Client by Mr Cable was for an unrelated policy written by Insurer 2 in 2005.

Previous action by the Authority

37. On 23 June 2009, the Authority gave Mr Cable a Decision Notice in which it stated that it had decided to prohibit Mr Cable from performing any controlled functions, on the basis of his admitted attempt to overcharge a client. The Authority noted in the Decision Notice that Mr Cable had stated that his behaviour in acting with a

lack of integrity was an isolated instance of him succumbing to temptation in an area of business with which he was unfamiliar.

38. The events set out in this Notice, which the Authority considers demonstrate a lack of integrity, therefore took place at a time when Mr Cable had (1) previously acted with a lack of integrity in relation to a client, (2) been investigated by the Authority in relation to it, (3) stated that it was an isolated incident, and (4) been given a Decision Notice by the Authority stating that it had decided to prohibit him from performing any controlled function. Notwithstanding this, as set out in this Notice Mr Cable acted with a lack of integrity in relation to the Client on a number of occasions. Mr Cable, although aware of the seriousness of his previous behaviour and the resultant Authority action being taken against him, was not deterred from committing further acts of misconduct in relation to a client. The Authority considers this to be a serious aggravating factor.

FAILINGS

39. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.
40. Mr Cable acted with a lack of honesty and integrity, in breach of Statement of Principle 1, by deliberately:
- 1) failing to put in place insurance policies for the Client and pass on to insurers premiums received from the Client, with the result that no insurance was put in place; and
 - 2) misleading the Client repeatedly into believing that such insurance cover was in place / being put in place.
41. Mr Cable's behaviour was aggravated by the fact that he had previously acted with a lack of integrity in relation to a client and was aware that the Authority was taking action against him in this regard.
42. Further, by reason of these matters, the Authority considers that Mr Cable is not a fit and proper person as he lacks honesty and integrity.

SANCTION

Financial Penalty

43. The Authority has imposed a financial penalty on Mr Cable for his breaches of Statement of Principle 1.
44. The Authority's policy in relation to the imposition of a financial penalty is set out in Chapter 6 of DEPP which forms part of the Authority's Handbook. The regulatory provisions governing the determination of financial penalties changed on 6 March 2010, and the Authority has had regard to the fact that part of Mr Cable's misconduct occurred after the new provisions came into force. However, as the majority of Mr Cable's misconduct occurred before that change, the Authority has applied the penalty regime as set out in DEPP that was in place up to 5 March 2010. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010.
45. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2G(1))

46. In determining the level of penalty, the Authority has had 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.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(2))

47. Mr Cable repeatedly acted dishonestly over a period of approximately two years, causing the risk of loss to the Client whom he led to believe had paid M&E for policies that had been put on risk.

The extent to which the breach was deliberate or reckless (DEPP 6.5.3G(3))

48. Mr Cable deliberately committed the breaches.

Whether the person on whom the penalty is to be imposed is an individual (DEPP 6.5.2G(4)) and the size of the financial resources of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

49. The Authority has taken into account, in determining the amount of penalty to be imposed, that Mr Cable is an individual and that enforcement action may have a greater impact on him than it would on a firm.
50. The Authority has also taken into account the fact that the payment of any fine is likely to cause Mr Cable serious financial hardship. However, the Authority considers that the seriousness of Mr Cable's misconduct warrants the imposition of a financial penalty notwithstanding his financial circumstances.

The amount of benefit gained or loss avoided (DEPP 6.5.2G(6))

51. The Authority considers that an individual should not be allowed to retain the amount of benefit he gained from his misconduct. The Authority has not sought disgorgement of £17,452.56 (representing the value of the premiums paid by the Client), as the Authority has seen no evidence that the premiums received by M&E from the Client for the policies were applied for Mr Cable's personal benefit.

Conduct following the breach: DEPP 6.5.2G(8)

52. The Authority has taken into account Mr Cable's conduct when challenged by the Client following its discovery that the insurance had never been put in place. When challenged, Mr Cable asked the Client not to report the matter to the Authority. He also failed to repay the premiums when requested to do so by the Client.

Disciplinary record and compliance history: DEPP 6.5.2G(9)

53. In October 2010 the Authority prohibited Mr Cable from performing any controlled functions on the basis that he had acted with a lack of integrity in attempting to overcharge a client.
54. The Authority considers it an aggravating factor, in relation to the matters set out in this Notice, that Mr Cable acted with a lack of integrity in relation to a client at a time when he had previously done so, and had been investigated by the Authority and received a Decision Notice from it stating that the Authority had decided to prohibit him from performing controlled functions on that basis.

Other action taken by the Authority (DEPP 6.5.2G(10))

55. In determining the appropriate level of penalty, the Authority has also taken into account penalties imposed by the Authority on other approved persons for similar behaviour. This has also been considered alongside the deterrent purpose for which the Authority imposes such sanctions.

Financial penalty

56. The Authority has therefore decided to impose a total financial penalty of £140,000 on Mr Cable for breaching Statement of Principle 1 whilst acting in his capacity as the sole director and sole approved person at M&E.

Prohibition

57. Mr Cable is not a fit and proper person as he lacks honesty and integrity, and he poses a serious risk to consumers and to confidence in the financial system. The Authority has therefore made an order prohibiting him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

Decision Maker

58. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.
59. This Final Notice is given to Mr Cable under and in accordance with section 390(1) of the Act.

Manner of and time for payment

60. The financial penalty must be paid in full by Mr Cable to the Authority by no later than 2 August 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

61. If all, or any, of the financial penalty is outstanding on 2 August 2013, the Authority may recover the outstanding amount as a debt owed by Mr Cable and due to the Authority.

Publicity

62. 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 matters 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 Cable or prejudicial to the interests of consumers.
63. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contact

64. For more information concerning this matter generally, please contact Alexander Banerjea at the Enforcement and Financial Crime Division of the Authority (direct line: 0207 066 7206).

John Kirby
Enforcement and Financial Crime Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
2. The Authority has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

RELEVANT HANDBOOK PROVISIONS

Fit and Proper Test for Approved Persons

4. The section of the Authority's Handbook of rules and guidance (the "Handbook") entitled "FIT" sets out the Fit and Proper test for Approved Persons. 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.
5. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.
6. In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G includes:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

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

7. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
8. APER 2.1.2P sets out Statement of Principle 1 which, at the relevant time, stated that an approved person must act with integrity in carrying out his controlled function.
9. APER 3.1.3G provides 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 expected in that function.
10. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
11. APER 4.1 sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. Examples of such conduct are:
 - (a) deliberately misleading (or attempting to mislead) a client or the Authority by act or omission (APER 4.1.3E(1) and (3)). Examples of such behaviour include the falsifying of documents (APER 4.1.4E(1));
 - (b) retaining a client's funds wrongly (APER 4.1.11E(6));
 - (c) deliberately not paying due regard to the interests of a customer (APER 4.1.14E); and
 - (d) deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment (APER 4.1.15E).

OTHER RELEVANT REGULATORY PROVISIONS

The Authority's policy on the imposition of financial penalties

12. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") which forms part of the Handbook. The sections cited below are the sections which applied prior to 6 March 2010.
13. DEPP 6.1.2G provided that the principal purpose of imposing a financial penalty 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.
14. The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G set out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to take action for a financial penalty, which included the following:-
 - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the

duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

(b) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority, the degree of co-operation the person showed during the investigation of the breach, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority.

(c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.

15. DEPP 6.5.1G(1) provided that the Authority will 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.

16. DEPP 6.5.2G 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.

Deterrence: DEPP 6.5.2G(1)

17. When determining the appropriate level of penalty, the Authority 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.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

18. The Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Relevant considerations include the duration and frequency of the breach, the loss or risk of loss caused to consumers, investors or other market users and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

19. The Authority will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the Authority may have regard in determining whether a breach was deliberate or reckless include whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the Authority decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

20. When determining the amount of a penalty to be imposed on an individual, the Authority will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The

Authority will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

21. The Authority may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. 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.
22. The purpose of a penalty is not to render a person insolvent or to threaten the person's solvency. Where this would be a material consideration, the Authority will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the Authority will take account of those assets when determining the amount of a penalty.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

23. The Authority may take account of the amount of benefit gained or loss avoided by the individual as a result of the breach and will propose a penalty consistent with the principle that the person should not benefit from the breach.

Conduct following the breach: DEPP 6.5.2G(8)

24. The Authority may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the Authority's attention, and the degree of co-operation the person showed during the investigation of the breach by the Authority. Where a person has fully co-operated with the Authority's investigation, this will be a factor tending to decrease the level of financial penalty.

Disciplinary record and compliance history: DEPP 6.5.2G(9)

25. The Authority may take the previous disciplinary record and general compliance history of the person into account, including whether the Authority has taken any previous disciplinary action against the person and whether the Authority has previously brought to the person's attention issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed.

Other action taken by the Authority (or a previous regulator): DEPP 6.5.2G(10)

26. Action that the Authority has taken in relation to similar breaches by other persons may be taken into account. As stated at DEPP 6.5.1G(2), the Authority does not operate a tariff system. However, the Authority will seek to apply a consistent approach to determining the appropriate level of penalty.

The Authority's policy for exercising its power to make a prohibition order

27. The Authority's approach to exercising its powers to make prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
28. EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the 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.
29. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include 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.
30. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual 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.
31. EG 9.17 provides guidance on the Authority's approach to making prohibition orders against an individual other than an individual referred to in EG 9.8 to 9.14 (approved persons). The Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives.
32. When considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate the factors set out in EG 9.9.
33. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);
 - (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
34. 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.