
FINAL NOTICE

To: **Paul Harrison**
c/o Smart & Cook Limited
Summit House
Glebe Way
West Wickham
BR4 0RB

Date: 18 September 2006

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.

1. THE PENALTY

- 1.1. The FSA gave you a Decision Notice on 14 September 2006 which notified you that pursuant to Section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £17,500 on you in respect of misconduct whilst an Approved Person, namely the failure to comply with Statements of Principle 2, 5, 6 and 7.
- 1.2. You confirmed on 19 July 2006 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA impose a financial penalty on you in the amount of £17,500.

2. REASONS FOR THE ACTION

Introduction

- 2.1. The FSA considers that you are guilty of misconduct for the purposes of section 66 of the Act in that between 14 January 2005 to August 2005 you failed to comply with Principles 2, 5, 6 and 7 of the Statements of Principle for Approved Persons. This failure occurred when you held the controlled functions CF1 Director, CF3 Chief Executive, and CF8 Apportionment and Oversight for Berry Birch & Noble Insurance Brokers Ltd ("BBNIB").

Summary of Facts

- You were Chief Executive of BBNIB which was authorised on 14 January 2005 as a general insurance intermediary but is no longer authorised.
- As Chief Executive of BBNIB you were a signatory of a declaration on the firm's application for authorisation that the firm was *"able to comply, and will comply, with the Act and the FSA Handbook from the date of authorisation"*. However, you then failed in your responsibility to take reasonable steps to ensure that BBNIB was complying with the relevant client money rules (contained in the Client Assets Sourcebook ("CASS")) following its authorisation as a general insurance intermediary on 14 January 2005.
- In July 2005 the firm's auditors identified serious failings in its treatment of client money which demonstrated that BBNIB was not capable of ensuring compliance with the client money rules.
- Prior to receiving advice from the firm's auditors you had not known, nor had you enquired, whether BBNIB was complying with the CASS Rules or not.
- You were responsible for the firm's failure to segregate client money, to keep track of client money held by third parties, and to perform essential client money calculations and reconciliations.

As a result of these failings client money was not adequately protected and only after extensive investigation by audit professionals was BBNIB able to establish that its client money balances were accurate and that they were in credit.

Relevant Statutory Provisions

- 2.2. The FSA's regulatory objectives are set out at section 2 of the Act.
- 2.3. Section 66 of the Act provides that the FSA may impose a financial penalty on an Approved Person or publish a public statement of his misconduct where it considers that he is guilty of misconduct. Misconduct is defined in the Act as including a failure to comply with a Statement of Principle issued under section 64 of the Act.

Relevant Guidance

- 2.4. In deciding to take the action described above the FSA has had regard to guidance published in the FSA Handbook, in particular, to the following Statements of Principle for Approved Persons contained in the Statements of Principle and Code of Practice for Approved Persons Sourcebook ("APER"):
 - (1) Statement of Principle 2: *"An approved person must act with due skill, care and diligence in carrying out his controlled function."* (APER 2.1.2P)
 - (2) Statement of Principle 5: *"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the*

firm for which he is responsible in his controlled function is organised so that it can be controlled effectively." (APER 2.1.2P)

- (3) Statement of Principle 6: *"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." (APER 2.1.2P)*
- (4) Statement of Principle 7: *"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system." (APER 2.1.2P)*

Facts And Matters Relied On

Background

- 2.5. BBNIB was authorised for general insurance business by the FSA with effect from 14 January 2005. BBNIB's auditors communicated to you on 22 July 2005 that there were issues in respect of compliance with the client money rules. The FSA conducted a Supervision visit to BBNIB on 4 August 2005 to discuss the firm's client money arrangements. At the visit you notified the FSA of serious failings in respect of client money arrangements and that BBNIB was unable to ensure that BBNIB was complying with the CASS Rules.
- 2.6. Following its Supervision visit the FSA concluded that BBNIB's client money arrangements were seriously deficient. BBNIB accepted the FSA's findings as to its failings, which were confirmed when the firm, with professional assistance, undertook the necessary remedial action.
- 2.7. Subsequently, a client money audit report (covering the period from 14 January 2005 to 30 September 2005) prepared by the firm's professional advisers also confirmed the findings of the FSA's August 2005 Supervision visit mentioned above. You have accepted personal responsibility for BBNIB's failings.
- 2.8. The failings referred to above were in respect of the following CASS Rules:
 - (1) CASS 5.4.4R (Condition for using the non-statutory client money trust);
 - CASS 5.4.4R(1), (2), (3) and (5)
 - (2) CASS 5.5.3R (Requirement to segregate)
 - (3) CASS 5.5.49R (Notification and acknowledgement of trust (banks));
 - CASS 5.5.49R(1) & (2)
 - (4) CASS 5.5.63R (Client money calculation and reconciliation);
 - CASS 5.5.63R(1)(a), (1)(b)(i), (1)(b)(ii) & (2)
 - (5) CASS 5.5.64R (Record of client money calculation method); and
 - (6) CASS 5.5.76R (Failure to perform calculations or reconciliation).

Due Skill, Care and Diligence

- 2.9. You signed the Deeds to set up the non-statutory client money trust which refer to the relevant CASS Rules on segregation of client money. You were therefore aware fully of the requirement to segregate client money into the non-statutory trust accounts. However, client money was credited to accounts that were not designated specifically client money accounts and you thereby failed to segregate client money in accordance with the relevant CASS Rules.
- 2.10. You did not take reasonable steps to inform yourself adequately of the relevant parts of the CASS Rules that applied to BBNIB. This was despite being made aware by a third party on several occasions of the need to review the CASS Rules. You reviewed these rules in full for the first time after being notified by the FSA of its intention to conduct a client money visit in August 2005.
- 2.11. You did not take reasonable steps to implement appropriate systems and controls to ensure that BBNIB was complying with the CASS Rules from 14 January 2005. You assumed that another part of the group was carrying out client money reconciliations and calculations required under the CASS Rules and you did not take any steps to check if BBNIB was actually complying with the relevant CASS Rules.
- 2.12. The conduct described in paragraph 2.9 above amounts to a breach of Principle 2 and, in each instance, the conduct described in paragraphs 2.10 and 2.11 amounts to a breach of Principle 6.

Organisation and effective control

- 2.13. You did not know which CASS Rules applied to BBNIB and you did not apportion CASS Rule compliance duties appropriately. This was because you believed that compliance with the CASS Rules was being conducted by another company. You did not, however, check that it was actually being conducted by that company. You, therefore, did not take reasonable steps to ensure that BBNIB was organised so that the CASS Rules compliance could be adequately and effectively monitored and controlled. These omissions amount to a breach of Principle 5.

Relevant requirements and standards of the regulatory system

- 2.14. As an approved person performing significant influence functions (CF1, 3 and 8), you were responsible for overseeing BBNIB's compliance with the relevant requirements and standards of the regulatory system. You failed to ensure that client money was protected adequately and thereby failed to ensure that BBNIB complied with the relevant requirements and standards of the regulatory system. This failure amounts to breach of Principle 7.

Compliance history

- 2.15. You have not been subject to any previous regulatory action.

Conclusion

- 2.16. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the conclusion that your conduct demonstrates:
- (1) a serious failure to carry out your controlled functions with due skill, care and diligence; and
 - (2) a resulting serious failure by BBNIB to provide adequate protection for its clients' money.
- 2.17. The client money rules are designed to ensure that money belonging to customers of general insurance intermediaries is protected and the FSA has made it a high priority to ensure that such firms are complying with the Rules. The FSA considers that, in order to achieve its regulatory objectives, in particular, those of consumer protection and market confidence, it should impose a financial penalty on you of £17,500. The FSA has given you full credit for your conduct following the identification of this matter and for your compliance history. The decision not to impose a more severe sanction reflects these considerations.

3. DECISION MAKER

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

4. IMPORTANT

- 4.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time of Payment

- 4.2. The financial penalty must be paid in full by you to the FSA by no later than 2 October 2006, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 4.3. If all or any of the financial penalty is outstanding on 3 October 2006, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 4.4. 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 a 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.

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

FSA contacts

- 4.6. For more information concerning this matter generally, you should contact Roger Marsh at the FSA (direct line: 020 7066 5068 /fax: 020 7066 5069).

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William Amos

Head of Retail 1

FSA Enforcement Division