
FINAL NOTICE

To: **Paul Simon Willment**

Individual Ref No: **PSW01059**

Dated: **03 August 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Paul Simon Willment (“Mr Willment”), final notice about the imposition of a financial penalty on you and an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm:

1. ACTION

1.1. The FSA gave you, Mr Willment, a Decision Notice on 18 June 2010 (“the Decision Notice”), which notified you that the FSA had decided to:

- (1) impose a financial penalty of £50,000 on you, Paul Willment, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), for failing to comply with Statements of Principle 2 and 5 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“APER”); and
- (2) make an order, pursuant to section 56 of the Act, to prohibit you 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”).

1.2. You have not referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (“the Tribunal”) within 28 days of the date on which the Decision Notice was given to you.

1.3. Accordingly, with effect from today, the FSA:

- (1) has imposed on you a financial penalty of £50,000; and

- (2) hereby makes an order, pursuant to section 56 of the Act, prohibiting you 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 takes effect from 03 August 2010.

2. REASONS FOR THE ACTION

- 2.1. By its Decision Notice dated 18 June 2010 (the "Decision Notice"), the FSA gave notice that it had decided to take the action described above and you were given the opportunity to refer the Decision Notice to the Tribunal within 28 days of receiving it.
- 2.2. The FSA understands that you have not referred the matter to the Tribunal within the time allowed by the Decision Notice.
- 2.3. The reasons the Decision Notice was issued were that, between 14 January 2005 and 11 March 2008 ("the Relevant Period"), you were approved by the FSA to perform controlled functions at Orion Direct Limited ("Orion") and Peppercom Plc ("Peppercom"). You were approved to perform controlled function 2 (Non-Executive Director), controlled function 1 (Director - AR) for Orion, and controlled function 1 (Director) for Peppercom. These are significant influence functions. In performing these roles, your conduct fell short of the FSA's prescribed standards for approved persons. Specifically:
 - (1) you failed to understand Orion's and Peppercom's responsibilities or regulatory obligations as authorised persons or your own as an approved person;
 - (2) you failed to take reasonable steps to ensure that Orion and Peppercom were organised so they could be controlled effectively in that you essentially delegated the performance of your controlled functions to an employee of Orion and Peppercom ("the employee"), who acted as the Managing Director of both companies although he was not an approved person, and failed to exercise any oversight of the employee; and
 - (3) your failure effectively to oversee the actions of the employee allowed Orion, in the period from September to November 2007, to fail to pass on client premiums to brokers and insurers and this posed a risk of consumer detriment by potentially leaving several hundred clients uninsured.
- 2.4. The FSA considers that your failure to understand your own regulatory responsibilities and obligations as an approved person, and those of Orion and Peppercom as authorised firms, as well as your failure properly to perform your non-executive director role at Orion, and executive director role at Peppercom, demonstrates a failure to act with due skill, care and diligence. Therefore, the FSA considers that your conduct was in breach of Statement of Principle 2 of APER.
- 2.5. Further and more generally, the FSA considers that, in the Relevant Period, you failed to meet the standards required of the controlled functions you held. As an approved person and non-executive director of Orion, and executive director of Peppercom, you should have taken reasonable steps to ensure that the business of the firms was

organised so that it could be controlled effectively. Your failure to do so was therefore in breach of Statement of Principle 5 of APER.

- 2.6. Additionally, in view of your lack of competence and capability in the above matters, the FSA has concluded that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and that you should be prohibited from doing so.
- 2.7. The FSA has therefore decided to take the action for the reasons described in the Decision Notice and to give this Final Notice. A copy of the relevant extract of the Decision Notice is attached to and forms part of this Final Notice.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this Final Notice was made by the Chairman of the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Final Notice is given to you in accordance with section 390(1) 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 17 August 2010, 14 days after the date of this Final Notice.

If the financial penalty is not paid

- 4.3. If all or any of the financial penalty is outstanding on 17 August 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 4.4. Sections 391(4), 392(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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.
- 4.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

- 4.6. For more information concerning this matter generally, you should contact Paul Howick at the FSA (direct line: 020 7066 7954).

.....

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

EXTRACT FROM DECISION NOTICE DATED 18 JUNE 2010

4 FACTS AND MATTERS RELIED ON

Background

- 4.1. Orion became authorised on 14 January 2005, and Peppercom became authorised on 24 April 2007. Both firms were authorised to conduct the following activities with regard to general insurance:
- (a) advising on non-investment insurance contracts (except pension transfers/opt outs);

- (b) agreeing to carry on a regulated activity;
 - (c) arranging (bringing about) deals in non-investment insurance contracts;
 - (d) assisting in the administration of non-investment insurance contracts;
 - (e) dealing in non-investment insurance contracts as an agent; and
 - (f) making arrangements for non-investment insurance contracts.
- 4.2. Orion and Peppercom were general insurance intermediary firms which have the same directors. Orion specialised in providing commercial insurance to taxi drivers, driving instructors, social clubs and restaurants. Peppercom specialised in providing insurance to learner drivers.
- 4.3. In February 2008, the FSA became aware that customers of Orion had paid premiums to the firm but these premiums had not been received by the brokers providing agency facilities or the insurers. This potentially left several hundred customers uninsured.
- 4.4. In March 2008 the FSA received further information from one third party wholesale broker and two customers that, despite the customer paying premiums in full to Orion and receiving letters from Clubs Direct (a trading name of Orion) indicating that cover was in place and would be maintained, that customers were not covered.
- 4.5. In March 2008 both firms went into administration and their books of business were sold by the administrators. On 21 May 2008, at the request of the FSA, the administrators signed a Voluntary Variation of Permission to the effect that both Orion and Peppercom would cease conducting all regulated activities for which they had Part IV permission. The administrators applied to cancel Orion and Peppercom's authorisation on 3 October 2008. Both firms' Part IV permissions were cancelled on 15 December 2008.
- 4.6. The FSA commenced its investigation into your conduct on 21 May 2008.

Your role at Orion

- 4.7. You were a director of Orion. Specifically, on 14 January 2005, you became an approved person as a CF2 non-executive director of Orion. On 20 October 2005 you became a CF1 director (AR) for Orion and on 24 April 2007 you additionally obtained CF2 non-executive director (AR) for Orion. You remained a director of Orion until the firm went into administration on 11 March 2008.
- 4.8. In terms of your actual role at Orion, you rarely attended Orion's offices. You had no involvement in decision-making and did not provide any, or any appropriate, governance check, attend board meetings or otherwise appear to have performed any of the roles and duties expected of a non-executive director. You essentially abdicated your roles and delegated these roles to the employee. You had little understanding about the business of Orion, and in particular you did not understand or otherwise seek to understand Orion's financial circumstances. You took no steps to supervise this delegation of your roles to the employee.
- 4.9. Despite your controlled functions, you saw your role as advisory and did not have any other input in Orion's business. You viewed your role as a non-executive director as providing high level advice rather than taking an active role in the management of the business. You were initially employed to provide advice in relation to Orion and,

following the creation of Peppercom, you were supposed to become more involved in that business. You failed take any steps to carry out any of the roles you were appointed to carry out.

Responsibilities of a non-executive director

- 4.10. The FSA's Supervision Handbook ("SUP") (which was in force during the Relevant Period) provided guidance that, as a non-executive director of Orion and someone who performs significant influence functions, it is likely that you play a part in ensuring that effective governance structures, systems and controls were developed and operated. This could have included setting the business strategy, regulatory climate and ethical standards of the firm.¹
- 4.11. In the Relevant Period, SUP also provided specific guidance and examples of a non-executive director's responsibilities. It stated that these may include "*scrutinising the approach of executive management, the firm's performance and its standards of conduct*".²
- 4.12. Despite accepting the non-executive director role, you failed to understand your responsibilities as an approved person holding a significant influence function and performing that role and failed to provide any meaningful contribution to the running of Orion. You apparently considered yourself to be a consultant to Orion, but provided little, if any, discernible input at board or any other level.

Client Money Deficit

- 4.13. Between September and November 2007 the employee withdrew over £300,000 from Orion's client money account to fund Peppercom's development. You admit that you were aware of the transfers from Orion to Peppercom by the employee and that you did not challenge him about it.
- 4.14. As a non executive director of Orion you had a responsibility to ensure that client funds were not used for purposes other than that for which they were provided. You failed adequately to monitor the employee's activities and consequently he was able to withdraw over £300,000 without challenge. In interview with the FSA, you admitted that you did not adequately oversee any aspect of Orion's activities.

Experience

- 4.15. You did not have any relevant experience or knowledge of the insurance industry before taking on the role of a non-executive director at Orion and you made no real attempt to exercise your responsibilities or to obtain the necessary knowledge required in order to fulfil your role. Your main reason for joining the board of Orion was that the employee believed he could not hold the relevant significant influence controlled functions himself.

Your role at Peppercom

- 4.16. You were also a director of Peppercom during the relevant period. On 24 April 2007 you obtained the CF1 director approval for Peppercom. You remained a director of Peppercom until it went into administration on 11 March 2008.

¹ Supervision handbook dated 12 September 2007 Approved Persons SUP 10.5.4G

² Supervision handbook dated 12 September 2007 Approved Persons SUP 10.6.9G(2)

- 4.17 You were appointed as a director of Peppercom at the time it was being established. You were therefore responsible for ensuring that Peppercom was organised so that it could be controlled effectively. You were not involved in managing or otherwise working for Peppercom despite holding the CF1 Director controlled function for Peppercom. It was intended that you would run the offices of Peppercom in Cheltenham, however, you rarely attended its offices in any case. Peppercom's operations were later moved to Orion's offices. As you did with your non-executive role at Orion, you essentially delegated your role in the Peppercom business directly to the employee and failed to play an active role in Peppercom's decision making process.

Experience

- 4.18. Your limited experience of the insurance industry and your lack of engagement in Peppercom left you unable to detect or mitigate any risks in relation to the Peppercom. You did not understand, or make any attempts to understand, the nature of the business at Peppercom. This meant that you lacked the appropriate experience to be a director of Peppercom or to monitor adequately the day to day business at the firm. Having taken on an executive function at both Orion and Peppercom also meant that you could not provide an independent perspective for the purposes of your non-executive director function at Orion.
- 4.19. When questioned in interview by the FSA about your knowledge of the insurance industry you were not able to answer any questions relating to insurance business. You were not aware of how many agreements were in place with underwriters or if there were risk transfers on all the policies with which Orion and Peppercom were involved.
- 4.20. Even without this experience, however, you could have still fulfilled your role as an executive or non-executive director if you had attempted to gain knowledge of the industry that you were in or made more attempt to understand Peppercom's business. There is no evidence to suggest that this happened.

5. ANALYSIS OF BREACHES

- 5.1. The FSA has considered your conduct in determining whether you complied with APER. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance.
- 5.2. The FSA considers that in your role as a non-executive director at Orion you failed to perform your controlled functions adequately. In assessing your conduct, the FSA has had regard to and highlights the following:
- (a) You did not understand the responsibilities of a non-executive director of a regulated firm and took no steps to understand these responsibilities. In your role as a non-executive director at Orion, you failed to provide any discernible input such as asking questions as to why there were no Board meetings or Board decisions;
 - (b) You did not question your role as a director and allowed the employee, who was not an approved person, to act as Managing Director of Orion. You failed to understand the Orion's business model and sources of profit;

- (c) You did not take any steps to intervene when you became aware that the employee was using funds drawn from Orion's client account to fund the establishment of Peppercom because you considered it futile to raise any issues you may have identified; and
 - (d) Your failure to intervene or report the conduct of the employee and your general failure to exercise your role of non-executive director in relation to Orion's business demonstrates that you did not take reasonable steps to ensure that the firm was organised so that it could be controlled effectively, in contravention of Statement of Principle 5 of APER and that you failed to act with due skill, care and diligence in carrying out your controlled functions, in contravention of Statement of Principle 2 of APER.
- 5.3. By any measure, you failed to provide the business input required of a non-executive director at Orion.
- 5.4. In relation to your role at Peppercom, you had no knowledge of the controlled function you were approved to perform and little understanding of your responsibilities as an approved person. You effectively delegated your functions as a director of Peppercom to the employee (who was not an approved person). The FSA considers that your lack of involvement demonstrates a failure to take reasonable steps to ensure that the business of Peppercom was organised so that it could be controlled effectively in breach of Statement of Principle 5 of APER and a failure to act with due skill, care and diligence in carrying out your controlled function in breach of Statement of Principle 2 of APER.

6. ANALYSIS OF PROPOSED SANCTION

- 6.1. Your failings are serious, and resulted in several hundred customers of Orion being potentially uninsured. However, in mitigation, you have admitted your failings in interview with the FSA and do not intend to work in financial services again. The FSA has not taken action against you previously.
- 6.2. The FSA considers that it is appropriate to impose a financial penalty upon you. The reason for imposing the financial penalty on you under section 66 of the Act is that, while an approved person at Orion, you failed to act in a manner expected of a non-executive director. Further, in relation to Orion and Peppercom, you failed to oversee the business of the firms for which you were responsible adequately or at all and this ultimately led to a failure by Orion to pass on insurance premiums, which could have had serious consequences for the customers of Orion.

Financial penalty

- 6.3. The FSA considers that the seriousness of your conduct makes it appropriate for the FSA to impose a significant financial penalty of £50,000 on you.
- 6.4. In determining the level of financial penalty, the FSA had regard to all the relevant circumstances of the case and the factors set out in DEPP, extracts from which are set out in the Annex to this notice. Prior to 28 August 2007 the FSA's policy in relation to financial penalties was contained in chapter 13 of the Enforcement Manual ("ENF"). In arriving at the appropriate penalty, the FSA has considered the relevant sections of DEPP and ENF.

- 6.5. The principal purpose of a financial penalty is to promote high standard of regulatory conduct by deterring person 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.
- 6.6. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence

- 6.7. The principal purpose of the imposition of a penalty is to promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 6.8. In determining the appropriate level of penalty, the FSA has had regard to the need to ensure those who are approved persons demonstrate appropriate levels of competence and manage their businesses in accordance with FSA rules and regulations. The FSA considers that a penalty should ordinarily be imposed to demonstrate to you and others the seriousness with which the FSA regards your conduct.

The extent to which the breach was deliberate or reckless

- 6.9. The FSA has concluded that you have not acted deliberately.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 6.10. The FSA recognises that the financial penalty imposed on you is would have a very significant impact on you as an individual. The FSA has taken into account the previous submissions you made regarding your financial situation and does not consider there to be verifiable evidence that the financial penalty would cause you severe financial hardship or financial difficulties.

Previous action taken in relation to similar findings

- 6.11. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour.

The nature, seriousness and impact of the breach

- 6.12. Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and the protection of consumers, the FSA proposes to impose a penalty of £50,000 on you.
- 6.13. The FSA found no evidence that the conduct in issue was deliberate, however there was a significant risk to customers arising from the deficiencies in your oversight and monitoring of both firms and this risk was identified by the FSA and not by you.

Prohibition Order

- 6.14. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities assists the FSA in working towards its regulatory objectives of protecting consumers, promoting public

awareness, maintaining confidence in the financial system and reducing financial crime.

- 6.15. The FSA considers that your conduct described above, which breached Statements of Principles 5 and 2 of APER, demonstrates a serious lack of competence and capability in relation to the performance of your controlled functions. The FSA therefore considers that it is necessary to make a prohibition order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.