
FINAL NOTICE

To: Philip Eley
IRN: PXE01140
Date of Birth: 21 December 1965
Dated: 27 March 2014

ACTION

1. For the reasons listed below, the Authority hereby:
 - (a) withdraws the approval granted to Philip Eley to perform the controlled function of CF1 (Director) in relation to EISL, pursuant to section 63 of the Act;
 - (b) imposes on Philip Eley, pursuant to section 66 of the Act, a financial penalty of £7,200; and
 - (c) makes an order against Philip Eley, pursuant to section 56 of the Act, prohibiting Philip Eley from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 27 March 2014.
2. Philip Eley agreed to settle at an early stage of the Authority's case. Philip Eley therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £10,286 on Philip Eley.

SUMMARY OF REASONS

3. On the basis of the facts and matters described below, the Authority has concluded that Philip Eley poses a serious risk to consumers and to confidence in the financial system.
4. During the Relevant Period, Philip Eley, whilst acting in his capacity as a director of EISL failed to act with integrity in contravention of Statement of Principle 1 of the Statements of Principle by deliberately falsifying 10 NCD letters in relation to 10 customers' policies and submitting those falsified letters to an insurer (Insurer A).
5. The Authority has concluded that Philip Eley fails to meet the criteria for fitness and propriety set out in FIT and that Philip Eley is not fit and proper to be an approved person.

DEFINITIONS

6. The following definitions are also 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;

"DEPP" means the Decision Procedure and Penalties Manual;

"EG" means the Enforcement Guide;

"EISL" means Eley Insurance Services Limited;

"FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

"the Handbook" means the Authority's Handbook of rules and guidance;

"NCD" means no claims discount;

"the Relevant Period" means between 16 October 2012 and 9 November 2012;

"the Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved persons; and

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

FACTS AND MATTERS

Background to EISL

7. On 14 January 2005, EISL was authorised by the Authority to conduct insurance mediation activities. On the same date, Philip Eley was approved to perform the CF1 (Director) controlled function at EISL and he was also approved as the individual responsible for insurance mediation. On 22 April 2013, Philip Eley withdrew his approval to be the individual responsible for insurance mediation.

Audit of EISL carried out by Insurer A

8. On 12 October 2012, Insurer A wrote to EISL requesting copies of 30 of its customers' files to be reviewed as part of a periodic audit. One of the purposes of that audit had been to ensure that correct premiums were being collected from clients for their level of risk.
9. Philip Eley submitted the 30 customer files to Insurer A as requested and between 5 November 2012 and 6 December 2012, Insurer A conducted a file audit of those 30 cases submitted to it by EISL.
10. Insurer A's audit report (dated 6 December 2012), set out its concerns regarding NCD letters on 10 of those audited files; 6 of the 10 NCD letters purported to emanate from Insurer B and 4 from Insurer C, and all of which were letters purporting to confirm the no claims history of the relevant customers. All 10 NCD letters were sent by Insurer A to Insurer B and Insurer C for verification of their authenticity, and were subsequently confirmed by both insurers to be fraudulent documents.
11. Enforcement conducted a voluntary interview with Philip Eley on 8 July 2013, during which Philip Eley admitted that he had falsified all 10 NCD letters and submitted them to Insurer A in an attempt to cover a gap in the no claims discount bonus audit trail so that EISL would not fail the audit.

Philip Eley's conduct

12. During the interview with Philip Eley, he explained that EISL had a contractual obligation with Insurer A, to obtain proof of no claims history from each client within 21 days of commencement of the insurance policy. Philip Eley stated that, during the Relevant Period, he was preparing the 30 customer files requested by Insurer A for the audit when he realised that NCD letters were missing from 10 of those customer files. He explained that he panicked and falsified the missing 10 NCD letters by taking a piece of paper marked with the letterhead of Insurer B, placing a piece of paper over the top and manually typing in false information relating to the clients' previous insurance policies. He repeated this process for a total of 6 letters purporting to be from Insurer B and 4 purporting to be from Insurer C.
13. Philip Eley submitted those false NCD letters to Insurer A with the intention that Insurer A would accept those letters as genuine proof of the clients' no claims history. As the genuine NCD letters had not been obtained for each of the 10 customers, Philip Eley could not have been satisfied that the information contained in any of those letters was an accurate representation of the clients' NCD history.

FAILINGS

14. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.
15. Philip Eley, as a director of EISL, acted in breach of Statement of Principle 1 by failing to act with integrity in carrying out a significant influence function as an approved person (CF1), in that Philip Eley deliberately falsified 10 no claims discount letters in relation to 10 customers' policies and submitted those falsified letters to Insurer A.
16. These facts, and Philip Eley's breach of Statement of Principle 1, demonstrate that Philip Eley is therefore not a fit and proper person.

SANCTIONS

Financial penalty

17. Given Philip Eley's breach of Statement of Principle 1, the Authority hereby imposes a financial penalty on him pursuant to section 66 of the Act. The Authority's policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP.
18. Enforcement has also had regard to the corresponding provisions of Chapter 7 of EG and Chapter 13 of the Enforcement Manual which were in force during the Relevant Period.
19. The financial penalty is determined by a five-step framework, set out in DEPP, having regard to all the circumstances of the case. The penalty therefore consists of:

Step 1 – disgorgement

20. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
21. Philip Eley received no direct financial benefit from his breaches and so the Step 1 figure is nil.

Step 2 – the seriousness of the breach

22. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. As the breach lasted less than 12 months, DEPP 6.5B.2G(2) states that the relevant income is the amount earned in the 12 months preceding the last day of the Relevant Period.
23. Philip Eley's relevant income in relation to the misconduct was £34,287.
24. In deciding on the percentage of relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

25. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.
26. DEPP 6.5B.2(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (a) the breach caused a significant loss or risk of loss to individual consumers, investors or other market users;
 - (b) the individual failed to act with integrity;
 - (c) the individual abused a position of trust; and
 - (d) the breach was committed deliberately or recklessly.
27. Applying the relevant factors in paragraph 26 above to Philip Eley's failings, the Authority considers those failings to be Level 4 for the purposes of Step 2 because:
- (a) there was a risk of loss to each of the 10 customers. As evidence of the customers' true NCD position had not been obtained prior to the audit, Philip Eley had no way of knowing what each client's true NCD position was. This meant that each of those 10 customers' policies was arranged on the basis of unverified NCD information (some of which has subsequently been shown to be materially inaccurate), such that all 10 policies could have been cancelled by Insurer A, which would have meant that the customers were uninsured for the relevant period;
 - (b) Philip Eley failed to act with integrity throughout the Relevant Period; and
 - (c) Philip Eley admitted to deliberately falsifying the no claims discount letters.
28. Taking all of these factors into account, the Authority considers the seriousness of the failings to be level 4 on the scale of seriousness and so the Step 2 figure is 30% of £34,287. The penalty figure after Step 2 is therefore £10,286 (rounded down to the nearest £1).

Step 3 – mitigating and aggravating factors

29. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged in accordance with Step 1, to take into account factors which aggravate or mitigate the breach.
30. The Authority considers there to be no mitigating or aggravating circumstances. The penalty figure after Step 3 is therefore £10,286.

Step 4 – adjustment for deterrence

31. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
32. The Authority considers that the penalty is sufficient for the purposes of credible deterrence. The penalty figure at Step 4 is therefore £10,286.

Serious financial hardship

33. Pursuant to DEPP 6.5D.2G, the Authority may reduce the proposed penalty if appropriate, if the penalty would cause the individual serious financial hardship.
34. The Authority considers that the proposed penalty would not cause Philip Eley serious financial hardship. The Step 4 figure therefore remains at £10,286.

Step 5 – settlement discount

35. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement.

The Authority and Philip Eley have reached an agreement at Stage 1. As a result a 30% reduction applies to the financial penalty. The penalty figure at Stage 5 is therefore £7,201.

Financial penalty

36. The Authority therefore imposes a financial penalty on Philip Eley of £7,200 (£7,201 rounded down to the nearest £100), for breaching Statement of Principle 1.

Withdrawal of Approval and Prohibition

37. The Authority considers that Philip Eley is not a fit and proper person and that he poses a serious risk to consumers and to confidence in the financial system. The Authority therefore considers it appropriate to withdraw Philip's Eley approval to perform the controlled function of CF1 and to prohibit Philip Eley from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

Decision Maker

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

Manner of and time for Payment

40. The financial penalty must be paid by Philip Eley to the Authority by no later than 10 April 2014, 14 days from the date of the Final Notice.

If the financial penalty is not paid

41. If all or any of the financial penalty is outstanding on 11 April 2014, the Authority may recover the outstanding amount as a debt owed by Philip Eley and due to the Authority.

Publicity

42. Sections 391(4), 391(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 Authority must publish such information about the matter to which this Final 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 Philip Eley or prejudicial to the interests of consumers.

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

Authority contact

44. For more information concerning this matter contact Stephanie Prowse at the Authority (direct line: 0207 066 9404 / fax: 0207 066 9405).

Bill Sillett

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. The Authority has the power, pursuant to Section 63 of the Act, to withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
4. Section 66 of the Act provides that the 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 (FIT)

5. The section of the Authority's 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.
6. 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.
7. FIT 2.1.1G provides that in determining a person's honesty and integrity, the Authority will have regard to all relevant matters.

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

8. 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.
9. APER 2.1.2P sets out Statement of Principle 1 which, at the relevant time, stated that an approved must act with integrity in carrying out his controlled function.

10. 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.
11. 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.
12. APER 4.1 sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. An example of such conduct is falsifying documents (APER 4.1.4E).

OTHER RELEVANT REGULATORY PROVISIONS

The Authority's policy on the imposition of financial penalties

13. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP.
14. DEPP 6.1.2G provides 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.
15. The Authority will consider the full circumstances of each case when determining whether or not to impose a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to impose a financial penalty, which include 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; and
 - (c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.
16. DEPP 6.5.1G(1) provides 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.
17. DEPP 6.5B sets out the five steps for calculation of financial penalties to be imposed on individuals.

The Authority's policy for exercising its power to withdraw approval and make prohibition orders

18. 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.
19. EG 9.2 provides that the Authority's effective use of the power under section 63 of the Act to withdraw approval from an approved person will help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
20. 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.
21. 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.
22. EG 9.8 provides that when the Authority has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval or both.
23. When considering whether to exercise its power to make a prohibition order against an approved person and/or withdraw its approval, 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.
24. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person, 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.
- 25. 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.