
FINAL NOTICE

To: **Ralph Paul Whittington** **Savesure Limited (In Liquidation)**

IRN/FRN: **RXW01285** **507526**

Dated: **10 September 2015**

ACTION

1. For the reasons given in this Final Notice, the Authority hereby takes the following action:
 - a. makes an order against Mr Whittington, pursuant to section 56 of the Act, prohibiting Mr Whittington from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;
 - b. withdraws the approvals granted to Mr Whittington to perform the CF28 (Systems and controls) and CF29 (Significant management) controlled functions in relation to Savesure, pursuant to section 63 of the Act; and
 - c. imposes on Mr Whittington, pursuant to section 66 of the Act, a financial penalty of £42,111, comprising disgorgement of £8,611 (inclusive of interest) and a penalty of £33,500.
2. Mr Whittington agreed to settle at an early stage of the Authority's investigation. Mr Whittington 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 totalling £56,569 on Mr Whittington (comprising disgorgement of £8,611 (inclusive of interest) and a penalty of £47,958).

SUMMARY OF REASONS

3. On the basis of the facts and matters described below, the Authority has concluded that Mr Whittington failed to act with integrity in carrying out his controlled functions in breach of Statement of Principle 1, by deliberately causing Savesure to misappropriate insurance premiums paid to Savesure by its clients for insurance during the Relevant Period. The misappropriated insurance premiums were used to fund Savesure's business expenses and repay funds that Mr Whittington had injected into Savesure.
4. The serious nature of this breach leads the Authority to conclude that Mr Whittington is not a fit and proper person to perform functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm and that he should be prohibited from doing so.
5. This action supports the Authority's statutory objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

DEFINITIONS

6. The definitions below are used in this Final Notice (and in the Annexes):
 - "the Act" means the Financial Services and Markets Act 2000;
 - "APER" means the Statements of Principle and Code of Practice for Approved Persons;
 - "the Authority" means the Financial Conduct Authority;
 - "the Business Account" means the business bank account which was operated by Savesure;
 - "the Client Account" means the statutory trust client bank account which was operated by Savesure;
 - "DEPP" means the Decision Procedure and Penalties Manual;
 - "EG" means the Enforcement Guide;
 - "FIT" means the Fit and Proper Test for Approved Persons;
 - "the Handbook" means the Authority's Handbook of rules and guidance;
 - "Mr Whittington" means Ralph Paul Whittington;
 - "the Relevant Period" means 1 March 2012 to 31 December 2013;
 - "Savesure" means Savesure Limited (In Liquidation);
 - "the Statements of Principle" means the Statements of Principle as set out in APER; and
 - "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

Background

7. On 19 February 2010, Savesure was authorised by the Authority to conduct insurance mediation activities. Savesure is owned by three shareholders, one of which is Mr Whittington.
8. Mr Whittington was approved to perform the CF28 (Systems and controls) and CF29 (Significant management) controlled functions at Savesure on 18 November 2011. Mr Whittington has continued to hold the CF28 and CF29 functions.
9. Mr Whittington notified the Authority on 17 January 2014 that Savesure had ceased trading. Subsequently, on 29 July 2014, Savesure entered creditors' voluntary liquidation.

Insurer/underwriter debts

10. On entering liquidation, Savesure owed £63,107 to insurers/underwriters in relation to net outstanding insurance premiums for policies arranged with those insurers/underwriters for Savesure's clients. All of those insurance policies had been arranged by Savesure under risk transfer agreements.
11. Also on 29 July 2014, Savesure's client base and insurance book were sold to Firm A.

Misappropriation of insurance premiums

12. During the Relevant Period, Savesure received £208,612 of client premiums. Savesure earned £43,716 in commission on those premiums received. During the Relevant Period, Savesure transferred a net sum of £50,899 above the amount that it was entitled to transfer as commission, from the Client Account to the Business Account. The money transferred was primarily used to pay Savesure's business expenses.
13. Also, during the Relevant Period, Mr Whittington injected money into Savesure from his personal finances or funds he had raised through his creditors, and withdrew money from Savesure as repayment of the money he had injected into Savesure, by making payments from the Business Account to either himself or to his creditors. Some of these repayments were funded by the money that Mr Whittington transferred from the Client Account to the Business Account which exceeded the amount Savesure was entitled to transfer as commission (as referred to in paragraph 12 above). Of that amount, a total of £7,536.46 was used to make the payments to Mr Whittington or his creditors as repayment of funds that he had injected into Savesure.
14. Mr Whittington personally effected the transfers made from the Client Account to the Business Account. Mr Whittington knew, when making the transfers, that Savesure was not entitled to the entirety of the amount of money being transferred, and nonetheless made the transfers as required for Savesure's own use, so as to ensure that Savesure continued trading, and used some of that money to repay funds that Mr Whittington had injected into Savesure.

Mr Whittington's conduct

15. Mr Whittington has explained to the Authority that Savesure identified how much it was due in commission by reviewing the statements provided by the insurers/underwriters. Nonetheless, Mr Whittington used the money from the Client Account to provide Savesure with additional funding when there was a need

for money in the business and to repay funds he had injected into Savesure, with the knowledge that the sums of money transferred significantly exceeded the amount due to Savesure in commission and that neither he nor Savesure had any legal entitlement to that money.

16. Mr Whittington has stated that this practice resulted in debts accumulating with insurers/underwriters and Mr Whittington had planned to repay those debts through third party investment or a sale of the business which he had been attempting to secure before Savesure ceased trading in January 2014.

FAILINGS

17. The statutory and regulatory provisions relevant to this Final Notice are set out in Annex A.

Failing to act with integrity in carrying out controlled functions: Statement of Principle 1

18. Mr Whittington, as an approved person of Savesure, failed to act with honesty and integrity in carrying out controlled functions, in that he knowingly caused Savesure to misappropriate insurance premiums paid by clients to Savesure, totalling £50,899.
19. Mr Whittington was solely responsible for making the transfers of money from the Client Account to the Business Account. In making those transfers, Mr Whittington failed to ensure that only money which was owed to Savesure as commission was transferred from the Client Account to the Business Account. Instead, he knew that money from the Client Account, to which Savesure was not entitled and which belonged to customers and was payable to insurers/underwriters, was being transferred to the Business Account primarily for Savesure's own use, but also to repay funds that he had injected into Savesure.

Not fit and proper

20. By reason of the facts and matters described above, the Authority considers that Mr Whittington lacks honesty and integrity and, therefore, is not a fit and proper person.

SANCTION

Financial penalty

21. Given Mr Whittington's breach of Statement of Principle 1, the Authority may impose 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. In determining the financial penalty, the Authority has had regard to that guidance.
22. Changes to DEPP were introduced on 6 March 2010. Given that Mr Whittington's breach occurred after that date, the Authority has had regard to the provisions in force after that date.
23. The application of the Authority's penalty policy is set out in Annex A to this Final Notice in relation to Mr Whittington's breach of Principle 1.
24. In determining the financial penalty to be attributed to Mr Whittington's breach, the Authority has had particular regard to the following matters as applicable:
 - a. the need for credible deterrence;

- b. the nature, seriousness and impact of the breach;
 - c. the settlement discount for agreeing to settle at an early stage of the Authority's investigation; and
 - d. serious financial hardship.
25. The penalty calculation in relation to Mr Whittington is set out in Annex B to this Final Notice. Having regard to all the circumstances, the Authority considers that £42,111 (after a Stage 1 discount) is the appropriate financial penalty to impose on Mr Whittington.

Withdrawal of approvals

26. The Authority considers that Mr Whittington is not a fit and proper person as he lacks honesty and integrity, and therefore considers it appropriate to withdraw Mr Whittington's approvals to perform the CF28 and CF29 controlled functions in relation to Savesure.

Prohibition

27. The Authority considers that, in light of the conduct described above, Mr Whittington is not a fit and proper person as he lacks honesty and integrity, and poses a serious risk to consumers and to confidence in the financial market. Consequently, the Authority considers it appropriate to prohibit Mr Whittington 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

28. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.
29. This Final Notice is given to Mr Whittington in accordance with section 390 of the Act.

Manner of and time for payment

30. The financial penalty must be paid in full by Mr Whittington to the Authority in the following instalments:
- a. £14,037 by no later than 10 September 2016, one year from the date of this Final Notice;
 - b. £14,037 by no later than 10 September 2017; and
 - c. £14,037 by no later than 10 September 2018.

If the financial penalty is not paid

31. If all or any of the instalments are outstanding on 10 September 2016, 10 September 2017 or 10 September 2018, the Authority may recover the outstanding amount as a debt owed by Mr Whittington to the Authority.

Publicity

32. Section 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 the 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 Mr Whittington or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
33. The Authority intends to publish such information about the matter to which the Notice relates as it considers appropriate.

Authority contacts

34. For more information concerning this matter please contact Dilip Vekariya at the Authority (direct line: 0207 066 5520).

Bill Sillett
Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B 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 of the Act 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. FIT sets out the 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 including, but not limited to, those set out in FIT 2.1.3G, which includes whether the person has contravened any of the requirements or standards of the regulatory system (FIT 2.1.3G(5)).

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, do 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, which applied from 1 December 2001 to 31 March 2013, set out Statement of Principle 1 which stated that an approved person must act with integrity in carrying out his controlled function.

10. APER 2.1A.3P, which applies from 1 April 2013, sets out Statement of Principle 1 which states that an approved person must act with integrity in carrying out his accountable functions.
11. 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.
12. 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.
13. 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 misusing the assets of a client or his firm (APER 4.1.10E), including using a client's funds for purposes other than those for which they were provided (APER 4.1.11E(5)) and retaining a client's funds wrongly (APER 4.1.11E(6)); and
 - (b) deliberately not paying due regard to the interests of a customer (APER 4.1.14E).

OTHER RELEVANT REGULATORY PROVISIONS

The Authority's policy on the imposition of financial penalties

14. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP (the penalty analysis in relation to Mr Whittington is located at Annex B).
15. DEPP 6.5B sets out the five steps for the calculation of financial penalties to be imposed on individuals in non-market abuse cases.
16. DEPP 6.5D sets out the Authority's approach to serious financial hardship.
17. DEPP 6.5D.1 states that the Authority may consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of the enforcement action serious financial hardship.
18. DEPP 6.5D.1(2)(a) sets out that the Authority will only consider a reduction if the individual provides verifiable evidence that payment of the penalty will cause them serious financial hardship.
19. DEPP 6.5D.2(1) states that the Authority would consider an individual's ability to pay the penalty over a reasonable period. The Authority's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty.

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

20. The Authority's approach to exercising its power to withdraw approvals and make prohibition orders is set out in Chapter 9 of EG.

21. EG 9.1 states that the Authority may exercise the power to make a prohibition order where it considers that, to achieve any of the Authority's statutory 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.
22. 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.
23. 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. In deciding whether to withdraw its approval and/or make a prohibition order, the Authority will consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.
24. EG 9.9 states that, when it decides 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, the following factors:
 - (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 approved persons in terms of honesty, integrity and reputation are set out in FIT 2.1);
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; 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 and/or withdrawing its approvals, including the use of its power to impose a financial penalty.

ANNEX B

Penalty Analysis

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.
2. Changes to DEPP were introduced on 6 March 2010. Given that Mr Whittington's breach occurred after that date, the Authority has had regard to the provisions of DEPP in force after that date.
3. The application of the Authority's penalty policy is set out below in relation to Mr Whittington's breach of Statement of Principle 1 on or after 6 March 2010.

Breach of Principle 1 on or after 6 March 2010

4. In respect of any breach occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5 sets out the details of the five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: Disgorgement

5. The Authority considers that Mr Whittington should not be allowed to retain the direct financial benefit he derived directly from his misconduct, pursuant to DEPP 6.5B.1G. The Authority has calculated that, during the Relevant Period, Mr Whittington transferred a net sum of £50,899 above the amount that Savesure was entitled to transfer as commission from the Client Account to the Business Account, of which a total of £7,536.46 was used to make payments to himself or his creditors (on the same day), as repayment of funds that he had injected into Savesure from his personal finances or from funds he had raised through his creditors. Therefore, Mr Whittington derived a direct financial benefit of £7,536.46 from his misconduct.
6. The Authority will ordinarily also charge interest on the benefit derived directly from misconduct. Adding interest at an annual rate of 8% results in a Step 1 figure of £8,611 (rounded to the nearest £1).

Step 2: Seriousness of the breach

7. At Step 2, the Authority determines the figure that reflects the seriousness of the breach (DEPP 6.5B.2G). The Authority will determine a figure which will be based on a percentage of the individual's "relevant income". The relevant income will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred during the Relevant Period.
8. The Authority considers that Mr Whittington's relevant income for the Relevant Period to have been £39,965.
9. 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 in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

10. 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. The Authority considers that the following factors are relevant:

Impact of the breach

11. Mr Whittington derived a direct financial benefit of £7,536.46 as a result of the breach.
12. In addition, the loss to Savesure's insurance creditors totalled £63,107 in relation to the net outstanding insurance premiums, and the Authority is aware that the insurance creditors will not recover any of the debt due to them as part of the liquidation of Savesure.
13. As the insurance creditors had risk transfer agreements in place with Savesure, there is no apparent loss caused to individual consumers or consumers in general. However, there was an inherent risk of loss to consumers as a result of Mr Whittington's misconduct.

Nature of the breach

14. Mr Whittington failed to act with honesty and integrity throughout the Relevant Period. The length of the Relevant Period demonstrates the long duration of the breach.

Whether the breach was deliberate or reckless

15. Mr Whittington has admitted that he knew that the transfers he was making from the Client Account to the Business Account included funds to which neither he nor Savesure had any legal entitlement and were above and beyond Savesure's commission entitlement. His actions were therefore deliberate. The breach was also intentional in that Mr Whittington intended or foresaw that the consequences of his misconduct would result in a breach.
16. In addition to the direct benefit that Mr Whittington derived, he also intended to obtain an indirect financial benefit from the breach as the insurance premiums that were transferred from the Client Account to the Business Account were used to fund, amongst other things, Savesure's business expenses. This ensured that Savesure continued trading for longer than it may otherwise have done and Mr Whittington could continue to derive an income from Savesure.
17. Taking all of these factors into account, the Authority considers the seriousness of Mr Whittington's breach of Statement of Principle 1 on and after 6 March 2010 to be level 5 and so the Step 2 figure is 40% of £39,965.
18. The Step 2 figure is therefore £15,986.

Step 3: Mitigating and aggravating factors

19. 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 (DEPP 6.5B.3G).
20. The Authority considers that to be no mitigating or aggravating circumstances. The penalty figure after Step 3 is therefore £15,986.

Step 4: Adjustment for deterrence

21. If the Authority considers that 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 (DEPP 6.5B.4G).
22. The Authority considers that the absolute value of the penalty is insufficient to act as a deterrent to Mr Whittington and to others in the industry. The Authority therefore increases the penalty at Step 4 by way of an uplift of 200%. The penalty figure after Step 4 is therefore £47,958.

Step 5: Settlement discount

23. 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 Mr Whittington reached agreement.
24. The Authority and Mr Whittington reached agreement at Stage 1 so a 30% discount applies to the Step 4 figure.
25. Therefore, the Step 4 figure after the settlement discount is £33,500 (rounded down to the nearest £100).
26. Taking account of the figure at Step 1, the total financial penalty is £42,111 (after Stage 1 discount) (£56,569 before Stage 1 discount).

Serious financial hardship

27. Pursuant to DEPP 6.5D.1G, the Authority may reduce the proposed penalty if appropriate, if the penalty would cause the individual serious financial hardship.
28. DEPP 6.5D.2G(7) provides that there may be cases where, even though the individual has satisfied the Authority that payment of the financial penalty would cause him serious financial hardship, the Authority considers the breach to be so serious that it is not appropriate to reduce the penalty. The Authority will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit, and whether the individual acted fraudulently or dishonestly with a view to personal gain.
29. Information provided by Mr Whittington indicates that he has capital assets of less than £16,000. Mr Whittington is currently unemployed.
30. However Mr Whittington acted dishonestly, he directly benefited from the breach and his misconduct enabled Savesure to continue trading for longer than would otherwise have been possible which, in turn, provided Mr Whittington with an income. Although Mr Whittington's misconduct did not cause loss to consumers,

there was a risk of loss to consumers and actual loss to insurers/underwriters. Mr Whittington's misconduct is considered to be at level 5 on the scale of seriousness, and the Authority considers that the breach is sufficiently serious that the penalty should not be reduced for financial hardship reasons.

Conclusion

31. The Authority considers that £56,569 is an appropriate financial penalty to impose on Mr Whittington (before any Stage 1 discount), relating to Mr Whittington's breach of Statement of Principle 1 under the new penalty regime.
32. After Stage 1 discount is applied to the penalty figure reached at Step 4, the total penalty is reduced to £42,111 (inclusive of the Step 1 figure).