
FINAL NOTICE

To: **Redvers David Evans ("You")**

Of:

Date: 13 December 2004

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about an order prohibiting you from carrying out any controlled function involving exercise of significant influence over any person in relation to any regulated activity carried on by any other Authorised Person

THE ORDER

The FSA gave you a Decision Notice dated 28 October 2004 which notified you that, for the reasons set out in that notice, pursuant to section 56 of the Financial Services and Markets Act ("the Act"), the FSA had decided to make an order prohibiting Redvers David Evans, from performing any controlled function involving exercise of significant influence over any person in relation to any regulated activity carried on by any other Authorised Person.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from carrying out any controlled function involving exercise of significant influence over any person in relation to any regulated activity carried on by any other Authorised Person. This order has effect from 13 December 2004.

REASONS FOR THE ORDER

1. Introduction

- 1.1. It appears to the FSA that Mr Evans is not fit and proper to carry out any controlled function involving exercise of significant influence over any person in relation to any regulated activity carried on by any other Authorised Person because his conduct, as

set out below, demonstrated a lack of honesty and integrity and a serious lack of compliance with regulatory standards.

- 1.2. Between March 2001 and June 2003 in his capacity as the senior partner of the John Sutton Partnership ("the Firm" or "JSP") Mr Evans:
 - (1) created documents (the Firm's Pensions Review Quarterly Returns from March 2001 to March 2003 inclusive) which contained false information;
 - (2) submitted these documents to the FSA with the intention of misleading it concerning the progress that the Firm had made in respect of its Pensions Review;
 - (3) provided false or misleading information to the other partners of the Firm in respect of the progress that JSP had made in respect of its Pensions Review, and
 - (4) failed to treat the customers of the Firm fairly, in that at least 10 investors have not yet been paid redress that is due to them.
- 1.3. The FSA therefore considers it necessary to make a prohibition order in order to achieve its regulatory objective of consumer protection.

2. Relevant Statutory Provisions and Guidance

Statutory Provisions

- 2.1. The FSA's regulatory objectives established in section 2(2) of Financial Services and Markets Act ("FSMA") include the protection of consumers.
- 2.2. Section 56 of FSMA provides that the FSA may prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person.
- 2.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may be made:
 - (a) in relation to a specified function, a class of function or any function; and
 - (b) in relation to authorised persons generally or a class of authorised persons.
- 2.4. Section 56(1) provides that the FSA may make a prohibition order if it appears to the FSA 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.
- 2.5. A prohibition may therefore be partial or total and may be imposed if it appears to the FSA that the individual concerned is not a fit and proper person to perform such functions.
- 2.6. Section 64 of FSMA authorises the FSA to issue statements of principle with respect to the conduct expected of approved persons. If it does so it must also issue a code of

practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle. Such a code may specify –

- (1) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;
- (2) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle;
- (3) factors which, in the opinion of the Authority, are to be taken into account determining whether or not a person's conduct complies with a statement of principle.

Relevant Guidance

The FSA Handbook

- 2.7. In exercising its power to issue a prohibition order the FSA must have regard to guidance published in the FSA Handbook. The relevant considerations in relation to the action specified above are set out below.
- 2.8. The Fit and Proper Test for Approved Persons (“FIT”) identifies three criteria as being the most important considerations, namely:
 - (1) honesty, integrity and reputation (FIT 2.1): This includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards;
 - (2) competence and capability (FIT 2.2): This includes an assessment of the individual's skills in carrying out the controlled function that he is performing, and
 - (3) financial soundness (FIT 2.3).
- 2.9. The Statements of Principle and Code of Conduct for Approved Persons (“APER”) sets out the Statements of Principle in respect of approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 2.10. The guidance provided in APER 3.1.3 stipulates 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, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function. APER 3.1.4 provides guidance that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his/her conduct was deliberate or where his/her standard of conduct was below that which would be reasonable in all the circumstances.

2.11. Statement of Principle 1 provides that:

An approved person must act with integrity in carrying out his controlled function.

2.12. APER 4.1 lists types of conduct which do not comply with Statement of Principle 1. In particular, 4.1.3 states that deliberately misleading (or attempting to mislead) a client, his firm, or the FSA is conduct which breaches Statement of Principle 1. APER 4.1.4 provides that this behaviour could include:

(1) *falsifying documents;*

(10) *providing false or inaccurate information to the firm;*

(11) *providing false or inaccurate information to the FSA.*

APER 4.1.8 includes “*deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function*” as a further ground for assessing whether there has been a breach of Statement of Principle 1.

2.13. Statement of Principle 2 states that:

An approved person must act with due skill, care and diligence in carrying out his controlled function.

2.14. APER 4.2.3 includes failing to inform the firm of material information in circumstances where the approved person was aware of such information as a ground for conduct which does not comply with Statement of Principle 2. APER 4.2.4(4) considers such conduct to include providing inaccurate or inadequate information to a firm.

2.15. Statement of Principle 4 provides that:

An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.

2.16. APER 4.4.4 states failing to promptly report, in accordance with the firm’s internal procedures, information which would reasonably be of material significance to the FSA as conduct which does not comply with Statement of Principle 4. The guidance at APER 4.4.5 provides that there is no duty on an approved person to such information directly to the FSA unless he is one of the approved persons responsible within the firm for reporting matters to the FSA.

2.17. APER 4.4.9(1) includes failing without good reason to inform a regulator of information of which the approved person was aware in response to questions from that regulator is conduct which is in breach of Statement of Principle 4.

Enforcement Policy

2.18. ENF 8.4 summarises the powers to make prohibition orders set out in FSMA and the circumstances under which Enforcement will consider recommending such action. In

particular ENF 8.4.2(3) states that the scope of a prohibition order will depend on the range of functions which the individual concerned carries out in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or the market generally.

- 2.19. ENF 8.6 gives specific guidance in relation to prohibition orders against individuals employed or formerly employed by firms who are not approved persons. ENF 8.6.1 states that the FSA, when considering making a prohibition order against such individuals may make an order only on the grounds that the individual is not fit and proper to carry out functions in relation to regulated activities.
- 2.20. ENF 8.6.2 provides that the following specific criteria, as set out in ENF 8.5.2, should be considered when determining the fitness and propriety of an individual employed or formerly employed by a firm who is not an approved person:
- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities in accordance with the criteria contained in FIT, and
 - (2) whether and to what extent the individual has failed to comply with the Statements of Principle or been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under FSMA;
 - (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system, and, if relevant
 - (5) whether the conduct in question occurred while the individual was an approved person, the previous disciplinary record and general compliance history of the individual.
- 2.21. In summary, the relevant considerations are whether, in terms of honesty, integrity, competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by them. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

3. Facts and Matters Relied on

The John Sutton Partnership

- 3.1. JSP was an independent financial adviser partnership with 3 partners: operating in Sale Moor, Manchester. Mr Evans was the senior partner. JSP was initially regulated by FIMBRA, followed by the Personal Investment Authority ("PIA"), and, from 1 December 2001, by the FSA. The Firm's permitted regulated activities have been advising on investments, agreeing to carry on a regulated activity, arranging deals in investment and making arrangements.

- 3.2. There is no record of any previous disciplinary issues involving either JSP or Mr Evans.
- 3.3. At the time of the conduct under investigation Mr Evans owned 50% of the Firm. His responsibilities within JSP included the conduct of the Pensions Review, the renewal of JSP's Professional Indemnity Insurance, compliance and money laundering and general day-to-day responsibilities relating to staffing needs and the running of the firm.

JSP's Conduct of the Pensions Review

- 3.4. From 1995 firms regulated by the PIA could be required to carry out a review of any aspect of their investment business with a view to determining whether redress should be offered to any investor who had suffered loss or damage as a result of a failure by a member to comply with its relevant duties.
- 3.5. The PIA subsequently published Guidance providing the standards and specification enabling member firms to meet their respective responsibilities to review relevant past pension opt-out, pension non-joiner and pension transfer business ("the Pensions Review"). The Pensions Review was divided into two phases, Phase 1 and Phase 2. Firms carrying out the review were required to submit Quarterly Returns to the regulator detailing their progress.
- 3.6. Completion of the Pensions Review became a requirement for firms regulated by the FSA by virtue of transitional arrangements set out in the Financial Services and Markets Act 2000 (Transitional Provisions) (Review of Pensions Business) Order 2000, which treats a failure to carry out the review as a failure to comply with FSA Rules. The deadline for completion of Phase 2 was 30 June 2002. Completion for this purpose meant that redress had been paid to relevant customers or that offers of redress had been made to them.
- 3.7. In the period from 31 December 1995 to 31 March 2003, Mr Evans submitted a total of 26 Returns on behalf of JSP.
- 3.8. JSP's Phase 1 Pensions Review was completed in June 1998. However, during a telephone conversation with the FSA in March 2003, Mr Evans reported 15 outstanding cases in JSP's Phase 2 Review. As a result, the FSA's Pensions Department visited JSP on 5 June 2003.
- 3.9. During the visit, Mr Evans informed the Pensions Department that JSP's Returns had been falsified for the period from March 2001. The Returns showed that JSP had made progress with the Review and had paid redress to investors when, in fact, no progress had been made on the Review since March 2001 and no redress had been paid.
- 3.10. Mr Evans remained a partner in JSP until March 2004. He ceased to be an Approved Person on 23 March 2004.
- 3.11. On 19 February 2004, Investigators were appointed to carry out an investigation into Mr Evans's conduct as an Approved Person carrying on regulated activities.

- 3.12. During the investigation, Mr Evans confirmed that he had completed the Quarterly Returns with false information. Contrary to the information contained in the Quarterly Returns the Firm had made no progress with its Pensions Review since March 2001 except to instruct outside actuaries to calculate potential losses. The investigation confirmed that one firm had been so instructed in respect of 17 customers. Another firm of outside actuaries had calculated the loss relating to one other customer.
- 3.13. Contrary to the information provided on the Quarterly Returns to the FSA about redress offered and paid to customers, of the 18 cases referred to the outside actuaries:
- (1) no redress was due in 3 cases;
 - (2) no losses have yet been calculated in 5 cases; and
 - (3) no redress has been offered or paid to 10 customers for whom losses have been calculated.

4. Conclusions

- 4.1. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the following conclusions.
- 4.2. In his capacity as a partner of JSP, Mr Evans was responsible for the conduct of the Pensions Review, which included the completion of Pensions Review Quarterly Returns, their submission to the FSA and dealing with clients and the Firm's Professional Indemnity Insurers in relation to offers and payment of redress.
- 4.3. By submitting false Pensions Review Quarterly Returns to the FSA from March 2001 up to and including March 2003, Mr Evans deliberately misled the FSA into believing that JSP had made progress with the Pensions Review when this was in fact not the case. Mr Evans also misled his partners into the same belief. Mr Evans has therefore breached Statement of Principle 1 in that he:
- (1) completed the Pensions Review Quarterly Returns from March 2001 up to and including March 2003 with false information;
 - (2) provided false or inaccurate information to the firm in relation to the progress of the Pensions Review; and
 - (3) submitted the falsified Pensions Review Quarterly Returns to the FSA over a period of two years with the intention of misleading the FSA as to JSP's progress of the Pensions Review.
- 4.4. Mr Evans has breached Statement of Principle 2 by providing inaccurate or inadequate information regarding the progress of the Review to the two other partners of JSP as explained in 5.3 above.
- 4.5. Mr Evans was the approved person within JSP responsible for the conduct of the Pensions Review, including the completion and submission of the Returns. Thus, by

failing to report the true extent of JSP's Review to the FSA, Mr Evans is in breach of Statement of Principle 4.

- 4.6. By failing to ensure that the Firm continued to fulfil its obligation to complete the Review after March 2001, Mr Evans has failed to act with the required integrity and competence and has breached Fit and Proper Criteria FIT 2.1 and FIT 2.2
- 4.7. Mr Evans was responsible for ensuring that redress payments arising from the Pensions Review were made to those clients of the firm to whom it was due. He failed to ensure that such payments or even offers of payment were made to at least 10 clients to whom it was due. This too represents a breach of FIT 2.1.

5. IMPORTANT

- 5.1. This notice is given to you in accordance with section 390 of the Act.

Publicity

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

Third Party rights

- 5.4. The FSA gave a copy of the Decision Notice to the firm. Accordingly, the FSA must also give a copy of this notice to the firm.

FSA Contacts

- 5.5. For more information concerning this matter generally, you should contact Sylvia Levi in the Enforcement Division (direct line: 020 7066 1422/fax: 020 7066 1423).

John Winfield
FSA Enforcement Division