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## FINAL NOTICE

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To: **Stephen Goodwin**

Individual  
Reference  
Number: SXG01427

Date of  
Birth: 29 November 1960

Date: 24 July 2012

### 1. ACTION

1.1. For the reasons given in this notice, the FSA hereby:

- (1) imposes on Mr Stephen Goodwin ("Mr Goodwin") a financial penalty of £471,846; and
- (2) makes an order prohibiting Mr Goodwin from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 24 July 2012.

- 1.2. The financial penalty consists of the following elements:
- (1) disgorgement of financial benefit of £303,846 arising from Mr Goodwin's misconduct; and
  - (2) an additional punitive element of £168,000.
- 1.3. Mr Goodwin agreed to settle at an early stage of the FSA's investigation. Mr Goodwin therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the punitive element of the financial penalty imposed on Mr Goodwin would have been £240,000.

## **2. SUMMARY OF REASONS**

- 2.1. Mr Goodwin was one of two partners of S Goodwin & M Best ("Goodwin Best"). From November 2008 to November 2010 ("the relevant period"), Mr Goodwin and, until January 2010, his partner (now deceased) accepted insurance premiums from Goodwin Best clients but, in some cases, failed to pass the relevant funds to insurers and intermediaries to arrange the associated insurance policies. They knowingly misappropriated approximately £393,766 in order to fund the partnership's business expenses. Their actions resulted in financial loss to clients. During the relevant period, Mr Goodwin paid £89,920 into the business to pay client premiums.
- 2.2. Mr Goodwin's conduct demonstrates a lack of honesty and integrity and therefore of fitness and propriety, and constitutes a breach of Statement of Principle 1 of the FSA's Statements of Principle. The FSA considered that Mr Goodwin poses a risk to consumers and to the financial system and that the nature and seriousness of the breaches outlined above warranted the imposition of a substantial financial penalty and the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. These actions support the FSA's regulatory objectives to reduce financial crime, maintain market confidence and protect consumers.

## **3. DEFINITIONS**

- 3.1. The following definitions are used in this Final Notice:

"the FSA" means the Financial Services Authority

"the Act" means the Financial Services and Markets Act 2000

"Goodwin Best" means S Goodwin & M Best

"Statements of Principle" means the FSA's Statements of Principle for Approved Persons

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

"the FSA Handbook" means the FSA Handbook of rules and guidance

“EG” means the FSA’s Enforcement Guide

“DEPP” means the FSA’s Decision Procedure and Penalties Manual.

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. Goodwin Best was a commercial insurance broker partnership based in Bury, Lancashire comprising Mr Goodwin and his partner (now deceased) (“the partners”). Goodwin Best was established in 1996 by the partners, who ran the business together until January 2010 when the other partner left Goodwin Best and ceased to take his monthly drawings from the partnership (although he remained a partner). Goodwin Best was authorised by the FSA on 14 January 2005 to conduct insurance mediation activities.
- 4.2. Mr Goodwin was responsible for insurance mediation and held the controlled function of CF4 (Partner) at Goodwin Best from 14 January 2005 to 13 April 2011.
- 4.3. Goodwin Best ceased trading on 1 November 2010, when the insurance broker Firm A bought Goodwin Best’s book of business. The partnership dissolved on 26 January 2011.
- 4.4. On 13 April 2011, following Mr Goodwin’s voluntary application for the cancellation of Goodwin Best’s Part IV permission, Goodwin Best’s permission was cancelled and its authorisation was withdrawn. Mr Goodwin’s approval to perform his controlled functions lapsed upon the cancellation of Goodwin Best’s Part IV permission.

##### **Conduct in issue**

- 4.5. During the relevant period, Goodwin Best suffered financial difficulties. In response, the partners, contrary to agency agreements that Goodwin Best held with a number of insurers, retained a number of insurance premiums received from clients and did not pay them to the relevant insurers and intermediaries. The partners transferred these funds from Goodwin Best’s bank account for the retention of insurance premiums (“the premium account”) into Goodwin Best’s office bank account (“the office account”), and used these funds to pay business expenses of the partnership.
- 4.6. The partners misappropriated approximately £393,766 during the relevant period, transferring money from the premium account to the office account according to when bills and wages were due. Mr Goodwin, during the relevant period, also paid £89,920 into the premium account to pay client premiums. The total amount misappropriated by Mr Goodwin was therefore £303,846.
- 4.7. At least three Goodwin Best clients whose policies were not subject to risk transfer agreements (under which the insurer bears the risk for any losses arising from the firm failing to transfer the money to the insurer) suffered loss as a result of Goodwin Best’s failure to pay their insurance premiums to the relevant intermediaries during the

relevant period. Client B suffered an uninsured loss and Clients C and D paid the same premiums twice to ensure that their insurance policies remained in force.

- 4.8. Mr Goodwin was adjudged bankrupt on 12 April 2011 in relation to a debt of £50,699 incurred by Goodwin Best between 2008 and 2010. Mr Goodwin has been unable to pay the outstanding premiums owed to the relevant insurers and intermediaries.
- 4.9. On 24 February 2011, Mr Goodwin admitted to the FSA that the partners had misappropriated insurance premiums and provided details of the manner in which they had done so, as described above. Mr Goodwin has expressed significant remorse for his actions and has co-operated fully with the FSA's investigation into these matters.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in the Annex.
- 5.2. Mr Goodwin breached Statement of Principle 1 by failing to act with integrity in carrying out his controlled functions in that he deliberately and dishonestly accepted insurance premiums from Goodwin Best clients and failed to pass the relevant funds to insurers and intermediaries to arrange the associated insurance policies, resulting in some clients being left unknowingly uninsured and at the risk of paying premiums twice to maintain cover. He also breached Statement of Principle 1 in knowingly allowing his partner to engage in the same activity.
- 5.3. These facts, and Mr Goodwin's breach of Statement of Principle 1, demonstrate that Mr Goodwin lacks honesty and integrity, is therefore not a fit and proper person.

## **6. SANCTION**

### **Financial penalty**

- 6.1. Given Mr Goodwin's breach of Statement of Principle 1, the FSA may impose a financial penalty on him pursuant to section 66 of the Act. The FSA's policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP which forms part of the FSA Handbook. On 6 March 2010, the FSA adopted a new penalty-setting regime. As the majority of Mr Goodwin's misconduct took place before the adoption of the new regime, the FSA considered this case under the regime which applied before 6 March 2010.
- 6.2. The FSA also had regard to the corresponding provisions of Chapter 7 of EG which were in force during Mr Goodwin's misconduct.
- 6.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory 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. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.
- 6.4. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP

6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considered that a financial penalty is an appropriate sanction, given the serious nature of the breaches.

- 6.5. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The FSA considered that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2G(1))

- 6.6. The FSA considered that a financial penalty should be imposed to demonstrate to Mr Goodwin and others the seriousness with which the FSA regards his behaviour.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(2))

- 6.7. Mr Goodwin acted dishonestly repeatedly and over a two year period, accruing personal benefit as a result and causing loss to Clients B, C and D.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

- 6.8. Mr Goodwin deliberately committed the breaches.

Whether the person on whom the penalty is to be imposed is an individual (DEPP 6.5.2G(4)) and the financial resources of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

- 6.9. The FSA took into account in determining the amount of penalty to be imposed that Mr Goodwin is an individual and that enforcement action may have a greater impact on him than it would on a firm.

- 6.10. The FSA also took into account the fact that Mr Goodwin has recently been discharged from bankruptcy. Notwithstanding Mr Goodwin's recent bankruptcy, the FSA considered the seriousness of Mr Goodwin's misconduct warranted the imposition of a financial penalty.

The amount of benefit gained or loss avoided (DEPP 6.5.2G(6))

- 6.11. The FSA considered that Mr Goodwin should not be allowed to retain the amount of benefit he gained from his misconduct. It has proved difficult to precisely quantify the amount but the FSA estimates that the partners together misappropriated approximately £393,766. In addition, Mr Goodwin transferred £89,920 into the business, all of which was used to pay client premiums. Given that Mr Goodwin was a partner and that he knowingly engaged in the relevant course of misconduct with his partner from which the partnership as a whole benefited, the FSA considered that £303,846 (the difference between the total amount misappropriated by Goodwin Best and the £89,920 that Mr Goodwin paid into the business to pay client premiums) represents the minimum amount of benefit received by Mr Goodwin. The FSA therefore considered it appropriate to seek disgorgement of £303,846. This amount

therefore makes up the disgorgement element of the financial penalty proposed in this case.

Conduct following the breach (DEPP 6.5.2G(8))

- 6.12. Mr Goodwin has expressed significant remorse about his actions and has co-operated fully with the FSA's investigation. Were it not for these facts, the proposed punitive element of the financial penalty would have been higher.

Other action taken by the FSA (DEPP 6.5.2G(10))

- 6.13. In determining the level of financial penalty, the FSA took into account penalties imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

Conclusion on financial penalty

- 6.14. In conclusion, having regard to all the circumstances, the FSA considered the appropriate level of financial penalty to be £543,846, comprising disgorgement of financial benefit of £303,846 and a punitive element of £240,000 (before stage 1 discount).

**Prohibition order**

- 6.15. Mr Goodwin demonstrated a lack of honesty and integrity and is therefore not a fit and proper person to perform regulated activities. The FSA has therefore made an order prohibiting Mr Goodwin from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, pursuant to section 56 of the Act.

**7. PROCEDURAL MATTERS**

**Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

**Manner of and time for Payment**

- 7.3. The financial penalty must be paid in full by Mr Goodwin to the FSA by no later than 7 August 2012, 14 days from the date of the Final Notice.

**If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 8 August 2012, the FSA may recover the outstanding amount as a debt owed by Mr Goodwin and due to the FSA.

## **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such 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 Mr Goodwin or prejudicial to the interests of consumers.
- 7.6. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **FSA contacts**

- 7.7. For more information concerning this matter generally, contact John Kirby (direct line: 020 7066 1458/ fax 0207 066 1459) of the Enforcement and Financial Crime Division of the FSA.

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**Tom Spender**  
**FSA Enforcement and Financial Crime Division**

## **ANNEX**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **1. Relevant statutory provisions**

- 1.1. The FSA's regulatory objectives, as set out in Section 2(2) of the Act, include the protection of consumers, maintaining confidence in the UK financial system and the reduction of financial crime.
- 1.2. The FSA 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 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.
- 1.3. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA 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 FSA pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

#### **2. Relevant Handbook provisions**

##### **Fit and Proper Test for Approved Persons**

- 2.1 The section of the FSA 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.
- 2.2 FIT 1.3 provides that the FSA 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.
- 2.3 In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G includes:
  - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G (5)); and
  - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory



system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G (13)).

### **Statements of Principle and Code of Practice for Approved Persons (“APER”)**

- 2.4 APER sets out the fundamental obligations of approved persons and sets out examples of conduct, which, in the opinion of the FSA, 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.
- 2.5 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.
- 2.6 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.
- 2.7 In this case, the FSA considers the most relevant of the Statements of Principle to be Statement of Principle 1 which states that an approved person must act with integrity in carrying out his controlled function (APER 2.1.2P).
- 2.8 APER 4.1 sets out examples of behaviour which the FSA considers does not comply with Statement of Principle 1. Examples of such conduct are:
  - (1) deliberately misusing the assets or confidential information of a client or of 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));
  - (2) deliberately not paying due regard to the interests of a customer (APER 4.1.14E); and
  - (3) deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment (APER 4.1.15E).

### **3. Other relevant regulatory provisions**

#### **FSA policy on the imposition of financial penalties**

- 3.1 In considering the appropriate sanction, the FSA has had regard to its published guidance. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook.

- 3.2 The Decision Procedure and Penalties Manual (Financial Penalties) Instrument 2010, which came into force on 6 March 2010, made changes to DEPP. As the misconduct described in the Decision Notice mostly occurred prior to 6 March 2010, the FSA has had regard to the provisions of DEPP in force prior to 6 March 2010.
- 3.3 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.
- 3.4 The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:-
- (1) 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.
  - (2) 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 FSA, and the degree of co-operation the person showed during the investigation of the breach.
  - (3) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.
- 3.5 DEPP 6.5.1G(1) provides that the FSA 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.
- 3.6 DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

**(1) Deterrence: DEPP 6.5.2G(1)**

When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons 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.

**(2) The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)**

The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Relevant considerations include the duration and frequency of the breach, the loss or risk of loss caused to consumers, investors or other market users and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

**(3) The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)**

The FSA will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

**(4) Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)**

When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

**(5) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)**

The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

The purpose of a penalty is not to render a person insolvent or to threaten the person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the FSA will take account of those assets when determining the amount of a penalty.

**(6) The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)**

The FSA may take account of the amount of benefit gained or loss avoided by the individual as a result of the breach and will propose a penalty consistent with the principle that the person should not benefit from the breach.

**(7) Conduct following the breach: DEPP 6.5.2G(8)**

The FSA may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention, and the degree of co-operation the person showed during the investigation of the breach by the FSA. Where a person has fully co-operated with the FSA's investigation, this will be a factor tending to decrease the level of financial penalty.

**(8) Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)**

Action that the FSA has taken in relation to similar breaches by other persons may be taken into account. As stated at DEPP 6.5.1G(2), the FSA does not operate a tariff system. However, the FSA will seek to apply a consistent approach to determining the appropriate level of penalty.

**(9) Discount for early settlement: DEPP 6.7.2G**

Where a person receives a percentage reduction on a financial penalty for early settlement of enforcement action against him, if part of the financial penalty specifically equates to the disgorgement of profit accrued then the percentage reduction will not apply to that part of the penalty.

**FSA policy for exercising its power to make a prohibition order**

- 3.7 The FSA's approach to exercising its powers to make prohibition orders is set out in EG.
- 3.8 EG 9.1 provides that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA 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.
- 3.9 EG 9.4 sets out the general scope of the FSA'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. 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.

- 3.10 EG 9.17 provides guidance on the FSA's approach to making prohibition orders against an individual other than an individual referred to in EG 9.8 to 9.14 (approved persons). The FSA will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives.
- 3.11 When considering whether to exercise its power to make a prohibition order against such an individual, the FSA 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.
- 3.12 EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the FSA 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.
- 3.13 EG 9.23 provides that in appropriate cases the FSA 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.