
FINAL NOTICE

To: Stephen Charles Jones

Address: Edinburgh House
17 Clywd Street
Rhyl
Clywd
LL18 3LA

Individual FSA ref: SCJ01036

Date: 25 August 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Stephen Charles Jones, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt profession firm

1. ACTION

1.1. The FSA gave you, Stephen Charles Jones, a Decision Notice on 15 July 2009 (“the Decision Notice”) which notified you that it had decided to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

- 1.2. The FSA would have imposed a financial penalty of £100,000 on you pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”) but for your bankruptcy.
- 1.3. You did not refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.4. Accordingly the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 26 August 2009.

2. REASONS FOR THE ACTION

Statements of Principle 1 and 4

- 2.1. By a Decision Notice dated 15 July 2009, the FSA concluded that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. But for your bankruptcy, the FSA would have imposed a financial penalty on you for your misconduct which included failing to comply with Statements of Principle 1 and 4.
- 2.2. You have failed to meet the minimum regulatory standards in terms of honesty and integrity. These standards include an obligation to demonstrate 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. As such, you are not a fit and proper person.
- 2.3. You pose a risk to consumers and lenders and therefore to confidence in the financial system. Also, action has been taken against you in support of the FSA’s financial crime objective.
- 2.4. In summary, the facts on which the FSA relied in making its decision are:
 - (1) contrary to Statement of Principle 1, you entered information which you knew to be false on seven of your own applications in relation to mortgages on properties you owned, or wished to own, and submitted

each application to lenders. As a result, you obtained the benefit of mortgage offers, more favourable terms on mortgage offers than you would otherwise have received, and procurement fees; and

- (2) contrary to Statement of Principle 4, you:
 - (a) failed to return telephone calls and reply to e-mails from the FSA's investigators, and to reply to two statutory requirements dated 29 January 2008 and 8 February 2008 about the matters referred to in (1);
 - (b) prior to a visit by the FSA, you produced fact find documents for completed sales, and arranged for the customers to sign and back date them, so that it would appear to the FSA during the visit that you had created contemporaneous sales documents; and
 - (c) in interview, you gave a false address to the FSA instead of the actual address where you lived.

Statement of Principle 7

- 2.5. The financial penalty referred to in paragraph 1.1 above would also have been imposed on you for failing to comply with Statement of Principle 7 while you performed controlled functions at Jones & Poole Independent Mortgage Specialists ("the Partnership") between 31 October 2004 and 26 June 2007.
- 2.6. In summary, the facts on which the FSA relied on are, as the senior partner, you failed to take reasonable steps to ensure that:
 - (1) the business of the Partnership, for which you were jointly responsible with one other partner, was organised so that it could be controlled effectively; and
 - (2) in recommending regulated mortgage contracts, the Partnership complied with the relevant requirements and standards of the regulatory system.

2.7. More specifically, you failed:

- (1) to ensure that the Partnership had in place appropriate management and control arrangements such that each partner could be satisfied that the other partner, and that overall the Partnership, was complying with regulatory requirements and treating its customers fairly;
- (2) to take steps to ensure that the Partnership made and retained appropriate records, in particular of clients' income and expenditure, relying instead on general and undocumented discussions with customers, and you could not therefore demonstrate to the FSA's satisfaction why mortgage recommendations were suitable; and
- (3) to implement recommendations made by an external compliance consultant which would have helped to ensure that the Partnership complied with regulatory requirements and treated its customers fairly. In particular, the compliance consultant suggested that you monitor and supervise your assistant but the FSA has seen no evidence that you have done so.

2.8. Your conduct was serious because it exposed approximately 1,500 customers to the risk of receiving unsuitable advice. Your misconduct was serious given that you were approved to perform the apportionment and oversight controlled function (CF8).

Relevant statutory and regulatory provisions

2.9. The relevant statutory provisions and regulatory requirements are attached at Annex A.

Facts and matters relied upon

Background

2.10. You were one of two partners at the Partnership. You performed the controlled functions of partner (CF4) and apportionment and oversight (CF8). You were

the senior partner since the formation of the Partnership in or around 2001 or 2002. You conducted mortgage business on an advised basis.

- 2.11. The Partnership conducted regulated activities from two offices. You operated solely out of Edinburgh House, 17 Clywd Street, Rhyl, Clywd, LL18 3LA and you were responsible for the supervision of a mortgage adviser employed at the Rhyl office. The other partner operated solely out of the Chester office.
- 2.12. You were responsible for ensuring that the Partnership had in place adequate management and control arrangements for ensuring that the Partnership as a whole complied with regulatory requirements and treated its customers fairly.
- 2.13. The Partnership became authorised by the FSA on 31 October 2004 with permission to carry on the regulated activities of:
 - (1) advising on regulated mortgage contracts;
 - (2) agreeing to carry on a regulated activity (in relation to regulated mortgage contracts);
 - (3) arranging (bringing about) regulated mortgage contracts; and
 - (4) making arrangements with a view to regulated mortgage contracts.
- 2.14. On 14 January 2005, the Partnership was permitted to carry on the following additional regulated activities in relation to non-investment insurance contracts:
 - (1) arranging (bringing about) deals in investments;
 - (2) advising on investments (except on Pension Transfers and Pension Opt Outs); and
 - (3) making arrangements with a view to transactions in investments.
- 2.15. Following an application by the Partnership, its Part IV permission was cancelled on 25 April 2008.

The April 2006 on-line mortgage application

- 2.16. In April 2006, you submitted an on-line mortgage application to Lender A, in which you declared your income (i.e. your share of net profit from the Partnership) to be:

Year	Income
	£
2004	158,000
2005	197,000

You gave no indication on the mortgage application that you earned any income from other sources.

- 2.17. On 17 January 2008, the FSA asked you to comment on the apparent discrepancy between the income declared on your mortgage application and your actual income. You referred to the Partnership's accounts for the period ended 31 July 2006 and the net profit figure of £154,887. You said that you received additional income of £32,000 from rental properties. You also said that you had been the chairman of a local football club and of its social club, from which you had derived an income, but that you had subsequently sold your interest in the football club and its social club.
- 2.18. Analysis of the Partnership's annual accounts for the year ended 31 July 2006 showed net profit for the Partnership of £154,887, and your share of the Partnership's profit to be £92,932.
- 2.19. The income that you declared on your mortgage application to Lender A is significantly higher than any identifiable income derived from your 60% share of the Partnership's profit and from previously unmentioned sources of income (to the extent that the FSA has been able to identify these additional sources of income).
- 2.20. The FSA noted that your income declaration on the mortgage application to Lender A made no reference to any other sources of income.

2.21. The FSA has established that the income figure you declared on the mortgage application described above was not consistent with information held by Her Majesty's Revenue and Customs ("HMRC"). We concluded that you knowingly entered false information on your mortgage application, and submitted the mortgage application to the lender based on information which you knew to be false.

2.22. Your declared taxable income was:

Year ending	Partnership income	Other taxable income
April	£	£
2004	55,273.00	110.63
2005	66,659.00	2,813.00
2006	101,855.00	2,069.00
2007	100,388.40	-70.00

2.23. It is therefore evident that you inflated your income declared on the mortgage application significantly above that declared to HMRC, which calls into question your honesty and integrity.

2.24. The facts and matters described in paragraphs 2.16 to 2.23 are relevant to your obligations under Statement of Principle 1.

2.25. The FSA asked you to provide documentary evidence of your income to help explain the anomaly between your declared income on the mortgage application and your actual income. You failed to reply to the FSA's requests for information and documents and no information or documents were provided by you. As such, you failed to cooperate with the FSA, and your failure to cooperate is material as it has hindered the FSA's investigation into serious alleged misconduct on your part. In the absence of replies from you, and on the basis of information obtained from other sources, the FSA came to the conclusion that you deliberately made a false declaration about your income on your mortgage application and you were seeking to prevent the FSA from establishing your actual income.

2.26. The facts and matters described in paragraph 2.25 are relevant to your obligations under Statement of Principle 4.

Compliance arrangements

2.27. There was limited contact between you and the other partner to discuss the compliance arrangements within the Partnership. You told the FSA that you had not met on a regular basis since the formation of the Partnership and the last time that regular meetings took place was before mortgage regulation (i.e. 31 October 2004).

2.28. There were no arrangements in place for the monitoring of your mortgage sales by the other partner, or vice versa. You stated that you would conduct checks of your own client files. You did not use, for example, a standard checklist or pro-forma to ensure a minimum standard of checking or consistency across the business. As the Partnership had no arrangements in place for monitoring each partner's mortgage sales, customers were at risk of receiving unsuitable mortgage advice.

2.29. You told the FSA that you were not aware that the Partnership needed to have in place an appropriate training and competence regime and that you only became aware of this upon receipt of an external consultant's compliance audit report dated 6 December 2006.

2.30. That compliance consultant's report included an action plan and the following recommendations to help ensure compliance with regulatory requirements:

- (1) development of a compliance plan;
- (2) completion of an annual apportionment and oversight report;
- (3) development of job descriptions for all persons holding controlled functions;
- (4) development and implementation of a training and competence regime;
- (5) implementation of formal mortgage file reviews for your assistant;
- (6) the retention of mortgage product research on client files.

- 2.31. The compliance consultant's report also highlighted that there was a fundamental requirement that each partner should be fully aware of what the other was doing and to what standards. The report also stated that to ensure best practice, the Partnership should implement a revised and more detailed suitability letter.
- 2.32. You said that no face to face meetings were held with the other partner to discuss the content of the report or a timetable for the implementation of recommendations. The only contact between you and the other partner was a brief telephone discussion about it. Arrangements were made for the compliance consultant to return to the Partnership in February 2007.
- 2.33. In the meantime, you took no action to implement the compliance consultant's recommendations set out above. You could have implemented some of the main recommendations without the assistance of the compliance consultant, such as: the development of job descriptions for the approved persons, implementing mortgage file reviews and retaining mortgage product research on client files.
- 2.34. When the FSA visited the Partnership on 26 June 2007, none of the main recommendations had been implemented and the FSA found no evidence of a plan or timetable to implement the recommendations.
- 2.35. In the opinion of the FSA, you failed to obtain sufficient information about the customers' personal and financial circumstances and needs and preferences to be able to assess whether the recommended mortgage contracts were suitable.
- 2.36. More generally, you failed to make and retain appropriate records of the reasons why you concluded that the mortgages he recommended were suitable. The FSA found:
- (1) no product research retained on file to help demonstrate how the recommended mortgage was selected and whether it was the most suitable mortgage for the client;

- (2) that clients had been recommended self certification mortgages with no indication as to whether the potential higher costs had been explained to them;
 - (3) inconsistent references to the required mortgage term on internal documents and the mortgage offer with no explanations for the difference; and
 - (4) suitability letters which did not adequately reflect your reasons for recommending particular mortgage contracts.
- 2.37. You also failed to take reasonable steps to make and retain appropriate records to demonstrate why you concluded that your mortgage recommendations were suitable for customers. The FSA could not therefore determine whether these sales were suitable on the basis of the information recorded on the client files.
- 2.38. The facts and matters described in paragraphs 2.27 to 2.37 are relevant to your obligations under Statement of Principle 7.

Fact finds

- 2.39. You completed 12 fact find documents for customers retrospectively. You asked customers to sign and back date fact finds to around the time of the mortgage application so that it appeared that full fact find exercises had been undertaken and recorded contemporaneously when the FSA came to review the files as part of a desk based review prior to the visit.
- 2.40. You confirmed during the FSA's visit on 26 June 2007 that the fact find documents had been created after the event. The FSA notes your frank admission. However, you did not bring the matter to the FSA's attention; rather it was the FSA which discovered that you had manufactured fact finds.
- 2.41. You later told the FSA that the retrospective fact finds were created to put 'meat on the bone' for the client files being reviewed by the FSA. However, you failed to provide a reasonable explanation as to why you had entered false dates on fact finds, why you had asked customers to sign and back date the fact finds, and why you had not been open about the provenance of these documents.

2.42. The facts and matters described in paragraphs 2.38 to 2.40 are relevant to your obligations under Statement of Principle 4.

Additional material

2.43. After you were given a Warning Notice in July 2008, additional material came to light providing six further instances of mortgage fraud in breach of Statement of Principle 1 and one further instance of breach of Statement of Principle 4. This material is summarised in paragraphs 2.44 to 2.49 (the “Additional Material”).

The benchmark for the accuracy of declarations of income

2.44. By an Accountant’s Certificate dated 4 May 2007, the following information was provided about your income:

Year ending 31 July	Net profit before drawings of the Partnership	Your share of net profits	Drawings
	£	£	£
2004	126,000	63,300	68,093
2005	155,246	106,933	109,939
2006 (draft)	153,045	76,523	87,218
2006 (final)	154,877	92,932	

2.45. This information broadly corresponds with the taxable income declared to HMRC as set out at paragraph 2.22 above albeit for the tax year not for the years ending 31 July. For the purposes of assessing the accuracy of your declarations of income to mortgage lenders, the FSA has taken the view that, if they correspond with either the Accountant’s Certificate or the amounts declared to HMRC, they will be regarded as accurate. If they correspond with neither but you have materially overstated your income, the FSA regards any such declarations to mortgage lenders as false.

The additional applications relating to mortgages

- 2.46. The further instances of submitting false information in applications to mortgage lenders in order to obtain a mortgage offer, or an offer on more favourable terms than you would otherwise have received, or both, are as follows.

September 2005: re-mortgage application to Lender B

- (1) On 19 September 2005, you and another individual ('X') submitted a joint application to Lender B for a residential re-mortgage on a property known as Address A falsely stating your share of the net profit in the Partnership for the trading years ending 2004 and 2005 was £108,000 and £150,000 respectively. As a result, you obtained the re-mortgage you sought.

August 2006: Change of Parties application to Lender B

- (2) In August 2006, when you made a Change of Parties application to Lender B to have X removed from the mortgage referred to in (1), you inflated your income (your stated share of the net profit from the Partnership exceeded the total net profit of the firm, before drawings, for each year in question) and falsely stated that you owned the Partnership whereas you shared net profits in proportion to income generated. You also incorrectly stated that you had lived at Address A for three years eight months, whereas you were at that time living elsewhere. As a result, you successfully transferred the mortgage on Address A into your sole name.

November 2006: mortgage application to Lender C

- (3) In November 2006, when you applied to Lender C for a £300,000 mortgage in order to purchase a property, you declared a mortgage on another property but you falsely omitted to disclose your mortgage over Address A. You also falsely stated that you owned 100% of the Partnership whereas in fact you shared the Partnership's net profits in

proportion to the income you had generated. As a result of this information, you obtained a mortgage offer of £300,000 and the Partnership claimed a procurement fee of £1,050. In the event, you did not proceed with the purchase.

August 2007: application to Lender C for a first mortgage

- (4) In August 2007, you applied to Lender C for a mortgage of £294,500 to purchase a flat. You falsely stated that your address was Address A. You also falsely declared your income as in this table:

Year ending July	£
2004	170,000
2005	200,000

You did not provide details of the outstanding mortgage balance with Lender B nor the monthly mortgage payments. You declared your mortgage on Address A but you falsely failed to disclose your mortgage with Lender A, unsecured debts of £20,000 and hire purchase agreements for two cars totalling approximately £100,000. As a result, you obtained a mortgage offer from Lender C for £294,500. In the event, you did not proceed with the purchase.

August 2007: application to Lender F for a second mortgage

- (5) In August 2007, you applied to Lender F for a £50,000 loan to be secured on one of your properties. You falsely stated that you were at that time living in that property and that you had done for the past 1 year 3 months. As a result, your application was initially approved in principle. In the event, however, your application eventually proved unsuccessful.

September 2007: re-mortgage application to Lender G

- (6) In September 2007, you applied to Lender G for a loan of £500,000 to re-mortgage Address A. You falsely stated that you currently resided

at Address A and that the use of the property was “Wholly Owner–Occupied Residential” although in fact you lived elsewhere and Address A was let to tenants. You also falsely stated your income as follows:

Year	£
2004	127,000
2005	155,000
‘net profit amount’ (for 2006)	154,000
‘present annual net profit’ (for 2007)	154,000

As a result of this information, Lender G made a mortgage offer of £484,500 in November 2007. However, after carrying out further checks the lender withdrew its mortgage offer. The Lender’s assessor commented:

“i am not happy to proceed as this broker is know for inflating income, no accountants details filled in!!! x2 undisclosed mortgs, bank details at diff add and is introducing his own case, false address history.”

- 2.47. The facts and matters in paragraph 2.46 relate to your honesty and integrity and to your obligations under Statement of Principle 1.

October 2007 interview

- 2.48. In October 2007, you were compelled by the FSA to attend an interview and answer questions. In that interview, in response to the first question put to you, you falsely stated that your home address was Address A. You have since clarified that you moved out of Address A in May 2007 and let it to tenants. You were not living at Address A in October 2007, nor have you lived there since May 2007.

2.49. The facts and matters in paragraphs 2.48 relate to your honesty and integrity and to your obligations under Statement of Principle 4.

Representations

2.50. You were given notice of the Additional Material in letters to you from the FSA dated 3 December 2008 and 11 December 2008 and asked for your response. You responded by way of written representations to the FSA's Regulatory Decisions Committee which were received on 5 January 2009.

2.51. In your letter of 30 December 2008, you accepted as correct a number of points made by the FSA in its letters of 3 December and 11 December but gave explanations of other matters including:

- in relation to where you were living at certain times, giving a version of events which was different to that given in the additional material;
- in relation to the differing amounts of declared income, explaining that some income was declared net and some was declared as total gross income;
- saying that certain loans had been repaid;
- explaining the business arrangements in the Partnership; and
- explaining why you did not proceed with the purchase of a number of properties.

2.52. You denied inflating your income on the application forms or providing false information to obtain mortgage offers.

2.53. Although you did not directly address the matters raised in the Warning Notice, some of your points made in the context of the additional material were relevant to the Warning Notice.

Findings

2.54. The FSA found your explanations of your income, your residence, your financial commitments and your interest in the Partnership inconsistent and unconvincing. Particular examples are:

- in your application of August 2007 to Lender C you claimed that your ‘income for last trading year’ (July 2004) was £170,000 whereas the record of your declared taxable income was £55,383.63 (for the year ending April 2004) and £69,472 (2005);
- in your application for a loan in September 2007 to Lender G, you stated that the use of Address A was “Wholly Owner-Occupied Residential” whereas it was let to tenants at the time you signed the declaration;
- in your application of August 2007 to Lender C for a first mortgage, you failed to disclose your unsecured debts and hire purchase agreements; and
- in your application of November 2006 to Lender C, in Section C ‘Income details self employed’ in answer to question 1 ‘Company name’ you answered ‘Jones + Poole IMS’ and in answer to question 9 ‘What is your shareholding’, you answered ‘100%’ when at the time of signing the declaration you owned the business jointly with your partner.

2.55. The FSA noted that there were many statements in your representations that were unsupported by evidence. For example, ‘The loan to Porsche Finance was repaid in December 2005’ and ‘Address A was transferred into a Buy to Let mortgage’. Whilst the FSA would prefer to be able to accept your representations as being wholly truthful, the lack of reliability of a number answers you made on mortgage application forms suggests that it would be prudent for the FSA not to rely on certain statements in your representations without supporting evidence.

Analysis of misconduct and sanctions

Statements of Principle 1 and 4

2.56. You entered incorrect information on seven of your own applications in relation to mortgages and properties you owned (or wished to own) or omitted to include relevant information which had been requested on the lender’s form, or both. You submitted these applications to lenders even though they were based on information which you knew to be incorrect or misleading. The

FSA has concluded that you were knowingly involved in the submission of false applications to mortgage lenders which were submitted by you through the Partnership, in breach of Statement of Principle 1. You then failed to cooperate with the FSA's investigation, and you misled the FSA in interview about where you lived in breach of Statement of Principle 4.

- 2.57. You also created false sales documents to make it appear to the FSA that you were making and retaining full contemporaneous records of your discussions with clients, in breach of Statement of Principle 4.

Statement of Principle 7

- 2.58. The FSA has concluded that the misconduct summarised in paragraph 2.6 above meant that the Partnership, which was based in two separate locations and involved inadequate contact between the two partners, was not managed in a way which ensured that it complied with regulatory requirements and treated customers fairly.

Financial penalty

- 2.59. The FSA's policy on penalties in general terms is set out in paragraph 1.13 of the Annex to this notice. The following elements of the policy would have been particularly relevant but for the bankruptcy.

Deterrence: DEPP 6.5.2G(1)

- 2.60. The principal purpose of the imposition of a penalty against you of the amount in mind would have been to promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 2.61. In determining the appropriate level of penalty, the FSA has had regard to the need to ensure those who are approved persons act with integrity and do not abuse their positions in the financial services industry and obtain mortgages on a false basis. The FSA considers that a significant penalty should have been imposed to demonstrate to you and others the seriousness with which the FSA regards such behaviour.

- 2.62. In determining the amount of this penalty, the FSA has also had regard to the FSA's financial crime objectives in ensuring that behaviour by individuals which undermines confidence in the financial system is not tolerated.

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

- 2.63. You have further demonstrated your lack of integrity by submitting fraudulent applications to mortgage lenders, as a result of which you benefitted personally. Your attempts to mislead the FSA by fabricating client information, giving the FSA a false home address and requesting that customers sign and backdate fact finds are very serious.

- 2.64. As a result of your actions, together with your failure to cooperate with the FSA's investigation, the FSA considers that you pose a serious risk to customers and to confidence in the financial system.

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

- 2.65. The FSA considers that your decisions or actions, or both, were deliberate actions taken by you without concern for the risk posed to customers and lenders. In this regard, they amounted to deliberate misconduct. Your actions were below the standard of behaviour that could reasonably be expected of an approved person.

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

- 2.66. The FSA recognises that the financial penalty which would have been imposed on you was likely to have a significant impact on you as an individual but it would have been proportionate in relation to the seriousness of the misconduct.

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

- 2.67. The FSA is aware that you were adjudged bankrupt by an order dated 20 January 2009 following your petition for bankruptcy on 11 September 2008.

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

- 2.68. The FSA has taken into account the personal benefit obtained by you from your numerous breaches of Statements of Principles 1 and 4. The FSA believes that the penalty is consistent with the principle that you should not benefit from your breaches and that it will act as an incentive to others to comply with regulatory standards.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.69. You failed to be open and honest with the FSA's investigation, although when questioned you did admit that you had knowingly submitted false documents to the FSA. You failed to provide documentary evidence of your income to explain the anomaly between your declared income on one of your mortgage applications and your actual income.

Disciplinary record and compliance history: DEPP 6.5.2G(9)

- 2.70. The FSA has not previously taken any disciplinary action against you.
- 2.71. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has taken into account previous decisions made in relation to similar misconduct.

Conclusions

- 2.72. Based on your conduct, the findings and the analysis summarised above, the FSA concluded that you failed to meet the minimum regulatory standards for approved persons in respect of honesty and integrity, and that you are not therefore fit and proper to perform any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 2.73. The severity of the risk you pose to consumers and lenders, and to confidence in the market generally is such that it is also necessary, in order to achieve its regulatory objectives, for the FSA to exercise its power to make the prohibition order referred to in paragraph 1.1.

- 2.74. Accordingly, the FSA considers that it is appropriate to make a prohibition order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and to impose a financial penalty under section 66 of the Act.
- 2.75. Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, the FSA decided that it would have imposed a financial penalty of £100,000 on you but for the appointment of a trustee in bankruptcy in April 2009.

3. DECISION MAKER

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

4. IMPORTANT

- 4.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

- 4.2. 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 FSA must publish such information about the matter to which this Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

FSA contacts

- 4.3. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5895 / fax: 020 7066 5896).

Tom Spender
Head of Department
FSA Enforcement Division

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Penalties

Statutory background

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act are: market confidence; public awareness; the protection of consumers; and the reduction of financial crime.
- 1.2. Section 66 of FSMA provides:
 - “(1) The Authority may take action against a person under this section if—
 - (a) it appears to the Authority that he is guilty of misconduct; and
 - (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
 - (2) A person is guilty of misconduct if, while an approved person—
 - (a) he has failed to comply with a statement of principle issued under section 64; or
 - (b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act.
 - (3) If the Authority is entitled to take action under this section against a person, it may—
 - (a) impose a penalty on him of such amount as it considers appropriate; or ...”

The Statements of Principle and Code of Practice for Approved Persons

- 1.3. The module of the FSA's Handbook known as 'The Statements of Principle and Code of Practice for Approved Persons' ("APER") sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. APER also describes factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.
- 1.4. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their

standard of conduct was below that which would be reasonable in all the circumstances.

- 1.5. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 1.

Statement of Principle 1

- 1.6. Statement of Principle 1 requires an approved person to act with integrity in carrying out their controlled function.
- 1.7. APER 4.1 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 1. APER 4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA does not comply with Statement of Principle 1. Specific examples of such conduct are set out in APER 4.1.4E and include providing false or inaccurate documentation or information, or deliberately falsifying documents. In considering a person's integrity, the FSA may also have regard to whether that person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)).

Statement of Principle 4

- 1.8. Statement of Principle 4 requires an approved person to 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.
- 1.9. APER 4.4 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 4. APER 4.4.7E states that where the approved person is, or is one of the approved persons who is, responsible within the firm for reporting matters to the FSA, failing promptly to inform the FSA of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise, is a failure to comply with Statement of Principle 4. APER 4.4.9E(3) also states that failing without good reason to supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement does not comply with Statement of Principle 4.

Statement of Principle 7

- 1.10. Statement of Principle 7 requires an approved person performing a significant influence function to take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 1.11. APER 4.4 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 4. In particular, APER 4.7.2E states that in the opinion of the FSA, conduct of the type described below does not comply with Statement of Principle 7:

- (1) “Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* in respect of its *regulated activities* falls within *APER* 4.7.2 E. In the case of an *approved person* who is responsible, under *SYSC* 2.1.3R(2), with overseeing the *firm's* obligation under *SYSC* 3.1.1R , failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within *APER* 4.7.2E.” (*APER* 4.7.3E)
- (2) “Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the *regulatory system* in respect of its *regulated activities* falls within *APER* 4.7.2E (see *APER* 4.7.12 G).” (*APER* 4.7.4E)
- (3) In the case of an *approved person* performing a *significant influence function* responsible for compliance under *SYSC* 3.2.8R, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within *APER* 4.7.2 E (see *APER* 4.7.14 G). (*APER* 4.7.10E)

Guidance on the exercise of the FSA's powers

- 1.12. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act.
- 1.13. The module of the FSA's Handbook known as 'the Decision Procedure and Penalties manual' ("DEPP") sets out, among other things, the FSA's policy with respect to the imposition and amount of penalties under the Act. DEPP 6.2.1G states that the FSA will consider the full circumstances of each case and that the criteria listed are not exhaustive. In particular, DEPP 6.2.4G states that the FSA will only take disciplinary action against an approved person where there is evidence of personal culpability on his part, which arises from his behaviour and, amongst others, the standard of behaviour fell below that which would be reasonable in all the circumstances.
- 1.14. The FSA has also had regard to its Enforcement Guide (EG). In particular, EG 2.2G(2) states that the FSA will seek to exercise its enforcement power in a manner that is transparent, proportionate and consistent with its publicly stated policies.
- 1.15. Though the references in this notice are to the EG, the FSA has had regard to the appropriate provisions in Chapter 13 of the FSA's Enforcement Manual ("ENF"), which applied during the period in which your misconduct occurred. ENF 13.1.1G(2) states that the Act empowers the FSA to impose a financial penalty on an approved person, where the FSA considers that he is guilty of misconduct; this is defined in the Act as failure to comply with a Statement of Principle issued by the FSA under section 64 (Conduct: statements and codes),

or being knowingly concerned in a contravention by the relevant firm of a requirement imposed on that firm by or under section 66 of the Act (Disciplinary powers).

2. Prohibition

- 2.1. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person, or exempt professional firm. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

FSA's policy for exercising its power to make a prohibition order

- 2.2. The FSA's approach to exercising its powers to withdraw approval and to make prohibition orders is set out at EG 9. EG 9.1 states that the FSA's power under sections 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is necessary either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 2.3. EG 9.4 sets out the general scope of the FSA's powers in this respect, 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 vary according to the range of functions which the individual concerned 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.
- 2.4. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 2.5. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) the matters set out in section 61(2) of the Act;
 - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and

propriety are set out in the module of the FSA Handbook entitled "the Fit and Proper Test for Approved Persons" ("FIT"), in particular in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);

- (3) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);...
- (5) the relevance and materiality of any matters indicating unfitness;
- (6) the length of time since the occurrence of any matters indicating unfitness;
- (7) 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
- (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

2.6. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:

- (1) providing false or misleading information to the FSA, including relating to business arrangements;
- (3) severe acts of dishonesty, for example those which may have resulted in financial crime; and

...

(5) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

Fit and proper test for approved persons

2.7. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 2.8. In this instance, the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual in accordance with EG 9.9.
- 2.9. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's honesty, integrity and reputation.
- 2.10. In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance 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)).
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