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**FINAL NOTICE**

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To: **Mr Steven Leslie Davis**

Individual FSA ref: **SLD01042**

Date of birth: **16 February 1956**

Date: **21 July 2006**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to publish a statement of your misconduct:**

**1. STATEMENT OF MISCONDUCT**

- 1.1 The FSA gave Mr Steven Leslie Davis (“Mr Davis”) a Decision Notice dated 20 July 2006 which notified him that pursuant to sections 66 and 67(3) of the Financial Services and Markets Act 2000 (“the Act”), to the FSA has decided to publish a statement of misconduct in respect of Mr Davis’ failure to comply with Statements of Principle 5 and 6 for Approved Persons (“APER”) issued under section 64 of the Act.

- 1.2 The misconduct described in this notice would, in the FSA's opinion, have merited a significant financial penalty. However, the FSA has seen evidence of Mr Davis' inability to pay a significant financial penalty, and the likely adverse impact of even a lesser penalty on his ability to make payments to his creditors.

## **2. REASONS FOR THE ACTION**

### **Background**

- 2.1 Mr Davis was one of five directors and an equal majority shareholder of Essential Mortgages Limited ("EML"). A third shareholder held the remaining 10%. EML, now in liquidation, is no longer an authorised person. EML ceased trading on 6 January 2005. The permission granted to EML by the FSA to carry on regulated activities was cancelled on 13 October 2005, in response to an application made by the Liquidator to cancel the Part IV permission.
- 2.2 EML was a mortgage and general insurance intermediary. From 31 October 2004, EML became authorised and regulated by the FSA, and was granted permission to carry on the following regulated mortgage activities:
- (1) advising on regulated mortgage contracts;
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging regulated mortgage contracts; and
  - (4) making arrangements.
- 2.3 EML applied for and, from 14 January 2005, was granted permission to carry on the insurance mediation activities listed below:
- (1) advising on investments (ex Pension Transfers/Opt Outs); and
  - (2) making arrangements with a view to transactions in investments.
- 2.4 EML acted as a retail broker, primarily operating in the re-mortgage market. It had a market research division which passed on marketing leads, where customers expressed an interest in EML's services, to EML's sales team. EML did not contact mortgage lenders directly on behalf of its clients. It used a mortgage "packager" at this stage of the sales process. The role of the mortgage packager was to liaise with the lender on behalf of EML and its clients.
- 2.5 Mr Davis was an approved person in that he was approved by the FSA to perform the controlled functions of: CF1 - Director, CF3 - Chief Executive and CF8 - Apportionment and Oversight in relation to the regulated activities carried on by EML. Mr Davis was responsible for the oversight of and direct supervision of the accounts function at EML and, in the absence of a finance director, he had overall responsibility for the finances of EML.

## **Terms of the statement of Mr Davis' misconduct**

- 2.6 Mr Steven Leslie Davis has failed to comply with Statements of Principle 5 and 6 for Approved Persons issued under section 64 of the Act.
- 2.7 Mr Davis, as the director responsible for EML's accounts function and finance issues (and in the absence of a finance director) failed to ensure that EML had in place an adequate system for processing, accounting for and monitoring customers' applications in respect of, and payments for, accident sickness and unemployment ("ASU") insurance policies.
- 2.8 The system that was introduced was inadequate because it relied upon one full time member of staff ("the Accounts Clerk"), described by EML as its "Accounts Department", to undertake all accounting functions. The Accounts Clerk had no accounting qualifications, received no training other than a hand over by the previous job holder, and was subject to no formal reporting regime or management oversight.
- 2.9 By his own admission, Mr Davis allowed the Accounts Clerk to run the Accounts Department with no formalised oversight arrangement and left it to the Accounts Clerk to decide when to pay which creditors. Typically, the Accounts Clerk would prioritise payments according to urgency, taking into account the perceived importance of the creditor (e.g. paying taxes) and urgency (e.g. threat of civil action).
- 2.10 As a consequence of this failure, customers' ASU insurance premiums were not passed on to the insurer, and were instead banked and used by EML to meet other costs and liabilities. About 350 customers' ASU insurance policies were not therefore placed on risk (representing approximately £500,000 of premium), thereby exposing them to the risk of significant financial loss and other detriment arising from being uninsured.
- 2.11 Mr Davis told the FSA that, in accordance with its policy and practice, EML made *ex gratia* payments to customers in response to their claims when, occasionally, it failed to pass on payments to the insurer. The Accounts Clerk told the FSA that there may have been around six cases where such payments were made. The FSA found evidence that EML made such payments totalling £5,000 to one customer whose ASU insurance policy had not been placed on risk. Mr Davis approved these payments as the relevant signatory for the cheques.
- 2.12 The evidence obtained by the FSA suggests that Mr Davis failed to take adequate interest in the matter personally as the director responsible for EML's finances and as the Approved Person responsible for Apportionment and Oversight. He did not investigate with the Accounts Clerk whether these occasional failures that would have come to his attention were an indication of a systemic problem. Instead, it was accepted as a business risk that on occasions, for whatever reason, when ASU insurance policies were not placed on risk and that, where EML deemed itself responsible, it should make *ex gratia* payments to customers in response to their claims.
- 2.13 Mr Davis therefore failed to take reasonable steps to ensure that this aspect of the business of EML for which he was responsible was organised in such a way that it could be controlled effectively. He also failed to exercise due skill, care and diligence

in managing this aspect of the business of EML.

- 2.14 By the action proposed in this notice, the FSA is seeking to hold Mr Davis to account personally for the failures summarised above, to the extent that he was responsible for the failures.
- 2.15 Mr Davis accepted responsibility for the failures summarised above and agreed to settle the matter with the FSA on the basis that a statement of his misconduct should be published by the FSA.
- 2.16 For the avoidance of doubt, the FSA is not asserting that the Accounts Clerk referred to in this notice is guilty of any misconduct. (NB. This paragraph does not form part of the terms of the statement of misconduct.)

### **3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS**

#### **Statutory provisions**

- 3.1 The FSA may take action against a person under section 66 of the Act if it appears to the FSA that he is guilty of misconduct and if the FSA is satisfied that it is appropriate in all the circumstances to take action against him (section 66(1) of the Act).
- 3.2 A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 or 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 (section 66(2) of the Act).
- 3.3 The FSA may either impose a penalty on that person of such an amount as it considers appropriate or publish a statement of his misconduct (section 66(3) of the Act).

#### **Statements of Principle for Approved Persons (issued under section 64 of the Act)**

- 3.4 Statement of Principle 5 of the Statements of Principle for Approved Persons (“APER”) requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.
- 3.5 Statement of Principle 6 of APER requires that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

#### **Relevant Guidance**

- 3.6 In exercising its power to take this action in respect of Mr Davis’ misconduct, the FSA had regard to guidance published in the FSA handbook, and the following guidance in particular.
- 3.7 The guidance in section 12.3.3 of the Enforcement Manual (“ENF”), which is part of

the FSA Handbook of rules and guidance, provides that:

“The criteria for determining whether it is appropriate to issue a public censure or public statement rather than impose a financial penalty are similar to those for determining the level of financial penalty listed in ENF 3 (Discipline of firms and approved persons: financial penalties). The starting point is that the FSA will consider all of the relevant circumstances of the case. Some particular considerations may be relevant when the FSA determines whether to impose a public censure or public statement rather than a financial penalty. The following list is not exhaustive (not all of these factors may be relevant in a particular case, and there may be other factors that are relevant):

- (1) if the firm or approved person has made a profit or avoided a loss as a result of the breach or misconduct, this may be a factor in favour of a financial penalty, on the basis that a firm or approved person should not be permitted to benefit from its breach or misconduct;
- (2) if the breach or misconduct is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach or misconduct; other things being equal, the more serious the breach or misconduct, the more likely the FSA is to impose a financial penalty;
- (3) if the firm or approved person has admitted the breach or misconduct and provides full and immediate co-operation to the FSA, and takes steps to ensure that consumers are fully compensated for any losses arising from the contravention, this may be a factor in favour of a public censure or statement of misconduct, rather than a financial penalty, depending upon the nature and seriousness of the breach or misconduct;
- (4) if the firm or approved person has a poor disciplinary record or compliance history (for example, where the FSA has previously brought disciplinary action resulting in adverse findings in relation to the same or similar behaviour), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
- (5) the FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public statement; and
- (6) if the firm or approved person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their breach or misconduct would otherwise attract, this may be a factor in favour of a lower level of financial penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to impose a public statement rather than a financial penalty, if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:
  - (a) verifiable evidence that an approved person would suffer serious financial hardship if the FSA imposed a financial

penalty; and

- (b) verifiable evidence that the firm would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level”.

#### **4. FACTS AND MATTERS RELIED ON**

- 4.1 EML conducted business as a mortgage and general insurance intermediary between 11 February 1999 and 6 January 2005. It primarily operated in the re-mortgage market and in conjunction with its mortgage business it also advised on and sold insurance policies.
- 4.2 EML ceased trading on 6 January 2005 and entered into a Creditor's Voluntary Liquidation on 24 February 2005 to wind up the company ("the Liquidation") due to insolvency.

##### ***Accident Sickness and Unemployment ("ASU") policies***

- 4.3 EML advised on and sold insurance policies including ASU policies on behalf of a broker which acted pursuant to a binding authority to arrange policies on behalf of an insurance company which underwrote the policies. The broker appointed a third party administrator to process ASU insurance policies on its behalf, and that included the collection of premiums.
- 4.4 The ASU policies sold by EML were only effected or “came on risk” upon completion of the related mortgage. The ASU policy commenced on the date of completion of the mortgage but if the mortgage did not complete the ASU policy would not have been placed on risk.
- 4.5 Originally the process for dealing with such policies was that EML submitted an application form to the third party administrator prior to completion of the mortgage. If the mortgage completed EML would receive a cheque from the borrower's solicitors, which included the one-off ASU policy premium, and then the third party administrator would invoice EML in respect of the premium to be forwarded within 60 days.
- 4.6 EML fell into arrears in respect of the premium payments to the third party administrator and it is understood that the outstanding debt had reached approximately £300,000 by July 2003. An agreement was reached between EML, the broker and the insurer whereby EML would pay back the arrears over a period of time and the insurer would honour all the related ASU policies.
- 4.7 Until February 2004, the process that was followed entailed EML taking no action in relation to an ASU insurance application until the mortgage completed. EML would then tell the third party administrator that the mortgage had completed. The third party administrator would then send EML an invoice and EML would treat it as a purchase ledger invoice payable within 60 days.
- 4.8 From February 2004, the broker requested a change in the process in that EML was supposed to send the customer’s application form to the third party administrator and

then receive commission.

- 4.9 According to Mr Davis, EML's practice was occasionally to make *ex gratia* payments to customers whose policies were not placed on risk, where the process had not been followed correctly by EML and where they subsequently tried to make claims.
- 4.10 The FSA is concerned that EML received premium for ASU insurance policies which it did not submit to the third party administrator, and that the result of this failure was that about 350 consumers did not have ASU insurance in place when they believed that they were covered. Mr Davis told the FSA that this was caused by an "administrative error" that resulted from the change in process described in paragraph 4.8 above.
- 4.11 The Accounts Clerk told the FSA that her job title at EML was "Accountant", a title which she inherited from the previous job holder. The Accounts Clerk told the FSA that she was not a qualified accountant and that she had no other relevant professional qualifications.
- 4.12 The Accounts Clerk told the FSA that she was responsible for preparing general accounts, monthly balance sheets and profit and loss accounts, purchase and payroll ledgers, raising company cheques for signature by two directors, and payment of all invoices received. She said that she passed balance sheets and profit and loss accounts to Mr Davis and did not know what happened to them thereafter.
- 4.13 The Accounts Clerk told the FSA that, as far as she could remember, none of the directors came back to her with questions about the accounts or approached her about any financial matters of concern.
- 4.14 When the FSA asked the Accounts Clerk to comment on the financial statements that she produced from March to October 2004, she replied that she was not a qualified accountant and that it would be wrong for her to speculate.
- 4.15 The Accounts Clerk told the FSA that at no stage prior to the collapse of EML did Mr Davis notify her that there was a problem with EML's finances.
- 4.16 The Accounts Clerk told the FSA that she worked with no additional support staff other than a temporary staff member employed for six to eight weeks towards the end of 2003.
- 4.17 The Accounts Clerk told the FSA that she reported directly to Mr Davis.
- 4.18 The Accounts Clerk told the FSA that she received no guidance or instruction from Mr Davis about how to prioritise payments of bills and invoices, and that she therefore exercised her own judgement according to the nature of the creditor or the urgency of the matter. However, she said that she would have drawn urgent payment demands to the attention of Mr Davis.
- 4.19 The Accounts Clerk told the FSA that she did not know anything about the process relating to the sale of ASU insurance policies or how payments were made by customers. She also said that she was not responsible for reconciling payments of insurance premiums with invoices received from the insurer, and that she did not pass on any information to anyone else at EML to perform such a reconciliation

exercise. She went on to say that when EML received statements from the product provider, she would file them away in a cupboard in her office.

4.20 The Accounts Clerk told the FSA that her responsibility for ASU policies was that, on receipt of invoices, she made entries in the purchase ledger and then, when funds were available, she made the payment to the third party administrator. According to the Accounts Clerk, the process for dealing with ASU policies was administered by another department at EML but, in January 2004, when that whole department was made redundant, the administrative procedures for dealing with ASU policies changed.

4.21 The Accounts Clerk said that after the third party administrator stopped invoicing EML for ASU policies, she would receive a list of the clients in the “payment roll” for that day who had taken out an ASU policy. She would receive a peach coloured form that was filled in by the client from the mortgage processing department, which she used to match and attach them to the list. She said:

“they were really my invoice to pay to [the third party administrator]. So that was then for me to pay that list to [the third party administrator]”.

4.22 The Accounts Clerk told the FSA that she received telephone calls from customers saying that they had not received their insurance policies, but she did not equate that with the possibility that their policies had not been put on risk. The Accounts Clerk said she could not recall whether she told anyone else at EML about these calls and was generally vague in her representations to the FSA about her role and any action that she may have taken, other than that she would have reassured the customer and made payment of their policy premium a priority.

4.23 The Accounts Clerk said she thought that six customers may have contacted her and that she would have treated these cases as priority payments. She would act as one signatory and take the cheques to Mr Davis to sign. She never signed off such cheques unless she had authorisation from a director. The Accounts Clerk went on to say that when she approached Mr Davis to sign the cheques, Mr Davis did not ask any questions about them, and that she would have provided supporting documents to explain the nature and circumstances of the payment.

4.24 The Accounts Clerk said she could not recall the case of a customer, “Mr P”, whose policy was not placed on risk, who contacted EML to say that he wished to make a claim on his ASU insurance policy. Mr P received five payments totalling £5,000 from EML. The Accounts Clerk told the FSA that if she had received a call from Mr P, or any other customer in the same circumstances, she would have sought advice from one of EML’s directors because she could not have taken a decision on her own to make payments directly to customers in response to claims on ASU policies that were not put on risk.

4.25 The Accounts Clerk told the FSA that, by mid 2004, all payments to the third party administrator were late payments and that she faced problems paying all types of bills by then. She could not confirm whether she drew to Mr Davis’ attention at this time to the fact that a significant period of time had elapsed between the dates of insurance applications being submitted and settlement of invoices by EML. However, she said that she thought that someone from the third party administrator notified Mr Davis



and/or another director of EML that payments were not being kept up to date, and the directors would have passed on the message to her.

- 4.26 Mr Davis said that, unknown to him, new underwriters for ASU insurance business, appointed by the broker, had put in place a change to the procedure that had operated for three or four years previously. The new procedure required that EML should submit all ASU application forms with payments. Under the previous procedure, EML submitted customers' ASU application forms to the third party administrator who in turn would raise invoices for payment by EML.
- 4.27 According to Mr Davis, the new procedure therefore meant that EML was not being invoiced for ASU cover by the third party administrator, because it was not submitting application forms. EML was, however, still receiving clients' premiums which were being used by its Accounts Department for other business expenses and to meet outstanding liabilities.
- 4.28 Mr Davis said that from his overview of EML's accounts, the finances looked to be in order during 2004 because the figures "...weren't particularly changing". He also said that the Accounts Clerk effectively ran the Accounts Department, that he relied upon her to report any irregularities about ASU policies (or any other matter) to him, and that he did not recall her reporting any irregularities to him.
- 4.29 Mr Davis told the FSA that he was responsible for EML's accounts and finances and that the Accounts Clerk reported to him directly, although "she ran the accounts department full stop". He went on to say that he put the accounting procedures in place and that they were approved by EML's accountants. He confirmed that he received monthly accounts from the Accounts Clerk and that he would pass on information to other individuals as appropriate.
- 4.30 Mr Davis appeared not to know whether the Accounts Clerk had any accounting qualifications and gave as a reason for employing her, instead of a qualified accountant, as the fact that EML had previously employed a qualified accountant who had "messed everything up". The Accounts Clerk was in his view experienced at doing day to day accounts, even though she may have lacked professional qualifications.
- 4.31 Mr Davis told the FSA that generally he signed cheques on behalf of EML provided to him by the Accounts Clerk.
- 4.32 Mr Davis told the FSA that he did not have regular meetings with the Accounts Clerk. Contact was made on an ad hoc basis, and that the job of running the Accounts Department and paying bills, including payments to insurers, was left to her.
- 4.33 Mr Davis went on to say that all financial information was passed on to the directors by the Accounts Clerk as she would have understood that her role did not extend to analysing and commenting on EML's financial resources, and that the directors were in possession of all relevant financial information.
- 4.34 Mr Davis told the FSA that he could not recall the Accounts Clerk presenting any unusual payments to him.

- 4.35 Mr Davis told the FSA that responsibility for the monitoring of late and overdue payments was generally left to the Accounts Clerk. Also, he said that the Accounts Clerk would have been fully aware of cash flow because she was responsible for bank reconciliations.
- 4.36 Mr Davis told the FSA that, as far as he could remember, the Accounts Clerk did not during 2004 draw to his attention an increasing number of demands for overdue bills to be paid.
- 4.37 Mr Davis told the FSA that he saw his role as “strategic” and that he was content on the basis of information being provided to him that EML was not insolvent.
- 4.38 Mr Davis told the FSA that in August or September 2004, EML was approached by a product provider (“Product Provider Two”) about introducing insurance business to it instead of through the product provider with which it had a current arrangement. He said that Product Provider Two had told EML that the day EML “joined” it would give EML £250,000. He went on to say that he understood that this payment was to be a “golden handshake” and no mention had been made by Product Provider Two in preliminary discussions that this was intended to be a loan.
- 4.39 Mr Davis told the FSA that a number of factors led to the demise of EML. In his view, the main reason was the fact that EML was expecting a “golden handshake” from Product Provider Two which, in the event, became instead at a critical period for EML an offer of a commercial loan for £150,000. The subsequent funding crisis prompted the directors of EML to make staff redundant and take steps to place EML in liquidation. The discovery, afterwards, of the administrative errors which had led to ASU insurance policy applications not being properly processed compounded the financial problems that would otherwise have faced EML if it had not already been placed in liquidation.
- 4.40 Mr Davis described for the FSA the actions taken from 6 January 2005 when the Board of EML realised that EML could not continue trading without the funds from Product Provider Two.
- 4.41 Mr Davis explained that after the mortgage packager had discovered that a number of ASU clients had not been put on risk, he investigated and came up with a figure of “about 370 odd clients”. He later assisted the Liquidator and passed on his findings. He estimated “that each policy was probably about £1,000 costs”.
- 4.42 Mr Davis explained his understanding of how the ASU policies were not put on risk, in that in February 2004 the broker changed underwriters for some reason, and requested a change in the process that EML had been operating for 3 or 4 years. He maintained that he was not aware that he had requested that EML:

“stop sending the applications off until we paid for them... But what that meant was of course was that we weren't getting the invoices coming back because we weren't sending the forms off. So my overview of the accounts was that everything was fine because the figures were, weren't particularly changing and everything was looking fine on a, slow ok I can't say fine. Was to looking ok on a, at a strategic Board level type thing. But actually we were building up an unknown debt that I didn't know about”.

4.43 Mr Davis told the FSA that EML's systems generated prompts for people to carry out certain actions in respect of the mortgage process, but that such a prompt system was not in place in respect of insurance business and had “nothing to do with the accounts”.

4.44 Mr Davis told the FSA that EML's systems were not set up to cope with the change of process when referring to the new underwriters for ASU policies. He said that:

“...they didn't want us to send them the application form until we paid the insurance, paid the bill...I don't know and nobody noticed that that just scuppered the whole system, because the system was reliant on the application going to the insurer who would then raise an invoice that we would pay. But by not asking, but that simple step unfortunately the process just, just fell over completely”.

4.45 Mr Davis expressed an opinion to the FSA about the extent of client loss arising from the systemic failure at EML in relation to ASU insurance policies not being placed on risk. He said:

“...but clearly yes, it was a grave error. I can accept and I will verify that, that there were some 370 odd clients affected by it, because that was my calculation at the time...But what I can say is there were 370 odd clients affected and it's a disaster”.

4.46 Mr Davis confirmed to the FSA that customers had suffered detriment as a result of the failure by EML to ensure that customers' ASU insurance policies were placed on risk, and that he took steps to identify and report the scale of the problem. He said:

“...I did this myself, when I first found out about the problem and, I went through it with [the Liquidator], I went through it with the FSA. I was completely open about it as soon as I found it out and I went throughout records and identified, personally, somewhere between 370,375, I can't remember the exact figure and I gave that list to [the Liquidator]. So I'm not trying to hide this at all...it's an absolute disaster.”

4.47 Mr Davis told the FSA even though he was unaware of Mr P who received five payments totalling £5,000, EML would pay any claims on ASU policies that had not yet been paid for by EML where it was responsible. He said:

“OK, we had a standard practice, and I don't remember that case at all and I wouldn't have been involved in that...if we hadn't paid for a case, so it was in our purchase ledger, yes we felt it was wrong to ask the insurer to pay because he hasn't been paid by the purchaser yet, so during that time we would handle any client, anything the client wishes, so if the client had a valid claim we felt it was right and proper for us to pay that claim to the client, simply because we haven't yet paid the purchase ledger invoice from the supplier...”.

4.48 Mr Davis told the FSA that it was standard practice for EML to pay out entitlements directly in response to claims on unpaid ASU policies. He said:

“...I have to say I can't say we formally had an agreement with [the third party

administrator] or [the broker], what I can say is that our standard practice always, was always, right from day one, that if we haven't paid the insurer we didn't feel it was right to ask the insurer to pay the client.”

4.49 Mr Davis went on to say that in his view EML was not acting as the insurer as such, and that it was instead making an *ex gratia* payment to the customer whose insurance policy was not placed on risk, and not hiding from the customer the nature of the payment.

4.50 Mr Davis told the FSA that cash was received by EML in payment of ASU insurance policies and was accounted for by EML and paid into its current bank account, and policyholders or customers' premiums were not ring fenced by the company.

## **5. BREACHES OF STATEMENTS OF PRINCIPLE FOR APPROVED PERSONS**

5.1 Mr Davis has breached Statement of Principle 5 in that, as an approved person performing a significant influence function, he failed to take reasonable steps to ensure the business of the firm for which he was responsible in his controlled function was organised so it could be controlled effectively. Specifically, he:

- (1) failed to ensure any effective system was in place to reconcile policies sold to consumers with those paid for and placed on risk with underwriters;
- (2) failed to ensure any effective system was in place and operated to reconcile monies received from clients with policies that were placed on risk with underwriters; and
- (3) failed to ensure that a sufficiently qualified and experienced individual was in control of the finances of EML and/or inappropriately delegated accounting responsibilities to an individual within EML without putting in place suitable arrangements to monitor and oversee that individual.

5.2 Mr Davis has breached Statement of Principle 6 in that, as an approved person performing a significant influence function, he failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled function. Specifically, he:

- (1) failed to monitor, or ensure any effective system was in place to reconcile policies sold to consumers with those paid for and placed on risk with underwriters;
- (2) failed to monitor, or ensure any effective system was in place and operated to reconcile monies received from clients with policies that were placed on risk with underwriters;
- (3) failed to exercise sufficient day to day control over the financial systems of EML and/or inappropriately delegated effective control to an insufficiently qualified or experienced member of staff;
- (4) failed to effectively monitor the working capital/cash flow position of EML and/or inappropriately delegated such responsibility to an insufficiently

qualified or experienced member of staff; and

- (5) failed to monitor or inadequately monitor, unusual transactions or business practices (including a failure to monitor why ASU policies had not been placed on risk and EML mortgages subsequently having to meet claims in respect of policies not placed on risk).

## **6. ANALYSIS OF SANCTION**

- 6.1 The FSA's policy in relation to giving public statements of misconduct is set out in Chapter 12 of ENF. The FSA considers that a public statement may have particular value in enabling the FSA to pursue its regulatory objectives by highlighting the requirements and standards of conduct expected of approved persons and promoting public awareness of the standards of behaviour expected of approved persons.
- 6.2 The policy provides that in some cases where the FSA considers that formal disciplinary action is appropriate, public statements may be an alternative to financial penalties. In the light of the potentially serious financial hardship that Mr Davis may face in meeting a financial penalty, and the risk posed to his creditors with whom he had entered into a voluntary arrangement, the FSA decided instead to publish a statement of his misconduct. If a financial penalty had been imposed it is considered that it would have been in the region of £50,000.

## **7. DECISION MAKERS**

- 7.1 The decision which gave rise to the obligation to give this Final Notice was made by the Executive Decision Makers on behalf of the FSA.

## **8. IMPORTANT**

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

### **Confidentiality and publicity**

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

**FSA contacts**

- 8.3 For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) or Peter Wright (direct line: 020 7066 2866) of the Enforcement Division of the FSA.

Jonathan Phelan  
Head of Department – Retail 3  
Enforcement Division

For and on behalf of the FSA