
FINAL NOTICE

To: **Stuart Unwin**
Of: **34 High Street
2nd Floor
March
Cambridgeshire
PE15 9JR**

Individual reference: **SXU00004**

Date: **25 April 2012**

1. ACTION

- 1.1. The FSA gave Stuart Unwin (“Mr Unwin”) a Decision Notice dated 2 March 2011 which notified Mr Unwin that the FSA had decided to make an order against him, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), prohibiting him from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm (“the Prohibition Order”).
- 1.2. Mr Unwin referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (“the Tribunal”) on 30 March 2011 but, following settlement discussions with the

FSA, notified the Tribunal of the withdrawal of the reference on 19 April 2012. The Tribunal gave its consent on 20 April 2012.

- 1.3. Accordingly, for the reasons set out below, the FSA hereby makes an order prohibiting Mr Unwin from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm. This order takes effect from 25 April 2012. Significant influence functions include those of CF1 (Director), CF2 (Non-executive director), CF3 (Chief executive), CF4 (Partner), CF8 (Apportionment and oversight), CF10 (Compliance oversight) and CF11 (Money laundering reporting). The prohibition does not relate to CF30 (Customer function) and therefore an investment adviser role.
- 1.4. The FSA would be minded to revoke the Prohibition Order, on Mr Unwin's application, in the event that Mr Unwin is able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy his lack of competence and capability. When considering whether to grant an application to revoke or vary the Prohibition Order, the FSA will consider all relevant information available at the time of the application.

2. REASONS FOR THE ACTION

- 2.1. The FSA is taking this action because while an approved person performing controlled functions involving the exercise of significant influence at Unwin Financial Services Limited ("UFSL") from the period 3 January 2006 to 18 November 2008 ("the relevant period"), Stuart Unwin failed to meet minimum regulatory standards in terms of competence and capability. Specifically, Mr Unwin:

- (1) failed to ensure:
 - (a) that UFSL's systems and controls were sufficient to ensure all occupational pension transfers written by UFSL were identified and signed off by a pension transfer specialist; and
 - (b) the suitability of all occupational pension transfer advice given to UFSL's customers up to August 2007

despite being made aware by the FSA in August 2007 that there were deficiencies in UFSL's systems and controls and of the risk that unsuitable advice had been given to customers;

- (2) delegated compliance to an individual who Mr Unwin knew lacked experience, without him having a proper basis for considering that he was competent. This was in circumstances where that compliance officer would be responsible for, amongst other things, supervising an adviser who had been dismissed by a previous employer because of being connected with possible mortgage fraud, where Mr Unwin failed to retain sufficient oversight of what he had delegated and when UFSL had either inadequate or no external compliance support; and
- (3) failed to take reasonable steps to implement adequate and appropriate systems and controls to ensure the effective monitoring of UFSL's advisers and in particular its trainee advisers. As a result, UFSL:
 - (a) failed to ensure the suitability of occupational pension transfer advice to UFSL's customers; and
 - (b) was at an unacceptably high risk of being used for the purposes of financial crime, including mortgage fraud.

2.2. The FSA considers that Mr Unwin's failings were serious because they exposed UFSL's customers to a serious risk of receiving unsuitable occupational pension transfer advice. In addition, Mr Unwin's actions exposed UFSL to the risk of being used to facilitate financial crime, specifically mortgage fraud.

2.3. As a result of the nature and seriousness of the conduct outlined at paragraph 2.1 above, the FSA has concluded that Mr Unwin is not fit and proper to perform any significant influence functions in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional firms. Accordingly the FSA proposes to prohibit Mr Unwin from doing so.

2.4. This action supports the FSA's objectives of consumer protection and the reduction of financial crime.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

- 3.1. The relevant statutory provisions, regulatory guidance and policy relied upon are set out at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. UFSL was a financial services firm which conducted life, pensions, investment and mortgage business and was authorised by the FSA to carry out these activities from 3 January 2006 until 29 March 2010 (except UFSL's permission to advise on pension transfers/opt outs which ran from 3 January 2006 to 6 February 2009.)
- 4.2. UFSL was based in March, Cambridgeshire and had advisers in locations across the UK.
- 4.3. Between 3 January 2006 and 20 March 2009 Mr Unwin was approved by the FSA to perform the controlled functions of Controlled Function ("CF") 1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), and were responsible for insurance mediation. During the relevant period Mr Unwin was the only individual at the firm with responsibility for compliance and for apportionment and oversight.
- 4.4. Mr Unwin also held CF21 (Investment Adviser) and CF24 (Pension Transfer Specialist) from 3 January 2006 until 31 October 2007, and subsequently CF30 (Customer) from 1 November 2007 until 22 July 2009.

Mr Unwin's failure to comply with regulatory requirements in respect of advising on occupational pension transfers

Regulatory background

- 4.5. Defined benefit occupational pension schemes provide guaranteed incomes in retirement based on an employee's final salary and length of service. In contrast, the benefit from a money purchase personal pension is not guaranteed; it is linked to the

performance of the underlying investments. Customers who transfer from a defined benefit occupational scheme to a money purchase personal pension are therefore giving up a guaranteed level of income in retirement for an uncertain level of income.

- 4.6. Occupational pension transfers are complex, high risk transactions. Until 31 October 2007 the FSA specified the controlled function of pension transfer specialist (CF24). This required that an individual performing the role of a pension transfer specialist needed to have passed an appropriate examination. Since 1 November 2007, when CF24 was removed from the list of Controlled Functions specified by the FSA, if an individual who is not a pension transfer specialist gives a personal recommendation about a pension transfer or pension opt-out on a firm's behalf, the firm must ensure that the recommendation is checked by a pension transfer specialist (an individual appointed by a firm to check the suitability of a pension transfer or pension opt-out who has passed an appropriate examination).
- 4.7. Firms conducting occupational pension transfers are required to comply with the Conduct of Business Rules which form part of the FSA Handbook, extracts of which can be found at Annex A. Specifically, Until 31 October 2007 all defined benefit occupational pension transfers required a transfer value analysis system (“TVAS”) report to be carried out. A TVAS report set out the minimum investment yield required from a new personal pension scheme in order to match the benefits in the ceding scheme that were being given up. The purpose of the TVAS was to enable an assessment to be made on whether a pension transfer was likely to be suitable in the context of a customer’s attitude to risk and other personal and financial circumstances. Since 1 November 2007 firms have been required to compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits provided by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pensions scheme.

Occupational pension transfers

- 4.8. As the person responsible at UFSL for occupational pension transfers, Mr Unwin was responsible for establishing and maintaining effective systems and controls to ensure

UFSL's occupational pension transfers were conducted in accordance with regulatory requirements.

4.9. The FSA reviewed eight of the 14 occupational pension transfers conducted by UFSL during the relevant period. The FSA found that:

- (1) In two cases no TVAS calculation (or equivalent) was on file;
- (2) Only one of the eight files reviewed had evidence that it had been signed off by Mr Unwin as UFSL's pension transfer specialist. The sign off was given at least two months after the TVAS had been prepared for the customer. In the remaining seven cases there was no evidence that the advice had been signed off by Mr Unwin; and
- (3) Two files failed to show customers being informed that benefits associated with their existing occupational pension, for example death benefits and RPI increases, would be lost upon the transfer to a personal pension. The loss of death benefit was particularly important for one of the customers who had three young children.

Conclusion

4.10. The deficiencies outlined above demonstrate that Mr Unwin has failed to ensure that UFSL's occupational pension transfers were conducted in accordance with regulatory requirements. Mr Unwin failed to ensure that a TVAS (or equivalent) was always carried out before recommendations were made to customers. Mr Unwin also failed to ensure that a comparison was always carried out of the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme, before UFSL's customers were advised to transfer out of a defined benefits pension scheme.

Mr Unwin's failure adequately to act on concerns raised by the FSA

4.11. The FSA visited UFSL in March 2007 ("the March 2007 Visit"). The March 2007 Visit identified a number of concerns, in particular with UFSL's occupational pension transfer business. On 3 August 2007, the FSA wrote to Mr Unwin outlining its

concerns and the remedial action required. The FSA's concerns included that occupational pension transfers conducted by UFSL had not been properly identified as such in the new business register, and/or had not been signed off by UFSL's pension transfer specialist (who was Mr Unwin) and that two occupational pension transfers were being transacted on an "insistent customer" basis in circumstances where the advice to the client that the transaction should not proceed was unclear.

4.12. Consequently, the FSA advised Mr Unwin to:

- (1) review all occupational pension transfers conducted by UFSL since January 2006. The review was to take account of the comments made in the FSA's report to Mr Unwin dated 3 August 2007, including the comments on the insistent client process. The review was to assess the suitability of transactions, and if necessary, further client communication. The review was to be completed within two months of the date of the report letter and the findings reported to the FSA; and
- (2) consider how cases are recorded on UFSL's new business register, to ensure that accurate management information was collected.

Review of UFSL's occupational pension transfers

4.13. In November 2007, Mr Unwin told the FSA that he had "re-reviewed" five occupational pension transfers and telephoned all occupational pension transfer customers to confirm their understanding and acceptance of the occupational pension transfer they had entered into.

4.14. Mr Unwin stated that during the telephone calls he asked customers how they got on with the advisor, what the advisor did, the customers' understanding of the transaction entered into and whether the customer had any issues they wished to discuss.

4.15. In addition, Mr Unwin wrote to customers to confirm that they "*were happy with no issues of understanding.*"

4.16. The FSA has seen no evidence that Mr Unwin reviewed the occupational pension transfers conducted by UFSL to the extent necessary to make an informed assessment of the suitability of the recommendation; checking whether customers were happy

with the service provided is insufficient to determine that the transaction they entered into was suitable for their needs.

Identification and sign-off of occupational pension transfers

- 4.17. In November 2007, Mr Unwin told the FSA that he had implemented a new back office system, which flagged all occupational pension transfers. Mr Unwin explained that the system was checked to ensure that all occupational pension transfers were signed off by Mr Unwin, as UFSL's occupational pension transfer specialist. One occupational pension transfer was advised on by UFSL after the purported improvements to the identification and sign off of occupational pension transfers. In this case there was no comparison on file of the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits provided by a personal pension scheme or stakeholder pension scheme, the suitability letter also failed to address loss of benefits and risks of transfer and the advice had not been signed off by Mr Unwin.
- 4.18. The amended system required a member of UFSL's staff to enter the details of all transactions conducted by UFSL onto a spreadsheet. The transaction should have been classified according to the details on the application form.
- 4.19. However, during the March 2008 Visit, SF&CD noted that files were mis-labelled and that occupational pension transfers were not always correctly classified. In addition, during the November 2008 visit, the FSA identified another two occupational pension transfers which had not been signed off by Mr Unwin as UFSL's pension transfer specialist.

Conclusion

- 4.20. From March 2007 Mr Unwin was aware that the FSA's had concerns about how he identified and signed off occupational pension transfer business. The FSA communicated these concerns to Mr Unwin in writing in August 2007. However, when the FSA went back to visit UFSL in March 2008 and again in November 2008 it found that occupational pension transfers were still not being identified and signed off. The FSA considers that Mr Unwin's conduct with regard to his continuing failure to ensure that changes made to UFSL's systems and controls of occupational pension

transfers were effective and his failure adequately to review the occupational pension transfers conducted by UFSL until August 2007 demonstrate a serious lack of competence and capability.

Mr Unwin's failure to ensure the adequacy of UFSL's compliance function and monitoring

- 4.21. The FSA expects firms and their senior managers to ensure that an employee who is engaging in an activity with or for private customers has been assessed as competent and is appropriately monitored. Mr Unwin was responsible for ensuring the competence and supervision of his staff.
- 4.22. UFSL's compliance officer ("Individual A") was UFSL's compliance officer throughout the relevant period. When Mr Unwin appointed Individual A he knew he had no previous experience of either supervising staff or of compliance. Individual A did, however, attend a number of compliance courses run by a product provider and three FSA workshops.
- 4.23. Between January 2006 and March 2008 Individual A spent approximately 25% of his time on compliance matters, 25% of his time on supervising staff and 50% of his time on sales. From March 2008 he spent 100% of this time on compliance.
- 4.24. Mr Unwin delegated all of his responsibility for overseeing compliance at UFSL to Individual A without having reasonable grounds for believing that he was able to deal with the matters that had been delegated to him. In addition Mr Unwin did not check what Individual A was doing to fulfil his role as UFSL's compliance officer.

External compliance consultants

- 4.25. Mr Unwin employed external compliance consultants in December 2005, but terminated their employment in December 2007 because he was dissatisfied with the service provided. The FSA has seen no evidence to suggest that he employed alternative external compliance consultants after this date.

Monitoring of trainee advisers

- 4.26. UFSL's advisers were not monitored effectively. In particular, UFSL failed to:

- (1) check all of the mortgage business written by one of UFSL's mortgage advisers who was subject to 100% file check due to his dismissal from a previous employer for involvement in possible mortgage fraud. This resulted in a mortgage application being submitted to a lender, through UFSL, containing false information; and
- (2) check all of the business written by one of UFSL's trainee advisers who was subject to 100% file check. This resulted in her giving advice on occupational pension transfers, when she was not qualified to do so.

Conclusion

- 4.27. The FSA concludes that Mr Unwin's conduct in delegating UFSL's compliance function to an individual who he knew had no experience of supervising advisers or of compliance, in circumstances where Mr Unwin failed to check the standard of that individual's work on an on going basis when UFSL had either inadequate or no external compliance support and where that individual was responsible for supervising trainee advisers, including one who had been dismissed by a former employer because of an apparent connection with mortgage fraud, demonstrates a serious lack of competence and capability.

5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

- 5.1. Mr Unwin made written and oral representations on the contents of the Warning Notice that had previously been given to him. In addition Mr Unwin provided a bundle of material in support of his representations.
- 5.2. Mr Unwin put forward a variety of distinct submissions in his effort to challenge the allegations within the Warning Notice. Mr Unwin highlighted the systems and controls he had put in place at UFSL, whilst he also criticised the FSA for the standard of supervision of his firm. Additionally Mr Unwin also complained about his treatment by both the FSA's Small Firms and Contact Division (in Supervision) and the Enforcement Division. In the course of his representations Mr Unwin did accept that he had made errors when discharging his significant influence function at

UFSL. However Mr Unwin sought to diminish the significance of his admitted failings by stressing the fact that the FSA was also to blame as it should have given him more assistance.

5.3. Mr Unwin provided succinct submissions detailing his background in financial services and his running of UFSL. Mr Unwin explained that following a change in the arrangements between UFSL and the network that it had been associated with, it had been necessary for him to purchase an external compliance function from that network. Mr Unwin noted that having concluded that no real oversight was being undertaken by the network he had decided to dispense with their services. Mr Unwin explained that to address the lack of a compliance function at UFSL he had recruited an individual to act as the compliance officer whilst he also intended to plug the gap in oversight at UFSL by relying on the FSA. Mr Unwin described how he had gone “direct to the FSA for supervision” in the anticipation that the FSA was there to “help you to get to your goal”. Unfortunately in Mr Unwin’s estimation, the FSA had fallen far short of what he had hoped it would do. He noted, by way of example, that when looking into the provision of advice concerning occupational pensions the FSA had demonstrated that it did not know who was permitted provide such advice at UFSL. That being said Mr Unwin did accept that there had been issues about his own qualifications in this area as they had apparently lapsed without his having been aware.

5.4. Having highlighted what he had done on his own initiative to put in place appropriate systems and controls at UFSL, Mr Unwin then sought to explain how he had sought to heed the criticisms of UFSL made by the FSA. Mr Unwin noted that after the FSA expressed reservations about the compliance officer at UFSL he had then dismissed this individual. Mr Unwin questioned what more he could have done than to have followed the advice of the FSA and to have sacked this individual. Furthermore Mr Unwin also called into doubt the validity of the criticisms made by the FSA of his erstwhile compliance officer. Mr Unwin noted that the compliance officer had, subsequent to his dismissal from UFSL, received approval to act in the same function at another firm. Mr Unwin submitted that this demonstrated the reasonableness of his reliance upon this individual. Mr Unwin made a similar point by also explaining that

it was his understanding that the mortgage adviser who had submitted the fraudulent mortgage application was still working within financial services.

- 5.5. In addition to asserting that the reasonableness of his actions could be inferred from the fact that the compliance officer and mortgage adviser still worked in financial services, Mr Unwin also suggested that this demonstrated how hard it had been for him to second guess what it was that the FSA required of him. Mr Unwin complained that he should have received far more explicit and helpful guidance from those who were supervising him. Mr Unwin criticised the FSA saying that he had not been provided with sufficient support and guidance and instead he had simply received unconstructive criticisms about matters such as the inadequacy of his weekly meetings with managers whilst no remedial suggestions had been proffered.
- 5.6. Mr Unwin complained that the FSA had compounded this unhelpful approach by the intermittent nature of its supervision of UFSL. Mr Unwin noted that between the contacts in March 2007 and August 2007 he had heard nothing from the FSA. Mr Unwin submitted that this had left him with the mistaken impression that there was little of concern to the FSA at UFSL. Mr Unwin also indicated that after the FSA's visit in November 2008, having dismissed his compliance officer, he had then awaited further details about a 'scoping document' which were not forthcoming. Mr Unwin suggested that the delay between the visit and the next contact he had with the FSA, in April 2009, had a catastrophic impact on his firm. In the course of discussions with Mr Unwin it was established that he had misunderstood the nature of the 'scoping document'. Mr Unwin had gained the impression that this 'scoping document' would identify problems at his firm and provide him with advice about how these could be rectified. In fact the 'scoping document' which had been discussed with him was actually the scope of a proposed skilled persons report as provided for in section 166 of the Act. Nonetheless, despite his misunderstanding, Mr Unwin maintained that had the FSA supervisors done that which he understood they had said they were going to do then his "company would still be intact". Mr Unwin's frustration at the delay between November 2008 and April 2009 was exacerbated by the change in the FSA's approach to UFSL in this period. Mr Unwin had been left, in November 2008, with the impression that the FSA was both content with most aspects of the running of the firm and it was happy with his proposed next steps as it had not demurred from what

he had suggested he was going to do. Mr Unwin had then heard nothing further in connection with the November visit until he had received a letter informing him that the FSA had decided to appoint investigators to look into UFSL. Mr Unwin questioned whether it was fair to impugn his conduct, despite his admitted failings, when the standard of UFSL's supervision by the FSA was so poor. Mr Unwin submitted that his conduct should be judged against the FSA which he characterised as having been unhelpful, misleading and dilatory. Indeed Mr Unwin speculated that the FSA had only been spurred into action in April 2009 because an application had been submitted for his approval as a CF30 at another firm.

- 5.7. In addition to criticising the supervision of UFSL by the FSA Mr Unwin also complained about the treatment he had received from the Enforcement team who investigated his case. Mr Unwin was particularly concerned with the conduct of the Enforcement staff at his interview. Mr Unwin stated that the team had interviewed him over a considerable period of time and that they had been bullying towards him. He added that he had not been given access to a copy of the Enforcement Guide and he felt that had he been permitted to see this guide it may have helped him to assert his rights in the interview. However though he had highlighted the conduct of the Enforcement staff at his interview Mr Unwin deprecated the conduct of the team throughout the investigation process. By way of example Mr Unwin submitted that he had been unfairly cajoled into voluntarily varying the permission ('VVOP') of his firm. Mr Unwin explained that as a result of the VVOP he had made his staff redundant and he had then had to liquidate his company with outstanding liabilities, which had in turn impacted upon his ability to find work. Mr Unwin felt that he had been misled about the powers that the FSA had to require him to VVOP and that had he not been given a false impression he may have sought to challenge any attempt by the FSA to vary the permissions held by UFSL. Mr Unwin submitted that the unfair treatment he had received from the Enforcement team was a factor that should be taken into account when assessing the appropriateness of the action proposed in the Warning Notice.
- 5.8. Mr Unwin submitted that whilst he had made errors when undertaking his significant influence function at UFSL he felt that he had learnt a number of lessons from his experiences. Mr Unwin commented that he put his "hands up" as he accepted that he

had been “relying on other people” this he accepted was a failing as he should have had “tighter control”. Mr Unwin highlighted how with hindsight he realised how these problems had developed and how he may well deal differently in the future were he ever to be faced with the issues which arose at UFSL. Mr Unwin explained that he would engage an external compliance function in the future, if he held a significant influence function role at a firm similar to UFSL. Indeed he noted that whilst he would supervise the sales staff every other aspect of the systems and controls in a putative future firm would be contracted in.

- 5.9. In the light of the insight he had gained into the failings of UFSL Mr Unwin urged the FSA to reconsider the action proposed in the Warning Notice. Mr Unwin submitted that the FSA not only shared in the blame for the failures in the systems and controls at UFSL but also the FSA’s unfair treatment of him should be taken into account when assessing the appropriateness of the action. Furthermore Mr Unwin highlighted his continued attempts to co-operate with the FSA as evidence of his fitness and propriety.

Findings

- 5.10. Having considered Mr Unwin’s representations and finding that there was no valid challenge to the allegations contained within the Warning Notice the FSA finds that Mr Unwin is not a fit and proper person to carry out any significant influence function due to his lack of competence and capability. The FSA notes that Mr Unwin made clear that he was prepared to “hold [his] hands up” to the allegations within the Warning Notice because he now appreciated that he should have “had tighter control” and “done things differently”. Furthermore the FSA considers that though Mr Unwin had admitted his failings the FSA did not consider that he had demonstrated any real insight into the role of the regulator and what had gone wrong and nor had he demonstrated that he understood what a significant influence function entailed. The FSA considers that Mr Unwin’s criticisms of the FSA’s supervision of UFSL and the subsequent Enforcement investigation have no bearing on the FSA’s assessment of his fitness and propriety. To the extent that Mr Unwin was attempting to excuse his conduct by highlighting the interaction he had with the FSA’s Small Firms and Contact Division (in Supervision) and the Enforcement Division, the FSA rejects his

submissions. As the FSA finds that these matters were not relevant to a determination of Mr Unwin's competence and capability the FSA makes no findings about the validity, or otherwise, of the criticisms he has made.

- 5.11. As Mr Unwin did not refute the FSA's case, the FSA finds that Mr Unwin accepts that he failed to take steps sufficient to effectively address the risks and deficiencies in UFSL's systems and controls, which had been pointed out to Mr Unwin by the FSA. The FSA finds that this demonstrates a serious lack of competence and capability for someone who was performing CF1, CF8 and CF10 functions in his capacity as the director of UFSL. The FSA expects approved persons carrying out significant influence functions to address areas of concern brought to their attention in a timely and appropriate manner and the FSA finds that Mr Unwin failed to do this. The FSA notes that Mr Unwin criticised the FSA for failing to be more explicit about the risks and deficiencies which were identified at UFSL. However, and notwithstanding the fact that no findings were made about the conduct of the supervisors of UFSL or the enforcement investigation, the FSA rejects the implication that this might excuse Mr Unwin's conduct. The FSA considers that regardless of the strengths or weaknesses of the complaints which Mr Unwin has made of the supervisors of UFSL, he had responsibility to ensure the good running of UFSL. The FSA finds that he was alerted to the problems at the firm however he did not take adequate steps to address these concerns. The FSA finds that this demonstrates a lack of competence and capability.
- 5.12. Taking into account his admissions concerning his failings at UFSL the FSA also finds that Mr Unwin's conduct, when delegating UFSL's compliance function, demonstrates a serious lack of competence and capability, in his capacity as director of UFSL performing CF1, CF8 and CF10. Mr Unwin delegated the compliance function at UFSL to an individual who he knew lacked experience, and without Mr Unwin having sufficient grounds for believing that he was competent. This failing was compounded by the fact that Mr Unwin delegated UFSL's compliance function to this individual at a time when UFSL had either inadequate or no external compliance support.
- 5.13. As with Mr Unwin's criticisms of the guidance about risks and deficiencies given to UFSL by the supervisors, the FSA also finds that Mr Unwin's complaint about the

FSA's oversight of his compliance function to be of no bearing to an assessment of his competence and capability. The FSA considers that responsibility for the compliance function at UFSL rested with Mr Unwin and that his criticisms of the FSA do not affect this assessment. The FSA finds that it is of no bearing that Mr Unwin's former compliance officer has been approved elsewhere to undertake a compliance function. The FSA finds that there were clear failures at UFSL and that Mr Unwin was ultimately responsible for them.

- 5.14. Taking into account his representations, including his admissions, the FSA also finds that in his capacity as the director performing significant influence functions, Mr Unwin failed to ensure the effective monitoring of UFSL's advisers, and in particular its trainee advisers. As a consequence of these failings UFSL both failed to ensure the suitability of occupational pension transfer advice given to its customers; and was at an unacceptably high risk of being used for the purposes of financial crime. The FSA considers both of these failings to be serious. A failure to ensure the suitability of occupational pension transfer advice could have resulted in UFSL's customers suffering substantial financial loss as a result of these complex and high risk transactions. The FSA finds that as the responsibility, to ensure that UFSL's advisers and trainee advisers were appropriately monitored, rested with Mr Unwin he can not seek to rely on the perceived failings of the FSA, or the fact that one particular adviser is working in financial services elsewhere, to excuse his conduct.
- 5.15. The FSA also does not consider that Mr Unwin's criticisms of the Enforcement team are relevant. Mr Unwin highlighted concerns he had around his treatment at stages throughout the investigative process including at interview and when he applied for a VVOP which resulted in UFSL having to close. The FSA makes no findings as to the validity of these complaints but instead notes that this has no bearing on the assessment to be undertaken of Mr Unwin's competence and capability particularly in the light of his admitted failings. The FSA notes that Mr Unwin is entitled, regardless of the findings contained within this notice, to pursue his grievances through the FSA's complaints scheme.
- 5.16. The FSA finds that Mr Unwin failed to demonstrate that he understood the regulatory requirements placed upon someone in a significant influence function. Indeed the

FSA finds that Mr Unwin demonstrated a complete lack of insight into the regulatory system. The FSA notes that its supervision of firms such as UFSL is not designed to replace an effective compliance function and nor is it intended that a firm should rely on the FSA to provide oversight of the work of a firm's advisers. Furthermore the FSA finds that Mr Unwin had failed to understand how the difficulties had arisen at the firm and how he should have tackled these problems. The FSA finds that far from demonstrating that he had benefitted from hindsight Mr Unwin had instead betrayed in his representations his inability to undertake a significant influence function and his lack of competence and capability. Though the FSA does not dispute that Mr Unwin had attempted to co-operate with the FSA, he had still failed to comprehend what was required of him. The FSA finds that UFSL's many serious failings required more than a reactive response from Mr Unwin as it was he who bore responsibility for the firm. The FSA notes that Mr Unwin commented both that he would in the future rely on external compliance providers whilst he also agreed that he had not retained a tight enough control on the systems and control at UFSL.

Conclusions

- 5.17. The FSA concludes that Mr Unwin's failure to ensure that UFSL complied with the relevant requirements and standards of the regulatory system demonstrates a serious lack of competence and capability in his capacity as director of UFSL performing CF1, CF8 and CF10.
- 5.18. The FSA therefore concludes that as Mr Unwin poses a serious risk to consumers and to the FSA's statutory objectives of protecting consumers and the reduction of financial crime he should be prohibited from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.
- 5.19. The FSA would be minded to revoke the Prohibition Order, on Mr Unwin's application, in the event that Mr Unwin is able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy his lack of competence and capability. When considering whether to grant an application to revoke or vary the order, the FSA will consider all relevant information available at the time of the application.

5.20. An analysis of this sanction is provided below.

6. SANCTION

6.1. Having regard to the facts and matters described above, the FSA has considered whether Mr Unwin is a fit and proper person to perform functions in relation to regulated activities. In doing so, the FSA has considered the relevant statutory provisions, regulatory requirements and guidance set out in Annex A.

6.2. By virtue of Mr Unwin's misconduct the FSA has concluded that he lacks fitness and propriety because he lacks the requisite competence and capability for individuals performing controlled functions involving the exercise of significant influence, and that, if he performed any such functions he would pose a risk to consumers. The FSA therefore considers that he should be prohibited from carrying out any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.

6.3. For the avoidance of doubt significant influence functions comprise any of the controlled functions 1 to 12B and 28 and 29 in the table of controlled functions, which is at SUP 10.4.5R.

7. DECISION MAKER

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

8. IMPORTANT

8.1. This Final Notice is given to Mr Unwin under, and in accordance with section 390 of the Act.

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 Mr Unwin or prejudicial to the interests of consumers.

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

FSA contacts

- 8.4. For more information concerning this matter generally, contact Kate Tuckley (direct telephone line: 020 7066 7086/fax: 020 7066 7087) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender

FSA Enforcement and Financial Crime Division

Annex A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Introduction

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; financial stability; public awareness; the protection of consumers; and the reduction of financial crime.

Prohibition

- 1.2. Under section 56 of the Act, if it appears to the FSA that an individual is 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, the FSA may make a prohibition order.
- 1.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:
- (1) a specified function, any function falling within a specified description, or any function (section 56(2)); and
 - (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

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

- 2.1. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities. The FSA may exercise this power where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG").

- 2.2. 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.
- 2.3. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) 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 FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.4. EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order, including serious lack of competence.

3. Fit and Proper Test for Approved Persons

- 3.1. 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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 3.2. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to prohibit an individual in accordance with EG 9.8.
- 3.3. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's competence and capability.
- 3.4. In determining a person's competence and capability FIT 2.2.1 provides that the FSA will have regard to matters including, but not limited to:
- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).

4. Conduct of Business rules

- 4.1. From 3 January 2006 until 31 October 2007 Rule 5.3.21R of the Conduct of Business Sourcebook ("COB"), which formed part of the FSA Handbook, stated that:

if a personal recommendation about a pension transfer or pension opt-out is to be made on a firm's behalf by an individual who is not one of its pension transfer specialists, the firm must have established procedures for checking:

- (1) the individual's compliance with the firm's procedures;
- (2) the correctness of the application of the transfer value analysis system, where applicable; and
- (3) the merits of the proposed transaction and the suitability of the recommendation;

and any such recommendation must be assessed by one of the firm's designated pension transfer specialists to ensure the procedures have been followed.

4.2. Since 1 November 2007 Rule 19.1.1R of the Conduct of Business Sourcebook (“COBS”), which forms part of the FSA Handbook, states that:

if an individual who is not a pension transfer specialist gives a personal recommendation about a pension transfer or pension opt-out on a firm’s behalf, the firm must ensure that the recommendation is checked by a pension transfer specialist.

4.3. Between 3 January 2006 and 31 October 2007 Rule 5.3.22 R of COB stated that:

(1) a firm must ensure that a transfer value analysis is carried out in accordance with COB 6.6.87 R - COB 6.6.93 R (Projections) before it makes any recommendation to a customer to transfer out of a defined benefits pension scheme.

4.4. From 1 November 2007 Rule 19.1.2 R of COBS states that a firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme.

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.