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## FINAL NOTICE

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**To:** **Vroni Mavis O'Brien**

**IRN:** **VMO01000**

**Address** **26 Northanger Close  
Alton  
Hampshire  
GU34 2BH**

**Dated:** **17 December 2015**

### **ACTION**

1. For the reasons set out below, the Authority hereby:
  - (a) imposes on Ms O'Brien, pursuant to section 66 of the Act, a financial penalty of £20,000; and
  - (b) makes an order against Ms O'Brien, pursuant to section 56 of the Act, prohibiting her from performing any significant influence functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. This order takes effect from 17 December 2015.

### **SUMMARY OF REASONS**

2. The Authority gives this Final Notice because during the Relevant Period, Ms O'Brien, while holding approvals for the CF1 (Director) and CF3 (Chief Executive) functions in relation to Joint Aviation:
  - (a) breached Statement of Principle 2, by failing to act with due skill, care and diligence while carrying out her controlled functions at Joint Aviation by:

- (i) creating and using inaccurate client money calculations for Joint Aviation, when she did not understand the relevant rules and requirements in relation to those calculations;
    - (ii) failing to use information available to her, including her own calculations of commission earned by Joint Aviation on premiums received, to ensure that Joint Aviation was only transferring money from one of its client premium accounts to Joint Aviation's business account that was properly due to it in commission earned, resulting in Joint Aviation improperly applying for Joint Aviation's use, insurance premiums paid by Joint Aviation's clients to Joint Aviation for insurance cover;
    - (iii) continuing, even after she was made aware of a client money shortfall at Joint Aviation on 23 February 2012, to transfer more money than was due to it in commission earned from one of Joint Aviation's client premium accounts to Joint Aviation's business account; and
    - (iv) failing to take any effective steps to understand the responsibilities associated with holding approvals for the CF1 (Director) and CF3 (Chief Executive) functions in relation to Joint Aviation.
  - (b) breached Statement of Principle 7, by failing to ensure that Joint Aviation complied with the relevant standards and requirements of the regulatory system in relation to the handling of client money, by:
    - (i) causing Joint Aviation to create and maintain inaccurate client money calculations, by (amongst other things) including a debtor figure that did not constitute client money;
    - (ii) causing Joint Aviation to transfer, from one of its client premium accounts to Joint Aviation's business account, money which was not properly due to it as commission earned, resulting in Joint Aviation misapplying client premiums;
    - (iii) causing Joint Aviation to breach specific rules in CASS. Specifically:
      - (a) CASS 5.5.3R, in not segregating client money from the firm's money, by using Joint Aviation's Euro client account to pay Joint Aviation's business expenses; and
      - (b) CASS 5.5.9R, in holding money other than client money in Joint Aviation's Euro client account, by receiving money from Firm B (including that other firm's client premiums) into Joint Aviation's Euro client account.
3. The Authority has concluded that Ms O'Brien fails to meet the criteria for fitness and propriety set out in FIT. Specifically, the Authority considers that Ms O'Brien is not a fit and proper person in terms of her competence and capability to perform any significant influence functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Accordingly the Authority has imposed the Prohibition Order on Ms O'Brien.

## **DEFINITIONS**

The following definitions are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“CASS” means the Client Assets section of the Handbook;

“DEPP” means the Decision Procedure and Penalties Manual section of the Handbook;

“EG” means the Enforcement Guide section of the Handbook;

“Firm A” means the company that purchased Joint Aviation’s client base and insurance book on 9 July 2012;

“Firm B” means a separate business based in Spain and not part of Joint Aviation;

“FIT” means the Fit and Proper Test for Approved Persons section of the Handbook;

“Handbook” means the Authority’s Handbook of rules and guidance;

“Joint Aviation” means Joint Aviation Services Limited;

“Joint Aviation’s business account” means the Sterling business bank account of Joint Aviation;

“Joint Aviation’s Euro client account” means the Euro client premium bank account of Joint Aviation;

“Joint Aviation’s Sterling client account” means the Sterling client premium bank account of Joint Aviation;

“the Relevant Period” means 1 April 2011 to 30 June 2012;

“the Prohibition Order” means an order, pursuant to section 56 of the Act, prohibiting Ms O’Brien from performing any significant influence functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm;

“Statement of Principle” means one of the Statements of Principle and Code of Practice for Approved Persons in the Handbook; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

4. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

## **FACTS AND MATTERS**

### *Background*

5. On 7 March 2007, Ms O'Brien was approved to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at Joint Aviation, and was also approved as the individual responsible for insurance mediation at Joint Aviation. During the Relevant Period Ms O'Brien was responsible for the running of Joint Aviation's accounts including dealing with client money reconciliations.
6. On 23 February 2012, Joint Aviation's accountants informed Joint Aviation that a client money shortfall existed. Prior to 23 February 2012, Joint Aviation incorrectly included a debtor figure in its client money calculations entitled 'JAS Spain'. Joint Aviation had no basis for considering that debt to be client money.
7. On 7 March 2012, Joint Aviation's accountants notified the Authority of the client money shortfall at Joint Aviation.
8. As at June 2012, Joint Aviation owed £150,253.81 to insurers in relation to net outstanding insurance premiums for policies arranged with those insurers. Joint Aviation did not have the necessary client funds to pay those liabilities, in large part as a result of the misapplication of client premiums. Joint Aviation did not have risk transfer agreements in place with all insurers for whom it had received premiums.
9. On 6 July 2012, following a meeting with the Authority, Joint Aviation ceased trading and varied its permission to add a requirement that it cease conducting regulated activities with immediate effect.
10. On 9 July 2012, Joint Aviation's client base and insurance book were sold to Firm A. Firm A assumed Joint Aviation's liabilities to insurers arising from the client money shortfall. As a result of this sale, Joint Aviation rectified the client money shortfall and no customers or insurers suffered a loss.
11. On 4 January 2013, Joint Aviation's permission was cancelled and Ms O'Brien's approval to perform controlled functions lapsed upon that cancellation. Ms O'Brien does not currently hold approval for any controlled functions.

### *Misapplication of insurance premiums*

#### *Sterling accounts*

12. During the Relevant Period, Joint Aviation received £2,690,291.63 of client premiums into Joint Aviation's Sterling client account. Joint Aviation earned £460,433.14 commission on those premiums received. Also during the Relevant Period, Joint Aviation transferred £538,797 from Joint Aviation's Sterling client account to Joint Aviation's business account.
13. Ms O'Brien was the sole person controlling Joint Aviation's bank accounts and was the CF1 (Director) responsible for client money reconciliations during the Relevant Period. Ms O'Brien caused Joint Aviation to transfer £78,363.86 more from Joint Aviation's Sterling client account to Joint Aviation's business account than was due to Joint Aviation in commission earned on premiums received. The insurance premiums that were misapplied were then used to pay the business expenses of Joint Aviation. Ms O'Brien was the sole person responsible for deciding to transfer money between Joint Aviation's accounts.
14. Even after Ms O'Brien was made aware of a client money shortfall at Joint Aviation on 23 February 2012, she continued to transfer more money than was due to Joint

Aviation in commission earned from Joint Aviation's Sterling client account to Joint Aviation's business account.

*Euro account*

15. During the Relevant Period, Joint Aviation received €72,986.85 of client premiums into Joint Aviation's Euro client account. Of that sum, Joint Aviation earned €11,708.88 commission on the premiums received into Joint Aviation's Euro client account, which commission remained in Joint Aviation's Euro client account.
16. In addition to those premiums received into Joint Aviation's Euro client account, €270,200 was also transferred to Joint Aviation from Firm B, including client premiums of Firm B, into Joint Aviation's Euro client account. That money did not relate to clients of Joint Aviation, and was not for the purpose of arranging insurance policies for Joint Aviation's clients.
17. Ms O'Brien, as the sole controller of Joint Aviation's accounts, caused Joint Aviation to transfer €127,500 from Joint Aviation's Euro client account to pay Joint Aviation's business expenses during the Relevant Period, being €115,791.12 more than was due to Joint Aviation in commission earned on premiums received. Those payments referred to above in this paragraph were in fact comprised partly of Joint Aviation client premiums and partly of funds from Firm B.

**FAILINGS**

*Statement of Principle 2: Ms O'Brien failed to act with due skill, care and diligence while carrying out her controlled functions at Joint Aviation*

18. Ms O'Brien, while being approved by the Authority to perform the CF1 (Director) and CF3 (Chief Executive) functions, breached Statement of Principle 2, by failing to act with due skill, care and diligence while carrying out her controlled functions at Joint Aviation by:
  - (a) creating and using inaccurate client money calculations for Joint Aviation, when she did not understand the relevant rules and requirements in relation to those calculations;
  - (b) failing to use information available to her, including her own calculations of commission earned by Joint Aviation on premiums received, to ensure that Joint Aviation was only transferring money from one of its client premium accounts to Joint Aviation's business account that was properly due to it in commission earned, resulting in Joint Aviation improperly retaining for Joint Aviation's use, insurance premiums paid by Joint Aviation's clients to Joint Aviation for insurance cover;
  - (c) continuing, even after she was made aware of a client money shortfall at Joint Aviation on 23 February 2012, to transfer more money than was due to Joint Aviation in commission earned from one of Joint Aviation's client premium accounts to Joint Aviation's business account; and
  - (d) failing to take any effective steps to understand the responsibilities associated with holding approvals for the CF1 (Director) and CF3 (Chief Executive) functions in relation to Joint Aviation.

*Statement of Principle 7: Ms O'Brien failed, in her capacity as director, to take reasonable steps to ensure that Joint Aviation complied with the relevant rules and requirements of the regulatory system*

19. Ms O'Brien, while being approved by the Authority to perform CF1 (Director) and CF3 (Chief Executive) functions, breached Statement of Principle 7 by failing to take reasonable steps to ensure that Joint Aviation complied with the relevant rules and requirements of the regulatory system in relation to the handling of client money by:
  - (a) causing Joint Aviation to create and maintain inaccurate client money calculations, by (amongst other things) including a debtor figure that did not constitute client money;
  - (b) causing Joint Aviation to transfer, from one of its client premium accounts to Joint Aviation's business account, money which was not properly due to it as commission earned, resulting in Joint Aviation misapplying client premiums; and
  - (c) causing Joint Aviation to breach specific rules in CASS. Specifically:
    - i. CASS 5.5.3R, in not segregating client money from the firm's money, by using Joint Aviation's Euro client account to pay Joint Aviation's business expenses; and
    - ii. CASS 5.5.9R, in holding money other than client money in Joint Aviation's Euro client account, by receiving money from Firm B (including that other firm's client premiums) into Joint Aviation's Euro client account.

*Fitness and Propriety*

20. As a result of Ms O'Brien's failings as set out above, the Authority considers that Ms O'Brien fails to meet the criteria for fitness and propriety set out in FIT. Specifically, the Authority considers that Ms O'Brien is not a fit and proper person because her conduct has displayed a serious lack of competence and capability. Further, Ms O'Brien's serious lack of competence and capability poses a risk to consumers and to confidence in the UK financial system.

**SANCTION**

**Financial penalty**

21. The Authority considers it appropriate to impose a financial penalty on Ms O'Brien for her breaches of Statements of Principle 2 and 7.
22. The financial penalty is determined by a five-step framework, set out in DEPP, having regard to all the circumstances of the case. The penalty therefore consists of the following:

*Step 1 – disgorgement*

23. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
24. Ms O'Brien has received no direct financial benefit from her breaches and so the Step 1 figure is nil.

Step 2 – the seriousness of the breach

25. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received from the employment in connection with which the breach occurred, and for the period of the breach.
26. During the Relevant Period Ms O'Brien's relevant income was £75,238.
27. In deciding on the percentage of relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals there are the following five levels:
  - Level 1 – 0%
  - Level 2 – 10%
  - Level 3 – 20%
  - Level 4 – 30%
  - Level 5 – 40%
28. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.
29. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:
  - (a) little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly;
  - (b) there was no or little loss or risk of loss to consumers, investors or other market users individually and in general; and
  - (d) the breach was committed negligently or inadvertently.
30. Applying the relevant factors above to Ms O'Brien's failings, the Authority considers those failings to be a Level 3 breach for the purposes of Step 2, in that Ms O'Brien acted with a serious lack of competence, because:
  - (a) a risk of loss to consumers arose because Joint Aviation misapplied insurance premiums and some consumers were not covered by risk transfer agreements. However no consumers suffered any actual loss, as when Joint Aviation was sold the purchaser assumed responsibility for the total client money shortfall;
  - (b) neither Joint Aviation nor Ms O'Brien made a profit from her breaches, save as to the continuation of the business of Joint Aviation; and
  - (c) Ms O'Brien did not intend her actions to cause the breaches and believed at all times that the client money shortfall would be made good.

31. However, Ms O'Brien's failings are serious, given that Ms O'Brien was the sole person in control of client money at Joint Aviation, and her acts and failings, and the consequences of those acts and failings, posed a serious risk to consumers.
32. Taking all of these factors into account, the Authority considers the seriousness of the breach to be Level 3 and so the Step 2 figure is 20% of £75,238. The penalty figure after Step 2 is therefore £15,047.

*Step 3 – mitigating and aggravating factors*

33. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged in accordance with Step 1, to take into account factors which aggravate or mitigate the breach.
34. The Authority takes into account that Ms O'Brien derived some assurance from client money audits which had been carried out by independent accountants for periods prior to the Relevant Period, and that she felt under pressure to make payments from Joint Aviation's client premium accounts. These factors mitigate her breaches of Statements of Principle 2 and 7.
35. However, the Authority considers her breaches are aggravated by the fact she admitted that, during the Relevant Period, she became aware she was causing payments to be made from Joint Aviation's client premium accounts which should not be made, demonstrating a serious lack of judgement and capability.
36. The penalty figure after Step 3 therefore remains £15,047.

*Step 4 – adjustment for deterrence*

37. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
38. DEPP 6.5B.4G(1) lists circumstances where the Authority may increase the penalty. In this instance, the Authority considers that the absolute value of the penalty is too small in relation to the breach to meet its objective of credible deterrence.
39. Accordingly, the Authority considers it is appropriate to increase the penalty for the purposes of credible deterrence because:
  - (a) the failings by Ms O'Brien relate to the misapplication of client premiums, her serious lack of competence in her role as an approved person (holding a significant influence position) and her prolonged failure to address this;
  - (b) despite her senior role at Joint Aviation, Ms O'Brien failed to make any changes to her conduct despite being made aware of a client money shortfall. The Authority considers that this is not consistent with the conduct expected of persons holding significant influence functions;
  - (c) if the Authority set the penalty at such a low level, it would not deter others from committing similar breaches; and
  - (d) Ms O'Brien's actions caused a risk of loss to both consumers and insurers.
40. The Authority considers an increase to the figure reached at Step 3 is appropriate, to set a penalty figure after step 4 of £20,000.

### Step 5 – settlement discount

41. This is not applicable because Ms O’Brien agreed to settle this matter after proceedings before the Tribunal had been commenced (i.e. Stage 4). The Step 5 figure remains £20,000.

### **Prohibition**

42. The Authority considers that Ms O’Brien is not a fit and proper person in terms of her competence and capability and therefore poses a risk to consumers and the integrity of the financial system. The Authority therefore considers it appropriate and proportionate to prohibit Ms O’Brien from performing any significant influence functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

### **PROCEDURAL MATTERS**

#### **Decision Maker**

43. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.

44. This Final Notice is given under, and in accordance with, section 390 of the Act.

#### **Manner of and time for payment**

45. The financial penalty must be paid in full by Ms O’Brien to the Authority as follows:
- (a) £350 per month being payable for the first 12 months immediately following the date of this Final Notice, and thereafter;
  - (b) £550 per month being payable for the 12 months following immediately after that; and thereafter;
  - (c) £766.66 per month being payable for the 11 months following immediately after that; and thereafter;
  - (d) one payment of £766.74 being payable within one month of the final payment under paragraph 44(c) above falling due.

#### **If the financial penalty is not paid**

46. If all or any of the financial penalty is outstanding on the day after the due date(s) for payment, the Authority may recover the financial penalty in full (or the outstanding amount) as a debt owed by Ms O’Brien and due to the Authority.

#### **Publicity**

47. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of the information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such a manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
48. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contact**

49. For more information concerning this matter generally, Ms O'Brien should contact Dilip Vekariya at the Authority (direct line: 0207 066 5520).

**Bill Sillett**  
**Enforcement and Market Oversight Division**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority. The Authority's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
2. The Authority has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

### **RELEVANT HANDBOOK PROVISIONS**

#### **Client Assets (CASS)**

4. The section of the Authority's Handbook entitled CASS sets out the rules and guidance in relation to the handling of client money and assets by firms. CASS 5 sets out the specific rules and guidance for insurance intermediaries.
5. CASS 5.5.3R requires a firm to hold client money separate from the firm's money.
6. CASS 5.5.9R states that a firm must not hold money other than client money in a client bank account, unless it is:
  - (1) a minimum sum required to open the account, or to keep it open; or
  - (2) money temporarily in the account in accordance with CASS 5.5.16R, or
  - (3) interest credited to the account which exceeds the amount due to clients as interest and has not yet been withdrawn by the firm.

#### **Fit and Proper Test for Approved Persons (FIT)**

7. The section of the Authority's Handbook entitled FIT sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
8. FIT 1.3 provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.
9. In determining a person's competence and capability, FIT 2.2 provides that the Authority will have regard to all relevant circumstances, including, but not limited

to, those set out in FIT 2.2.1G. FIT 2.2.1G includes whether a person has demonstrated by experience that he is suitable for a controlled function.

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

10. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
11. APER 2.1.2P sets out Statement of Principle 2 which, at the relevant time, stated that an approved person must act with due skill, care and diligence in carrying out his controlled function.
12. APER 2.1.2P sets out Statement of Principle 7 which, at the relevant time, stated 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 complies with the relevant requirements and standards of the regulatory system.
13. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
14. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
15. APER 4.2 sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 2. An example of such conduct is:
  - (a) failing to provide adequate control over client's assets (4.2.11E).
16. APER 4.7 sets out examples of behaviours which the Authority considers does not comply with Statement of Principle 7. Examples of such conduct are:
  - (a) 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 the regulated activities of the firm in question (APER 4.7.3E); and
  - (b) failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system of the firm may have arisen (APER 4.7.5E).

### **OTHER RELEVANT REGULATORY PROVISIONS**

#### **The Authority's policy on the imposition of financial penalties**

17. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook.

18. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
19. The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to take action for a financial penalty, which include the following:-
  - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.
  - (b) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority, the degree of co-operation the person showed during the investigation of the breach, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority.
  - (c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.
20. DEPP 6.5B sets out the five steps for calculation of financial penalties to be imposed on individuals.
21. DEPP 6.5D sets out the Authority's approach to serious financial hardship.
22. DEPP 6.5D.1 states that the Authority may consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of the enforcement action serious financial hardship.
23. DEPP 6.5D.1(2)(a) sets out that the Authority will only consider a reduction if the individual provides verifiable evidence that payment of the penalty will cause them serious financial hardship.
24. DEPP 6.5D.2(1) states that the Authority would consider an individual's ability to pay the penalty over a reasonable period. The Authority's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty.

### **The Authority's policy for exercising its power to make a prohibition order**

25. The Authority's approach to exercising its power to make prohibition orders is set out in Chapter 9 of EG.
26. EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to work towards achieving its statutory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either

to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

27. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
28. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
29. EG 9.17 provides guidance on the Authority's approach to making prohibition orders against an individual other than an individual referred to in EG 9.8 to 9.14 (approved persons). The Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.
30. When considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate the factors set out in EG 9.9.
31. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
  - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);
  - (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle;
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness; and
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
32. EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order including the use of its power to impose a financial penalty.