
FINAL NOTICE

To: Wayne Anthony Redgrave

IRN: WXR01076

DOB: February 1963

Date: 1 February 2016

ACTION

1. For the reasons given in this notice, the Authority has hereby imposed on Wayne Anthony Redgrave a financial penalty of £38,600.
2. Mr Redgrave agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £55,200.

SUMMARY OF REASONS

3. Mr Redgrave is an experienced broker and was a director, controller and the principal decision maker at Bar Professions Limited ("Bar"). He was personally responsible during the period from 14 March 2013 to 23 September 2013 ("the Relevant Period") for Bar's negligent failure to conduct adequate due diligence concerning insurance arrangements for policyholders and for sending a letter to over 1,300 of Bar's customers inducing them to enter into contracts of insurance on the basis of materially inaccurate and misleading information.
4. Bar, a specialist London based insurance broker, operated two binding authority agreements ("BAAs"), which were designed to provide compulsory professional indemnity insurance for the 2012/13 and 2013/14 underwriting years for approximately 1,300 solicitors across the UK. Without valid professional indemnity insurance, those firms would have been unable to practise.
5. The two BAAs were written through the same London based managing general agent, Aderia UK Limited ("Aderia"), but were insured, at different times, with

two European insurers, Balva Insurance Company AAS ("Balva") and Berliner Versicherung Aktiengesellschaft ("Berliner").

6. In April 2013, Balva's operating licence was suspended by its home state regulator, thereby exposing UK policy holders, including those solicitors insured through the first of the two BAAs with Aderia, to the risk that no valid insurance was in place.
7. In an attempt to put in place replacement insurance cover for policy holders, Bar, acting through Mr Redgrave, entered into a second BAA with Aderia. This BAA purported to give Bar authority to write solicitors' professional indemnity insurance on behalf of Berliner up to an annual premium income limit of £50 million.
8. At the time that Bar entered into the second BAA with Aderia, Mr Redgrave had concerns about a number of matters, including the level of the premium income limit available. Mr Redgrave also had reasonable grounds to question the position, standing and authority of Mr Shay Reches ("Mr Reches"), the individual who controlled and was the principal decision maker at Aderia, but was not approved by the Authority.
9. These grounds for concern should have caused Mr Redgrave to scrutinise more carefully the nature of Bar's business relationship with Mr Reches, Aderia and Berliner and to exercise greater due diligence concerning the arrangement. Instead, between late May and early June 2013, Mr Redgrave sent a letter to each of Bar's solicitor customers, numbering over 1,300, which stated that "alternative arrangements" had been made with Berliner and inviting them to accept replacement insurance on the basis set out in the letter.
10. Over 900 solicitors accepted the replacement cover on those terms. The letter, which was drafted and signed by Mr Redgrave, was materially inaccurate and misleading in that the underlying managing general agency agreement ("MGA Agreement") was neither signed nor effective at the time the letter was sent and the premium income limit (€5 million), ultimately agreed by Berliner, would have been insufficient to provide the cover offered in the letter.
11. The managing general agency agreement between Berliner and Aderia ("the Berliner MGA Agreement") was finalised and signed some six weeks after the letter was sent and was annulled on 23 September 2013. As a consequence, over 900 solicitors, originally insured through the second BAA, were required to seek new compulsory professional indemnity insurance from different providers or cease practising.
12. During the Relevant Period, Mr Redgrave breached Statement of Principle 6, in that he did not exercise due skill, care and diligence by failing to ensure that Bar, prior to sending the letter, had:
 - a) carried out sufficient and adequate due diligence to ensure that the Berliner MGA Agreement, underlying the second BAA, was in place between Berliner and Aderia, and there was a sufficient premium income limit to meet the proposed cover, when he had reason to doubt that this was the case;
 - b) taken reasonable care to ensure that the advice to solicitor customers to cancel their current policies with Balva and take out the cover with Berliner was suitable, in breach of ICOBS 5.3.1R; and

- c) communicated information to Bar's customers in a way which was clear, fair and not misleading.
13. Regulatory action in relation to this matter underlines the need for authorised firms and approved persons in the distribution chain to ensure that adequate steps are taken to satisfy themselves that robust and effective arrangements are in place to mitigate risks to customers. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
14. This action recognises that failure by one or more firms to comply with regulatory requirements that safeguard consumers and/or protect market integrity can distort competition. Tackling conduct failures, such as those detailed in this Final Notice, in order to ensure firms act with integrity, implement appropriate systems and controls, and arrange adequate protection for client assets, therefore supports the Authority's statutory objective to promote effective competition in the interests of consumers.

DEFINITIONS

15. The definitions below are used in this Final Notice.

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

"Aderia" means Aderia UK Limited, now known as II&B UK Limited and previously known as JCM Insurance Brokers Limited and JCM Brokers Ltd.

"Apro" means Apro Management Limited, Bar's AR.

"AR" means appointed representative.

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

"BAA" means a binding authority agreement, an agreement whereby an insurer (or its MGA) delegates underwriting authority to another party known as the Coverholder (often an insurance broker) which will act on behalf of the insurer to the extent permitted by the agreement, which frames the responsibilities, entitlements and obligations of the parties.

"the First BAA" means a BAA between Aderia and Bar signed on 20 February 2013 governing the marketing and sale of Solicitors' PII policies underwritten by Balva.

"the Second BAA" means a BAA between Aderia and Bar signed on 17 May 2013 purportedly governing the marketing and sale of Solicitors' PII policies underwritten by Berliner.

"Balva" means Balva Insurance Company AAS, a Latvian insurer and a Passported Firm.

"Bar" means Bar Professions Limited, a UK-based Coverholder.

"Berliner" means Berliner Versicherung Aktiengesellschaft, a German insurer and a Passported Firm.

"the Berliner MGA Agreement" means the MGA Agreement, which was signed between Berliner and Aderia on 15 July 2013, and took effect retrospectively from 1 June 2013.

"Coverholder" means a company (often an insurance broker) authorised to enter into contracts of insurance, on behalf of an insurer in accordance with the terms of a BAA.

"DEPP" means the Authority's Decision Procedure and Penalties Manual.

"EG" means the Enforcement Guide.

"the FCMC" means Financial and Capital Market Commission, the Latvian regulatory authority, also known as Finanšu un Kapitāla Tirgus Komisija (the FKTK).

"financial promotion" means an invitation or inducement to engage in investment activity that is communicated in an authorised firm's course of business.

"ICOBS" means Insurance Conduct of Business Sourcebook.

"MGA" means a managing general agent, an insurance intermediary which has contractual authority from one or more insurers to provide underwriting services on their behalf.

"MGA Agreement" means a contractual agreement giving an MGA contractual authority from one or more insurers to provide underwriting services, including negotiating and entering into binding authorities with Coverholders for the sale and fulfilment of policies, on behalf of the insurers.

"Mr Reches" or "Shay Reches" means Shay Jacob Reches.

"Mr Redgrave" means Wayne Anthony Redgrave.

"the Offer Letter" means the letter sent by Apro in late May/early June 2013 to most of Bar's and Apro's Solicitor Customers or the brokers who introduced those customers to Bar.

"Passported Firm" means a European Economic Area firm exercising its right to conduct activities and services regulated under EU legislation in the UK on the basis of its authorisation in its European Economic Area home state.

"PII" means professional indemnity insurance

"Relevant Period" means the period from 14 March 2013 to 23 September 2013.

"the renewal cover" means the policy which was intended to automatically renew for the 2013/2014 underwriting year.

"the replacement cover" means the new policy, which was intended to be incepted on 1 June 2013 to replace the previous cover for the 2012/13 underwriting year.

"RPPD" means the Regulatory Guide in the FCA Handbook named The Responsibilities of Providers and Distributors for the Fair Treatment of Customers.

“Solicitor Customers” means Bar’s solicitor customers, numbering approximately 1,300.

“Solicitors’ PII” means professional indemnity insurance provided to solicitors.

“Statement of Principle” means one of the Authority’s Statements of Principle and Codes of Practice for Approved Persons.

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

FACTS AND MATTERS

Background

16. Bar was a London based specialist insurance broker. Its principle business was as a Coverholder, authorised under the Act to undertake general insurance mediation activities. With the authority, or purported authority, of insurers (Balva and Berliner), and through the BAAs it held with their MGA (Aderia), Bar entered into contracts of insurance, predominantly PII for solicitors in England and Wales. Bar went into administration on 22 October 2014 and liquidation on 29 January 2015.
17. Mr Redgrave was a director, the controller and 90% shareholder at Bar during the Relevant Period. He was the main decision maker and held ultimate responsibility for Bar’s actions. Mr Redgrave ceased to be a director of Bar and an approved person on 23 October 2014.
18. Bar arranged PII cover for approximately 1,300 solicitors for the 2012/13 underwriting year with Balva through the First BAA.
19. Aderia had made Bar and Mr Redgrave aware on 14 March 2013 that Balva was required by the FCMC to temporarily cease writing various lines of business, including Solicitors’ PII business. During the following three months, Balva’s licence to write new business in the UK was formally suspended and then withdrawn by the FCMC. As a consequence, from March 2013 onwards, Bar and Mr Redgrave discussed and had then made plans with Aderia to replace Balva’s cover. Mr Reches, acting through Aderia, introduced Berliner to Bar in March 2013 as a possible replacement for Balva, and discussions about this arrangement took place between Bar, including Mr Redgrave, Mr Reches and Aderia. This culminated in Bar and its AR, Apro, entering into the Second BAA with Aderia on behalf of Berliner on 17 May 2013. The Second BAA was signed by Mr Redgrave on behalf of Bar and Apro.
20. The terms of the Second BAA provided that Bar had authority to write Solicitors’ PII business on behalf of Berliner up to an annual premium income limit of £50 million.
21. Both before and after it entered into the Second BAA, Bar and Mr Redgrave had grounds for concern as to whether the Berliner MGA Agreement had been concluded, signed and was in effect, as well as what premium income limits were in place for business written on behalf of Berliner. Bar and Mr Redgrave asked questions of Aderia in respect of those grounds for concern, but did not receive satisfactory answers to those questions before entering into the Second BAA, and did not see the substantive provisions of the signed Berliner MGA Agreement until after 15 July 2013.

Due diligence

22. Under ICOBS 2.5.3G(2), Bar would have been entitled to rely on information provided to it in writing (such as the Second BAA and the written assurances) by an unconnected authorised person (such as Aderia) unless it was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of that information. Bar had reasonable grounds to question the accuracy of information, in particular the provisions of the Berliner MGA Agreement, under which it held its binding authority. It did not receive satisfactory responses when it enquired about the provisions of the Berliner MGA Agreement. In the circumstances, Bar and Mr Redgrave should have undertaken further and more detailed enquiries in order to satisfy their concerns.
23. The grounds for concern that Bar raised with Aderia concerning the Berliner MGA Agreement prior to the Offer Letter being sent in late May/early June 2013 included whether:
 - a) the Berliner MGA Agreement was in place and had been signed;
 - b) Berliner's premium income limit was sufficient to enable Bar to write the level of business for which the Second BAA made provision; and
 - c) Berliner was appropriately capitalised.
24. Prior to sending the Offer Letter, Bar had taken some steps through Aderia to satisfy itself that the Berliner MGA Agreement, and other arrangements, were in place and effective for the purposes of the Second BAA. However, the steps that Bar took were inadequate in the following ways:
 - a) on a number of occasions, prior to the Offer Letter being sent, Bar asked Aderia to provide a copy of the signed Berliner MGA Agreement. Notwithstanding those requests, Bar did not see a copy of the signed Berliner MGA Agreement until after 15 July 2013 following intervention by the Authority and over six weeks after sending the Offer Letter;
 - b) Bar made a number of requests from March 2013 onwards to meet the CEO of Berliner in order to discuss the PII arrangements. That meeting only took place in July 2013 following intervention by the Authority; and
 - c) Bar had concerns about Berliner's reinsurance arrangements and pressed Aderia for information between April and May 2013, but only received details of a draft reinsurance slip on 23 June 2013.

Shay Reches

25. Throughout the Relevant Period, Mr Redgrave and Bar's dealings with Aderia were conducted principally through Mr Reches. This should have led Mr Redgrave and Bar to conduct adequate due diligence in order to satisfy themselves concerning the fitness and propriety of the individual acting on behalf of Aderia. Among the facts and matters (which were known, or would reasonably have been known, to Mr Redgrave and Bar), which should have led Mr Redgrave and Bar to make further enquiries, were that:
 - a) Mr Reches was the controller and majority owner of Aderia but was not approved by the Authority;

- b) Mr Reches was attempting to purchase shares in Berliner, which was a potential provider of PII to Bar's Solicitor Customers, creating a potential conflict of interest for Mr Reches;
 - c) Mr Reches, together with the companies controlled by him, was the subject of certain restrictions imposed by overseas regulators concerning the carrying out of unlicensed insurance business, which might adversely affect his status and standing as a participant in any UK regulated activity; and
 - d) Bar had recently experienced difficulties with Balva, which, like Berliner, was a European insurer, introduced to Bar by Mr Reches and over which Bar believed that Mr Reches had sought to exert control and hold shares.
26. The specific grounds for concern, outlined above, regarding the fitness and propriety of Mr Reches was a further reason for Mr Redgrave and Bar to conduct greater due diligence concerning the validity and effectiveness of the arrangements being put in place on behalf of its Solicitor Customers prior to sending the Offer Letter, which, as a result, contained inaccurate and misleading information.

The role of Apro

27. Mr Redgrave notified the Authority in February 2011 of the appointment of Apro as Bar's AR. Bar did not, however, have an AR agreement with Apro. Bar and Apro had common directors, including Mr Redgrave. The original intention was that Bar would undertake the broking side of the business with Apro effectively acting as a separate underwriter. However, in time, the distinction between Bar and Apro became blurred. Bar and Apro acted as one entity with the same offices, management and directors.
28. Apro's role was effectively to act as a vehicle to facilitate liaison with wholesale brokers, who would not want to deal with a rival broker (Bar) directly, which was why the Offer Letter was sent on Apro-headed paper. However, in effect, there was no distinction between Bar and Apro.
29. Bar was, in any event, responsible for communicating and approving financial promotions sent by its AR, Apro in accordance with ICOBS 1.1.1R and ICOBS 2.2.2R. Mr Redgrave should have taken reasonable steps to ensure that communications or financial promotions were clear, fair and not misleading as he was the main decision maker and ultimately responsible for Bar and Apro; he also drafted and signed the Offer Letter.
30. Bar, through its AR, Apro, sent the Offer Letter between late May/early June 2013 to most of its Solicitor Customers or to the brokers who had introduced those customers to Bar. The Offer Letter, among other things, stated that:
- a) Balva had been "temporarily suspended";
 - b) Bar/Apro had made "alternative arrangements" with Berliner;
 - c) Berliner had "agreed to honour all quotations previously offered by Balva securing all discounted premiums accepted last year on either the 1 or 2 year deal";
 - d) Bar/Apro remained "very confident" that Balva's "position will change";

- e) Bar/Apro was "suggesting [to its Solicitor Customers that] the current Balva policy will be cancelled from 1st June and a new policy with Berliner be incepted on the same day to run continuously to 30th September 2013"; and
 - f) Bar/Apro would "be including an automatic extension to the policy effective 1st October 2013 to either 30th September 2014 or 30th April 2015".
31. Over 900 of Bar's Solicitor Customers agreed to this arrangement.

The Berliner MGA Agreement

32. At the time that Bar entered into the Second BAA with Aderia on 17 May 2013, and sent the Offer Letter, Berliner had not signed the Berliner MGA Agreement authorising Aderia to delegate authority for Bar and Apro to write Solicitors' PII on behalf of Berliner. The Berliner MGA Agreement was not agreed and signed until 15 July 2013 – the day before a short notice visit from the Authority was due to take place and approximately six weeks after the Offer Letter was sent.
33. The Berliner MGA Agreement stated that Berliner would provide insurance up to an annual premium income limit of only €5 million whereas the Second BAA purported to provide Bar with the facility to write business on behalf of Berliner up to an annual premium income limit of £50 million. As a consequence, the actual premium income limit for 2013 of €5 million would have been exhausted by the replacement cover for the 2012/13 year alone (and which was due to expire on 30 September 2013); there would have been no underwriting capacity available for the renewal cover offered in the Offer Letter for the 2013/14 year.

FAILINGS

34. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
35. Statement of Principle 6 states that an approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.
36. Mr Redgrave breached Statement of Principle 6, by failing to exercise due skill, care and diligence at Bar and Apro by signing and sending the Offer Letter, prior to ensuring each aspect of the Offer Letter was correct. In particular, he failed to ensure that:
- a) the Berliner MGA Agreement was in place, and that there was a sufficient premium income limit to meet the proposed renewal cover, when Bar had reason to doubt that was the case. Bar had made enquiries in respect of its doubts, but the reassurances received did not satisfy those doubts, as set out in paragraphs 23 and 24;
 - b) Bar took reasonable care to ensure that the advice to the Solicitor Customers to cancel their current policies with Balva and take out the replacement and renewal cover with Berliner was suitable, in breach of ICOBS 5.3.1R;
 - c) Bar satisfied itself in relation to facts about which it was aware, or should have been aware, in respect of Mr Reches as set out in paragraphs 25 and 26; and

- d) Bar communicated information to the Solicitor Customers in the financial promotion within the Offer Letter, which Mr Redgrave drafted and signed, in a way which was clear, fair and not misleading, in breach of ICOBS 2.2.2R, in that the Solicitor Customers were led to believe that:
 - i) Bar/Apro had made arrangements with Berliner for it to guarantee replacement cover for the existing Balva policies, which in fact was not the case; and
 - ii) PII cover would automatically be renewed when, in fact, Bar/Apro had no authority to arrange this business.
- 37. The Offer Letter was materially inaccurate and misleading and Solicitor Customers, seeking replacement and renewal PII cover on the basis proposed by the Offer Letter, would have been at risk of being uninsured or of having otherwise legitimate claims rejected.
- 38. Mr Redgrave and Bar should have undertaken further due diligence in relation to Berliner, Mr Reches and the provisions of the Berliner MGA Agreement under which the Second BAA was granted, in order to give it reasonable grounds to be satisfied in respect of its concerns before sending the Offer Letter. Mr Redgrave should have also ensured that each aspect of the Offer Letter was correct, before it was sent.

SANCTION

Financial penalty

- 39. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
- 40. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to Mr Redgrave's breach of Statement of Principle 6.
- 41. In determining the financial penalty to be attributed to Mr Redgrave's misconduct, the Authority had particular regard to the following matters as applicable:
 - a) the need for credible deterrence;
 - b) the nature, seriousness and impact of the breach;
 - c) the risk of consumer detriment as a result of Mr Redgrave's failings; and
 - d) any applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation.
- 42. The Authority has therefore imposed a financial penalty of £38,600.

PROCEDURAL MATTERS

Decision maker

43. The decision which gave rise to the obligation to give this 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 Mr Redgrave to the Authority by no later than 1 February 2017.

If the financial penalty is not paid

46. If all or any of the financial penalty is outstanding on 1 February 2017, the Authority may recover the outstanding amount as a debt owed by Mr Redgrave and due to the Authority.

Publicity

47. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such 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 contacts

49. For more information concerning this matter generally, contact Paul Howick at the Authority (direct line: 020 7066 7954; or e-mail paul.howick@fca.org.uk).

Bill Sillett

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, includes the consumer protection objective.
2. 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. 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 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

3. The Authority's Statements of Principle and Code of Practice for Approved Persons (APER) have been issued under section 64 of the Act.
4. Statement of Principle 6 states that:

"An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function."
5. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

Relevant Handbook Provisions

DEPP

6. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

Insurance Conduct of Business Sourcebook (ICOBS)

7. ICOBS applied to Bar throughout the Relevant Period. Chapter 1 of ICOBS sets out the Authority's rules and guidance on the Application of ICOBS; Chapter 2 of ICOBS sets out the Authority's rules and guidance on General Matters; and Chapter 5 of ICOBS sets out the Authority's rules and guidance on Identifying client needs and advising.

8. ICOBS 1.1.1R provides:

"This sourcebook applies to a firm with respect to the following activities carried on in relation to a non-investment insurance contract from an establishment maintained by it, or its appointed representative, in the United Kingdom:

- (1) an insurance mediation activity;*
 - (2) effecting and carrying out contracts of insurance;*
 - (3) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;*
 - (4) communicating or approving a financial promotion;*
- and activities connected with them."*

9. ICOBS 2.2.2R provides:

*"When a firm communicates information, including a financial promotion, to a **customer** or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading."*

10. ICOBS 2.5.3G provides:

- "(1) Where it is compatible with the nature of the obligation imposed by a particular rule and with the Principles, in particular Principles 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), firms may rely on third parties in order to comply with the rules in this sourcebook.*
- (2) For example, where a rule requires a firm to take reasonable steps to achieve an outcome, it will generally be reasonable for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a firm cannot delegate its responsibility under the regulatory system. For example, where a rule imposes an absolute obligation (such as the requirement for an insurer to handle claims promptly and fairly) although a firm could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required."*

11. ICOBS 5.3.1R provides:

"A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment."

Relevant Handbook Regulatory Guides

The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

12. The RPPD sets out the FCA's view on what the combination of Principles for Businesses and detailed rules require respectively of providers and distributors in certain circumstances to treat customers fairly.

13. Paragraph 1.22 provides:

"In the area of financial promotions, Principles 3, 6 and 7 are particularly relevant. In particular, a firm:

- (1) should have in place systems and controls to manage effectively the risks posed by financial promotions;*
- (2) in passing on a promotion created by a provider, must act with due skill, care and diligence. A firm will not contravene the financial promotions rules where it communicates a promotion produced by another person provided the firm takes reasonable care to establish that another firm has confirmed compliance with the relevant detailed rules, amongst other matters".*

The Enforcement Guide (EG)

14. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
15. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose a financial penalty.

ANNEX B

PENALTY ANALYSIS

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases
2. The application of the Authority's penalty policy is set out below in relation to Mr Redgrave's breach of Statement of Principle 6.

Step 1: disgorgement

3. 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.
4. The Authority has not identified any financial benefit that Mr Redgrave derived directly from the breach.
5. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6. 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 by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
7. The period of Mr Redgrave's breach was from April to September 2013. As the breach lasted less than a year, Mr Redgrave's relevant income will be the gross amount received during the 12 months preceding the end of the breach; that is, during the period September 2012 to September 2013 (DEPP 6.5B.2G(2)). The Authority considers Mr Redgrave's relevant income for this period to be £552,669.
8. In deciding on the percentage of the 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 in non-market abuse cases there are the following five levels:

Level 1 – 0%
Level 2 – 10%
Level 3 – 20%
Level 4 – 30%
Level 5 – 40%

9. 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. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:
 - a) *The breach caused a significant loss or risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2(G)(12)(a):* Had Bar's customers accepted the proposals to cancel and replace their policies, given that Bar was not in a position to write the replacement and renewal policies, there was a risk of the customers being uninsured or of having otherwise legitimate claims rejected. Due to the withdrawal of Berliner, none of the replacement and renewal policies were actually put in place, so there has been little or no actual loss to Bar's customers as a result of the breaches.
10. 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 (DEPP 6.5B.2(G)(13)(a):* Although Mr Redgrave's intention was to facilitate the continuation of the Solicitors' PII business, and the commission that flowed from it, Bar ultimately made a loss as a result of the breach, which was the principal reason for Bar becoming insolvent and being placed into administration, then liquidation, and Mr Redgrave consequently being made redundant.
 - b) *The breach was committed negligently or inadvertently: (DEPP 6.5B.2(G)(13)(d):* The Authority's view is that Mr Redgrave's failures occurred as a result of negligence, rather than deliberate misconduct, recklessness or a lack of honesty or integrity on the part of Mr Redgrave.
11. The Authority also considers that the following factors are relevant:
 - a) Whilst it is clear that Mr Redgrave was the most senior individual at Bar and the main decision-maker, there were other individuals at Bar who carried out roles relevant to Bar's failings and Mr Redgrave relied on those individuals to some extent.
12. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 2 and so the Step 2 figure is 10% of £552,669.
13. Step 2 is therefore £55,266.

Step 3: mitigating and aggravating factors

14. 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 to take into account factors which aggravate or mitigate the breach.
15. The Authority considers that there are no aggravating or mitigating factors in this case.
16. Step 3 is therefore £55,266.

Step 4: adjustment for deterrence

17. 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.
18. The Authority considers that the Step 3 figure of £55,266 represents a sufficient deterrent to Mr Redgrave and others, and so has not increased the penalty at Step 4.
19. Step 4 is therefore £55,266.

Step 5: settlement discount

20. Pursuant to DEPP 6.5B.5G, if the Authority, and the individual on whom a penalty is to be imposed, agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
21. The Authority and Mr Redgrave reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
22. Step 5 is therefore £38,686.

Penalty

23. The Authority has therefore imposed a total financial penalty of £38,600 (rounded down to the nearest £100) on Mr Redgrave for breaching Statement of Principle 6