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**FINAL NOTICE**

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**To:            WILLIAM JOHN PIRIE**  
**DOB 15 MAY 1946**

**Date:           17 July 2008**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS ("the FSA") gives you final notice about the decision to make a prohibition order against you.**

**1.      ACTION**

- 1.1      The FSA gave Mr William John Pirie ("Mr Pirie") a Decision Notice dated 17 July 2008 which notified Mr Pirie that pursuant to Section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to make an order prohibiting Mr Pirie from carrying out any customer facing functions as currently defined by Controlled Function 30 in relation to any regulated activity carried on by any authorised person or exempt person.
- 1.2      Mr Pirie has agreed to settle this matter and will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3      The Prohibition Order takes effect from 21 July 2008.

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

- 2.1 The FSA has decided to exercise its statutory power to make a prohibition order against Mr Pirie as it considers that his conduct while a director at Mandrake Associates Limited ("MAL"/"the Firm") with responsibility for apportionment and oversight, fell short of the standards required by the FSA's Statements of Principle for Approved Persons ("APER").
- 2.2 Specifically, Mr Pirie mishandled endowment mortgage complaints received by MAL between 1 October 2002 and 9 October 2006 ("the Relevant Period") in carrying out his controlled functions by virtue of his failure to:
- (1) act with due skill, care and diligence while an approved person performing a significant influence function in ensuring that MAL's complaints handling procedures were operating effectively, in breach of APER 6; and
  - (2) take reasonable steps to ensure that MAL complied with the relevant requirements of the regulatory system, particularly the requirement to pay due regard to the interests of customers and treat them fairly, in breach of APER 7.
- 2.3 In considering these matters the FSA has taken account of the fact that during the Relevant Period, the Firm and Mr Pirie faced competing priorities and were engaged in litigation for the purposes of securing redress for payments arising out of its Pension Review. This litigation placed pressure upon the resources of MAL and impacted the establishment of contingency plans.
- 2.4 The FSA has also had regard to the fact that, the outstanding Financial Ombudsman Service ("the Ombudsman") awards from the Relevant Period are now up to date. In addition, the Firm has undertaken to:
- (1) engage a suitably qualified and independent consultant to assess an ongoing sample of its mortgage endowment complaints decisions; and
  - (2) resolve its current outstanding complaints within 12 months.
- 2.5 Owing to his conduct, the FSA is not satisfied that Mr Pirie is a fit and proper person to perform customer facing functions as defined by Controlled Function 30 in relation to any regulated activity carried on by any authorised person or exempt person.

### **3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE**

- 3.1 The FSA's regulatory objectives set out in section 2(2) of the Act include the protection of consumers.
- 3.2 Section 56 of the Act provides that the FSA may prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person.
- 3.3 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 functions. Such an order may be made in relation to:
- (1) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities; and
  - (2) authorised persons generally or any person within a specified class of authorised person.
- 3.4 Section 66(2) of the Act states that a person is guilty of misconduct if, while an approved person, -
- (1) he has failed to comply with a Statement of Principle issued under section 64; or
  - (2) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed by or under the Act.

#### Relevant Guidance

- 3.5 In exercising its power to issue a prohibition order, the FSA must have regard to guidance published in the FSA Handbook. The guidance that the FSA considers relevant to this case is set out below.
- 3.6 The FSA's policy on the issue of prohibition is set out in the Enforcement Guide ("EG") in respect of conduct after 28 August 2007. Regard has also been had to Chapter 8 of the Enforcement Manual ("ENF") which forms part of the FSA Handbook in relation to conduct occurring prior to 28 August 2007. Paragraphs 8.4 and 8.5 of ENF and 9.9 of EG set out a list of factors of particular relevance in considering a prohibition.
- 3.7 EG 9 summarises the powers to make prohibition orders set out in the Act and the

circumstances under which such action would be recommended.

- 3.8 EG 9.4 states that the FSA has 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.
- 3.9 EG 9.5 states that the scope of a prohibition order will depend on 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 the risk which he poses to consumers or the market generally.
- 3.10 EG 9.9 provides that, when the FSA decides whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case, including, but not limited to, the following:
- (1) whether an individual is fit and proper to perform functions in relation to regulated activities in accordance with the criteria contained in FIT;
  - (2) whether, and to what extent, the approved person has failed to comply with Statements of Principle or been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles for Businesses and other rules);
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness;
  - (5) 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
  - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 3.11 In summary, the relevant considerations are whether the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by them. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

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

- 3.12 The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. 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 approved persons.
- 3.13 FIT identifies competence and capability (FIT 2.2): this includes an assessment of the individual's skills in carrying out the controlled function that he is performing as being one of the most important criteria for consideration.

### Statements of Principle and the Code of Conduct for Approved Persons ("APER")

- 3.14 Section 64 of the Act authorises the FSA to issue Statements of Principle with respect to the conduct expected of approved persons. If it does so it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the Statements of Principle. Such a code may specify:
- (1) descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle; and
  - (2) factors which, in the opinion of the FSA, are to be taken into account in determining whether or not a person's conduct complies with a Statement of Principle.
- 3.15 APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 3.16 APER 3.1.3G states 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, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 3.17 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be

reasonable in all the circumstances.

3.18 Statement of Principle 6 provides that:

*"An approved person performing a significant influence function must act with due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function."*

3.19 APER 4.6 lists types of conduct which do not comply with Statement of Principle 6.

3.20 Statement of Principle 7 provides 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."*

3.21 APER 4.7 lists types of conduct which do not comply with Statement of Principle 7.

3.22 APER 4.7.7E states that failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities is conduct which breaches Statement of Principle 7.

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

##### **Mr Pirie and MAL**

4.1 Mr Pirie is the sole director of MAL, a firm that provided advice in relation to a range of products including endowment mortgages. MAL sold approximately 17,412 endowment policies including low cost endowments ("LCE") policies between 1988 and 2000. Between 1 October 2002 and 9 October 2006 it received complaints about 2,127 endowment mortgage policies from clients who alleged that MAL had mis-sold them an endowment mortgage ("the Complainants"). Of these complaints, MAL concluded and rejected 624 and upheld none. As some clients complained about multiple policies, the number of individual complainants is approximately 10% less.

4.2 Mr Pirie joined MAL in 1983 and became a director on 1 March 1996. He acquired approval as CF1 – Director on 1 December 2001 and CF21 - Investment Adviser and on 5 November 2004 Mr Pirie became the sole director of MAL, although he had

taken on the apportionment and oversight (CF8) role on 29 September 2004. He had primary responsibility for managing and overseeing endowment mortgage complaints received by MAL, although the day to day handling of complaints was delegated to the Firm's Compliance Officer. Mr Pirie regularly reviewed the complaints register and signed off the Final Decision Letter ("FDL") in relation to complaints where one of the complaints handlers was the original sales adviser.

### **Regulatory context**

- 4.3 The failings occurred at a time when there was a high level of awareness within the industry of the issues surrounding mortgage endowment sales and associated concerns regarding the handling of complaints regarding mortgage endowment sales.
- 4.4 The FSA publicly stated in December 1999 that an industry-wide review of mortgage endowment sales along the lines of the Pensions Review would be disproportionate and in October 2000 that the appropriate mechanism for delivering redress in relation to mis-sales of mortgage endowments was through the complaints handling processes of firms.
- 4.5 The importance of mortgage endowment complaint handling processes was highlighted again in November 2000, via PIA Regulatory Update 80, and again in July 2001, via PIA Regulatory Update 91.
- 4.6 On 4 April 2002, John Tiner, then a Managing Director at the FSA, sent a letter to all major firms who acted as product providers or financial advisers in relation to mortgage endowment policies. This letter set out the FSA's concerns about the way in which complaints about mortgage endowment were being dealt with. Most notably, its purpose was to accentuate the importance of fair handling of complaints. Firms were asked to respond to the letter and to review and, if necessary, to revise their complaints-handling procedures in the light of the concerns expressed.
- 4.7 The Tiner Letter included an annex which listed specific action points to enable firms to avoid unfairness in respect of their handling of mortgage endowment complaints ("the Tiner Points").
- 4.8 In December 2004, the FSA sent another letter to the chief executives of larger mortgage endowment firms and financial advisers, advising that while many firms were achieving the required standards for complaints handling, some were not. The

2004 Tiner Letter specifically mentioned the high uphold rate of complaints referred to the Ombudsman as a point of concern.

- 4.9 The 2002 and 2004 Tiner Letters were available on the FSA's website together with information on regulatory standards and the processing of mortgage endowment complaints.
- 4.10 The FSA issued a further report in July 2005 called *"Mortgage Endowments: Progress report and next steps"* which stated that supervisory work, and potentially enforcement, would be vigorously pursued against those firms that still fall short in their complaints handling. Firms were strongly advised to ensure that they were in a position to handle any increases in complaints that may arise as a result of the sending out of 'red' projection letters, and of time bars implemented by some firms.
- 4.11 On 10 November 2005, MAL was placed on the list of worst performers based on a rolling three month average of several indicators.
- 4.12 In December 2005, the FSA wrote to MAL stating that:

*"Mandrake Associates Limited had the largest proportion of cases outstanding over 8 weeks old of all the firms that report to the FSA, with an average of 97%. Furthermore, the number of complaints outstanding each month has risen consistently and where cases are being closed the firm appears to be rejecting the complaint in virtually every case."*

The FSA requested details of the Firm's proposed remedial action.

- 4.13 In a letter dated 23 January 2006, MAL stated that the analysis of the endowment complaints and establishment of contingency plans had been delayed due to the impact of an ongoing legal dispute with a third party on the resources of the Firm.
- 4.14 Between January 2006 and June 2006, the FSA was in contact with MAL on no less than five occasions at which the backlog of outstanding complaints and outstanding Ombudsman's awards that were yet to be paid were highlighted and requests for action were made. MAL did not comply with the deadlines citing a lack of resources due to the awaited court ruling in its legal dispute.
- 4.15 On 7 August 2006 MAL was asked by the FSA to stop handling complaints until it had satisfied a number of conditions relating to its procedures and plans for dealing



with mortgage endowment complaints handling.

#### **Mr Pirie's conduct**

- 4.16 The FSA considers that Mr Pirie failed to consider his regulatory responsibilities when overseeing and dealing with complaints and, as a result, endowment mortgage complaints received by MAL were not handled appropriately. Consequently, customers were exposed to the risk that they would not receive compensation to which they were entitled.

#### ***Failing to act with due skill, care and diligence whilst an approved person performing a significant influence function***

- 4.17 Mr Pirie had ultimate oversight and responsibility for mortgage endowment complaints handling at the Firm as the sole CF1 director. He was responsible for ensuring that MAL reviewed and responded to complaints fully and fairly.
- 4.18 Mr Pirie was aware of the particular requirements pertaining to complaints handling by virtue of issues arising from previous regulatory action against the Firm when he was director, the concerns highlighted in letters and Supervisory visits dating back to July 2005 and the extent of awareness in the industry at the time. Mr Pirie was therefore aware that by his operation of complaints handling in the manner that he did, that he was engaging in a course of conduct that undermined MAL's ability to pay due regard to its customers' interests.
- 4.19 Mr Pirie's management and oversight of complaints were carried out in the belief that MAL had never knowingly mis-sold an endowment policy. The overall effect of the mortgage endowments complaints process at MAL in the Relevant Period was a complaint handling system that resulted in an enhanced risk of the rejection and/or delay of potentially valid complaints.
- 4.20 Mr Pirie stated that mortgage endowment complaints were delayed because MAL was awaiting a judgement in a case which affected the assessment of the resources of MAL's compliance department. During the Relevant Period not all customers were made aware of this reason for the delay in finalising their complaints.
- 4.21 As late as 3 March 2006, Mr Pirie stated that the awards made by the Ombudsman against MAL had not been paid because MAL's resources were going into the

pension review redress and the court action.

4.22 MAL's lack of resources should not have been a bar to ensuring that complaint handlers carried out a fair and unbiased investigation, issue a decision in favour of the complainants where appropriate and pay redress where justified.

4.23 In particular, Mr Pirie:

(1) disregarded and permitted complaint handlers to disregard the Firm's internal complaint handling procedure by deliberately failing to contact Sales Advisers in 98% of cases as part of the investigation of the complaints. Mr Pirie has stated that the Firm did this because he thought that all reports would be substantially the same, namely that the advisers would not recall the particulars of the sale;

(2) permitted complaint handlers to make unsubstantiated assumptions about the nature of the information that sales advisers may or may not have provided to the client at point of sale, including assumptions about the complainant's awareness of risk;

(3) permitted complaint handlers to reject complaints on the basis that they were time barred where there was insufficient evidence in a number of cases that the customer had received the appropriate 'red projection letters' which would enable the Firm to ascertain the appropriate time limits; and

(4) permitted complaint handlers to be inappropriately selective as to the evidence relied upon to determine the complainant's attitude to risk by accepting the customer's responses that supported the sale of an endowment policy but ignoring the answers that indicated the possibility of an endowment being unsuitable.

4.24 In addition, Mr Pirie permitted a category of complaints to be prioritised because he believed that MAL could reject them. The effect of this would be to delay appropriate redress to complainants who had valid complaints.

4.25 Mr Pirie oversaw a policy of challenging all initial views provided by the Ombudsman in order to delay or avoid the payment of redress to complainants. MAL also actually failed to pay redress on a timely basis when it was awarded by the Ombudsman.

4.26 Across the Relevant Period, the Ombudsman was finding in favour of complainants in

approximately 10% of cases. This included some cases where MAL had not issued a Final Decision Letter (“FDL”). Where MAL had issued an FDL, the Ombudsman overturned MAL’s decision and found in favour of the complainant in approximately 10% of cases.

4.27 Mr Pirie was aware of the likelihood of further increases in the number of complaints received by the Firm and he had been alerted to the need for extra resources by existing complaints handling staff. Mr Pirie was also aware of the increasing backlog of complaints as a result of its review of the complaints register. However, he did not take sufficient steps to address the problem. As a result by 9 October 2006, there were 1,089 outstanding complaints.

4.28 In particular key staff were not provided or made aware of the written procedures for dealing with complaints, were not trained on how to uphold a complaint, calculate redress or provided with the guidance in the Tiner Letters.

***Failing to take reasonable steps for ensuring MAL's compliance with regulatory requirements***

4.29 Mr Pirie was responsible for ensuring that MAL had in place appropriate complaints handling procedures. However, MAL did not operate appropriate complaint handling procedures, as required by DISP 1.2.1R and failed to observe relevant requirements of the regulatory system in dealing with complaints.

4.30 Mr Pirie also failed to provide complaints handlers with appropriate training to ensure that staff were applying the proper procedure when handling complaints.

4.31 Mr Pirie was aware that complainants were not provided with timely updates by virtue of his review of the complaints register. However, he failed to ensure that complainants were provided with timely updates at 4 and 8 week intervals on the progress of the investigation as set out above and failed to update clients at all after 8 weeks as required by DISP 1.4.4R and DISP1.4.5R. He also failed to ensure that complaints were dealt with promptly and failed to ensure that MAL paid redress in connection with the final decisions of the Ombudsman that were decided in favour of the complaint within a reasonable time as required by DISP 1.6.1R and 3.9.14R.

## **5. ANALYSIS OF BREACHES**

### ***APER 6***

- 5.1 By reason of the facts and matters set out in paragraphs 4.17 to 4.28 the FSA considers that Mr Pirie breached APER 6.
- 5.2 Mr Pirie failed to ensure that MAL dealt with endowment mortgage complaints properly. Mr Pirie also failed to devote sufficient resources to its complaint handling team, failed to provide adequate training and instruction to complaint handlers and failed to ensure the fair handling of complaints at the Firm. As a result, Mr Pirie oversaw a complaints handling system that resulted in an enhanced risk of the rejection of and/or delaying potentially valid complaints.

### ***APER 7***

- 5.3 By reason of the facts and matters referred to in paragraphs 4.29 to 4.31 above, Mr Pirie breached APER 7.
- 5.4 Mr Pirie failed to ensure that a 'thorough and objective' investigation was carried out as required by MAL's own procedures and therefore failed to ensure that he took reasonable steps to ensure that complaints were handled fairly, consistently and promptly as required by DISP 1.2.22R.
- 5.5 Mr Pirie also failed to ensure that complainants were provided with timely updates as required by DISP 1.4.4R and DISP1.4.5R and failed to ensure that MAL paid redress as required by DISP 1.6.1R and 3.9.14R
- 5.6 Mr Pirie therefore failed to ensure MAL's compliance with the regulatory requirement to pay due regard to the interests of customers and treat them fairly.

## **ANALYSIS OF SANCTION**

- 5.7 Mr Pirie was the director of MAL and held senior management responsibilities for the Firm. By breaching APER 6 and 7 in the manner stated above, Mr Pirie's conduct fell short of the standards required of an approved person. .

### **Prohibition**

- 5.8 In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the FSA's Enforcement Guide ("EG") and in particular the provisions of

EG 9.9. The FSA has also had regard to the provisions of its Handbook in force during the Relevant Period.

5.9 The FSA considers that in breaching APER 6 and 7 in the manner described Mr Pirie has demonstrated a serious lack of competence and capability in relation to the performance of his controlled function.

5.10 Having regard to the provisions of FIT, for all these reasons the FSA concludes that Mr Pirie is not a fit and proper person. The FSA has also considered that Mr Pirie is the sole director of MAL and that the Firm has undertaken to:

(1) engage a suitably qualified and independent consultant to assess an ongoing sample of its mortgage endowment complaints decisions; and

(2) resolve its current backlog of outstanding complaints within 12 months.

5.11 Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it necessary to impose a prohibition order prohibiting Mr Pirie from carrying out any customer facing functions as currently defined by Controlled Function 30 in relation to any regulated activity carried on by any authorised person or exempt person.

## **6. DECISION MAKERS**

6.1 The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for the purposes of the FSA's Decision Procedure and Penalties manual (DEPP).

## **7. IMPORTANT**

7.1 This Final Notice is given to you in accordance with Section 390 of the Act.

### **Publicity**

7.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the

interests of consumers.

**FSA Contacts**

- 7.3 For more information concerning this matter generally, you should contact, Stephen Robinson at the FSA (direct line: 020 7066 1338 / fax: 020 7066 1339).

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Georgina Philippou

Project Sponsor, for and on behalf of the FSA