
SECOND SUPERVISORY NOTICE

To: **Andrew Baxter**

Firm Reference Number: **453786**

Dated: **30 December 2014**

ACTION

1. For the reasons given below, having taken into account Andrew Baxter's representations, the Authority has decided not to rescind the variation made to Mr Baxter's permission under Part 4A of the Act (to remove all regulated activities with immediate effect) as provided for in paragraph 1 of the First Supervisory Notice (of 2 October 2014).
2. Accordingly, Mr Baxter's Part 4A permission has not included the following regulated activities since 2 October 2014—
 - (1) advising on investments (except on pension transfers and pension opt outs);
 - (2) advising on regulated mortgage contracts;
 - (3) agreeing to carry on a regulated activity;
 - (4) arranging (bringing about) deals in investments;
 - (5) arranging (bringing about) regulated mortgage contracts;
 - (6) making arrangements with a view to regulated mortgage contracts;
 - (7) making arrangements with a view to transactions in investments.

SUMMARY OF REASONS

3. Mr Baxter, a sole trader, was convicted of offences for which he was sentenced on 12 May 2014 to 12 months' imprisonment. He was released on 10 October 2014.
4. Mr Baxter has failed to be open and co-operative in his dealings with the Authority, including by—
 - (1) failing to disclose to the Authority that he had been convicted and imprisoned, and
 - (2) making misleading statements in two letters to the Authority while in prison concerning his locum arrangements.
5. For the reasons given in this Notice:
 - (1) It appears to the Authority that Mr Baxter is failing to satisfy the threshold conditions, in that he is not a fit and proper person in all the circumstances (paragraph 2E of Schedule 6 to the Act (suitability)).
 - (2) Having regard to its conclusion that it appears that Mr Baxter is failing to satisfy the suitability threshold condition and to its operational objective of consumer protection, the Authority considers that it is necessary not to rescind the variation made to Mr Baxter's permission by the First Supervisory Notice.

DEFINITIONS

6. In this Second Supervisory 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;
 - "the Handbook" means the Authority's Handbook of Rules and Guidance;
 - "Mr Baxter's Part 4A permission" means the permission given to Mr Baxter under Part 4A of the Act;
 - "the First Supervisory Notice" means the First Supervisory Notice given to Mr Baxter dated 2 October 2014;
 - "the Principles" means the Authority's Principles for Businesses;
 - "the threshold conditions" means the threshold conditions set out in Schedule 6 to the Act;
 - "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

RELEVANT STATUTORY PROVISIONS

7. The statutory and regulatory provisions relevant to this Second Supervisory Notice are set out in Annex A.

FACTS AND MATTERS

General

8. Mr Baxter was authorised by the Authority on 2 October 2006 to conduct regulated home finance and designated investment business. Mr Baxter is a sole trader and the only approved person at his firm.
9. On 12 May 2014, Mr Baxter was convicted at Durham Crown Court sitting at Teeside of offences for which he was sentenced to 12 months' imprisonment. He was convicted upon his own confession.
10. Mr Baxter did not notify the Authority at any stage that he had been charged with criminal offences, that he had been convicted of criminal offences or that he had been imprisoned.
11. Mr Baxter was released from prison on 10 October 2014.

Mr Baxter's statements to the Authority concerning his locum arrangements

12. On 8 July 2014, the Authority sent a letter to Mr Baxter which stated that the Authority had become aware that he had been convicted on 12 May 2014 and that he was serving a 12 month prison sentence. The Authority stated that as a consequence of this situation, and his status as a sole trader, the Authority no longer considered Mr Baxter to be meeting the threshold conditions. The Authority requested that Mr Baxter apply to cancel his Part 4A permission by 22 July 2014.
13. In a letter to the Authority of 18 July 2014, Mr Baxter stated (amongst other things):

"The business has a locum in place as per sensible and FCA business requirements."
14. The Authority contacted the locum which its records indicated had last been notified to it (Firm A). Firm A confirmed that no locum arrangements were in place with Mr Baxter. In response to the Authority's letter of 12 August 2014 noting this, Mr Baxter stated in a letter of 18 August 2014:

"You have the incorrect locum details, these were updated when I notified the FSA in late 2012, however I have no access to my written or electronic files to provide a copy of this."
15. In his representations (see Annex B), Mr Baxter stated the following:
 - (1) He had entered into an appointed representative's agreement with an individual (Mr B) on 18 September 2012.

- (2) "After becoming aware of ... the charges being brought against [Mr Baxter], [Mr B] informed [Mr Baxter] that he would not be prepared to act as locum, but that he would use his best endeavours to find an alternative locum."
- (3) Mr Baxter cannot recall the exact date when Mr B informed him that he would not be able to act but this was probably in late March or early April 2014.
- (4) Mr Baxter notified the Authority of the termination of the position of Mr B as appointed representative on 24 April 2014. However, the agreement could only be terminated on 90 days' notice, so the contractual obligation on Mr A to act as a locum would have ended on 24 July 2014.
16. Even if Mr B was under a contractual obligation to act as locum until 24 July 2014, the Authority has concluded that it was misleading for Mr Baxter to make the statements he made about his locum arrangements in his letters of 18 July 2014 and 18 August 2014.
17. Further, Mr Baxter provided a copy of the appointed representative's agreement to the Authority. It states at clause 14, headed "Locum agreement" (emphasis added):
- "14.1 The principal and the AR agree to provide locum services to each other in the event of short term incapacity and or holiday and or sabbatical (defined as up to 3 months from the date of incapacity or the event) any sabbatical agreement requires not less than 90 days notice.
- 14.2 Locum services lasting longer than 3 months will be by agreement with both parties subject to a fee or payment of an agreed percentage of commission fees revenues received to cover the costs of the locum services."
18. As Mr Baxter was imprisoned for a period in excess of three months and as Mr B had indicated he was not prepared to act as locum, the Authority does not consider that Mr B was contractually obliged to act as locum during Mr Baxter's imprisonment.

REPRESENTATIONS

19. Annex B contains a brief summary of the key representations made by Mr Baxter and how they have been dealt with. In making the decision which gave rise to the obligation to give this Second Supervisory Notice, the Authority has taken into account all of the representations made by Mr Baxter, whether or not set out in Annex B.

FAILINGS

20. On the basis of the facts and matters set out in this Notice the Authority has reached the conclusions set out below.

21. Mr Baxter has failed to deal openly and co-operatively with the Authority:
 - (1) Mr Baxter was obliged to notify the Authority of the criminal proceedings brought against him; in the circumstances of his case, at the very latest at the point of his conviction and imprisonment. He did not do so, in breach of SUP 15.3.1R and Principle 11 (Relations with regulators) of the Principles.
 - (2) Mr Baxter made misleading statements, which he must have known to be misleading, in the two letters to the Authority while in prison concerning his locum arrangements, in breach of Principle 11.
22. It therefore appears to the Authority that Mr Baxter is failing to satisfy the suitability threshold condition (of paragraph 2E of Schedule 6 to the Act), of being a fit and proper person in all the circumstances.
23. Having regard to its conclusion that it appears that Mr Baxter is failing to satisfy the suitability threshold condition because he has not been open and co-operative with the Authority (including by providing misleading statements to the Authority) and its objective of consumer protection, the Authority considers that it is necessary not to rescind the variation made to Mr Baxter's Part 4A permission by the First Supervisory Notice.

PROCEDURAL MATTERS

24. This Second Supervisory Notice is given to Mr Baxter under section 55Y(7) and in accordance with section 55Y(9) of the Act.

Decision maker

25. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Regulatory Decisions Committee.

The Tribunal

26. Mr Baxter has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Baxter has 28 days from the date on which this Second Supervisory Notice is given to him to refer the matter to the Tribunal.
27. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) and filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).
28. For further information on the Tribunal (including the power to vary time periods) Mr Baxter should refer to the HM Courts and Tribunal Service website which will provide guidance and the relevant form to complete. The relevant page on HM Courts and Tribunal Service website can be accessed via the following link:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

29. A copy of Form FTC3 must also be sent to Donovan Thorpe-Davies, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Publicity

30. Mr Baxter should note that section 391 of the Act requires the Authority, when the Second Supervisory Notice takes effect (and this Second Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

Contacts

31. For more information concerning this matter generally, Mr Baxter should contact Donovan Thorpe-Davies at the Authority (direct line: 020 7066 8678).

Robin Callender Smith
Deputy Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority may, under section 55J of the Act, vary an authorised person's permission where it appears to the Authority that such person is failing to satisfy the threshold conditions (section 55J(1)(a)).
2. The variation may remove a regulated activity from those to which the permission relates (section 55J(2)(a)(ii)).
3. Section 55Y(3) of the Act allows such a variation to take effect immediately only if the Authority, having regard to the ground on which it is exercising its own-initiative power under section 55J, reasonably considers that it is necessary for the variation to take effect immediately.
4. Paragraph 2E of Schedule 6 to the Act states that:

"Suitability

A must be a fit and proper person having regard to all the circumstances, including—

[...]

- (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether A has complied and is complying with ... requests made by the [Authority], relating to the provision of information to the [Authority] and, where A has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

[...]"

5. Section 391 of the Act provides that:

"[...]

- (5) When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.

[...]

- (6) The [Authority] may not publish information under this section if, in its opinion, publication of the information would be—
 - (a) unfair to the person with respect to whom the action was taken,
 - (b) prejudicial to the interests of consumers [...].
- [...]
- (7) Information is to be published under this section in such manner as the [Authority] considers appropriate. [...]"

RELEVANT HANDBOOK PROVISIONS

- 6. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified above are set out below.

Relevant Principles

- 7. Principle 11 (Relations with regulators) of the Principles (PRIN 2.1.1R) provides:

"A *firm* must deal with [the Authority] in an open and cooperative way, and must disclose to [the Authority] appropriately anything relating to the *firm* of which [the Authority] would reasonably expect notice."

Duty to notify the Authority

- 8. SUP 15.3.1R of the Supervision Manual (matters having a serious regulatory impact) provides:

"A *firm* must notify [the Authority] immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

- (1) the *firm* is failing to satisfy one or more of the *threshold conditions*; or
- (2) any matter which could have a significant adverse impact on the *firm's* reputation; or
- (3) any matter which could affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*;

[...]"

Guidance concerning the relevant threshold conditions

- 9. Guidance on the threshold conditions is set out in the part of the Handbook entitled Threshold Conditions ("COND").

10. COND 2.5.1A UK reproduces paragraph 2E of Schedule 6 to the Act (set out in part above).
11. COND 2.5.4G(2) states that examples of the considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the suitability threshold condition include whether the firm conducts its business in compliance with proper standards; has competent and prudent management; and can demonstrate that it conducts its affairs with due skill, care and diligence.
12. COND 2.5.6G states that examples of considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy the suitability threshold condition include whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)) and the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system (COND 2.5.6G(1A)).

OTHER RELEVANT REGULATORY PROVISIONS

13. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
14. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the threshold conditions (EG 8.1(1)).

Varying a firm's Part 4A permission on the Authority's own initiative

15. EG 8.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3(1) specifies that the Authority may consider it appropriate to exercise its powers where it has serious concerns about a firm or the way its business is being or has been conducted.
16. EG 8.5(1)(a) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities.
17. EG 8.5(1)(b) specifies that the Authority will consider exercising its own-initiative power under section 55J(1)(a) or 55L(2)(a) of the Act, where the firm appears not to be a fit and proper person to carry on a regulated activity because it has breached requirements imposed on it by or under the Act (including Principles and rules) and the breaches are material in number or individual seriousness (EG 8.5(1)(b)(iii)).

Use of the own-initiative powers in urgent cases

18. EG 8.6 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it

necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.

19. EG 8.7 provides the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.7(1)).
20. EG 8.8 sets out a non-exhaustive list of factors the Authority will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that the Authority will consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
21. EG 8.9 sets out the factors which will determine whether the urgent exercise of the Authority's own-initiative power is an appropriate response to serious concerns, including: the extent of any consumer loss or risk of consumer loss or other adverse effect on consumers (EG 8.9(1)) and the extent to which customer assets appear to be at risk (EG 8.9(2)).

ANNEX B

REPRESENTATIONS

"Mothballing"

1. Mr Baxter made the following representations:
 - (1) Mr Baxter was the only person who undertook any advisory work in his business. His wife performed limited administrative duties. English is not her first language and she has difficulty in dealing with technical or legal English.
 - (2) The vast majority of his business came from existing contacts and Mr Baxter would meet such contacts on a 12 or 18 month cycle. Dealings with new customers were extremely limited.
 - (3) In the weeks leading to his trial on 12 May 2014, Mr Baxter ensured that all of the paperwork relating to products he had arranged previously had been completed in the unlikely event he received a custodial sentence.
 - (4) His business "was effectively "mothballed" ... because nothing needed to be done before his anticipated release". No reviews would need to take place until Mr Baxter's release.
2. The Authority has concluded that Mr Baxter has failed to explain how he would have provided adequate services to any existing customers who sought to contact his business during the period of his imprisonment outside the normal review period or how new customer queries were to be dealt with (even if such dealings were extremely limited). It is not sufficient to say that no reviews would need to take place in this period: even if there was a relatively low likelihood of customers seeking to make contact, Mr Baxter could not be sure at the time of being imprisoned that customers would not seek to make contact.
3. The Authority further notes the inconsistencies between these representations and Mr Baxter's letter of 18 August 2014, where he stated:

"... there is no risk of any unauthorised advice being given as mechanisms are in place to prevent such, administrative work is undertaken only by suitably trained staff and any requests for advice are outsourced to suitably authorised persons."

Mr Baxter's locum arrangements

4. Mr Baxter made the following representations:
 - (1) He had entered into an appointed representative's agreement with an individual (Mr B) on 18 September 2012. "After becoming aware of ... the charges being brought against [Mr Baxter], [Mr B] informed [Mr Baxter] that he would not be prepared to act as locum, but that he would use his best endeavours to find an alternative locum." Mr Baxter cannot recall the exact date when Mr B informed him that he would not be able to act but this was probably late March or early April 2014. He accepts that no locum was in place to look after the business while he was in prison.

- (2) Mr Baxter notified the Authority of the termination of the position of Mr B as appointed representative on 24 April 2014. However, the agreement could only be determined on 90 days' notice, so the contractual obligation on Mr B to act as a locum would have ended on 24 July 2014.
 - (3) A business that can be "mothballed" does not require immediate locum cover. No advice was provided and no administrative actions needed to be taken. It is not clear what a locum would have done.
 - (4) He accepts that he should have told the Authority that the business was effectively "mothballed". His failure to do so was due to a lack of understanding as to the nature of the concerns of the Authority and not because he wanted to deceive anyone.
5. The Authority has concluded as follows:
- (1) The representations in paragraph 4(1), (2) and (3) are inconsistent with the position as stated in Mr Baxter's letters to the Authority during the period of his imprisonment. The Authority has concluded that Mr Baxter did not have adequate locum arrangements in place during the period in which he was in prison and therefore made misleading statements to the Authority while in prison concerning his locum arrangements.
 - (2) As regards the representation in paragraph 4(2):
 - (a) If Mr Baxter seeks to rely on this representation to justify his statement in his letter of 18 July 2014 that the business had a locum in place, the Authority does not accept this.
 - (b) It was misleading to suggest that locum cover was in place when—
 - (i) under the agreement Mr B was only contractually obliged to provide locum cover for up to three months with further periods to be subject to agreement,
 - (ii) Mr Baxter was to be imprisoned for a period in excess of three months, and
 - (iii) Mr B had informed Mr Baxter that he was not prepared to act as locum in late March or early April.
 - (c) Further the Authority would have considered the statement made in the 18 July 2014 letter to be misleading even if the locum was contractually obliged to provide locum services until 24 July 2014.
 - (3) As regards the representation in paragraph 4(3), the Authority refers to its conclusion in paragraph 2.
 - (4) The Authority considers that Mr Baxter's statements concerning a locum being in place were misleading, and that Mr Baxter must have known them to be so.

Failure to notify the Authority of conviction and imprisonment

6. Mr Baxter made the following representations:

- (1) He does not accept that he was legally required to inform the Authority about the charges brought against him or his conviction. Mr Baxter's convictions are not financial in nature and he did not inform the Authority of them as a result. If the Authority needed to be made aware of any charges brought against an authorised person or any conviction, the rules of the Authority would state so expressly. However, SUP 13.3.1R—which the Authority takes to be a reference to SUP 15.3.1R—does not state this. The requirement to give notice only applies to information which indicates that the threshold conditions are not being satisfied or information which indicates that the position of customers may be prejudiced. As Mr Baxter's business was "mothballed", there was no legal requirement to give notice.
- (2) The solicitors and counsel who represented Mr Baxter following his being charged did not advise him that the Authority needed to be made aware of the charges.
- (3) Mr Baxter pleaded guilty and was given a custodial sentence. On the basis of his pre-sentence report, Mr Baxter expected to receive a non-custodial sentence. He accepts that this could not be guaranteed, but the advice he was given was that this was by far the more likely outcome. He was utterly shocked by the sentence and was not prepared for it.
- (4) On being sent to prison, he had only the telephone numbers of his wife and his then solicitors:
 - (a) It took three weeks before his wife's telephone number was approved by the Public Protection Unit.
 - (b) He did not contact his then solicitors because he had no faith and confidence in them. (He had undertaken his own research in relation to his case. When he put points to his then solicitors and counsel, they rejected them out of hand. He lost all trust and confidence in them.)
 - (c) He could have afforded legal representation, but he had lost confidence in his then solicitors and had no ability to search for other solicitors with the necessary specialist expertise.
- (5) The Authority underestimates the difficulties involved in dealing with legal issues as an unrepresented person in prison.
- (6) His letters to the Authority from prison were sent without the benefit of legal advice.

7. The Authority has concluded as follows:

- (1) The Authority has not relied on the type of offence for which Mr Baxter was convicted in concluding that it appears that Mr Baxter is not satisfying the threshold conditions. Mr Baxter was obliged to notify the Authority of his conviction and imprisonment in the circumstances of his case, in view of the

requirements of Principle 11 of the Principles, SUP 15.3.1R and the need to satisfy the suitability threshold condition. The Authority refers to its conclusion in paragraph 2 above.

- (2) Mr Baxter stated that he did not seek advice from his then solicitors and counsel concerning whether he should notify the Authority.
- (3) As regards the representation in paragraph 6(3):
 - (a) Mr Baxter has provided an extract of his pre-sentence report dated 1 May 2014. The extract itself is heavily redacted. The section setting out the recommendation to which Mr Baxter refers starts in the middle of a sentence. This limits the weight that can be given to it.
 - (b) However, even if it is accepted that Mr Baxter expected that a non-custodial sentence was by far the more likely outcome, he represented that—
 - (i) he accepts that this could not be guaranteed, and
 - (ii) he ensured that, in the weeks leading up to 12 May 2014, all of the paperwork relating to products he had arranged previously was completed.
 - (c) Accordingly, he made preparations for the imposition of a prison sentence. Those preparations should have included either—
 - (i) the notification of the Authority, or
 - (ii) at the very least, the making of adequate arrangements to ensure that the Authority was notified should a prison sentence be imposed.
 - (d) Further, Mr Baxter confirms that he pleaded guilty. The Authority notes the inconsistency with Mr Baxter's letter of 18 August 2014:

"... I would add I was not expecting to be convicted therefore how can I inform the FCA as per SUP 15.3.1R until it happens and I was not expecting to be imprisoned either ..."

- (4) The Authority does not accept the potential implication in Mr Baxter's representation in paragraph 6(4) that he could not have notified the Authority of his imprisonment:
 - (a) Following the approval of her telephone number, Mr Baxter could have asked his wife to notify the Authority. Notifying the Authority that Mr Baxter had been sent to prison and would contact the Authority in due course with further information would not have required command of technical or legal English.
 - (b) Irrespective of whether Mr Baxter no longer had trust and confidence in his then solicitors to represent him, they could have been instructed to

undertake the administrative step of notifying the Authority of Mr Baxter's circumstances.

- (c) Alternatively, new solicitors could have been instructed to notify the Authority of Mr Baxter's circumstances. This would not require specialist expertise.
- (d) Mr Baxter could have notified the Authority by letter.

If instead Mr Baxter was suggesting that it was difficult to notify the Authority, the Authority does not accept that this was an adequate excuse.

- (5) The Authority has given appropriate weight to the difficulties involved in dealing with legal issues as an unrepresented person in prison. For example, in this process, the Authority allowed Mr Baxter until 10 November 2014 to respond to the First Supervisory Notice of 2 October 2014. Mr Baxter did receive and reply to correspondence while in prison. The nature of the initial notification he needed to make to the Authority to comply with his regulatory obligations was neither onerous nor complex. Further, Mr Baxter has not provided an adequate explanation of why he was unable to instruct legal representatives or other agents.
- (6) Mr Baxter's two letters to the Authority from prison included misleading statements about basic factual matters that Mr Baxter must have known to be misleading. Legal advice was not needed in order to avoid making misleading statements of this nature.

Interim reinstatement

- 8. Mr Baxter represented that his permission to perform the regulated activities removed by the First Supervisory Notice should be reinstated until the Authority makes its final decision because—
 - (1) he is being deprived of his livelihood and is ready and willing to recommence the business as he left it before his imprisonment;
 - (2) no customer has been adversely affected by his absence;
 - (3) any need for the removal of the regulated activities from his permission on an interim basis has ceased.
- 9. Having regard to its conclusion that it appears that Mr Baxter is failing to satisfy the suitability threshold condition because he has not been open and co-operative with the Authority (including by providing misleading statements to the Authority) and having regard to the Authority's operational objective of consumer protection, the Authority considers it is necessary not to rescind the variation made to Mr Baxter's permission by the First Supervisory Notice.