
SECOND SUPERVISORY NOTICE

To: Noel Norbert Walker trading as Walkers Financial Planning

Address: 1 Redcatch Road
Knowle
Bristol
Avon
BS4 2EP

**Reference
Number:** 137916

Dated: 19 September 2013

ACTION

1. For the reasons given below, having taken into account the representations made by Mr Walker and pursuant to section 55J of the Act, the Authority has decided not to rescind the variation of Mr Walker's Part 4A permission. By First Supervisory Notice dated 20 June 2013, the Authority varied Mr Walker's Part 4A permission by removing all regulated activities with immediate effect. Accordingly, Mr Walker's Part 4A permission no longer includes the following regulated activities:
 - (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
 - (b) advising on regulated mortgage contracts;
 - (c) agreeing to carry on a regulated activity;

- (d) arranging (bringing about) deals in investments;
 - (e) arranging (bringing about) regulated mortgage contracts;
 - (f) dealing in investments as agent;
 - (g) making arrangements with a view to regulated mortgage contracts; and
 - (h) making arrangements with a view to transactions in investments.
2. The First Supervisory Notice further varied Mr Walker's Part 4A permission by imposing the following requirements, pursuant to section 55J of the Act, namely that Mr Walker must within 14 days of the First Supervisory Notice:
- (a) notify in writing all clients for Mr Walker's regulated activities that he is no longer permitted by the Authority to carry on regulated activities; and
 - (b) provide the Authority with a copy of the written notification sent to all clients for his regulated activities pursuant to (a) above, together with a list of all clients to whom such notification has been sent.

REASONS FOR ACTION

3. The Authority has concluded, on the facts and matters described below, that Mr Walker is failing and will continue to fail to satisfy the Threshold Conditions, in that the Authority is not satisfied that Mr Walker is a fit and proper person having regard to all the circumstances. In the opinion of the Authority, Mr Walker is not conducting his affairs in an appropriate manner, having regard in particular to the interests of consumers, and Mr Walker's conduct has not met the requirements of Principle 1 (Integrity) of the Principles under which a firm must conduct its business with integrity.

DEFINITIONS

4. The definitions below are used 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 "Contact Dates" means 21 March 2013, 30 March 2013 and 5 April 2013 on or around which Mr Walker met with the Customers;

the "Customers" means customers A, B and C;

"Mr Walker" means Noel Norbert Walker trading as Walkers Financial Planning;

"Mr Walker's Part 4A permission" means Mr Walker's permission pursuant to Part 4A of the Act;

the "Principles" means the Authority's Principles for Businesses;

the "RDR" means the Authority's Retail Distribution Review;

the “Threshold Conditions” means the threshold conditions set out in Part 1B of Schedule 6 to the Act; and

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

FACTS AND MATTERS RELIED ON

5. Mr Walker, a sole trader, was authorised by the Authority on 1 December 2001 to conduct designated investment business. On 31 October 2004, Mr Walker was also permitted to conduct regulated home finance business, and on 14 January 2005 he was also permitted to conduct insurance mediation business. With effect from 19 February 2013, Mr Walker varied his permission so that he is no longer able to conduct designated investment business.
6. On or around the Contact Dates, Mr Walker met with customers A and B and had a telephone conversation with customer C. During these contacts, the Customers did not sign any application documents, nor did they provide Mr Walker with oral authority to submit any pension transfer application on their behalf.
7. The discussion that Mr Walker had with the Customers on the Contact Dates, amounted to advising on and arranging investments for retail customers, activities that he had ceased to have permission to engage in from 19 February 2013, his permission having been varied to that effect on that date.
8. On 31 March 2013, Mr Walker submitted three pension transfer applications to Firm A, each in the names of the Customers. Each application included a signature purporting to be original signature of the relevant Customer. The applications were to effect the transfer of the Customers’ pension from Firm B to Firm A. Each of the Customers has confirmed that they did not consent to the application being submitted by Mr Walker on their behalf, and that they did not sign the application documents.
9. Mr Walker has failed to provide a satisfactory explanation of why he thought he had obtained the Customers’ consent to submit the applications, or of the circumstances surrounding the signing of the application documents. He stated (during the Authority’s investigation) that he had met and had discussions with each of the Customers about transferring their pensions approximately eighteen months earlier, and that he had obtained the Customers’ original signatures on the applications at that time. He failed to provide documentary evidence to substantiate that claim, and it is contradicted by the Customers. He also stated that he had obtained the Customers’ oral confirmation that they wished to proceed with the applications on the Contact Dates.

REPRESENTATIONS AND FINDINGS

Submission of the Customers’ application forms to Firm A

10. Mr Walker made representations that each of the Customers signed the application forms in 2010 and gave consent for those forms to be submitted at that time. Mr Walker asserted that the Customers subsequently gave him updated consent for the application forms to be submitted and that he then inserted a date on each of the Customers’ application forms shortly before they were submitted on 31 March 2013 and 4/5 April 2013. Mr Walker stated that he accepts that he was using

historic advice and copies of previously signed applications but that he did so because he was “under time pressure”. He stated that he believed his actions were in the Customers’ best interests in all the circumstances as he was trying to ensure that the Customers did not have to pay for the advice following the RDR changes taking effect.

11. Mr Walker also made representations that the Customers’ applications were part of a set of ten applications submitted to Firm A and that no allegations have been made against him in respect of seven of those applications. Only the Customers have alleged that he submitted their applications without first obtaining their consent/authorisation. Mr Walker contended that the Customers are mistaken and that the allegations against him have only been made because Firm A commenced an investigation into his submission of the application forms. Mr Walker asserted that during Firm A’s investigation, the Customers were approached by somebody holding themselves out as being connected to, or part of, the Police and were told that he was investigating a fraud. In particular, Mr Walker noted that the investigator prepared the Customers’ statements on Police stationery. Mr Walker contended that the Customers have mistakenly alleged that they did not provide him with their consent/authority for the submission of the application forms because Firm A’s investigator did not conduct an open and unbiased investigation. In essence, Mr Walker asserted that Firm A’s investigator misled the Customers into thinking that they were part of a Police investigation into fraud committed by Mr Walker, and unduly influenced their accounts when taking their statements.
12. The Authority has found that even on Mr Walker’s representations, his conduct in submitting copies of the Customers’ application forms to Firm A when he knew that they had not been signed by the Customers on the date/dates he inserted on to each breached Principle 1 (Integrity) of the Principles. Mr Walker’s conduct was clearly intended to give Firm A the false impression that: (i) the signatures on the application forms were the Customers’ original signatures (rather than copies); and (ii) the forms had been signed on the date/dates inserted by Mr Walker. In addition, the Authority does not accept Mr Walker’s representations that each of the Customers signed the application forms in 2010 and gave consent for those forms to be submitted at that time. Mr Walker has failed to provide the Authority with the original applications (or declarations) that he stated the Customers signed in or around 2010 (or any contemporaneous notes of his meetings with the Customers at that time). Mr Walker has also been unable to provide any documentary evidence to refute the Customers’ statements that they did not consent to him submitting the application forms to Firm A on their behalf. The Authority considers that Mr Walker should not have compromised on the need to obtain the Customers updated original signatures/updated written consent. Despite Mr Walker’s representation that he was “under time pressure”, the Authority considers that any time constraints were of his own making. He should not have proceeded with any transaction for which there was inadequate time for it to be handled properly, including such time as was required to set out the basis for any recommendation, to explain how the advice would be paid for, to answer any questions the Customers may have had, and to obtain the Customers’ signatures on the application forms. Accordingly, the Authority does not accept Mr Walker’s assertion that he obtained the Customers’ updated consent for the application forms to be submitted or that his conduct in submitting the application forms to Firm A was in the Customers’ best interests in all the circumstances.
13. The Authority has noted Mr Walker’s representations that the Customers’ applications were part of a set of ten applications submitted to Firm A and that no

allegations have been made against him in respect of seven of those applications. The Authority accepts Mr Walker's representations that only the Customers have alleged that he submitted their applications without first obtaining their consent/authorisation. However, the Authority rejects Mr Walker's representation that the Customers have mistakenly alleged that they did not provide him with their consent/authority for the submission of the application forms because Firm A's investigator did not conduct an open and unbiased investigation. The Authority sought and obtained confirmation from each of the Customers that at the time they provided their statements to Firm A's investigator they knew that he was acting as an employee of Firm A and not the Police. The Customers have also confirmed that they provided the statements of their own free will and that they stand by the contents of their statements. Therefore, the Authority does not accept Mr Walker's assertion that Firm A's investigator misled the Customers into thinking that they were part of a Police investigation into fraud committed by Mr Walker, and unduly influenced their accounts when taking their statements.

Misleading the Authority

14. Mr Walker made representations that he did not mislead the Authority. He stated that each of the Customers signed the application forms in 2010 and gave consent for those forms to be submitted at that time.
15. The Authority does not accept Mr Walker's representations that he did not mislead the Authority. Notwithstanding his representations that each of the Customers signed the application forms in 2010 and gave consent for those forms to be submitted at that time, Mr Walker also stated (during the Authority's investigation) that he had obtained the Customers' original signatures on the applications approximately eighteen months prior to submitting them on 31 March 2013 and 4/5 April 2013. However, the Customers statements directly contradict Mr Walker's statements and Mr Walker has failed to provide the Authority with the original applications (or declarations) that he stated the Customers signed in or around 2010 (or any contemporaneous notes of his meetings with the Customers at that time).

Advising on and arranging transactions for which Mr Walker did not have permission

16. Mr Walker accepted that he did arrange transactions for which he did not have permissions by submitting the Customers' applications on 31 March 2013 and 4/5 April 2013. Mr Walker stated that he did so because he mistakenly believed or assumed that he was allowed to if those transactions related to advice he had given before the RDR changes took effect on 31 December 2012. Mr Walker further stated that he provided the Customers with advice on those applications when he had the permission to do so (in 2010).
17. The Authority does not accept Mr Walker's representations that he mistakenly believed or assumed he could submit the Customers' applications on 31 March 2013 and 4/5 April 2013. The Authority notes that with effect from 19 February 2013, Mr Walker varied his permission so that he was no longer able to conduct designated investment business because he did not want to continue providing retail investment advice after the RDR changes took effect. If Mr Walker was in any doubt as to the impact of his variation of his permission on his ability to transact the pension switches, he could have contacted the Authority to seek clarification. The Authority also does not accept Mr Walker's representations that

he only provided the Customers with advice on the applications when he had the permission to do so (in 2010). Mr Walker has not provided the Authority with any documentary evidence that he provided advice on the applications in 2010. Further (and notwithstanding the lack of documentary evidence), Mr Walker has asserted that he contacted the Customers to check that his advice suited their current circumstances. If so, his actions would constitute updated/current advice to the Customers. For the foregoing reasons, the Authority has found that Mr Walker did advise on and arrange transactions for which he did not have permission in breach of Principle 1 (Integrity) of the Principles.

Proportionality of the Authority's action

18. Mr Walker stated that his conduct did not lack integrity (for the reasons set out in his representations above) and that the removal of all his permissions is disproportionate in all the circumstances. Mr Walker asserted that in his 30 years of trading, he has never been accused of lacking integrity or of dishonesty of any kind. Mr Walker also made representations that he is not an on-going risk to clients or potential clients as he no longer intends to advise on pensions and investments. He intends to start up a new business building affordable homes. Mr Walker stated that he has recruited three administrative staff and his new offices should be completed in May 2014. The removal of all his permissions would jeopardise all his future plans.
19. The Authority has found that Mr Walker's conduct did breach Principle 1 (Integrity) for the reasons set out in the Authority's findings above. Accordingly, the Authority considers that the removal of all Mr Walker's permissions is proportionate in all the circumstances. The Authority notes that it would be open to Mr Walker to seek to reapply for his permissions if he satisfies the Authority as to his suitability (including his fitness and propriety) in the future.

FAILINGS

10. The regulatory provisions relevant to this Second Supervisory Notice are set out in the Annex.
11. From the facts and matters described above the Authority, having regard to its operational objectives, has reached the following conclusions:
 - Mr Walker acted with a lack of integrity in breach of Principles 1 of the Principles: (i) by submitting the applications without first obtaining consent from the Customers to, or their signatures on, the applications; (ii) in stating to the Authority that he had obtained the Customers' original signatures on the applications approximately eighteen months previously; and (iii) in advising on and arranging transactions for which he did not have permission;
 - the risk of loss or other adverse effect on consumers by Mr Walker's failings, which are material breaches of requirements imposed on him by the Authority, causes the Authority to have very serious concerns about Mr Walker such that the exercise of the Authority's own-initiative power to vary Mr Walker's Part 4A permission with immediate effect is an appropriate response to those concerns; and
 - it is desirable to exercise the Authority's own initiative power to vary Mr Walker's Part 4A permission with immediate effect to meet its operational

objectives, and specifically in relation to Mr Walker, the objective of the protection of consumers.

PROCEDURAL MATTERS

Decision Maker

12. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Regulatory Decisions Committee.
13. This Second Supervisory Notice is given to Mr Walker under section 55Y(7) and in accordance with section 55Y(5) of the Act, and is being served on Mr Walker at his place of business as last notified to the Authority. The following statutory rights are important.

The Upper Tribunal

14. Mr Walker has the right to refer the matter to which this Second Supervisory Notice relates to the Upper 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 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Walker has 28 days from the date on which this Second Supervisory Notice is given to him to refer the matter to the Upper Tribunal.
15. A reference to the Upper Tribunal can be made by way of a reference notice (Form FTC3) signed by Mr Walker and filed with a copy of this Second Supervisory Notice. The Upper Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).
16. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

17. Mr Walker should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Upper Tribunal. A copy of the reference notice should be sent to Roger Hylton at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Publicity

19. Mr Walker 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

20. For more information concerning this matter generally, Mr Walker should contact Roger Hylton at the Authority (direct line: 020 7066 8168).

Andrew Long
Chairman, Regulatory Decisions Committee

ANNEX TO THE SECOND SUPERVISORY NOTICE ISSUED BY THE AUTHORITY TO NOEL NORBERT WALKER TRADING AS WALKERS FINANCIAL PLANNING ON 19 SEPTEMBER 2013

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include the protection of consumers.
2. Section 20(1) of the Act provides that:

“(1) If an authorised person other than a PRA-authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—

(a) given to that person under Part 4A, or

(b) resulting from any other provision of this Act,

he is to be taken to have contravened a requirement imposed on him by the [Authority] under this Act.”
3. The Authority is authorised by section 55J of the Act to exercise the following powers:
 - to 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));
 - to vary an authorised person's permission where it is desirable to do so to advance any of its operational objectives (section 55J(1)(c)(i));
 - to vary such a permission by removing a regulated activity from those for which the permission is given (section 55J(2)(a)(ii)); and
 - to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 55A of the Act, (section 55J(10)).
4. Section 55Y of the Act allows such a variation to take effect immediately (or on a specified date) only if the Authority having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
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, publication of the information would, in its opinion, be –

(a) unfair to the person with respect to whom the action was taken. [or]

(b) prejudicial to the interests of consumers

...

(7) Information is to be published under this section in such manner as the [Authority] considers appropriate."

6. Paragraph 2E to Schedule 6 to the Act states that:

"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; and

[...]

(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."

RELEVANT HANDBOOK PROVISIONS

7. In exercising its power to vary a Part 4A permission, the Authority must have regard to guidance published in the Authority's Handbook of Rules and Guidance (the "Handbook"). The relevant main considerations in relation to the action specified above are set out below.

Relevant Principle

8. Principle 1 (Integrity) of the Principles, states that a firm must conduct its business with integrity.

Guidance concerning the relevant Threshold Condition

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

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

10. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must be a fit and proper person having regard to all the circumstances, including amongst other things, the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers; and also whether his business is being, or is to be,

managed in such a way that his affairs are conducted in a sound and prudent manner (COND 2.5.1AUK(1)(c) and (f)).

11. COND 2.5.4G(2)(a) states that the Authority, when forming its opinion as to whether a firm is conducting its affairs in an appropriate and sound and prudent manner, will have regard to relevant matters, including whether it conducts, or will conduct, its business with integrity and in compliance with proper standards.
12. COND 2.5.6G states that the Authority, when forming its opinion as to whether a firm is conducting its business with integrity and in compliance with proper standards, may have regard to considerations including whether a firm has contravened any provisions of the Act or the regulatory system, which include the Threshold Conditions, the Principles and other rules (COND 2.5.6G(4)).

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)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).

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

15. EG 8.1B provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.
16. 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.
17. 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.
18. 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

19. 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.

20. 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)).
21. EG 8.8 sets out a non-exhaustive list of factors the FSA will consider in exercising its own-initiative power as a matter of urgency. EG 8.8(1) specifies that the FSA 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.
22. EG 8.9 sets out the factors which will determine whether the urgent exercise of the FSA'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)).