FINAL NOTICE

To: **Mr Harbinder Panesar**

Individual Reference Number: **HSP01018**

Date of Birth: **29 March 1967**

Date: **15 January 2013**

ACTION

1. For the reasons given in this notice, the FSA hereby:

   (a) imposes on Mr Panesar a financial penalty of £212,237; and

   (b) makes an order prohibiting Mr Panesar from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 15 January 2013.

2. The financial penalty consists of:

   (a) disgorgement of financial benefit of £88,437 arising from Mr Panesar's misconduct; and

   (b) an additional punitive element of £123,800.

3. Mr Panesar has provided verifiable evidence that he is suffering from serious financial hardship. However, due to the particularly egregious nature of the misconduct the penalty has not been reduced. Nor has any reduction been made to the disgorgement of financial benefit.

4. Mr Panesar agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) discount on the punitive element of the remaining penalty under the FSA's executive settlement procedures. Had it not been for that reduction, the FSA would have imposed a total financial penalty of £265,237 on Mr Panesar.

SUMMARY OF REASONS

5. Mr Panesar was approved to perform CF8 (Apportionment and Oversight) at Warranties from 14 January 2005 to 31 March 2009 and CF1 (Director) at Elite from 1 April 2010 to 1 December 2010. During these periods Mr Panesar breached Statement of Principle 1.

6. Mr Panesar breached Statement of Principle 1 by failing to act with integrity. In particular, he:

   (a) dishonestly misappropriated substantial funds from the business for his personal benefit. Between August 2008 and December 2010 Mr Panesar depleted business funds by £181,444 (£88,437 of which he misappropriated while he held a controlled function at Warranties or Elite);

   (b) operated the business with reckless disregard for the interests of customers and regulatory requirements, as a consequence of which customers were exposed to a significant risk of financial loss, by:

(i) failing to report policies accurately to Elite's underwriters;

(ii) selling policies that were outside the scope of the cover which had been authorised by Elite's underwriters;

(iii) continuing to sell policies with one of Elite's underwriters after Elite's facility with that underwriter had ended; and

(iv) designing and selling the Supreme Plus policy, which fundamentally failed to meet customers' needs.

7. As a result of his misconduct, a substantial number of customers were left without the insurance cover they had paid for. Elite failed to report at least 3,700 policies to its underwriters, sold at least 1,700 policies which were outside the scope of its authority and sold at least 1,060 Supreme Plus policies.

8. Mr Panesar has failed to act with honesty and integrity, whilst as an approved person at both Warranties and subsequently Elite.

9. During the intervening twelve months when he was not approved, Mr Panesar continued to misappropriate business funds. Mr Panesar was also found personally responsible by the court for failings at Warranties and to have acted without integrity. He is also in contempt of court for breaching a freezing injunction. He is therefore not a fit and proper person to perform any functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm.

10. Mr Panesar also lacks financial soundness. He has recently been discharged from bankruptcy, which had come about partly as a result of the Templeton judgment by which the court found Mr Panesar personally liable to Templeton for over £3m.

11. This action supports the FSA's regulatory objectives of:

(a) reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime;

(b) securing the appropriate degree of protection for consumers; and

(c) ensuring greater confidence in the insurance market.

DEFINITIONS

12. The definitions below are used in this Final Notice:

(a) the "Act" means the Financial Services and Markets Act 2000;

(b) "CF1" means the FSA's controlled function 1 (Director);

(c) "CF8" means the FSA's controlled function 8 (Apportionment and Oversight);

(d) "DEPP" means the FSA's Decision Procedure and Penalties Manual;

(e) "EG" means the FSA's Enforcement Guide;

(f) "Elite" means Motorcare Elite (2008) Limited (in liquidation), a firm authorised from 1 April 2010 to 15 January 2013;

(g) "FIT" means the FSA's Fit and Proper Test for Approved Persons

(h) the "FSA" means the Financial Services Authority;

(i) the "FSCS" means the Financial Services Compensation Scheme

(j) "Mr Panesar" means Mr Harbinder Panesar;

(k) "Part IV Permission" means the permission granted to Elite by the FSA under Part IV of the Act to carry on regulated activities;

(l) the "Settlement Decision Makers" means the two members of the FSA's senior management who have jointly taken the decision which gave rise to the obligation to give this Notice;

(m) the "Statements of Principle" means the FSA's Statements of Principle and Code of Practice for Approved Persons;

(n) the "Supreme Plus policy" means the motor breakdown insurance product which was sold by the business on the basis it would provide customers with

mechanical breakdown cover for the entire time that they owned the vehicle;

(o) "Templeton" means Templeton Insurance Limited;

(p) the "Templeton litigation" means the litigation initiated by the underwriter Templeton against Warranties and Mr Panesar in July 2008; and

(q) "Warranties" means Motorcare Warranties Limited (in liquidation), a firm authorised from 1 January 2005 to 25 May 2010.

FACTS AND MATTERS

Background

13. Warranties was an insurance intermediary that provided motor breakdown insurance through a distribution chain of 1,616 motor dealers acting as appointed representatives. It was incorporated on 18 December 1997 and became authorised on 1 January 2005. Warranties ceased to be authorised on 25 May 2010 and went into liquidation on 7 July 2011.

14. In July 2008 Templeton, Warranties' underwriter, initiated civil litigation against Warranties and Mr Panesar. Templeton's allegations against Warranties included that Warranties had:

(a) failed to pass on premiums to Templeton;

(b) sold policies that were outside the scope of its agency agreement with Templeton; and

(c) through Mr Panesar, made a fraudulent misrepresentation to Templeton about the losses sustained under its policies.

15. Templeton also secured a freezing order over Warranties' assets. After this point, premiums paid by Warranties' customers were paid into Elite's bank accounts.

16. Elite was incorporated in July 2008 and became authorised on 1 April 2010. When it became authorised Elite assumed Warranties' management structure, systems and controls, offices and staff and also took over responsibility for policies issued by

Warranties, its relationships with 531 of its authorised representatives and its agreements with underwriters.

17. Between July 2008 and March 2011 Warranties and/or Elite were party to:

    (a) an agency agreement between Warranties (subsequently transferred to Elite) and Underwriter A from 31 July 2008 to 17 June 2010;

    (b) an agency agreement between Warranties (subsequently transferred to Elite) and Underwriter B from 1 October 2008 to 1 September 2009; and

    (c) an agency agreement between Elite and Underwriter C from 1 April 2010 to 18 March 2011.

18. Elite stopped carrying out regulated activities on 18 March 2011. On 14 December 2011 the FSA approved Elite's application to vary its permission so as to cease all regulated activity. The firm went into liquidation on 12 December 2011. The FSA has cancelled Elite's Part IV Permission as at 15 January 2013.

Mr Panesar's role and responsibilities

19. Mr Panesar became managing director of Warranties in 2005. He was approved to perform CF8 (Apportionment and Oversight) on 14 January 2005. He became CF1 (Director) of Elite on 1 April 2010 and was the only approved person at Elite until he resigned on 1 December 2010.

20. During these periods Mr Panesar was solely responsible for the management of Warranties and Elite. His responsibilities included overseeing Elite's business strategy and day to day management, and for arranging and negotiating with the firms' underwriters. Mr Panesar was also solely responsible for reporting to the underwriters the premiums received from customers.

Misappropriation of funds

21. Mr Panesar was entitled to receive from Warranties and then Elite:

(a) a gross salary of £1,230 a fortnight, that is around £31,980 per annum; and

(b) additional payments to cover petrol and other expenses.

22. The majority of his salary and all expenses were paid through a director's loan which was written off at the end of each accounting period by payment of a dividend.

23. Between August 2008 and 18 March 2011 Mr Panesar was entitled to receive £149,455. During this period he routinely and frequently transferred money from the business accounts to his personal account. He misappropriated a total sum of £181,444 for his own benefit. He paid himself £88,437 of these total funds while he held a controlled function at Warranties or Elite.

24. Mr Panesar took the following steps to conceal this misappropriation:

(a) he did not disclose one business bank account to Elite's accountants, from which he misappropriated £53,600; and

(b) he falsely recorded payments from other business accounts as legitimate payments to third parties when in fact he had made these payments to himself.

Reckless conduct of business at Elite

Introduction

25. Mr Panesar operated the business with reckless disregard for the interests of customers and regulatory requirements, as a consequence of which customers were exposed to a significant risk of financial loss.

26. He purported to arrange insurance for customers, for which he charged a premium, when in relation to certain warranties no such cover had in fact been arranged, because:

(a) he had failed to report policies accurately to Elite's underwriters;

(b) he had sold policies that were outside the scope of the cover which had been authorised by Elite's underwriters; or

(c) he had sold policies with one of Elite's underwriters after Elite's facility with that underwriter had ended.

27. Further, a central part of Elite's business was the Supreme Plus policy which Mr Panesar had personally designed. This was sold to a large number of Elite's customers through the firm's appointed representatives. However, the product was fundamentally flawed and was administered in a way that failed to meet customers' needs.

28. As a result of his misconduct, a substantial number of customers were left without the insurance cover they had paid for.

Under-reporting of policies

29. Under-reporting of policies had been prevalent and systemic in Warranties. In July 2008, Warranties' underwriter, Templeton, alleged that Warranties had failed to report all policies between 2004 and 2008.

30. On three occasions following these allegations (July 2009, January 2010 and May 2010) another underwriter, Underwriter A, raised concerns with Mr Panesar about the underreporting of policies written by Warranties. These policies were subsequently taken on by Elite in April 2010.

31. On 10 May 2010 Underwriter A sent an auditor to Elite's offices to carry out an audit of these policies. The auditor found that between December 2009 and April 2010 Warranties had failed to report 480 policies. This exposed customers to the risk of loss, as underwriters would not accept claims if they had not received a premium from Warranties for the relevant customer.

32. The business model at Elite operated exactly the same way as it had at Warranties. Mr Panesar made no material changes to the operating model or practice of the business when Elite took over the business from Warranties. As a result significant under-reporting continued.

33. In early 2011 Underwriter C conducted a review of Elite's sales. It found that between April 2010 and March 2011 Elite had failed to report over 3,700 policies. It identified a discrepancy of at least 30% between the number of policies that Elite reported to

Underwriter C and the number of policies recorded on Elite's own system during this period. As a result Underwriter C refused to pay some claims.

34. Mr Panesar was aware that the under-reporting of policies was a serious problem at Elite. He knew this from:

    (a) the concerns raised by Templeton and Underwriter A about this issue at Warranties;

    (b) his knowledge that practices at Elite had not changed to address these issues;

    (c) the concerns subsequently raised by Underwriter C about under-reporting at Elite; and

    (d) the refusal of underwriters to pay valid claims on unreported policies.

35. Despite knowledge of these serious and unresolved failings, Mr Panesar allowed Elite to continue to sell policies to customers, and took no action to stop under-reporting continuing.

Sales outside scope of Elite's authority

36. Warranties had persistently failed to ensure that policies were sold within the terms of the authority it had from its underwriters. This failing had been included in Templeton's allegations in March 2009.

37. In March 2010, Underwriter A also raised concerns about Warranties' sale of policies that were outside the scope of its agency agreement (e.g. high value vehicles, taxis and policies over the duration or claim limit agreed with the underwriter) or were sold by appointed representatives whom Underwriter A had expressly prohibited from selling its policies. Underwriter A subsequently identified that at least 300 of such policies had been sold between July 2008 and June 2010.

38. Elite operated the same business model as Warranties, and Elite also sold policies outside the scope of its agreement with underwriters.

39. Underwriter C reported that between April 2010 and March 2011 Elite sold over 1,700 policies that were outside the scope of its authority.

40. Mr Panesar was aware that Elite sold policies outside the scope of its authority. He knew this from:

(a) the concerns raised by Templeton and Underwriter A about this issue at Warranties;

(b) his knowledge that practices at Elite had not changed to address these issues;

(c) the concerns subsequently raised by Underwriter C about under-reporting at Elite; and

(d) the refusal of underwriters to pay valid claims on policies that were outside the scope of Elite's authority.

41. Despite his knowledge of these serious and unresolved failings, Mr Panesar allowed Elite to continue to sell policies to customers, and took no action to stop the sale of policies outside the scope of its authority continuing.

Sale of policies after cancellation of agency agreement with Underwriter B

42. On 1 September 2009 Mr Panesar cancelled Warranties' facility with Underwriter B. The main sales by Elite's appointed representatives at this time were for Underwriters A and C.

43. However, as Mr Panesar knew, Elite took up the sale of policies for Underwriter B and continued to sell policies underwritten by Underwriter B after 31 August 2009 until late October 2010**.** Customers who were sold these policies after the facility had been cancelled were left with invalid insurance cover.

The Supreme Plus policy

44. Mr Panesar was responsible for creating the Supreme Plus policy. Warranties sold this product from 2004 and, when Elite became authorised, it took over the administration of those policies that Warranties had sold which were still active and continued to sell the policy.

45. The Supreme Plus policy was a motor breakdown insurance policy. Elite's authorised representatives sold it to customers when they purchased a vehicle on the basis that, in exchange for a single payment, it would provide mechanical breakdown cover for as long as they owned that vehicle, subject to certain conditions in relation to servicing and mileage.

46. Mr Panesar intended the policy to provide cover for the duration of customers' ownership of their vehicles by Elite entering into a series of 12 month or 36 month fixed term policies on behalf of Supreme Plus customers, using the additional premium that they had paid for Supreme Plus cover to renew the policies when each fixed term ended. This would supposedly continue for as long as the purchaser of the policy retained the insured vehicle. Mr Panesar calculated the single premium paid by the customer on the assumption that customers kept their cars for an average of 2.7 years. Mr Panesar informed the brokers who were in contact with Elite's underwriters of the nature of this business.

47. The way in which Mr Panesar operated the business meant that the Supreme Plus policy fundamentally failed to meet customers' needs.

48. The Supreme Plus policy was dependent on the timely renewal of customers' fixed term policies, which was in turn dependent on Elite having sufficient funds to meet the costs of renewal. Elite:

    (a) had no system which enabled it to ensure it renewed all customers' policies on time;

    (b) did not charge premiums sufficient to cover all renewals; and

    (c) such funds that it did keep were mixed up with Elite's own money.

49. This was exacerbated by the fact that, throughout the time that Mr Panesar was a director of Elite, the business was under considerable financial strain:

    (a) Elite had funded Warranties' legal costs in the Templeton litigation and made payments to customers to cover their claims that had been rejected as a result of the litigation. Elite recorded these payments in its accounts as an intercompany debt, which by 31 July 2010 totalled £665,300;

(b) Elite had taken on a debt owed by Warranties to Underwriter A in respect of unpaid premiums, totalling over £400,000 by May 2010. Elite was already over £35,000 in arrears by 2 August 2010;

(c) Mr Panesar was misappropriating substantial funds from the business; and

(d) Mr Panesar personally authorised ex gratia payments from Elite's funds to Elite customers whose claims had been rejected by the relevant underwriter, which further diminished the firm's resources.

50. As a result Elite was often left with insufficient funds to pay for renewals and only 10% of the renewals that Elite should have effected took place. This left many customers without insurance cover.

51. Elite's records do not show the total number of customers who purchased the Supreme Plus policy. However, the product has been described by staff at Elite as central to the firm's business. Records recovered from Elite by Underwriter C show that between 8 April 2010 and 14 March 2011 Elite sold at least 1,060 Supreme Plus policies underwritten by Underwriter C. Over 140 customers have claimed compensation to date from the FSCS in relation to these policies.

Criticism in Templeton judgment and contempt of court

52. The trial in the Templeton litigation took place in October and November 2010 and the judgment was published on 3 December 2010.

53. The judgment was highly critical of Mr Panesar personally. Mr Panesar was implicated in the forgery of documents and was found to be "*fully aware and party to the dishonest representation*" that Warranties made to Templeton. The court also found that Warranties plainly disregarded its obligation to pay premium to Templeton; that Mr Panesar was personally responsible for that failure; and that the failure was caused by a "*persistently casual approach to its contractual obligations and a wholly disorganised system for accounting for premium*".

54. In March 2012 the court found that Mr Panesar was in contempt of court for breaching the freezing order secured by Templeton against Warranties' assets. He used the "Motorcare" name, Warranties' office, telephone number and elements of its

website to conduct Elite's business, and by persuading Warranties' appointed representatives to work for the new firm. In July 2012 the court sentenced Mr Panesar to 9 months' imprisonment. Mr Panesar appealed this decision on 25 September 2012, and due to personal mitigating factors the sentence was suspended.

Financial soundness

55. On 3 December 2010, the day after Mr Panesar resigned as director and approved person, the court made an order (which was finalised on 29 March 2012) that Mr Panesar, Warranties and another defendant were jointly liable to pay £3,250,000 in relation to the Templeton litigation. Mr Panesar was declared bankrupt on 3 May 2011 and was discharged from bankruptcy in May 2012.

FAILINGS

56. The regulatory provisions relevant to this Final Notice are referred to in the Annex.

Misappropriation of company funds - Statement of Principle 1

57. Throughout his time as director of the business, and including those periods when he was an approved person, Mr Panesar regularly took funds from the business accounts. These funds were in addition to and not reflected in either the salary or dividend payments he received. Mr Panesar misappropriated £88,437 whilst an approved person.

58. Mr Panesar concealed the fact that he had made payments to himself from the business:

    (a) one of the business accounts from which Mr Panesar removed over £50,000, was never disclosed to the business' auditors and therefore none of the payments made to Mr Panesar from this account were reflected in Elite's financial statements; and

    (b) in relation to many of the cheque payments, Mr Panesar falsely recorded the payments as having been made to third parties.

59. This concealment supports the FSA's conclusion that Mr Panesar knowingly and dishonestly made payments to himself from the business.

60. Mr Panesar has breached Statement of Principle 1 by acting dishonestly.

Reckless operation of business - Statement of Principle 1

61. Mr Panesar was the managing director of both Warranties and Elite until December 2010. During that time he was responsible for the operation of the business, the arrangement of underwriting and the business' financial affairs.

62. During this period Mr Panesar operated the business with reckless disregard for the interests of customers and regulatory requirements. Mr Panesar allowed Elite to:

(a) fail to report policies accurately to its underwriters;

(b) sell policies that were outside the scope of its authority; and

(c) continue to sell policies with Underwriter B after Elite's facility with the underwriter had ended.

63. Mr Panesar allowed these problems to continue at Elite despite knowing that they had been prevalent at Warranties and continued at Elite, and that there was a significant risk that customers would be exposed to financial loss as a result. This risk crystallised on numerous occasions when underwriters refused to pay claims.

64. Mr Panesar also designed and sold the Supreme Plus policy, a product which failed to meet customer needs. He allowed Elite to operate this product in a way that was not viable despite knowing that as a result there was a significant risk that customers could be left without cover. His reckless operation of the Supreme Plus product put customers at serious risk of loss which crystallised on numerous occasions when Elite failed to renew customers' policies.

Not fit and proper

65. The facts and matters identified above lead the FSA to the conclusion that Mr Panesar fell seriously short of the minimum regulatory standards required for approved persons performing controlled functions. Further, the FSA takes into account that his misappropriation of premiums continued in the intervening year when he was not an approved person.

66. Mr Panesar's lack of fitness and propriety is also evidenced in both the substantive and contempt judgments of the Templeton litigation. The court considered that Mr Panesar was personally responsible for the failings at the firm, including the under-reporting of policies. Moreover, the court disbelieved Mr Panesar having heard his evidence under oath; implicated him in the creation of forged documents; and deemed him to have been fully aware of and party to the misrepresentation.

67. Further, Mr Panesar was not candid with the FSA at interview. Although Mr Panesar did not intentionally mislead the FSA, he told the FSA that his income from the firm was limited to his salary when he actually received significant additional sums from the firm.

68. Mr Panesar has failed to act with honesty and integrity and lacks financial soundness. As such, he is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

SANCTION

Financial penalty

69. The FSA hereby imposes a financial penalty on Mr Panesar for breaching Statement of Principle 1. As the most serious elements of his misconduct took place after 6 March 2010, the FSA's new penalty regime applies.

70. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

71. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the serious nature of the breaches and the need to send out a strong message of deterrence to others.

Calculation of financial penalty under DEPP

72. The FSA'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 FSA 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.

Step 1 - disgorgement

73. Pursuant to DEPP 6.5B.1G, at Step 1 the FSA seeks to deprive an individual of the financial benefit derived directly from the breach, where it is practicable to quantify this.

(a) **Statement of Principle 1 (misappropriation):** The Step 1 figure is £88,437, which is the total that Mr Panesar misappropriated during the periods that he held a controlled function at Warranties and then at Elite.

(b) **Statement of Principle 1 (recklessness):** Mr Panesar did not derive any financial benefit directly from this breach. The Step 1 figure is therefore zero.

74. The total Step 1 figure is £88,437.

Step 2 – the seriousness of the breach

75. Pursuant to DEPP 6.5B.2G, at Step 2 the FSA 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.

(a) **Statement of Principle 1 (misappropriation):** In the period from 1 August 2008 to 1 December 2010 Mr Panesar's relevant income totalled £77,797.

(b) **Statement of Principle 1 (recklessness):** In the period from 1 April 2010 to 1 December 2010 Mr Panesar's relevant income totalled £30,860.

76. In deciding on the percentage of relevant income that forms the basis of the Step 2 figure, the FSA 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.

77. 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%

78. In assessing the seriousness level, the FSA takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

(a) **Statement of Principle 1 (misappropriation):** Mr Panesar is guilty of a Level 5 breach for the purposes of Step 2 because:

(i) he acted deliberately for his own personal gain;

(ii) he falsely recorded payments to himself as payments to third parties;

(iii) he misappropriated sums from an account which he failed to disclose to Elite's accountants;

(iv) he abused his senior position in both Warranties and Elite;

(v) his misconduct weakened the solvency of the business, which ultimately had an adverse impact on customers; and

(vi) his misconduct occurred continuously over a two year period.

A Level 5 breach equates to 40% of Mr Panesar's relevant income. The penalty figure for this breach after Step 2 is therefore £31,119.

(b) **Statement of Principle 1 (recklessness):** Mr Panesar is guilty of a Level 4 breach for the purposes of Step 2, because:

(i) the breach was reckless;

(ii) it could impact upon confidence in the insurance market;

(iii) it threatened the solvency of the firm and its relationships with its underwriters; and

(iv) it put Elite's customers at risk of loss.

A Level 4 breach equates to 30% of Mr Panesar's relevant income. The penalty figure for this breach after Step 2 is therefore £9,258. The total Step 2 figure after Step 2 is £40,377.

Step 3 – mitigating and aggravating factors

79. Pursuant to DEPP 6.5B.3G, at Step 3 the FSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (but not including any amount to be disgorged in accordance with Step 1) to take into account factors which aggravate or mitigate the breach.

80. The aggravating factors in this case are that:

(a) Warranties has previously received a Private Warning from the FSA on 27 August 2008 in relation to concerns about the adequacy of its systems for controlling its appointed representatives;

(b) Mr Panesar failed to bring the breaches to the FSA's attention; and

(c) although Mr Panesar did not deliberately mislead the FSA, he did not tell the FSA about his misappropriation of funds from the business when he had the opportunity to do so and told the FSA that his income from the firm was

limited to his salary.

81. There are no mitigating factors.

82. The FSA has therefore increased the penalty by 25%. The total penalty figure after Step 3 is therefore:

(a)	**Statement of Principle 1 (misappropriation):**	£38,898
(b)	**Statement of Principle 1 (recklessness):**	£11,573
Total**:**		£50,471.

Step 4 – adjustment for deterrence

83. Pursuant to DEPP 6.5B.4G, if the FSA 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 FSA may increase the penalty.

84. In the interests of credible deterrence it is appropriate to increase the penalty because:

(i) Mr Panesar committed a deliberate fraud over an extended period;

(ii) he abused his position as sole director of Elite;

(iii) he knowingly concealed his fraudulent conduct;

(iv) by this misconduct he knowingly exacerbated the financial difficulties faced by Elite and put customers at risk;

(v) he acted with reckless disregard for the needs of customers and regulatory requirements;

(vi) he allowed systemic problems at Warranties to continue in Elite for a considerable period despite knowing that customers would be put at risk as a result; and

(vii) his misconduct put customers at risk.

The penalty figure at Step 4 has been set by reference to the £88,437 that Mr Panesar

misappropriated. The FSA has applied a multiplier of 2 to this figure and set the total penalty figure at Step 4 at £176,874.

Step 5 – settlement discount

85. Pursuant to DEPP 6.5B.5G, if the FSA 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 FSA and the individual reached agreement.

86. Mr Panesar has agreed to settle at an early stage of the investigation, and is therefore entitled to a discount of 30%. The penalty figure after Step 5 is therefore £123,812.

87. The total penalty that shall be imposed on Mr Panesar is therefore £212,237, which constitutes:

(a) disgorgement of £88,437; and

(b) an additional punitive element of £123,800.

88. Had Mr Panesar not agreed to settle at an early stage the penalty figure after Step 5 would have been £265,237, which constitutes:

(a) disgorgement of £88,437; and

(b) an additional punitive element of £176,800.

Serious financial hardship

89. Mr Panesar has recently been discharged from bankruptcy, which indicates that paying the full penalty outlined above would cause him serious financial hardship. The FSA has considered all the circumstances of the case to determine whether the penalty imposed on Mr Panesar should be reduced. By misappropriating company funds and seeking to conceal these payments from Elite's accountants, Mr Panesar:

(a) obtained significant financial benefit; and

(b) acted dishonestly with a view to personal gain.

90. Mr Panesar's misconduct is so serious that it would not be appropriate to reduce the penalty.

Prohibition

91. It is appropriate and proportionate to in all the circumstances to make an order prohibiting Mr Panesar from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of honesty and integrity.

92. Mr Panesar has demonstrated that he lacks integrity. In the interests of consumer protection it is appropriate to impose a prohibition order on Mr Panesar in the terms set out above.

PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for payment

95. The financial penalty must be paid in full by Mr Panesar to the FSA by no later than 29 January 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

96. If all or any of the financial penalty is outstanding on 29 January 2013, the FSA may recover the outstanding amount as a debt owed by Mr Panesar and due to the FSA.

Publicity

97. 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.

98. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

99. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142) of the Enforcement and Financial Crime Division of the FSA.

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Bill Sillett

Head of Retail Enforcement
FSA Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers.

2. Section 56 of the Act provides that the FSA may make a prohibition order prohibiting an individual from performing a specified function.

3. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

Handbook provisions

4. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance. The main provisions relevant to the action specified above are set out below.

Statements of Principle and the Code of Practice for Approved Persons

5. The Statements of Principle set 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.

6. Statement of Principle 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the

behaviour to be expected in that function.

7. Statement of Principle 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where 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.

8. Statement of Principle 3.1.6G provides that Statement of Principle (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statement of Principle.

9. The Statement of Principle relevant to this matter is Statement of Principle 1, which provides that an approved person must act with integrity in carrying out his controlled function.

10. Statement of Principle 4.1.2E lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1. These include misappropriating clients' assets and deliberate, acts, omissions or business practices that could be reasonably expected to cause consumer determinant.

The Fit and Proper Test for Approved Persons

11. FIT sets out and describes the criteria that are relevant in assessing the continuing fitness and propriety of approved persons.

12. FIT 1.3.1 states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

    (a) honesty, integrity and reputation;

    (b) competence and capability; and

    (c) financial soundness.

13. FIT 1.3.2 states that in assessing fitness and propriety, the FSA will also take into account the activities of the firm for which the controlled function is performed, the

permissions held by that firm and the markets in which it operates.

14. FIT 1.3.3 states that the criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the FSA is determining a person's fitness and propriety and that it would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.

15. FIT 2.1.3G provides that when determining a person's honesty, integrity and reputation the FSA will have regard to matters including:

    (a) whether the person has been convicted of a criminal offence. Particular consideration will be given to offences of dishonesty, fraud or financial crime;

    (b) whether the person has been the subject of any adverse finding in civil proceedings, particularly in connection with investment or other business, misconduct, fraud or management of a body corporate; and

    (c) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

16. FIT 2.2.1G states that in determining a person's competence and capability the FSA will have regard to all relevant matters including but not limited to:

    (a) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or intends to perform;

    (b) whether the person has demonstrated by experience and training that the person is suitable to perform the controlled function; and

    (c) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with the function.

17. FIT 2.3.1G states that in determining a person's financial soundness, the FSA will have regard to any factors including, but not limited to:

(a) whether the person has been the subject of any judgment debt or award, in the United Kingdom or elsewhere, that remains outstanding or was not satisfied within a reasonable time; and

(b) whether, in the United Kingdom and elsewhere, the person has made any arrangements with his creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, been the subject of a bankruptcy restrictions order, offered a bankruptcy restrictions undertaking, had assets sequestrated or been involved in proceedings in relation to any of these.

DEPP guidance since 6 March 2010

18. The FSA has had regard to the guidance on the imposition and amount of penalties set out in Chapter 6 of the current version of DEPP. All references to DEPP in this subsection of the Notice refer to the current DEPP guidance.

19. DEPP 5.1.1G provides that a person subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the FSA. The fact that he does so will not usually obviate the need for a statutory notice recording the FSA's decision to take that action. Where, however, the person subject to enforcement action agrees not to contest the content of a proposed statutory notice, the decision to give that statutory notice will be taken by senior FSA staff. The decision will be taken jointly by two members of the FSA's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level. At least one of the Settlement Decision Makers will not be from the Enforcement and Financial Crime Division. The other settlement decision maker will usually be, but need not be, from the Enforcement and Financial Crime Division. Consistent with section 395(2) of the Act, a Settlement Decision Maker will not have been directly involved in establishing the evidence on which the decision is based.

20. DEPP 6.4.1G provides that the FSA will consider all the relevant circumstances of the case when deciding whether to impose a financial penalty.

21. DEPP 6.5B.1G sets out the five steps for calculating financial penalties for individuals

in non-market abuse cases.

Step 1 - disgorgement

22. The FSA will seek to deprive an individual of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this.

Step 2 – the seriousness of the breach

23. The FSA will determine a figure which will be based on a percentage of an individual's "relevant income". "Relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred (the "relevant employment"), and for the period of the breach.

24. This approach reflects the FSA's view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The FSA also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The FSA recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the FSA still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a controlled function.

25. Having determined the relevant income the FSA will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the FSA will consider the seriousness of the breach and choose a percentage between 0% and 40%.

26. In deciding which level is most appropriate to a case against an individual, the FSA will take into account various factors which will usually fall into the following four categories:

(a) factors relating to the impact of the breach;

(b) factors relating to the nature of the breach;

(c) factors tending to show whether the breach was deliberate; and

(d) factors tending to show whether the breach was reckless.

27. Factors relating to the impact of a breach committed by an individual include the loss or risk of loss caused to consumers.

28. Factors relating to the nature of a breach by an individual include:

(a) the nature of the rules, requirements or provisions breached;

(b) the frequency of the breach;

(c) whether the individual held a senior position within the firm;

(d) the extent of the responsibility of the individual for the business areas affected by the breach; and

(e) whether the individual took any steps to comply with FSA rules, and the adequacy of those steps.

Step 3 – mitigating and aggravating factors

29. The FSA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

30. The following factors may have the effect of aggravating or mitigating the breach:

(a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention (or the attention of other regulatory authorities, where relevant);

(b) the degree of cooperation the individual showed during the investigation of the breach by the FSA, or any other regulatory authority allowed to share information with the FSA;

(c) whether the individual took any steps to stop the breach, and when these steps were taken;

(d) any remedial steps taken since the breach was identified, including whether these were taken on the individual's own initiative or that of the FSA or another regulatory authority; and

(e) the previous disciplinary record and general compliance history of the individual

Step 4 – adjustment for deterrence

31. If the FSA 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 FSA may increase the penalty. Circumstances where the FSA may do this include:

(a) where the FSA considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence;

(b) where previous FSA action in respect of similar breaches has failed to improve industry standards;

(c) where the FSA considers it is likely that similar breaches will be committed by the individual or by other individuals in the future; and

(d) where a penalty based on an individual's income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

Step 5 – settlement discount

32. The FSA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, 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 FSA and the individual concerned reached an agreement.

Serious financial hardship

33. DEPP 6.5D sets out the FSA's approach to imposing a penalty where that penalty would subject an individual to serious financial hardship.

34. DEPP 6.5D.1G states that the FSA's approach to determining penalties is intended to ensure that financial penalties are proportionate to the breach. The FSA recognises that penalties may affect persons differently, and that the FSA should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.

35. DEPP 5.5D.2G states that there may be cases where, even though the individual has satisfied the FSA that payment of the financial penalty would cause him serious financial hardship, the FSA considers the breach to be so serious that it is not appropriate to reduce the penalty. The FSA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

(a) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;

(b) the individual acted fraudulently or dishonestly with a view to personal gain;

(c) previous FSA action in respect of similar breaches has failed to improve industry standards; or

(d) the individual has spent money or dissipated assets in anticipation of FSA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FSA or other authorities.

Enforcement Guide

36. The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007.

37. The FSA's approach to financial penalties and public censures is set out in Chapter 7 of EG.

38. EG 7.3 states that the FSA has measures available to it where it considers it is

appropriate to take protective or remedial action, including the prohibition of an individual from performing a specified function in relation to a regulated activity.

39. EG 7.6 states that the FSA's policy in relation to reducing a penalty because its payment may cause a person serious financial hardship is set out in DEPP 6.5D.

40. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of EG.

41. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

42. EG 9.3 states that in deciding whether to make a prohibition order the FSA will consider all the relevant circumstances.

43. EG 9.4 sets out the general scope of the FSA's power in this respect. 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.

44. EG 9.5 provides that the scope of the 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 risk which he poses to consumers or the market generally.

45. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

    (a) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT

2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));

(b) whether, and to what extent, the approved person has:

(i) failed to comply with the Statement of Principle issued by the FSA with respect to the conduct of approved persons; or

(ii) 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 and other rules) (EG 9.9(3));

(c) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

(d) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

(e) 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 (EG 9.9(7)); and

(f) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

46. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include severe acts of dishonesty, which may have resulted in financial crime and serious lack of competence (EG 9.12(3)).

47. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.