
FINAL NOTICE

To: Paul White
Date of Birth: 28 March 1968
Authority Reference Number: PMW01135
Date: 8 April 2016

ACTION

1. For the reasons given in this Final Notice, the Authority hereby:
 - (1) publishes a statement of Paul White's misconduct (a 'public censure'), pursuant to section 66 of the Act. Mr White provided verifiable evidence of serious financial hardship. Had it not been for his reduced financial circumstances, the Authority would have imposed a financial penalty of £250,000; and
 - (2) makes an order, pursuant to section 56 of the Act, prohibiting Mr White from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm. This order takes effect from the date of this Notice.
2. The public censure will be issued on 12 April 2016 and will take the form of this Final Notice, which will be published on the Authority's website.

SUMMARY OF REASONS

2. The Authority decided to take this action because, during the period 8 March 2007 until 24 November 2010, Mr White was knowingly concerned in a contravention of Principle 5 by RBS in relation to LIBOR.

London Interbank Offered Rate

3. LIBOR is a benchmark reference rate fundamental to the operation of both UK and international financial markets. Its integrity is of fundamental importance to confidence in the financial system.
4. LIBOR is published daily in a number of currencies and maturities. It is based on the cost of borrowing in the interbank market and Panel Banks make daily submissions to an external administrator to enable LIBOR to be calculated. Until 31 January 2014, LIBOR was administered by the BBA and was set according to a definition published by the BBA.¹
5. At RBS, like other Panel Banks, Submitters are responsible for determining and making LIBOR submissions. Submitters are at the very heart of the LIBOR setting process. They are the link between the Panel Banks and the daily published LIBOR rates. Accordingly, it is essential for the integrity of LIBOR that Submitters act properly in their role.
6. Mr White was the Primary Submitter for JPY and CHF LIBOR throughout the Relevant Period.

RBS's Final Notice

7. On 6 February 2013 the Authority gave RBS a Final Notice, imposing a financial penalty of £87.5 million on the firm for significant failings in relation to LIBOR. The RBS Final Notice describes how, among other breaches, RBS breached Principle 5, which provides that a firm must observe proper standards of market conduct.

Mr White's misconduct in relation to LIBOR submissions

8. Mr White knew that the definition of LIBOR required submissions from Panel Banks based on their cost of borrowing in the interbank market. He knew that Trading Positions were not a relevant factor under the definition, although as a Submitter for RBS, Mr White understood the full LIBOR submission process, and was aware that it involved an element of judgement. Mr White deliberately closed his mind to the risk that taking Trading Positions into account was contrary to proper standards of market conduct. In doing so, he acted recklessly, and therefore with a lack of integrity.
9. Mr White acted improperly and was knowingly concerned in RBS's breach of Principle 5 in the following ways:
 - (1) he made JPY and CHF LIBOR submissions which took into account requests made by Derivatives Traders;
 - (2) he made JPY LIBOR submissions which took into account requests made by a Broker on behalf of an External Trader at another Panel Bank; and
 - (3) he took into account Trading Positions for which he was responsible when making JPY and CHF LIBOR submissions.

¹ Since 1 February 2014, LIBOR has been administered by ICE Benchmark Administration Limited ("IBA"): www.theice.com/iba/jhtml

Sanction

10. The UK and international financial system relies on the integrity of benchmark reference rates such as LIBOR. Mr White's misconduct as a JPY and CHF LIBOR Submitter threatened confidence in the integrity of the UK financial system and could have caused significant harm to other market participants.
11. Mr White was an approved person. Approved persons must act with integrity. However, during the Relevant Period Mr White made JPY and CHF LIBOR submissions which took into account: requests made by Derivatives Traders; Trading Positions for which he was responsible; and requests made by a Broker on behalf of an External Trader. In doing so Mr White deliberately closed his mind to the risk that his behaviour was contrary to proper standards of market behaviour, and so acted recklessly (and therefore also with a lack of integrity).
12. In light of the seriousness of the matters set out in this Notice, Mr White's misconduct warrants the imposition of a significant penalty. Mr White provided verifiable evidence of serious financial hardship. Had it not been for his reduced financial circumstances, the Authority would have imposed a financial penalty of £250,000. In the circumstances the Authority considers it appropriate to publish a statement of Mr White's misconduct.
13. In addition, as a result of his lack of integrity, the Authority considers that Mr White is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and, as such, should be prohibited from doing so.

DEFINITIONS

14. The definitions below are used in this Notice:

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

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

"BBA" means the British Bankers' Association, which until 31 January 2014 was the administrator of LIBOR;

"Broker" means an interdealer broker who acted as intermediary in, amongst other things, deals for funding in the cash markets and interest rate derivative contracts. Broker B is specifically referred to in this Notice (for the sake of clarity it should be noted that there is no reference to Broker A in this Notice);

"CHF" means Swiss Franc;

"CHF LIBOR" means the London Interbank Offered Rate for CHF;

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

"Derivatives Trader" means an employee of RBS trading interest rate derivatives. This notice specifically refers to Derivatives Traders A, B, C and G;

"EG" means the Authority's Enforcement Guide;

"ENF" means the Authority's Enforcement Manual;

"External Trader" means an employee of a Panel Bank other than RBS, trading interest rate derivatives. External Trader A, a former employee of UBS, is specifically referred to in this Notice;

"FIT" means the Authority's Fit and Proper test for Approved Persons;

"JPY" means Japanese Yen;

"JPY LIBOR" means the London Interbank Offered Rate for JPY;

"LIBOR" means the London Interbank Offered Rate;

"Money Market Trader" means an employee of RBS with primary responsibility for trading cash and managing the funding needs of RBS;

"Panel Bank" means a bank with a place on the panel of the administrator of LIBOR (the BBA during the Relevant Period) for contributing LIBOR submissions in one or more currencies;

"Primary Submitter" means a Money Market Trader who had responsibility for making RBS's LIBOR submissions;

"Principle 5" means Principle 5 of the Authority's Principles for Businesses;

"RBS" means The Royal Bank of Scotland plc;

"RBS Final Notice" means the Final Notice dated 6 February 2013 given to RBS by the Authority;

"Relevant Period" means the period 8 March 2007 to 24 November 2010;

"Submitter" means an employee responsible for determining and making LIBOR submissions on behalf of a Panel Bank;

"Traders" means Derivatives Traders and External Trader A collectively;

"Trading Position" means a trading book position held either in respect of derivative positions or money market positions;

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

"UBS" means UBS AG.

FACTS AND MATTERS

Background

LIBOR and interest rate derivatives contracts

15. LIBOR is the most frequently used benchmark for interest rates globally, referenced in transactions with a notional outstanding value of at least USD 500 trillion. During the Relevant Period, LIBOR was published for 10 currencies and 15 maturities.
16. Interest rate derivatives contracts typically contain payment terms that refer to benchmark rates. LIBOR is by far the most prevalent benchmark rate used in over-the-counter interest rate derivatives contracts and exchange traded interest rate contracts.
17. During the Relevant Period, LIBOR was published on behalf of the BBA. LIBOR (in each relevant currency) was, and continues to be, set by reference to the assessment of the interbank market made by a number of Panel Banks. Each Panel Bank contributes rate submissions each business day.
18. These submissions are not averages of the relevant Panel Banks' transacted rates on a given day. Panel Banks are required to exercise their subjective judgement in evaluating the rates at which money may be available in the interbank market when determining their submissions.
19. During the Relevant Period, the LIBOR definition published by the BBA and available to participants in the UK and international financial markets was as follows:

"The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size just prior to 11:00 London time".
20. The definition of LIBOR required submissions related to funding from the Panel Banks. It did not allow for consideration of factors such as Trading Positions.
21. Until February 2011, the JPY LIBOR panel consisted of 16 banks, including RBS, and the rate calculation for each maturity excluded the highest four and lowest four submissions. An average of the remaining eight submissions (known as the interquartile range) was taken to produce the final benchmark rate. The CHF LIBOR panel consisted of 12 banks, including RBS, and the rate calculation for each maturity excluded the highest three and the lowest three submissions. The interquartile range was taken to produce the final benchmark rate.
22. During the Relevant Period, RBS delegated responsibility for determining and making LIBOR submissions to Submitters on its money markets desk (which responsibility was sometimes further delegated to substitute Submitters).

RBS's Final Notice

23. RBS breached Principle 5 through misconduct relating to its submission of rates which formed part of the LIBOR setting processes.

24. Principle 5 states that a firm must observe proper standards of market conduct.
25. The RBS Final Notice sets out that RBS breached Principle 5 in, inter alia, the following ways:
 - (1) manipulation of RBS's own submissions that formed part of the calculation of the published JPY and CHF LIBOR rates; and
 - (2) collusion with Panel Banks and Broker firms.

Mr White's role at RBS

26. Mr White was employed by RBS as a Money Market Trader from 1994 until July 2011. From 21 February 2007 until October 2007 he was approved to perform the CF26 "Customer Trading" controlled function. Thereafter he was approved to perform the CF30 "Customer" controlled function until 2 November 2011. Mr White had extensive experience of the money markets, having worked in this area for over 20 years. Mr White traded in a range of financial products, including over-the-counter derivative products, overnight indexed swaps, loans, deposits and interest rate swaps, which are referenced to LIBOR. The value of these financial products and the profit gained by RBS, Mr White's book, and ultimately Mr White personally by way of his performance-related bonus, would depend to an extent on where LIBOR set each day.
27. During the Relevant Period Mr White also acted as the Primary Submitter for JPY and CHF LIBOR. Mr White understood the LIBOR submission process and knew the BBA definition of LIBOR. He knew that Trading Positions were not a relevant factor under the definition. He deliberately closed his mind to the risk that taking them into account when making JPY and CHF LIBOR submissions was contrary to proper standards of market conduct.
28. Mr White accepted that he took Trading Positions into account as a factor when making LIBOR submissions but, as set out in more detail in Annex B, Mr White stated that he would always make a 'correct' LIBOR submission, within an acceptable range of figures in accordance with the LIBOR definition. He stated that any communications which appeared improper were merely sent to appease those making requests. The Authority does not accept Mr White's version of events, and considers that Mr White took Trading Positions into account, only restricting himself from submitting figures that would not appear plausible. Although Mr White did not know that his behaviour was contrary to proper standards of market conduct, he deliberately closed his mind to the risk that it was. He therefore acted recklessly and with a lack of integrity.

Requests made by Derivatives Traders to Mr White

29. During the Relevant Period, Derivatives Traders routinely made requests to Mr White, in writing and orally, to adjust RBS's JPY and CHF LIBOR submissions in order to benefit their Trading Positions.
30. The Authority has evidence of Mr White receiving 68 documented communications (often containing requests for more than one day, and/or multiple maturities) from Derivatives Traders while acting as the Primary Submitter for JPY and CHF LIBOR during the Relevant Period. These

Derivatives Traders were seeking to manipulate RBS's JPY and CHF LIBOR submissions to benefit their Trading Positions and Mr White acted in accordance with many of their requests. The 68 communications comprised 47 in relation to JPY LIBOR and 21 in relation to CHF LIBOR. In addition, during the period March 2007 to November 2008, when Mr White sat next to Derivatives Trader A, he received oral CHF LIBOR requests on a weekly basis from Derivatives Trader A.

31. Such requests were for high, low or specific JPY and CHF LIBOR submissions with the aim of influencing the final benchmark published by the BBA. This, in turn, would impact the profit or loss made on Derivatives Traders' Trading Positions. Mr White closed his mind to the risk that what he was doing was improper, as demonstrated, for example, in his exchange with Derivatives Trader C set out at paragraphs 63-65 below.

Mr White took Derivatives Traders' requests into account

32. During the Relevant Period, Mr White routinely took the Trading Positions of Derivatives Traders into account when making CHF and JPY LIBOR submissions.
33. For example, at 10:33:19 on 4 December 2008, the following Bloomberg exchange took place between Derivatives Trader A and Mr White:

Derivatives Trader A: *"can u put 6m swiss libor in low pls?"*

White: *"NO"*

Derivatives Trader A: *"should have pushed the door harder"*

White: *"Whats it worth?"*

Derivatives Trader A: *"ive got some sushi rolls from yesterday?"*

White: *"it dont push inwards, thankfully"*

Derivatives Trader A: *"id have ripped it off the hinges straight in ur face"*

White: *"ok low 6m, just for u"*

Derivatives Trader A: *"woooooohooooooo 0.01%?"*

Derivatives Trader A: *"thatd be awesome"*

White: *"1.33"*

Derivatives Trader A: *"perfect u r a nice man"*

34. On 4 December 2008, RBS's submission was 1.33 for six month CHF LIBOR, a fall of six basis points from 1.39 the previous day. This resulted in RBS moving down to ninth in the ranking of Panel Banks, from equal fourth the previous day.

35. At 10:13:50 on 17 March 2009, the following exchange took place between Derivatives Trader A and Mr White. Derivatives Trader A wanted

Mr White to move the three month CHF LIBOR higher, and wanted the six month CHF LIBOR to move lower:

Derivatives Trader A: *"may I request libors?"*

White: *"u can request"*

Derivatives Trader A: *"3m 0.43, 6m 0.55, can we do that?"*

White: *"not really"*

Derivatives Trader A: *"why?"*

White: *"can do 6's at 55 3m 41,??"*

Derivatives Trader A: *"why cant we do my one?"*

White: *"we are, in 6's"*

36. RBS's subsequent LIBOR submission, submitted by Mr White later that day, was 0.42 for three month CHF LIBOR, a rise of three basis points from 0.39 the previous day. This resulted in RBS moving up to equal fourth in the ranking of Panel Banks, from tenth the previous day.
37. For six month CHF LIBOR, RBS's submission was 0.54, a fall of three basis points from 0.57 the previous day. This resulted in RBS moving down to ninth in the ranking of Panel Banks, from eighth the previous day.
38. Derivatives Trader A made the requests because his Trading Positions would generally benefit from a narrowing of the gap between three month CHF LIBOR and six month CHF LIBOR. Although the submission levels were not exactly as Derivatives Trader A had requested, they narrowed the gap by six basis points (the same overall effect that the requested levels would have had) and Mr White understood that this would potentially assist Derivatives Trader A's Trading Positions.
39. At 06:50:00 on 14 September 2009, with respect to RBS's JPY LIBOR submissions, Derivatives Trader B requested *"high 3 and 6s please"* and Mr White responded *"ok"*. Although RBS's three and six month JPY LIBOR submissions remained unchanged, RBS moved up in the ranking of Panel Banks because of lower LIBOR submissions by most other Panel Banks. The three month submission resulted in RBS moving up to equal second, from equal third the previous day. The sixth month submission resulted in RBS changing to second in the ranking of Panel Banks, from equal second the previous day.
40. At 07:44:16 on 15 September 2009, the following Bloomberg exchange took place between Derivatives Trader B and Mr White:

Derivatives Trader B: *"can we lower our fixings today please paul"*

White: *"make your mind up, haha, yes no probs"*

Derivatives Trader B: *"im like a whores drawers"*

41. Although on 15 September 2009, RBS's submission for one month JPY LIBOR was not in line with Derivatives Trader B's request (the submission was 0.18, remaining unchanged from the previous day, resulting in RBS being equal fifth in the ranking of Panel Banks, the same position as the previous day), RBS's three and six month JPY LIBOR submissions were in line.
42. For three month JPY LIBOR, RBS's submission was 0.36, a drop of two basis points from 0.38 the previous day. This resulted in RBS moving down to equal fifth in the ranking of Panel Banks, from second the previous day.
43. For six month JPY LIBOR, RBS's submission was 0.56, a drop of three basis points from 0.59 the previous day. This submission was equal fifth, down from second the previous day.
44. At 09:07:00 on 17 September 2009, Derivatives Trader C said to Derivatives Trader B, *"if we can drop 3mth Libor by 1bp would be great, the rest unchange."* Derivatives Trader B then asked Mr White, *"can we lower 3s pls by 1."*
45. On 17 September 2009, RBS's submission was 0.35 for three month JPY LIBOR, a fall of one basis point from 0.36 the previous day. This resulted in RBS moving down to equal sixth in the ranking of Panel Banks, from equal third the previous day.

Mr White's contemporaneous statements

46. Mr White provided contemporaneous positive responses to requests from Derivatives Traders. For example, he provided a number of positive responses to Derivatives Trader A including:
 - (1) On 4 December 2008: *"ok low 6m, just for u";*
 - (2) On 31 December 2008: *"ok if i must";*
 - (3) On 30 January 2009: *"Ok i get ya... libors as requested";* and
 - (4) On 16 March 2009: *"perfect, if thats what u want".*
47. In a Bloomberg exchange with Derivatives Trader G on 10 March 2010, Mr White asked *"how low u want it"*. Similarly, on 25 May 2010, he asked Derivatives Trader G *"do you want me to move lower?"*.

Mr White took account of Broker requests on behalf of External Trader A

48. During the Relevant Period, Mr White made JPY LIBOR submissions which took into account requests made by Broker B on behalf of External Trader A. Mr White knew that in making requests to him, through Broker B, External Trader A sought to benefit External Trader A's Trading Positions.
49. For example, at 06:32:38 on 12 May 2010, the following Bloomberg exchange took place between Broker B and Mr White:

Broker B: *"hi m8, u got any particular emotion in ur 3m fix today, any chance of u dropping it? 8-)"*

Mr White: *"Ummm, No axe for me, yes sure".*

Broker B: *"where u gonna put it?"*

Mr White: *"0.23"*

Broker B: *"tx info friend... have a super day in this brave new world"*

50. On 12 May 2010, RBS's submission was 0.23 for three month JPY LIBOR, a drop of one basis point from 0.24 the previous day. This resulted in RBS moving down to equal twelfth in the ranking of Panel Banks, from equal ninth the previous day.

51. At 07:12:00 on 22 June 2010, the following Bloomberg exchange took place between Broker B and Mr White:

Broker B: *"u got a bit less emotion in the 3's fix [JPY] today?"*

White: *"unchanged should be the call, u want higher?"*

Broker B: *"yah, if not a msve prob"*

White: *"will c what we can do, maybe up a pip"*

Broker B: *"nice, much appreciated"*

52. On 22 June 2010, RBS's submission was 0.24 for three month JPY LIBOR, a rise of one basis point from 0.23 the previous day. This resulted in RBS moving up to equal ninth in the ranking of Panel Banks, from equal twelfth the previous day.

53. Mr White knew that Broker B's JPY LIBOR requests were made on behalf of External Trader A in order to benefit External Trader A's Trading Positions at UBS. For example, on 3 March 2010 the following communication took place:

Broker B: *can I pick ur brain*

White: *yeah*

Broker B: *u see 3m jpy libor going anywhere between now and imm?*

White: *looks fairly static to be honest, poss more pressure on upside, but not a lot*

Broker B: *oh we have a mutual friend who'd love to see it go down, no chance at all?*

White: *haha [initials of External Trader A] by chance*

Broker B: *shhh*

Mr White took account of his own Trading Positions when making JPY and CHF LIBOR submissions

54. During the Relevant Period, Mr White acted as the Primary Submitter for CHF and JPY LIBOR.
55. During this period Mr White took into account his Trading Positions when making CHF and JPY LIBOR submissions.
56. Mr White referred openly to the fact that he was taking his Trading Positions into account when making JPY LIBOR submissions.
57. For example, at 09:56:38 on 3 March 2010 during a Bloomberg communication with Broker B regarding the three month JPY LIBOR submission, Mr White stated *"hehehe, mine should remain flat, always suits me if anything to go lower as i rcve funds"*.
58. Also, in a Bloomberg communication on 12 May 2010 (paragraph 49 above), when asked by Broker B whether he had *"any particular emotion in ur 3m fix today, any chance of u dropping it?"* Mr White responded, *"Ummm, No axe for me, yes sure"*. By this Mr White meant that he did not have a Trading Position fixing by reference to three month LIBOR that day, and as such was willing to accommodate Broker B's request.

Motivation

59. Mr White was motivated by RBS's financial interests when he took into account his Trading Positions when making CHF and JPY LIBOR submissions, in that he took into account the impact of LIBOR and RBS's LIBOR submissions on the profitability of his Trading Positions. This is demonstrated, for example, by his communications in the paragraphs above.
60. Mr White knew that Traders were motivated by financial interests when making requests to him. The final benchmark LIBOR rate published by the BBA would impact the profitability of Traders' Trading Positions and Mr White knew this, as demonstrated by, for example, a Bloomberg exchange at 09:20:38 on 16 March 2009. In that exchange, Derivatives Trader A made it clear to Mr White that he hoped to benefit his positions from changes in the published CHF LIBOR:

Derivatives Trader A: *"can we pls get a very very very low 3m and 6m fix today pls we have rather large fixings!"*

White: *"perfect, if thats what u want"*

Derivatives Trader A: *"tks paul and then from tomorrow we need them thru the roof!!!!: -)"*

White: *":-D"*

Recklessness

61. Mr White deliberately closed his mind to the risk that his behaviour was contrary to proper standards of market conduct. He knew that the LIBOR submission of each bank was supposed to reflect the rate at which the bank believed it could borrow, and not take into account the bank's own interests.
62. Mr White had not been given proper training or instruction on LIBOR submission. Further, the inappropriate requesting and taking into account of Trading Positions was widespread, and conducted openly, at RBS. In the circumstances Mr White did not know that his behaviour constituted improper market conduct. But he was an experienced Submitter, and he deliberately closed his mind to the risk that it did.
63. It is clear that Mr White had concerns about his behaviour. For instance, at 08:08:00 on 24 November 2010, the following Bloomberg exchange took place between Mr White and Derivatives Trader C:

Derivatives Trader C: *"hey was wondering if it suits you guys on hiking up 1bp on the 6mth Libor in JPY... it will help our position tremendously..."*

White: *"to be honest happy with levels we see at the moment"*

Derivatives Trader C: *"ok no prob... wouldnt want to cause any problem.. thanks mate"*

64. Immediately following this exchange, Mr White called Derivatives Trader C and said *"It's alright we're just not allowed to have those conversations on Mindalign"* (laughing). Derivatives Trader C then responded, *"Oh sorry about that, I didn't know"* and asked (with a laugh) whether it was *"because of the BBA thing."* Mr White then said *"Yes exactly, leave it with me and it won't be a problem..."*
65. Mr White did not increase his submission by one basis point as Derivatives Trader C had requested. As a result, RBS's six month JPY LIBOR submission remained unchanged at 0.38 (though RBS's submission moved up to fourth in the ranking of Panel Banks, from equal fifth). However, notwithstanding that this submission was not consistent with Derivatives Trader C's request, the exchange demonstrates Mr White's concern.

FAILINGS

66. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

Knowing concern in RBS's breach of Principle 5

67. Section 66(2)(b) of the Act provides that a person is guilty of misconduct if, while an approved person, he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act. A person can be 'knowingly' concerned either through actual knowledge of the relevant factual matters (which, in this case, include the fact that the behaviour was contrary to proper standards of market conduct), or by deliberately closing his or her mind.

68. For the purposes of this Notice, RBS is the “relevant authorised person” under section 66(2)(b) of the Act and its breach of Principle 5 is the “contravention of a requirement imposed on that authorised person” by or under the Act.
69. Mr White, an approved person, was knowingly concerned in RBS’s breach of Principle 5 because during the Relevant Period he:
- (1) had primary responsibility for JPY and CHY LIBOR submission rates on behalf of RBS;
 - (2) knew that the definition of LIBOR required submissions from Panel Banks based on their cost of borrowing in the interbank market - he knew that Trading Positions were not a relevant factor under the definition;
 - (3) deliberately closed his mind to the risk that taking such matters into account in determining where RBS’s JPY and CHF LIBOR submissions should be set, to benefit the financial interests of RBS (and UBS), was contrary to proper standards of market conduct;
 - (4) made JPY and CHF LIBOR submissions which took into account requests made by Derivatives Traders;
 - (5) made JPY LIBOR submissions which took into account requests made by Broker B on behalf of External Trader A; and
 - (6) took into account his own Trading Positions when making JPY and CHF LIBOR submissions.

Lack of fitness and propriety

70. The relevant sections of FIT are set out in Annex A to this Notice. FIT 1.3.1 states that the Authority will have regard to, among other things, a person’s honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
71. Mr White is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he lacks integrity, as demonstrated by his conduct set out in this Notice.
72. Mr White’s actions lacked integrity because he deliberately closed his mind to the risk that his behaviour was contrary to proper standards of market conduct. In so doing he acted recklessly.

SANCTION

Financial Penalty

73. Mr White’s misconduct took place from 8 March 2007 to 24 November 2010.
74. In determining the appropriate financial penalty, the Authority has had regard to the Authority’s policy on the imposition of financial penalties and public censures, as set out in DEPP during the period from 28 August 2007 to 5 March 2010. The detailed provisions of DEPP relevant to this matter,

as in force during that period, are set out in Annex A. In determining the financial penalty, the Authority has had regard to this guidance, and its analysis of how the guidance applies is set out below. The Authority has also had regard to:

(1) the provisions of ENF in force during the pre-28 August 2007 part of the Relevant Period; and

(2) the provisions of DEPP in force during the post-5 March 2010 part of the Relevant Period.

75. DEPP 6.5.2 lists factors which may be relevant when the Authority determines the amount of financial penalty for a person under the Act. Relevant factors are analysed below. DEPP 6.5.1 provides that the list of criteria in DEPP 6.5.2 is not exhaustive and all the relevant circumstances of the case will be taken into consideration.
76. The Authority considers the following DEPP factors to be particularly important in assessing the sanction:

Deterrence – DEPP 6.5.2(1)

77. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

Nature, seriousness and impact of the breach – DEPP 6.5.2(2)

78. Mr White's breaches were extremely serious. Mr White improperly and routinely took requests from and on behalf of Traders into account during the Relevant Period, and also took his own Trading Positions into account.
79. LIBOR is of central importance to the operation of UK and worldwide financial markets. Doubts about the integrity of LIBOR threaten confidence in these markets. Panel Banks' Submitters are the guardians of LIBOR and as such Mr White's failings were very serious.
80. Mr White's misconduct could have caused serious harm to other market participants.
81. Mr White was in a position of significant responsibility in his role at RBS.
82. Mr White was a highly experienced market professional.

The extent to which the breach was deliberate or reckless – DEPP 6.5.2(3)

83. Mr White's conduct was reckless. He acted as he did despite knowing that Trading Positions were not a relevant factor under the LIBOR definition, and deliberately closed his mind to the risk that taking them into account was contrary to proper standards of market conduct.

Conduct following the breach - DEPP 6.5.2(8)

84. Mr White provided a good level of cooperation with the Authority's investigation from an early stage. This cooperation has been reflected in the penalty.

Disciplinary record and compliance history - DEPP 6.5.2(9)

85. The Authority has not taken previous regulatory action against Mr White.

Serious financial hardship - public censure

86. Mr White has produced verifiable evidence that any financial penalty would cause him serious financial hardship. The Authority considers it appropriate to take Mr White's financial position into account and therefore considers that there should be no financial penalty and that, in these circumstances, it is appropriate to publish a statement of Mr White's misconduct. Had it not been for his reduced financial circumstances, the Authority would have imposed a financial penalty of £250,000.

Prohibition Order

87. The Authority considers that Mr White's actions as described in this Final Notice demonstrate that he lacks integrity. As such, the Authority believes that it is appropriate to prohibit Mr White from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

REPRESENTATIONS

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

PROCEDURAL MATTERS

89. This Final Notice is given in accordance with section 390 of the Act.
90. The following paragraphs are important.

Decision maker

91. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

Serious Fraud Office Investigation

92. The Serious Fraud Office is conducting an investigation into facts and matters at RBS concerning LIBOR misconduct. The Authority has not made any findings as to whether a criminal offence has been committed, and has taken no account of that investigation in reaching the decision to issue this Notice.

Confidentiality and publicity

93. Section 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter

to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority Contacts

97. For more information concerning this matter generally, contact Patrick Meaney (direct line: 020 7066 7420) at the Authority.

Mark Francis

**Head of Department, Wholesale 1, Enforcement and Market Oversight
Division**

ANNEX A

RELEVANT REGULATORY PROVISIONS

1. The Authority's strategic objective, set out in section 1B(2) of the Act, is ensuring that the relevant markets function well. The relevant markets include the financial markets and the markets for regulated financial services (section 1F of the Act). The Authority's operational objectives are set out in section 1B(3) of the Act, and include the integrity objective: protecting and enhancing the integrity of the UK financial system (section 1D).

Knowingly concerned

2. The Authority has the power, pursuant to section 66(1) of the Act, to impose a financial penalty of such amount as it considers appropriate, or to publish a statement of misconduct, where it appears to the Authority that a person is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.
3. A person is guilty, pursuant to section 66(2)(b) of the Act, of misconduct if, while an approved person, he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.
4. PRIN was issued pursuant to section 137A of the Act and contains general statements regarding the fundamental obligations of firms under the regulatory system.

PRIN

5. Principle 5 states: *"A firm must observe proper standards of market conduct"* (PRIN 2.1.1R).

Lack of integrity

6. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. Pursuant to section 56(2) of the Act, such an order may relate to a specified function, any function falling within a specified description or any function.

FIT

7. FIT sets out the criteria for assessing a person's fitness and propriety.
8. FIT 1.1.2 states:

"The purpose of FIT is to set out and describe the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function (see generally SUP 10A and SUP 10B on approved persons). The criteria are also relevant in assessing the continuing fitness and propriety of approved persons. The criteria that the Authority will consider in relation to an authorised person are described in COND."

9. FIT 1.3.1 states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.

10. FIT 1.3.3 states:

"The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms where the Authority is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination."

11. FIT 2.1.1 states:

"In determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3 G which may have arisen either in the United Kingdom or elsewhere[...]"

12. FIT 2.1.3G provides a non-exhaustive list of matters to which the Authority will have regard in determining a person's honesty, integrity and reputation.

Financial penalties and public censures

13. The Authority's policy on the imposition of financial penalties and public censures is set out in the Authority's Decision Procedure & Penalties Manual ("DEPP"). The provisions of DEPP set out below are those which were in force from 28 August 2007 to 5 March 2010. The Authority has also had regard to the provisions in force before and after this period (i.e. at the beginning and at the end of the Relevant Period).

14. DEPP 6.2.1(1) states that the Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or public censure. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

(1) The nature, seriousness and impact of the suspected breach, including:

(a) whether the breach was deliberate or reckless;

(b) the duration and frequency of the breach;

(c) the amount of any benefit gained or loss avoided as a result of the breach; and

...

(e) the impact or potential impact of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;

(2) The conduct of the person after the breach, including the following:

(a) how quickly, effectively and completely the person brought the breach to the attention of the Authority or another relevant regulatory authority;

- (b) the degree of co-operation the person showed during the investigation of the breach;
- (c) any remedial steps the person has taken in respect of the breach; and
- (d) the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken;

(3) The previous disciplinary record and compliance history of the person including:

- (a) whether the Authority (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;
- (b) whether the person has previously undertaken not to do a particular act or engage in particular behaviour; and
- ...
- (d) the general compliance history of the person, including whether the Authority (or any previous regulator) has previously issued the person with a private warning.

15. DEPP 6.5.1(1) states that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned. The list of factors in DEPP 6.5.2 is not exhaustive: not all of these factors may be relevant in a particular case, and there may be other factors that are relevant.

16. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

17. DEPP 6.5.2(2) states that the Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The considerations that may be relevant include:

- (a) the duration and frequency of the breach; and
- (d) the loss or risk of loss caused to consumers, investors or other market users;

18. DEPP 6.5.2(3) states that the Authority may take account of the extent to which the breach was deliberate or reckless.

19. DEPP 6.5.2(5) states that the Authority may take account of the size, financial resources and other circumstances of the person on whom the penalty is to be imposed.

Prohibition order

20. The Authority's approach to deciding whether to impose a prohibition order, and the scope of any such prohibition order, is set out in chapter 9 of EG.

21. EG 9.1 sets out how the Authority's power to make a prohibition order under section 56 of the Act helps it work towards achieving its statutory objectives. The Authority may exercise this power 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.

22. EG 9.3 states:

"In deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the [Authority] will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the [Authority]. As is noted below in some cases the [Authority] may take other enforcement action against the individual in addition to seeking a prohibition order and/or withdrawing its approval. The [Authority] will also consider whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies."

23. EG 9.5 states:

"The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally."

24. EG 9.8 to 9.14 set out guidance on the Authority's approach to making prohibition orders against approved persons.

25. EG 9.8 states that, in deciding whether to make a prohibition order, the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

26. Specifically in relation to approved persons, EG 9.9 states that in deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances of the case. These include, but are not limited to, the following:

(2) Whether the individual is fit and proper to perform 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).

(3) Whether, and to what extent, the approved person has:

- a. *[.....]*
- b. *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) or failed to comply with any directly applicable*

Community regulation made under MiFID or any directly applicable provision of the auction regulation.

(5) The relevance and materiality of any matters indicating unfitness.

(6) The length of time since the occurrence of any matters indicating unfitness.

(7) 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.

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

27. EG 9.10 states:

"The [Authority] may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates."

28. EG 9.11 states:

"Due to the diverse nature of the activities and functions which the [Authority] regulates, it is not possible to produce a definitive list of matters which the [Authority] might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm."

29. EG 9.13 states:

"Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the [Authority] will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety."

ANNEX B

REPRESENTATIONS

Mr White's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

The LIBOR setting process

1. *Mr White's role as a Submitter for JPY and CHF LIBOR was a very small part of his job at RBS. He was responsible for money market trading books in up to five currencies. He was under a huge amount of time pressure in his role and would need to consider and respond to messages in seconds. Setting LIBOR was not part of his job description, but he assumed the role as required by his superiors at RBS.*
2. *The definition of LIBOR involved a degree of subjectivity. There would always be a range of answers that correctly answer the question posed by the BBA. In times of illiquidity in the market there was an even greater element of subjectivity involved in the submission of the LIBOR rate. The definition did not expressly prohibit the consideration of Trading Positions provided that the answer to the BBA question was nevertheless correct.*
3. *LIBOR setting was not regulated during the relevant period. There was no regime covering the benchmark setting process. Mr White received no formal training or guidance in relation to the definition of LIBOR. There were no specific bank policies or procedures on the submission of LIBOR, and RBS gave no instructions on setting it. Mr White was not fully and properly instructed with regard to what to take into account and what not to take into account. He was appointed to do it even though he sat next to Derivatives Traders. Further, Derivatives Traders would stand in as Submitter when he was not there. He was put in a position of obvious conflict by RBS. Mr White did not know that the definition of LIBOR prohibited consideration of Trading Positions or that it was improper of him to consider them.*
4. *Mr White did consider requests made by Derivatives Traders as one of the factors he used to assess the correct LIBOR submission. However, Mr White believed that there could be a number of correct answers to the BBA LIBOR definition and that provided he submitted a correct answer it was not improper to take into consideration the Derivatives Traders' positions as one of the factors in his assessment. Applying the LIBOR definition (without taking into account Trading Positions) would lead to the calculation of more than one possible figure - a range of correct submissions. Only then would he take into account Trading Positions, as part of his discretion in determining which of the possible figures to submit. He did not take profit and loss into account at the first stage, when determining the range of correct figures. Mr White always submitted correct LIBOR rates and these rates may well on occasion have been consistent with Traders' requests. The fact that his rates were correct was supported by the fact that when Mr White made RBS's LIBOR submission it was generally identical or very close to the BBA's subsequently fixed rate.*
5. *Mr White saw no harm in letting Traders believe that he was doing them a favour provided the submission that he ultimately made was not incorrect. The phrases Mr White used, including in the communications on 4 December 2008 at 10:33:19 and 17 March 2009 at 10:13:50, are simply examples of Mr White letting Traders believe that he was helping them out, even if in fact, their requests were simply consistent with what he believed to be a correct*

rate (based on a genuine subjective assessment of the rate at which RBS could borrow funds).

The Authority has concluded as follows:

6. Mr White was an experienced Submitter with over 15 years' experience as a Money Market Trader. He understood the process for submitting LIBOR, and knew its definition. He knew that a bank's LIBOR submission should reflect the rate at which the bank believed it could borrow. It follows that the Submitter should not consider the bank's Trading Positions, which cannot be relevant to what the correct rate *is*, but can only be relevant to what the bank *would like it to be* (if acting in its own financial interests).
7. Mr White's language in reply to the multiple requests he received clearly indicates that he frequently allowed Traders' requests to alter where he would otherwise have set his submissions. This included responses such as: *"just for you", "ok if I must", "libors as requested", "ok you win", "ok will try", "For u yes", "only as its you", "how low u want it", "might even just go lower for the fun of it...:-)", "will c what we can do, maybe up a pip", "unchanged should be the call, u want higher?".* The communications do not suggest that Mr White was contemplating a 'range' of figures. The Authority does not consider it credible that Mr White was simply letting Traders believe he was 'doing them a favour', nor that Traders would have continued to make such requests if Mr White were not acting on them.
8. Mr White also received weekly oral requests from Derivatives Trader A over a period of around 18 months which are unlikely to have continued for that period if he were not acting on them.
9. There is no evidence, beyond Mr White's assertions, to support his position that he was determining a range of equally 'correct' LIBOR submission figures and then only taking into account Traders' requests (and his own positions) within that range. In this regard it was relevant that Mr White did not refer to such a 'range' in his initial interview with the Authority, nor in his internal disciplinary interviews. In relation to his own Trading Positions, in his first internal disciplinary interview Mr White stated that *"I set a [LIBOR] rate to benefit my interest as a money market trader... To benefit the overall results in my P&L... My P&L at the end of the year is affected by how I set LIBOR"*.
10. The Authority concludes that in fact Mr White took Trading Positions into account, only limiting his submissions on the basis of what he considered would appear plausible. It is clear that Mr White did so routinely in his assessment and determination of what the relevant submission would be.

Analysis of relevant submission figures

11. *Due to the subjective nature of LIBOR it is not possible to demonstrate that Mr White ever submitted an incorrect rate. The concept of referring to the relative position of submissions compared to other banks is flawed as it relies on the premise that the other banks were submitting accurate LIBOR rates. It is clear from the Authority's actions against other banks that the Authority does not take this view.*
12. *Further, there were numerous occasions on which the submission made by Mr White did not correspond to the request made, even where Mr White's communication suggested that he would take it into account. For instance, the*

communication at 16 March 2009 demonstrated the lack of correlation between phrases used by Mr White to Traders and his submissions.

The Authority has concluded as follows:

13. There is clearly a limit to the reliance that can be placed on an analysis of the figures submitted (as set out further below). The Authority's primary evidence for Mr White's misconduct is the communications between him and Derivatives Traders (and Broker B). These provide prima facie evidence that Mr White was acting improperly, by taking into account Trading Positions. The Authority does not rely on an overall analysis of Mr White's submission figures, but notes that such an analysis does not undermine the case against Mr White (as might be the position if, for instance, all or the vast majority of the submissions were wholly inconsistent with the requests, which is not the case).
14. The Authority accepts that other banks also submitted inaccurate rates in an effort to manipulate LIBOR, and that this decreases the reliance which can be placed on reference to the relative positions of submissions. Nonetheless the Authority believes that support for its conclusions can be drawn from certain of the figures, such as those set out in the body of this notice, which suggest the requests have significantly impacted the submissions made.
15. The Authority accepts that the figures do not in all instances support the conclusion that Mr White improperly took requests into account. The Authority acknowledges that often Mr White's LIBOR submissions only moved by a single basis point following a request to increase or decrease it, and sometimes did not move from the previous day. However, this was not always the case. Given the primary evidence of the communications themselves, in addition to the limited support derived from the figures in certain instances, the Authority does not consider that this undermines the Authority's overall conclusion as to Mr White's behaviour. The Authority notes that there could be a number of reasons why the submitted figure in any individual instance might not correlate with the written request made, which would not undermine the Authority's case (such as conflicting written and oral requests, a conflict between the written request and Mr White's own positions, and simple error). The Authority considers it unlikely that Traders would have continued to make requests of Mr White had he failed to act on their requests.

Derivatives Traders' requests

16. *Mr White saw no harm in letting Derivatives Traders believe that he was 'doing them a favour' provided the submission that he ultimately made was not incorrect, i.e. their requests were simply consistent with what he believed to be the correct rate. He acted in the interests of developing and maintaining good relationships with others – he was setting up to 60 rates a day and had to get along with the Derivatives Traders he sat with.*
17. *In relation to the communication at 10:33:19 on 4 December 2008, the phrase 'just for u' did not mean that Mr White submitted a rate that was incorrect because of the request. The phrase was used in a jovial and light-hearted manner and is not an indication that Mr White altered his submission outside of the correct range of rates for that day.*
18. *In relation to the communication at 10:13:50 on 17 March 2009, this communication demonstrated that Mr White was not prepared to accede to Derivatives Traders' requests if he felt that they were not consistent with the*

correct submission. His actual submissions were not consistent with the request, showing that Mr White would only ever make a submission that he believed to be correct.

19. *In relation to the communication at 9:20:38 on 16 March 2009, with regard to the phrase 'if thats what u want', as above the submission did not correspond to the requests made, demonstrating that Mr White would not set an incorrect rate.*

The Authority has concluded as follows:

20. The Authority does not consider that there would be 'no harm' in a Submitter allowing Derivatives Traders to believe he was doing something improper, and that they should continue to make improper requests to him (and, by implication, others). Mr White was an experienced Submitter and would have known this.
21. In relation to the communications on 4 December 2008 and 17 March 2009 referred to above, both the communications used and the subsequently submitted figures support the Authority's case (noting that Mr White was aware of what would benefit Derivatives Trader A's positions).
22. As set out above, the content and frequency of communications regarding requests supports the Authority's case. Mr White accepts that his communications give the appearance of favours being given; the Authority concludes that this is precisely what Mr White was doing. He was not seeking to assess a 'correct' range of submissions, or take into account only relevant factors in the proper performance of his Submitter role, but was taking account of requests which sought to benefit Derivatives Traders' positions, as a favour.
23. Although the submitted figure does not correlate with the request in every instance (such as on 16 March 2009 as referred to above), as set out above the Authority does not consider that this undermines its case.

Broker requests on behalf of External Trader A

24. *Mr White did not take requests from Brokers or External Traders into account when making LIBOR submissions. Any exchanges between him and Broker B were to ascertain information about the market to assist in his assessment of the correct range of rates for his LIBOR submission. Although he may on occasion have given the impression of co-operation, this was in the interests of developing and maintaining good relations with others in the industry. Mr White never let the requests made by Broker B influence his submission. If a request made and Mr White's own assessment accorded with each other then this was simply a coincidence. As a result there were occasions when the request made by Broker B and the RBS submissions did not correspond. The communication of 3 March 2010 was an example of a request with which the subsequent submission did not correlate.*

The Authority has concluded as follows:

25. Mr White's communications support the Authority's case. Although the submitted figure does not correlate with the request in every instance, as set out above the Authority does not consider that this undermines its case.

Mr White's own Trading Positions

26. *Mr White took the positions of both his money market books and his trading book into account as factors when making LIBOR submissions. The fact that Mr White was a Submitter and also had his own books (including a trading book) was known about and approved at the highest levels of senior management at RBS. It would have been impossible for Mr White to 'unlearn' his own positions when making LIBOR submissions. The fact that this was known about and therefore implicitly approved by the bank supported Mr White's belief that taking his books' positions into account as a factor in assessing his LIBOR submission was not improper provided that he submitted a correct LIBOR rate. On no occasion did Mr White submit a LIBOR rate that he considered to be incorrect because it suited the profitability of his books.*

The Authority has concluded as follows:

27. *Notwithstanding the fact that, as RBS knew, Mr White was both a trader, with his own book, and a Submitter, it was not acceptable for him to take into account his own Trading Positions in assessing and making LIBOR submissions. Although he could not "unlearn" his own Trading Positions (which was no different from the fact that he could not "unlearn" Derivatives Traders' requests once made), he could and should have disregarded them in making LIBOR submissions. Although it is true that RBS failed to structure the desks appropriately to adequately mitigate conflicts of interest, this does not excuse the fact that Mr White chose to take into account his own Trading Positions when making submissions in order to benefit his books. This was improper.*

Motivation

28. *Mr White realised that Traders made requests to try and maximise the profitability of their own trading books. However, Mr White never submitted a rate that he knew to be incorrect in order to assist the profitability of a Trader's book. Similarly, if his own books would have benefitted from a rate that did not fit the BBA definition of LIBOR then he would never have made a submission at that rate. In any event, the profitability of his books was only one factor in the calculation of his discretionary bonus. In fact his books were not very profitable.*

29. *Mr White is unable to accept that Traders were always requesting LIBOR to be moved in a direction which was favourable to their Trading Positions, to benefit their trading books, as there may have been occasions where Traders made requests because they believed the correct LIBOR should be lower or higher. Mr White is obviously unable to comment on the specific reasons for any particular request.*

The Authority has concluded as follows:

30. *As set out above, the Authority does not accept that Mr White sought to submit a figure within what he considered to be an acceptable range.*

31. *The language of the communications, including references to fixings and requests for assistance and favours, supports the conclusion that Traders' requests were motivated by financial interests.*

Recklessness

32. *Mr White was not lacking in integrity as he always made submissions that he believed to be correct and in accordance with the definition of LIBOR as he understood it to be. He genuinely did not believe that he was doing anything wrong.*
33. *By the time of the Bloomberg exchange and telephone call on 24 November 2010, Mr White was aware that allegations of USD LIBOR manipulation were being investigated, and this made him less sure about the propriety of Derivatives Traders making requests. Further, in this instance Mr White did not alter his submissions despite being asked to do so. This was an example of him telling a Derivatives Trader that he would take their request into account but then subsequently ignoring it because following the request would mean making an incorrect LIBOR submission.*

The Authority has concluded as follows:

34. Given Mr White's knowledge and experience, he knew that Trading Positions were not a relevant factor under the definition of LIBOR. He clearly had concerns about his behaviour but, given the circumstances, including that the behaviour of making requests was widespread and conducted openly, he deliberately closed his mind to the risk that it was contrary to proper market conduct.
35. The Authority accepts that in this instance the submitted figure does not indicate that he followed the request, as it was not consistent with it. However, it is nevertheless clear from the telephone call that Mr White had concerns, and by this stage did not want there to be written evidence of requests.

Prohibition

36. *Mr White was not lacking in integrity as he always made submissions that he believed to be correct and in accordance with the definition of LIBOR as he understood it to be.*
37. *Even if the Authority found Mr White to be not fit and proper, it still had the discretion not to impose a prohibition order on him. There were a number of factors against doing so – in particular the lack of risk that Mr White would now pose to confidence in the financial system following his investigation by the Authority, and the length of time since the submissions were made.*

The Authority has concluded as follows:

38. As an experienced Submitter with over 15 years' experience as a Money Market Trader, Mr White acted improperly in relation to LIBOR in two different currencies over a period of three and a half years, for the benefit of the Trading Positions of himself and others. In doing so he demonstrated a clear lack of integrity. His behaviour had the potential to impact the market generally and, as he knew, any benefit he gained for RBS in this way would cause a corresponding loss to its counterparties. Although LIBOR submission was only a small part of his job, his role as a Submitter was an important one. Mr White acted in a way that he knew to be outside the definition of LIBOR, while deliberately closing his mind to the risk that his behaviour was contrary to proper standards of market conduct. In so doing he acted recklessly, and therefore with a lack of integrity.

39. The Authority considers that, in all the circumstances, including that he has not admitted his wrongdoing, Mr White's behaviour indicates that he is not a fit and proper person and a prohibition order is warranted.

Limitation

40. *In accordance with sections 66(4), (5) and (5ZA) of the Act, the Authority could not take action against Mr White pursuant to section 66 of the Act, as the Warning Notice had been given to Mr White more than 3 years after the Authority first had information from which Mr White's misconduct could reasonably be inferred.*

41. *Section 66 should not be interpreted too narrowly or too broadly, but reasonably, with regard to the intent of the statute. If it was interpreted too narrowly, the Authority could always delay the beginning of the limitation period by stating that it knew of the general issue but not certain specifics. 'Misconduct' did not mean the precise actions/omissions as particularised in the subsequent notice. It meant that category of misconduct which, if further investigated, could later be particularised.*

42. *The Authority had in its possession, more than three years prior to the Warning Notice being given, various documents which when read together identified Mr White as RBS' JPY LIBOR submitter and contained information from which it was reasonable to infer the alleged misconduct.*

The Authority has concluded as follows:

43. The Authority does not accept that the correct approach in assessing limitation is to consider the category of misconduct. The Authority agrees with the Tribunal's comments in *Andrew Jeffery v The Financial Conduct Authority [FS/2010/0039]*, in particular at the following paragraphs:

- a. paragraph 334 *"The reference in s 66(4) to "the misconduct" (our emphasis) clearly refers to the particular misconduct in respect of which action is to be taken against a particular person, and not to conduct of a similar nature in respect of which information may have been obtained earlier.";*
- b. paragraphs 338-339 *"A mere allegation or assertion unsupported by evidence would be unlikely to be regarded as sufficient to amount to knowledge of misconduct or as information from which it would be reasonable for the Authority to have inferred misconduct, although it might be expected to give rise to further enquiry. Knowledge of an allegation of misconduct is not the same as knowledge of the misconduct... Where the Authority becomes aware of more than one act of misconduct of which a particular person appears to be guilty, the time limit operates separately in respect of each..."; and*
- c. paragraph 410 *"As we have described, the actual or constructive knowledge of the Authority must relate to the specific incidents of misconduct set out in the Warning Notice. Knowledge of similar past misconduct, whether actual or inferred, does not start time running generally in respect of different cases of the same or similar misconduct."*

44. The Authority did not have information, prior to three years before the Warning Notice was given, from which it could reasonably have inferred Mr White's misconduct as set out in the Notice. It was aware only of allegations of misconduct, in general terms – referring, for instance, simply to Submitters, but not to Mr White personally. The periods of time covered by the allegations were not those covered in the Notice.
45. Even if the correct approach were to consider categories of misconduct, the position would be unchanged, as the Authority had no information indicating misconduct by Mr White in relation to the categories set out in the Notice – taking into account his own Trading Positions, Derivatives Traders' requests, or requests by Broker B on behalf of External Trader A. However, as set out above, the correct approach is to consider information relating to the specific misconduct. The Authority therefore concludes that it may take action against Mr White pursuant to section 66 of the Act.