FSA®

SEE FINAL NOTICE ISSUED ON 8 OCTOBER 2012

DECISION NOTICE

To:	John Blake
FSA Individual Reference Number:	JXB02040
Date:	18 January 2012

TAKE NOTICE: The Financial Services Authority, of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") has decided to take the following action:

1. ACTION

1.1. For the reasons set out below and pursuant to:

(1) section 123 (Power to impose penalties in cases of market abuse);

(2) section 66 (Disciplinary powers); and

(3) section 56 (Prohibition orders);

of the Financial Services and Markets Act 2000 ("the Act"), the Financial Services Authority ("the FSA") has decided to impose on you, John Blake:

(1) a financial penalty of £100,000 for:

(a) engaging in market abuse as defined by section 118(7) of the Act (dissemination); and

(b) being knowingly concerned in the failure of Welcome Financial Services Limited ("Welcome") to take reasonable care to organise and control its affairs responsibly and effectively in breach of Principle 3 (Management and control); and

(2) a prohibition order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, on the grounds that you are not a fit and proper person as your conduct described in more detail later in this Notice demonstrates a lack of integrity.

1.2. The financial penalty would have been £400,000 but for evidence that imposing such a penalty would have caused you financial hardship.

2. SUMMARY REASONS FOR THE ACTION

2.1. Between August 2007 and February 2009 ("the Relevant Period"), you were the Managing Director at Welcome, the principal subsidiary of Cattles Limited, then known as "Cattles plc" ("Cattles"), a subprime lender. You were approved to perform the chief executive function (CF3) and the apportionment and oversight function (CF8).

The false and misleading statements

2.2. Welcome published false and misleading information about the credit quality of its loan book in its Annual Report and Financial Statements for the year ending 31 December 2007 ("Welcome's 2007 Annual Report") by stating that:

(1) as at 31 December 2007, around £2.1 billion of its approximately £3 billion loan book was "neither past due nor impaired" (ie not in contractual arrears);

(2) it treated a loan account as impaired when the account was 120 days in contractual arrears; and

(3) it had made a pre-tax profit of £130 million for the year to 31 December 2007.

2.3. Welcome's 2007 Annual Report containing this false and misleading information, approved by Welcome's Board including yourself, was consolidated into Cattles' Annual Report and Financial Statements for the period ending 31 December 2007 ("Cattles' 2007 Annual Report"). This was published on 28 February 2008, reporting a pre-tax profit of £165.2 million.

2.4. The same misleading information was also published in the Cattles' rights issue prospectus dated 23 April 2008 ("the Rights Issue Prospectus") that raised £200 million.

The true position in respect of the loan book

2.5. In fact, deferments had been routinely employed in the business and a correct application of the International Financial Reporting Standard 7 ("IFRS 7") would have resulted in loans which had been deferred being treated either as past due or as re-negotiated. Because deferments had not been stripped out of the 'neither past due nor impaired' category, around £2.1 billion of the loan book was disclosed as not being in contractual arrears, creating the impression that far more customers were repaying their loans on time than was actually the case. The level of a lender's contractual arrears as a proportion of its loan book is a key measure of financial performance.

2.6. £445 million of the loan book was more than 120 days in contractual arrears and treated as unimpaired.

2.7. Impairing on a contractual basis, Cattles re-stated the figures in its 2007 Annual Report showing that it made a pre-tax loss of £96.5 million instead of the originally reported profit of £165.2 million (a reduction of £261.7 million). On the same basis, Welcome made a loss of £94.9 million (a reduction of £224.9 million).

Your responsibilities

2.8. As a director of Welcome you had a duty to exercise care, skill and diligence in the performance of your duties.

2.9. As an approved person and the managing director approved to perform the chief executive function, you had responsibility under the immediate authority of the Welcome Board for the conduct of the whole of the business.

2.10. As an approved person with responsibility for apportionment and oversight, in relation to the duty of Welcome to organise and control its affairs responsibly and effectively in accordance with Principle 3, you had responsibility for overseeing the establishment and maintenance of such systems and controls as were appropriate to Welcome.

Approval of the Annual Report

2.11. On 18 March 2008, you, together with the other directors on the Board of Welcome, approved Welcome's 2007 Annual Report.

Your knowledge

2.12. You knew that the business made extensive use of 'deferments' whereby missed contractually due payments could be deferred to the end of the loan period, usually without contacting the relevant customer, and a deferment was deemed to either re-start or pause the arrears clock, depending on the circumstances. This had the effect that a loan on which interest payments had been deferred might be deemed by the business to be:

(1) up-to-date and not in arrears despite a number of contractually due payments having been missed; or

(2) in arrears but not impaired (ie not more than 120 days in arrears) despite more than four contractual monthly payments having been missed.

The contraventions and financial penalty

2.13. By approving the Welcome's 2007 Annual Report in the knowledge that the information in it would be disseminated to the market, you committed market abuse.

2.14. By failing to discharge your duty to ensure the accuracy of the credit quality of Welcome's loan book, you were knowingly concerned in Welcome's breach of Principle 3.

2.15. In the light of all the circumstances, the FSA considers it appropriate to impose on you a financial penalty of £100,000 which would have been £400,000 but for your personal circumstances.

Integrity and prohibition

2.16. In failing to ensure that there was a full and open discussion on the treatment of deferments within Welcome leading to a proper application of IFRS 7 in the accounts, and for the reasons given more fully in paragraphs 6.9 to 6.17, the FSA considers that you failed to act with integrity in discharging your responsibilities.

2.17. The FSA makes no finding that you deliberately set out to conceal the true position, either on your own part or jointly with others.

2.18. The FSA concludes that you are not a fit and proper person to perform any function in relation to any regulated activity and that it should make a prohibition order accordingly.

3. LEGISLATION, RULES AND GUIDANCE

Relevant legislative provisions

3.1. The provisions set out below are those applicable during the Relevant Period.

3.2. The FSA has the power pursuant to section 56 of the Act, to prohibit an individual from performing any function in relation to any regulated activity where it appears to the FSA that that individual is not a fit and proper person.

3.3. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty on a person 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.

3.4. The FSA has the power, pursuant to section 123(1) of the Act, to impose a financial penalty where it is satisfied that a person has engaged in market abuse.

3.5. Section 118(1) of the Act defines *"market abuse"* as behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

> "occurs in relation to ... qualifying investments admitted to trading on a prescribed market; … and … falls within any one or more of the types of behaviour set out in subsections (2) to (8)."

3.6. Section 118A(1) of the Act provides that:

> "[b]ehaviour is to be taken into account for the purposes of … [sections 118 to 131A of the Act] … if it occurs in the United Kingdom or … in relation to qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom ..."

3.7. Section 130A of the Act provides that the Treasury may by order specify markets and investments which are "prescribed markets" and "qualifying investments" for the purposes of any or all of sections 118 to 131A of the Act.

3.8. The London Stock Exchange ("LSE") is a prescribed market for the purposes of section 118(7) of the Act by reason of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001. Shares are, by reason of the same Order and relevant European legislation, qualifying investments.

3.9. Section 118(7) defines as a form of market abuse behaviour which:

> "… consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading."

Relevant regulatory provisions

3.10. Principle 3 of the FSA's Principles for Businesses provides (in PRIN 2.1.1R) that:

> "A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

3.11. PRIN 3.2.3R provides, amongst other things, that Principle 3 applies with respect to the carrying on of unregulated activities in a prudential context, 'prudential context' being defined as:

> "in relation to activities carried on by a *firm*, the context in which the activities have, or might reasonably be regarded as likely to have, a negative effect on:
>
> (a) confidence in the *financial system*; or
>
> (b) the ability of the *firm* to meet either:
>
> (i) the "fit and proper" test in *threshold condition* 5 (Suitability); or
>
> (ii) the applicable requirements and standards under the *regulatory system* relating to the *firm's* financial resources."

3.12. Paragraph 5 to Schedule 6 of the Act sets out threshold condition 5 which says that:

> "The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including:
>
> (a) his connection with any person;
>
> (b) the nature of any regulated activity that he carries on or seeks to carry on; and
>
> (c) the need to ensure that his affairs are conducted soundly and prudently."

3.13. COND 2.5.4G(2)(a) sets out that in determining whether a firm will satisfy and continue to satisfy threshold condition 5, the FSA will have regard to all relevant matters including but not limited to whether a firm conducts its business with integrity and in compliance with proper standards.

3.14. MAR 1.2.3G makes clear that the Act does not require the person engaging in the behaviour in question to have intended to commit market abuse.

3.15. Further regulatory provisions are set out in the Annex to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. This Notice concerns your misconduct in the Relevant Period, during which time Cattles was a publicly listed financial services company, having been admitted to the Official List of the LSE in 1963. Cattles' shares were qualifying investments for the purposes of section 118 of the Act.

4.2. Welcome is a wholly owned subsidiary of Cattles, and is authorised and regulated by the FSA (FSA registration no. 305742). Welcome's principal business (which was not a regulated activity) was retail consumer lending, providing low value secured, unsecured and hire purchase loans to subprime borrowers at high levels of interest. The significance of this part of the business within the Cattles Group is indicated by figures taken from the Cattles 2007 Annual Report, which showed that it represented approximately 89.5% of Cattles' revenue.

4.3. As Managing Director of Welcome, you had overall responsibility for Welcome's business and exercised significant influence over Welcome's culture and the way in Welcome's business was conducted. You knew Welcome's financial statements formed by far the most significant part of Cattles' financial statements. You also attended meetings of Cattles' Audit Committee (which meetings were also attended by PricewaterhouseCoopers – "PwC") and were therefore in a key position to influence the information provided to Cattles' Audit Committee and PwC. To the extent that you were aware that relevant information was being withheld from, or that misleading information was being provided to, Cattles' Audit Committee and/or PwC, you should have taken steps to remedy the position.

Management of customer arrears within Welcome

4.4. In 2006, Welcome developed an operational structure whereby:

(1) a loan that was less than 60 days in arrears was managed by an 'Operational Branch';

(2) a loan that was more than 60 days but less than 120 days in arrears was managed by a Local Management Branch ("LMB"). The LMBs were described in Welcome's 2007 Annual Report as comprising:

> *"specialist collectors who work with customers to ensure regular payments resume so as to enable the account to be transferred back to the Operational Branch and to prevent the account from falling into more serious arrears"*; and

(3) a loan that was more than 120 days in arrears was considered impaired and was transferred to a 'Local Collection Unit' ("LCU").

4.5. Importantly, within Welcome, the arrears status of a loan (and therefore whether it sat within an Operational Branch, an LMB or an LCU) was not a simple calculation done on the basis of the number of contractually due payments missed (on which basis, for example, two missed monthly payments would equate to a loan being 60 days in arrears). Instead, Welcome's internal calculation of arrears allowed for the deferment of missed payments in certain circumstances, with the application of a deferment to a loan being treated within Welcome as either re-starting or pausing the calculation of arrears, depending on the circumstances.

4.6. A loan showing as up-to-date (ie not in arrears) in Welcome's internal management information might therefore be a loan on which a number of contractually due payments had been missed but deferred. Similarly, a loan showing as unimpaired (ie not more than 120 days in arrears) might be a loan on which more than four contractually due payments had been missed but in respect of which some of those payments had been deferred.

4.7. As you were aware, the financial impact of the setting up of the LMBs in 2006 was considerable. In 2006, but for the LMBs, around £260 million of loans would have been expected to be transferred to the LCUs and therefore classified as impaired. However, in fact only around £164 million was transferred to the LCUs. A substantial amount of this £96 million improvement was due to debt being held back from impairment through the use of deferments by the LMBs (ie deferments were used to pause debt at between 60 and 120 days that would otherwise have been impaired). As profit was calculated by reference to impairment, there was a corresponding £45 million improvement to Cattles' reported profit for that year. Within Welcome this

impact was justified on the basis that holding debt as unimpaired in the LMBs would allow specialist collectors time to work with customers. However, you were also aware that within the business certain individuals referred to the impact deferments used in the LMBs as an "overdraft" that had allowed Cattles to hit its profit target.

The requirements of International Financial Reporting Standard 7

4.8. As you were aware, Cattles' 2007 Annual Report was required to comply with IFRS 7 for the first time. The introduction of IFRS 7 states:

> *"The International Accounting Standards Board believes that users of financial statements need information about an entity's exposure to risks and how those risks are managed. Such information can influence a user's assessment of the financial position and financial performance of an entity or of the amount, timing and uncertainty of its future cash flows. Greater transparency regarding those risks allows users to make more informed judgments about risk and return."*

4.9. Paragraph 31 of IFRS 7 requires an entity to:

> *"disclose information that enables users to evaluate the nature and extent of risks arising from financial instruments to which the entity is exposed"*

4.10. In disclosing the nature and extent of the risks, entities are required to give both qualitative information on the risks (how they have changed in the period and how they are managed) as well as quantitative disclosures in respect of the risks. IFRS 7 sets out the risks to include, but not be limited to, credit risk, liquidity risk and market risk. The quantitive disclosures for credit risk should include:

(1) *"information about the credit quality of financial assets that are neither past due nor impaired"* (paragraph 36(c));

(2) *the carrying amount of financial assets that would otherwise be past due or impaired, whose terms have been renegotiated" (paragraph 36(d)); and*

(3) *"an analysis of the age of financial assets that are past due as at the reporting date but are not impaired" (paragraph 37(a).*

4.11. *"Past due"* is defined in IFRS 7 as when a counterparty has failed to make a payment when contractually due, for example failing to pay interest or principal payments due in the time period specified in the contract.

4.12. Under IFRS 7 a loan that is contractually overdue (but not impaired) but to which a deferment has been applied should be treated as:

(1) *"past due but not impaired"* where the deferment has not been agreed with the customer, which cannot have happened if there has been no contact with the customer); or

(2) *"renegotiated"* where the deferment has been agreed with the customer.

4.13. A loan on which interest payments have been deferred should be disclosed accordingly to give important information about credit quality.

Impairment

4.14. International Accounting Standard 39 requires loans to be treated as impaired where there is objective evidence that a loan asset is impaired. As referred to above, Welcome treated loans that were more than 120 days in arrears (importantly, after the application of deferments) as impaired.

Events prior to publication of Welcome's and Cattles' 2007 Annual Reports

4.15. The information required to be disclosed by IFRS 7 was not information that Cattles had made public and therefore, in April 2007, Cattles and Welcome formed a project team to consider the impact of the new requirements.

The meeting in June 2007

4.16. Early in its deliberations, the IFRS 7 project team took the correct view that deferments fell to be disclosed as either past due or renegotiated loans. However, in light of the clear steer being given by you and others within senior management, the project team sought to develop arguments to support the position that a deferred loan was neither renegotiated nor past due. At a meeting in June 2007 between the project team and certain of Cattles' directors and you, the project team reported that classifying deferments as either renegotiated or as past due was *"unacceptable"* because it would mean disclosing 34% of the loan book as renegotiated or as past due. The arguments suggested by the project team to avoid disclosure had not been fully

and openly debated. Nonetheless you, along with the Cattles directors present, endorsed the approach being proposed.

4.17. The clear inference is that the disclosure of deferments was deemed *"unacceptable"* to the business because it would reveal significant negative information about the credit quality of the loan book.

The reference to the impact of LMBs as an "overdraft" and the use of AMBs

4.18. As noted at paragraph 4.7 above, you were aware that within the business certain individuals referred to the impact of the LMBs as an "overdraft" that had allowed Cattles to hit its profit target for 2006. In mid-2007, you instructed staff at Welcome to refrain from using the term "overdraft" in respect of the debt held back from impairment by the LMBs. Around the same time, as you were aware, Welcome set up the Asset Management Branches ("AMBs"), a subset of the LMBs, to specialise in the collection of contractual payments on hire purchase and secured loans.

4.19. It was deemed appropriate for loans to remain in the AMBs for up to a year without being treated as impaired, even if contractually due payments were not being received during that period. This was achieved by the application of multiple deferments which had a significant financial impact by holding back debt from impairment.

The two versions of the IFRS 7 progress report and the report of a meeting in September 2007

4.20. A Cattles Audit Committee meeting took place on 6 September 2007, attended by you and James Corr among others, including PwC (who attended all Audit Committee meetings). At that meeting, PwC outlined the IFRS 7 requirements as understood by them, without referring to the question whether deferments should be disclosed as renegotiated loans (or indeed as past due loans) and neither you nor James Corr highlighted that fundamental issue. At that meeting, PwC referred to the IFRS 7 requirements which would apply to the 2007 financial statements for the first time. They explained that:

> *"… this might produce some strange looking numbers because the standard related to the debt which was not repaid in accordance with its contractual terms and this was in the ordinary course of business for [Welcome]. The*

> *plan was to produce for discussion at the December meeting IFRS 7 numbers for the 2006 financial statements as if IFRS 7 had then been in force.”*

4.21. On 20 September 2007, certain members of the IFRS 7 project team met with PwC to discuss the IFRS 7 disclosures. In advance of that meeting, the project team had produced two versions of an IFRS 7 progress report. The first version was for the Cattles Board and outlined the arguments to be used as to why deferments should not be classified as renegotiated or past due. The second version, sent to PwC, made no mention of deferments at all. You knew that the progress report sent to PwC made no mention of deferments, despite their fundamental importance to the question of what disclosures should be made.

4.22. Following the 20 September meeting, a member of the IFRS 7 project team updated another member of the team (as well as James Corr, among others, but not yourself) and reported that:

> *“IFRS 7 meeting with PWC also went very well … there was absolutely no mention of deferments … as they did not raise any challenge re deferments, we did not raise it either. I feel that deferments are not particularly on their radar screen either re IFRS 7 or generally and I suggest we keep it that way. …*
>
> *The one challenge they did come back on was around excluding 1-29 days arrears from the past due category. …*
>
> *… we got a really good result today and should be prepared to concede the 1-29 days point in the interests of the bigger prize. Can you run these thoughts by Peter [Miller – the Finance Director of Welcome] and John [Blake] when you are back next week?”*

4.23. You were aware in the months leading up to signing Welcome’s 2007 Annual Report that deferments were a material issue but, inconsistently with this email, believed that deferments were ‘very much on PwC’s radar’.

October and November 2007

4.24. In October 2007, an IFRS 7 Progress Report was prepared to update certain members of Cattex (a committee including Cattles’ executive directors including therefore James Corr and also including yourself). Assurances were given in the following terms, *“Whilst we did not specifically discuss deferments, PWC are fully aware of their use within the business and did not raise this as a potential issue.”*

4.25. By November 2007 at the latest, you, Peter Miller and James Corr were receiving information in the form of contractual delinquency graphs that clearly distinguished between Welcome's *"contractual arrears"* and *"deferred arrears"* impairment positions. The distinction between contractual and deferred arrears, and the potential implications of an unfavourable IFRS 7 interpretation, was therefore appreciated by you.

The Audit Committee meeting on 13 December 2007

4.26. On 13 December 2007, you attended an Audit Committee meeting. At that meeting, you explained that the reason for the disparity between the loan loss provision in 2006 and the higher 2007 provision was the *"change in product mix following the significant increase in unsecured lending during 2007."* You did not explain that one of the key reasons for the lower loss provision in 2006 was the use of deferments in the LMBs which had prevented a substantial amount of debt from flowing through to impairment (see paragraph 4.7 above). You were fully aware of this important information but did nothing to bring it to the attention of the Audit Committee.

4.27. In addition, at the same meeting, there was a discussion of PwC's Pre-Year End Audit Committee Report for December 2007, which stated that *"IFRS 7 defines past due as being 1 day in contractual arrears"* and appended an analysis of past due but not impaired figures as at 31 December 2006 prepared by management that failed to take deferments into account. Neither you nor James Corr took this opportunity to explain to the Audit Committee or PwC that the 2006 figures had been calculated in accordance with that definition of past due, on the basis that loans on which interest payments had been deferred could be treated as being not past due, and that the basis was highly material.

4.28. In relation to IFRS 7, the minutes stated:

> *"PwC reported that the Appendix to the PwC Report contained the quantitative disclosures relating to credit, liquidity and treasury risk for the 2006 numbers as if IFRS 7 had been in force at that date. [You] agreed to circulate to the Directors IFRS 7 qualitative disclosures for 2007, together with prior year disclosures for 2005 and 2006, accompanied by commentary explaining any spikes during the week commencing 17 December. [You] also noted that the revised Management Information to be circulated to the Directors from January 2008 would include IFRS 7 numbers."*

but there was no evidence that full and accurate information, including a discussion on the material issue of the treatment of deferments, had been or was later circulated as promised.

The draft paper to the Cattles' Board in December 2007 on the use of deferments

4.29. In late December 2007, you were involved in drafting a paper to brief the full Cattles' Board on IFRS 7 disclosures. An initial draft was prepared which claimed that *"collection tools such as…deferments are available for use in the LMBs, in restricted circumstances"*. No other mention of deferments was made. Given that over a third of the book had had a deferment applied, it was, as you were aware, highly misleading for the paper to claim that deferments were used in restricted circumstances. The paper also stated that Welcome's impairment trigger was *"120 days arrears"*. However, the paper made no mention of:

(1) the role of deferments in calculating the number of days in arrears for purposes of the impairment trigger and therefore the level of impairment;

(2) the approach being adopted on the treatment of deferments under IFRS 7 despite, as you were aware, the issue not having been raised with PwC who were unaware of the significance of deferments; and

(3) the fact that deferments were used as more than simply a *"collection tool"* ie the impact of deferments on what needed to be disclosed under IFRS 7 and on Welcome's arrears calculation was not explained.

4.30. However, rather than flag up the wholly inadequate explanation of deferments in the draft paper, you emailed one of your colleagues working on the draft to say *"do we need to mention deferments? ... re-writes are fairly self explanatory but deferments are not!"* You therefore clearly knew that not everyone on Cattles' Board understood deferments and wished to avoid having to explain their use. You were told that Peter Miller had already made the same point. The single reference to deferments in the draft paper was therefore deleted and the paper that went to the Cattles Board made no reference to deferments at all, despite their fundamental importance to what needed to be disclosed under IFRS 7 and to Welcome's internal arrears calculation.

The £169 million in the AMBs in January 2008

4.31. In January 2008, you were sent a further *"Key Audit Risks 2007"* document. This explained that there was now £169 million in the AMBs and (under the heading *"Work Performed by PwC"*) that:

> *"the risk still remains that as a part of other testing, the AMB … debt could be queried as to its nature, its recent payment performance and deferment activity … were we pushed into exactly how these accounts are prevented from reaching impairment it could highlight the level of deferments used as opposed to actual cash collected"*.

From this it is clear that you knew that PwC were not fully aware of Welcome's use of deferments and that there were concerns over the amount of cash being collected on the unimpaired debt in the AMBs.

The Audit Committee meeting February 2008

4.32. On 21 February 2008, Cattles' Audit Committee reviewed a draft internal audit report that it had commissioned to consider whether a 120 day impairment trigger remained appropriate when mainstream banks impaired after 90 days.

4.33. The draft report stated that:

> *"The ageing of accounts is based on the "contractual arrears calculation"…options to stop the customer becoming impaired are limited to … deferring payment … management has noted that … deferments … start the "clock" again with regard to ageing…deferments occur where it has been agreed with the customer that missed payments (necessary because of short term payment difficulties) can be made up at the end of the contract …"*.

4.34. It is clear from this that the internal auditors had not been accurately informed about Welcome's use of deferments. In contrast to what the report stated, deferments were mostly applied without agreement with the customer. In addition to "restarting the clock", deferments were also used to keep loans in arrears but not impaired as described in paragraph 4.5 above. Moreover, in making this comparison, the internal auditors were unaware of the extent to which Welcome's impairment trigger allowed for deferments, having been told at a meeting with yourself and others that deferments were "tightly controlled". This lack of understanding severely limited the value of the comparison being made.

4.35. During the Audit Committee meeting, which you attended, James Corr explained that Cattles had been advised that it *"... should explain the 120 days impairment trigger and the banding of the overdue debt up to that point by reference to the commercial reality of [the] business ..."* and he assured the Audit Committee that a detailed explanation of the impairment policy would be set out in the accounting notes to Cattles' 2007 Annual Report.

The Welcome Annual Report - February and March 2008

4.36. A draft of Welcome's 2007 Annual Report was approved by you and the rest of the Welcome Board on 25 February 2008 which stated that IFRS 7 had been adopted and contained the following figures:

Loans and receivables	**£ '000**
Neither past due nor impaired	2,184,553
Past due but not impaired (total)	458,158
Past due up to 29 days (but not impaired)	142,657
Past due 30-59 days (but not impaired)	118,945
Past due 60-89 days (but not impaired)	102,008
Past due 90-119 days (but not impaired)	94,548
Past due 120 days or more (but not impaired)	-
Impaired	440,989

4.37. The impairment trigger statement referred to in paragraph 4.43 below was not contained in the approved draft. However, as shown by the table above the draft stated that there were no loans *"Past due 120 days or more"* that were unimpaired, by implication stating that any loans over 120 days in contractual arrears were treated as impaired (which was untrue). The draft of Welcome's 2007 Annual Report acknowledged that the directors were required to *"Make judgements and estimates that are reasonable and prudent"*.

4.38. The draft of Welcome's 2007 Annual Report contained highly misleading information in relation to the credit quality of Welcome's loan book because it:

(1) stated that IFRS 7 had been adopted but, in fact, the arrears figures provided failed to strip out deferments, giving the impression that far more of Welcome's customers were repaying their loans on time than was actually the case. It stated that around £2.1 billion of Welcome's approximately £3 billion loan book was *"neither past due nor impaired"* (ie not in contractual arrears) when, in fact, calculated on the contractual basis required by IFRS 7, only around £1.5 billion of the book was *"neither past due nor impaired"*;

(2) implied that any loans more than 120 days in contractual arrears were treated as impaired when in fact £445 million of the loan book was more than 120 days in contractual arrears and treated as unimpaired;

(3) Welcome had made a pre-tax profit of £130 million for the year to 31 December 2007 whereas, in fact, on the implied basis that all loans more than 120 days in contractual arrears were impaired, Welcome had made a loss of £94.9 million (a reduction of £224.9 million).

4.39. Bearing in mind, for example, the 'Key Audit Risks 2007' document in January 2008 (see paragraph 4.31), you knew, or ought reasonably to have known, that IFRS 7 had not been complied with and you knew that a very significant number of loans were more than 120 days in contractual arrears being treated as unimpaired. You also knew, or ought reasonably to have known, that cash collection was poor in relation to a significant amount of unimpaired debt. Consequently, you knew that the draft of Welcome's 2007 Annual Report contained information which was false and misleading, and that in preparing them you had made judgments which were neither reasonable nor prudent. You knew, or ought reasonably to have known, that the information contained in the draft of Welcome's 2007 Annual Report would be disseminated by means of being consolidated into Cattles' 2007 Annual Report (published on Cattles' website on 28 February 2008). Consequently, you also knew, or ought reasonably to have known, that Cattles' 2007 Annual Report contained false and misleading information.

4.40. On 18 March 2008, a representation letter to PwC in connection with its audit of the financial statements of Welcome for the year ended 31 December 2007, minuted by

the Welcome Board and signed by Peter Miller, contained the following representations (amongst others):

(1) *"Each director has taken all the steps that he or she ought to have taken as a director in order to make himself or herself aware of any relevant audit information and to establish that [PWC] are aware of that information, including that ... All other records and related information which might affect the truth and fairness of, or necessary disclosure in, the financial statements ... and no such information has been withheld"*;

(2) *"So far as each director is aware, there is no relevant audit information of which [PWC is] unaware."*; and

(3) *"… the financial statements are free from material misstatement, including omissions."*;

without your having made adequate enquiries to satisfy yourself that these statements were true.

4.41. The letter also stated that *"we acknowledge our responsibility for the design and implementation of internal control to prevent and detect error."*

4.42. On 18 March 2008, you, and the rest of Welcome Board, approved the Welcome 2007 Annual Report which was filed at Companies House on 29 May 2008.

4.43. Welcome's 2007 Annual Report stated that it complied with IFRS 7 and contained the same information as the table at paragraph 4.47 and also acknowledged that the directors were required to *"Make judgements and estimates that are reasonable and prudent"*. It also stated that:

> *"Welcome Financial Services determines that there is objective evidence of an impairment loss at the point at which they are not prepared to offer any further credit to a customer who has encountered serious repayment difficulties. In Welcome Finance this is assessed by reference to the number of days an account is contractually in arrears. When an account has reached 120 days in arrears, there is an acceptance that the original contractual relationship has broken down."*

4.44. You were aware that this was not an accurate description of the impairment trigger as it made no mention of the role of deferments in calculating the impairment trigger and therefore the level of impairment. Instead, the statement reinforced the impression given by the IFRS 7 disclosures that Welcome calculated arrears simply on the basis of the number of contractual payments missed. This was further reinforced by

Welcome's statement that it had no loans *"Past due 120 days or more"* that were unimpaired (see table at paragraph 4.47 below), which gave the impression that all loans that were more than 120 days in contractual arrears were treated as impaired.

4.45. Welcome's 2007 Annual Report contained highly misleading information in relation to the credit quality of Welcome's loan book because it stated that:

(1) IFRS 7 had been adopted but, in fact, the *"neither past due nor impaired"* figures provided failed to strip out deferments, giving the impression that far more of Welcome's customers were repaying their loans on time than was actually the case. It stated that around £2.1 billion of Welcome's approximately £3 billion loan book was *"neither past due nor impaired"* (ie not in contractual arrears) when, in fact, calculated on the contractual basis required by IFRS 7, only around £1.5 billion of the book was *"neither past due nor impaired"*;

(2) Welcome treated a loan account as impaired when the account was 120 days in contractual arrears and that on this basis around £450 million of Welcome's loan book was *"past due but not impaired"* (when, in fact, with deferments of less than four monthly payments treated as past due loans over £600 million of the loan book was *"past due but not impaired"*) and £441 million of Welcome's loan book was impaired (when, in fact, with deferments of more than four monthly payments treated as impaired loans over £886 million of the book was impaired);

(3) Welcome had made a pre-tax profit of £130 million for the year to 31 December 2007 whereas, in fact, on the basis of the stated impairment trigger, Welcome had made a pre-tax loss of £94.9 million (a reduction of £224.9 million).

4.46. At the time you approved Welcome's 2007 Annual Report, you were aware of the requirements of IFRS 7. In addition, you knew, or ought reasonably to have known, that the stated approach to impairment was not the actual approach taken in Welcome's 2007 Annual Report. Consequently, Welcome's 2007 Annual Report contained information which was false and misleading.

4.47. The table below shows the original IFRS 7 and impairment disclosures relating to Welcome taken from Cattles' 2007 Annual Report as against the corrected figures calculated on a contractual basis and restated in Cattles' 2008 Annual Report (published on 12 May 2010):

Loans and receivables (Welcome)	Original 2007 (£m)	Restated 2007 (£m)
Neither past due nor impaired	2,184.5	1,572.4
Past due but not impaired (total)	458.2	601.2
Past due up to 29 days (but not impaired)	142.7	143.1
Past due 30 - 59 days (but not impaired)	119.0	221.3
Past due 60 - 89 days (but not impaired)	102.0	139.0
Past due 90 - 119 days (but not impaired)	94.5	97.8
Past due 120 days or more (but not impaired)	-	-
Impaired	**441.0**	**886.7**

4.48. It is clear that the original figures for 2007 gave a misleading impression as to Welcome's credit quality. As a result of the adjustments made to those figures, Welcome's reported pre-tax profit figure was reduced by £224.9 million, resulting in a reported pre-tax loss for Welcome of £94.9 million. As a result, Cattles was required to reduce its overall pre-tax profit figure by £261.7 million, resulting in a reported pre-tax loss to Cattles of £96.5 million.

Events after publication of Cattles' 2007 Annual Report

4.49. In preparation for questions from analysts in relation to the arrears figures contained in the 2007 Annual Report, you made it clear to the person working on a 'Questions and Answers' document in early March 2008 that you did not consider that analysts should be told about the role played by deferments. It is clear the individual was uncomfortable with these instructions as he subsequently circulated the 'Questions & Answers' document under cover of an email saying *"I have deliberately not referred to … deferments … I worry that this is ignoring a big part of the picture"*.

4.50. On 23 April 2008, Cattles issued the Rights Issue Prospectus. Like Welcome's and Cattles' 2007 Annual Reports, it contained misleading information because it

contained the same statement as that set out in paragraph 4.43 above regarding the basis for impairment and the financial statements in Cattles' 2007 Annual Report (which were stated to have adopted IFRS 7) were incorporated by reference.

4.51. Although you were not involved in approving the Rights Issue Prospectus, you were aware of its contents (even if only after it was made public) and therefore aware that it contained information which was false and misleading. The rights issue was fully subscribed and raised £200 million. Had Cattles' shareholders been aware that the application of deferments impacted on the calculation of the level of contractual arrears and the impairment to the extent it did, it is likely that they would have regarded this as highly material and been significantly less likely to subscribe to the rights issue.

4.52. On 19 August 2008, you received an internal audit report highlighting the lack of management information as to the aggregate level of deferments and detailing concerns over the impact of a £42 million 'bulk deferment' (which had been approved by Welcome's management in May 2008 despite not meeting standard policy requirements) on reported profit.

4.53. On 20 August 2008, you received an email setting out an estimate of the impact of removing all deferments from Welcome's impairment figure as at June 2008. The estimate showed that such a calculation would move £611 million of debt from non-impaired to impaired, requiring a provision of £488 million. In addition to the concerns raised by the internal audit report described in the above paragraph, you knew that certain Cattles' directors were seeking information on the level of deferments within Welcome (in Peter Miller's words to you, *"any differences over ... contractual and deferred arrears* [had] *dawned on ... "* one of the directors) but you took no steps to pass on your knowledge about the overall level of deferments or their impact on reported profit.

4.54. On 21 August 2008, you and James Corr attended the Cattles Audit Committee meeting which considered the internal audit report and the impact of the £42 million "bulk deferment". The aggregate level of deferments would have been highly material to the discussions.

4.55. By October 2008, the value of loans held within the AMBs had reached £230 million. On 24 October 2008, you, amongst others, received by email a draft Welcome Compliance Review of the AMBs. The first issue identified by the Compliance Review was *"Potential bad-debt on accounts held within AMB"* with the recommendation that:

> *"In line with current policy a/cs held within AMB are not subject to provisioning. However, where it is identified that no asset exists, or the asset is insufficient to settle the customers balance, management should review the appropriateness of retaining the a/c within AMD or whether such a/cs should be transferred to the LCU and provided against".*

Attached to the Compliance Review was a schedule entitled *"AMD Account Review (Random Sample)"*. By way of example only, this schedule showed the following accounts which were unimpaired despite being considerably greater than 120 days in contractual arrears:

(1) an account on which £9,878.72 was owed which had had 87 deferments applied and where it was not known that there was an asset in place;

(2) an account on which £57,431.12 was owed which had had 22 deferments applied and where it was known that *"House repossessed by 1st lender – no equity"*;

(3) an account on which £35,000.42 was owed which had had 34 deferments applied and where it was known that *"House repossessed by 1st lender – no equity. Notes indicate customer confirmed bankrupt 29/5/08."*

4.56. On 10 November 2008, a colleague sent to you and Peter Miller a revised version of the Compliance Review, saying *"I think you will find the updated version more accurate than the first"*. This version made no mention of the first issue previously identified (ie in relation to potential bad debt in the AMBs and the lack of assets to use as security). In addition, the *"AMD Account Review (Random Sample)"* schedule had been deleted in its entirety. The only reasonable inference is that you wanted to avoid any reference to these issues appearing in the Compliance Review in case it was seen by parties unaware of the true state of the debt housed within the AMBs.

4.57. By this stage, concerns as to provisioning on the loan book and in particular on debt housed within the AMBs had been raised directly with PwC by a member of Cattles' management team who had learned that none of the debt housed within that division was provided for. Accordingly, a paper was drafted by you, among others, to provide further explanation. The paper was distributed at a Cattles Audit Committee meeting on 4 December 2008. The paper informed the Audit Committee, for the first time, that the 120 days arrears trigger in fact allowed for multiple deferments, albeit that it claimed these were only allowed *"within strictly controlled circumstances"*. In fact, as you were aware from the *"Random Sample"* attached to the Welcome Compliance Review, it was misleading to describe the use of deferments as *"strictly controlled"*. In addition, the paper claimed that *"The establishment of the AMBs has provided greater visibility of collections performance, as well as an improvement in cash recoveries"* when you knew that cash collection in the AMBs was poor and had been declining during 2008.

4.58. The Audit Committee was very concerned to learn that debt that was more than 120 days in contractual arrears could remain unimpaired and without a provision and arranged for a further meeting on 15 December 2008 to discuss the AMBs, which as at October 2008 held £230 million of unimpaired debt. You attended the meeting, specifically convened to address the Audit Committee's concerns over the level of deferments in the AMBs and the effect on impairment, but at no stage did you explain the true extent to which deferments were used in the business, namely that in fact there was over £600 million of debt (approximately 20% of Welcome's loan book) that was only unimpaired because of the application of deferments.

4.59. The Audit Committee also sought an explanation as to why there appeared to be unsecured loan accounts housed within the AMBs. You gave assurances that each loan was secured by an asset, such as a car or property charge. You knew this to be untrue, as the Welcome Compliance Review had made clear. You also gave assurances to the Audit Committee that AMBs were *"designed to collect cash and reduce impairment"* without any indication of how ineffective the AMBs were in collecting cash and you advised the Committee that *"a customer must make payments and that if he or she did not do so then their loan would be impaired"* when you knew that this was not the case.

4.60. After further investigation, PwC refused to sign off Cattles' 2008 Annual Report and on 20 February 2009 it was announced that publication of the 2008 Annual Report would be delayed. The market reaction to this announcement was a 74% drop in the share price from 13.25 pence on 19 February 2008 to 3.5 pence the next day.

4.61. On 1 April 2009, Cattles announced that it would need to make a provision of around £700 million in excess of that originally anticipated for 2008. On 23 April 2009, Cattles announced that, in light of its inability to publish its 2008 Annual Report by the requisite deadline, it had requested a suspension of trading in its shares. Trading in Cattles' shares was duly suspended on the same day.

5. REPRESENTATIONS

5.1. You made a number of representations principally in writing on 22 June 2011 and orally 8 September 2011. What follows is a brief summary of the key representations on liability.

Legal submissions

Standard of proof

5.2. You said that the criminal standard of proof applied.

A false and misleading impression and dissemination

5.3. You did not concede that the accounts were false and misleading.

5.4. You did not 'disseminate' any false and misleading information. Approving the accounts of a subsidiary, without any substantial input into the manner in which the figures are incorporated into the parent company's accounts, gets nowhere near 'disseminating' the parent's documents.

The contractual position

5.5. You said that by custom and practice a term was implied into the contract whereby Welcome was obliged to consider a deferment in accordance with its policies or grant it if in accordance with its policies. On this basis, deferments were part and parcel of

the contractual arrangements with the customer and there was nothing incorrect in the IFRS 7 figures being disclosed after deferments.

5.6. It was more than a tenable view that waiving a term in your favour does not put the other party in breach. The purpose of a deferment was not to stigmatise the other party or engage Welcome's right to collect the whole amount.

5.7. In the industry, 'contractual' and 'deferred contractual' were understood to mean the same thing. Arrears which included deferred arrears were called 'contractual arrears'.

Responsibility and integrity

5.8. You absolutely refuted the allegations and denied any wrongdoing. The underlying problem appears to have been that Compliance failed to pick up the systemic failure of the operation of Welcome's Standard Operating Policies and Procedures. You had no knowledge of that at the time.

5.9. If it was found that the 2007 Accounts were false and misleading, it would be a matter of very considerable regret, responsibility for which, in the broadest sense, you acknowledge. But that did not mean that you were culpable of market abuse and knowing concern in a breach of Principle 3.

5.10. You refuted the allegation that your actions lacked integrity and in this context dealt specifically with a number of incidents on which the FSA relied.

The impairment trigger note in the Accounts

5.11. You rely on the fact that the Cattles accounts were approved and published before the Welcome accounts had been formally approved. Neither you nor Peter Miller had seen or consented to the formulation of the impairment trigger note. You had no prior knowledge of the note before its release. The impression created by the accounts would likely have been different without the note because the industry benchmark for disclosures was with figures that include deferments. For comparison purposes, the figures had become like apples and pears. Without the note, it is very different.

5.12. Although the 2007 Accounts, with the note, was approved and published by Welcome three weeks later by then the matter was already public and there was no evidence that

anyone, including PwC, had drawn the attention of any of the Welcome directors to it. You were not on notice that there had been a change of any significance.

Reliance on others

5.13. Even if the accounts are found to be false and misleading, the issue was whether there could be any material criticism of you for endorsing or approving the accounts on the basis on which they were disclosed. Your role was not central in the IFRS 7 debate. It was the accountants who formulated the positions, led the debate and responded to issues.

5.14. You relied on PwC and expected them, having been associated with the business for 13 years, to fully understand both the business and materiality of the deferment issue. Their report to the Audit Committee dated 4 December 2008 demonstrated that they knew deferments were part of the business and that they were, or potentially were, a material issue, and that the way in which the business reported its figures did not strip out deferments. At that time (although it was not their final view) they were indicating that the nature of the market needs to be taken into account when assessing the appropriateness of the accounting treatment. You had no reason to think that PwC would not have, and did not, put '2 and 2 together' and recognise that the definition of a 'good customer' (ie one who makes 10 payments out of 12) necessarily meant that extensive use was made of deferments.

5.15. So far as IFRS 7 was concerned, you also relied on the many other accountants, internally and externally. You had no reason to suppose that the relevant participants were not focussed on the material issues including whether IFRS 7 mandated a move from the way in which Welcome reported its financial state of affairs. There was no reason why the accountants were not in possession of sufficient material to be able to advise on the matter.

Specific incidents

5.16. Referring to the meeting in June 2007 (paragraph 4.16), you said that there was a lively and vigorous debate on what should have been happening. It was an early stage in the debate and the remark was no basis for the allegation that you were responsible for a cover up in the way in which the figures were reported.

5.17. Referring to the Audit Committee meeting on 13 December 2007 (paragraph 4.26), you said that you did not knowingly mislead the committee on the difference between the loss provisions in 2006 and 2007 by not mentioning deferments. To the best of your recollection, the change in the product mix was the reason for the higher charge in 2007.

5.18. Referring to your email of 21 December 2007 in which you questioned the need to refer to deferments (paragraphs 4.29 and 4.30), you said that the one brief sentence did not do the topic justice. If paper mentioned deferments, it should do so properly and fully. It was one of the key issues which the business had been debating up to Board level with a whole series of papers. In any event, the discussion at Board level continued through the following weeks and the reference to deferments had been taken out as a result of the same comment from Peter Miller.

5.19. Referring to the "Key Audit Risks 2007" document (paragraph 4.31), you said that you took your concerns to an appropriate colleague and were reassured that 'Everything is OK'.

6. FINDINGS AND CONCLUSIONS

The legal submissions

Standard of proof

6.1. The FSA relies on a number of cases in which it was common ground that the civil standard of proof applies. In Chhabra & Patel v FSA (2009) FSMT 072, the Tribunal said:

> *" … some things are inherently more likely than others and cogent evidence is generally required to satisfy a civil tribunal that a person has … behaved in a reprehensible manner. Generally speaking, people tend not to commit serious offences – not least because the consequences likely to follow if they do – and someone with a good character is less likely to behave badly than someone with a bad character. Someone who values their reputation will be less likely to imperil it than someone known to be disreputable. The more inherently unlikely it is that something has happened the more persuasive the tribunal will need to find the evidence pointing that way before concluding it to be more likely than not."*

6.2. In these proceedings, the FSA has therefore applied the civil standard and relied only on what it considered to be cogent evidence when considering the serious allegations against you, a person of unblemished record.

A false and misleading impression and dissemination

6.3. On the basis of the Facts and Matters relied on above, the FSA is satisfied that the information relating to the loan book was false and misleading.

6.4. In so far as you claim that you did not 'disseminate' the information, the FSA is satisfied that you did disseminate the loan book figures. The responsibility of a director of a subsidiary which contributes almost 90% of the revenue of its parent company, particularly when that company is listed, cannot hide behind the actions of the parent company. First, dissemination in section 118(7) of the Act (see paragraph 3.9) is 'by any means'. Secondly, MAR 1.8.6E(2) (Examples of market abuse (dissemination)) of the FSA Handbook includes as an example of dissemination a person who is responsible for the content of information submitted, in the example, to a regulatory information service. You approved the draft of Welcome's 2007 Annual Report with a view to publication in the Cattles's 2007 Annual Report having responsibility, with others, for the content of the financial statements including the loan book figures.

6.5. The FSA is satisfied that the objective test of knowledge ("or could reasonably have expected to have known that the information was false or misleading") is a simple objective test. It does not carry with it the test whether the subject was reckless as to his actual knowledge. The question is 'Was it reasonable in these circumstances to have expected a managing director with particular responsibility for Operations, and approved to perform the apportionment and oversight function, to know whether information relating to the loan book - a key constituent of the financial statements - was false or misleading?' The answer is quite clearly 'Yes'. Such a managing director had a duty to take all necessary steps to satisfy himself that the information was true and not misleading.

6.6. The elements of market abuse in section 118(7) of the Act are made out.

The contractual position

6.7. The FSA does not accept the analysis that custom and practice had altered the terms of the contract or that waiving a right to terminate the contract had the effect of changing its terms. Much seems to have flowed from the simple concept of 'a good customer' in the context of the Welcome business (see paragraph 5.14) including a justification for continuing its accounting policies and practices without change after the introduction of IFRS 7. However, no evidence was given that, by custom and practice, a deferment led to a change in the terms of the contract. The simple starting point is that, if one party to a contract waives a right against the other party to the contract, the terms of the contract have not changed, especially if the contract itself does not provide for the situation and there has been no contact between the parties. To conclude otherwise, in the context of Welcome deferring a right to a payment, is to conclude that the deferral has no financial effect.

6.8. Without regard to the merits or the extent of deferral, the fact of deciding to defer to the extent that it happened in the business had a significant impact on the value of the loan book. For the purposes of IFRS 7, what was happening in practice should have been clear from the accounts.

Responsibility and integrity

6.9. In considering whether you failed to act with integrity in discharging your responsibilities, the FSA has taken into account all the circumstances, including in particular:

(1) your responsibilities as Managing Director at Welcome approved to perform the controlled functions of chief executive (CF3) and apportionment and oversight (CF8);

(2) your experience;

(3) your responsibility to manage the consequences of the changes from UK GAAP to IFRS 7; and

(4) the importance of IFRS 7 to the business, including the belief that *"users of financial statements need information about an entity's exposure to risks and how those risks are managed"* (see paragraphs 4.8 to 4.13 above);

(5) the nature of the business, together with its size, scale and importance, including a loan book figure of over £3 billion;

(6) the evidence of your contribution in meetings and other internal communications on the issues surrounding the valuation of the loan book.

6.10. In these circumstances, the right thing for a person in your position to do would be:

(1) to rely on and assert his position and authority as an experienced director with specific responsibility for managing the consequences of a significant change to the business;

(2) to ensure a culture of transparency and openness in relation to the operation of the business feeding the financial statements which properly balanced the aims of the business with the needs of the market; and

(3) to take a particularly close interest in the treatment of deferments and their impact on impairment, both from a policy point of view and the delivery of the policy and to ensure that there was a full and open discussion on the relevant issues;

so that he can, with integrity, satisfy himself that the figures for the loan book are true and not misleading.

6.11. Measured against these factors, the FSA noted the absence of convincing evidence over a period of some 18 months to demonstrate you had taken all necessary steps to ensure that the issues relating to deferments were fully debated by all concerned (both internally with staff and committees including the Audit Committee and externally with the auditors and advisers), understood and resolved. You knew the significance of clearly identifying the number of loans that were more than 120 days in contractual arrears which were treated as unimpaired and you knew the importance of quantifying the amount of case collection in relation to unimpaired debt. You knew that the impact of deferments on the arrears and impairment figures was highly material and

you knew, or had ready access to others that knew, for example, the volume of deferments used in the LMBs.

6.12. An ordinary reader would have understood that the arrears, impairment and reported profit figures had been calculated on the basis of the missed contractually due payments. However, you failed to ensure that the impairment figure, ie the value of the book not in contractual arrears, in the Welcome 2007 Annual Report was the true one.

6.13. You had a particular responsibility to ensure that Welcome was organising and controlling its affairs responsibly and effectively in accordance with Principle 3. You were directly involved in these failings and were therefore knowingly concerned in Welcome's breach of Principle 3.

6.14. In these circumstances, the FSA concludes that you failed to act with integrity in not doing what you, as a director and the person approved to perform the functions of a chief executive and apportionment and oversight, should have done.

The impairment trigger note in the Accounts

6.15. For the reasons given in relation to the legal submissions on market abuse, the FSA does not consider that the manner in which the impairment trigger note was prepared or its timing affects the commission of market abuse.

Reliance on others

6.16. The necessary inference for the FSA, in the absence of clear evidence before it that the issues were fully and openly debated in the light of all the facts, is that those concerned with the implementation of IFRS 7, both internally and externally, were not fully in the picture. Such evidence as there is points to an absence of transparency. You have not demonstrated that you had relied on others in circumstances where you could reasonably be satisfied that matters were discussed and decisions taken in the light of all the circumstances.

Specific instances

6.17. The FSA considers that the explanations you give for the matters relied on do not amount to evidence of real engagement with the issues. Rather, they point to an avoidance of the issues for whatever reason at the time.

7. ANALYSIS OF SANCTION

7.1. The FSA views your conduct as particularly serious because:

(1) as Managing Director you held a very senior position at Welcome and exercised a significant influence function (CF3 and 8);

(2) your misconduct rendered misleading the arrears and profit figures within Welcome's 2007 Annual Report and also resulted in Cattles' 2007 Annual Report and the Rights Issue Prospectus containing misleading arrears and profit figures;

(3) your misconduct took place over a sustained period (approximately 18 months);

(4) you had numerous opportunities, over a sustained period, to provide full details to PwC and Cattles' Audit Committee of Welcome's use of deferments and to seek advice as to the correct accounting treatment of deferments. Instead you avoided doing so;

(5) there was a very serious impact on Cattles' shareholders, who have lost all or virtually all of their investment, and on market confidence. During the period of your misconduct, Cattles was a member of the FTSE 250 and at its height had a market capitalisation of over £1 billion. When the true state of Welcome's loan book emerged in early 2009, trading in Cattles' shares was suspended and on 16 December 2009 Cattles announced that its shares *"are likely to have little or no value"*. In Cattles' 2008 Annual Report published on 12 May 2009, the 2007 arrears and impairment figures contained in Cattles' 2007 Annual Report were restated, as a result of which Cattles' pre-tax profit figure for 2007 was adjusted from a pre-tax profit of £165.2 million to a pre-tax loss of £96.5 million. It is likely that the rights issue in April 2008, which

raised £200 million, would have been significantly less successful had the market known the true state of Welcome's loan book.

Penalty

7.2. The FSA considers it appropriate to impose a financial penalty of £100,000 against you, reduced from £400,000 in view of your financial circumstances, in addition to making the prohibition order in accordance with EG 9.23.

7.3. The FSA has taken all of the circumstances of the case into account in deciding that the imposition of a financial penalty is appropriate and the level of the penalty imposed is proportionate, including its regulatory objectives and the penalties imposed in other market abuse and analogous cases. The FSA has had particular regard to the contemporaneous provisions of the Decision Procedures and Penalties Manual set out in the Annex to this Notice, the aggravating factors set out in paragraph 7.1 above and the mitigating factor that the FSA has not previously taken any disciplinary action against you.

Prohibition

7.4. The FSA is satisfied that you failed to act with integrity in discharging your responsibilities and are therefore not a fit and proper person to perform regulated activities. In deciding that a prohibition order, prohibiting you from performing any function in relation to any regulated activity, is appropriate, the FSA has had regard to the guidance in chapter 9 of the Enforcement Guide ("EG").

8. DECISION MAKER

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

9. IMPORTANT

9.1. This Decision Notice is given to you under sections 57 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

The Upper Tribunal

9.2. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Tribunal, which, among other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Tribunal.

9.3. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Notice. The Tribunal's contact details are The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).

9.4. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

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

9.5. A copy of Form FTC3 must also be sent to Dan Enraght-Moony at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Legal Assistance Scheme

9.6. If the FSA gives you a decision notice and you decide to refer the matter to the Tribunal, under section 134 of the Act you may be eligible for legal assistance. For more information about the legal assistance scheme you should contact the Tribunal on 020 7612 9700.

Access to evidence

9.7. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, you are entitled to have access to:

(1) the material upon which the FSA has relied in deciding to give you this notice; and

(2) any material other than material falling within sub-paragraph (1) which was considered by the FSA in reaching the decision that gave rise to the obligation to give this notice or was obtained by the FSA in connection with the matter to which this notice relates but which was not considered by it in reaching that decision, which, in the opinion of the FSA, might undermine that decision.

9.8. A list of material you are entitled to have access to will be provided with this Decision Notice.

Third party rights

9.9. A copy of this notice is being given to PwC as third party identified above and to whom, in the opinion of the FSA, the matter in respect of which reasons are set out above is prejudicial. That party has similar rights of representation and access to material in relation to the matter which identifies it.

Confidentiality and publicity

9.10. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Tribunal.

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

9.13. A copy of Form FTC3 must also be sent to Dan Enraght-Moony at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

FSA contacts

9.14. For more information concerning this matter generally, you should contact Celyn Armstrong (direct line: 020 7066 2818) or Dan Enraght-Moony (direct line: 020 7066 0166).

Tim Herrington
Chairman, Regulatory Decisions Committee

ANNEX

Relevant Regulatory Guidance

1. The provisions quoted below are those in force at the time of all the material events, acts and omissions described above.

   Code of Market Conduct

2. The FSA issued MAR pursuant to section 119 of the Act, which requires the FSA to "prepare and issue a code containing such provisions as the … [FSA] … considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse." Under section 122 of the Act, MAR may be relied on "so far as it indicates whether or not particular behaviour should be taken to amount to market abuse."

3. MAR 1.8.3E provides examples of conduct which amount, in the opinion of the FSA, to behaviour falling within section 118(7) of the Act. Those examples include:

   "knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel."

4. MAR 1.8.4E adds as follows:

   "… if a normal and reasonable *person* would have known or should have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or could reasonably be expected to have known it was false or misleading."

5. MAR 1.8.6E states further that, in the FSA's opinion, the following is an example of market abuse falling within the terms of section 118(7) of the Act:

   "a *person* responsible for the content of information submitted to … [an *RIS*] … submits information which is false or misleading as to *qualifying investments* and that *person* is reckless as to whether the information is false or misleading."

   COND

6. COND 2.5.6G sets out that that in determining whether a *firm* will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters may include but are not limited to whether:

   (a) the *firm* has been open and co-operative in all its dealings with the *FSA* and any other regulatory body (see *Principle* 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the *regulatory system* and other legal, regulatory and professional obligations (COND 2.5.6G(1)); and

(b) the *firm* has contravened, or is connected with a *person* who has contravened, any provisions of the *Act* or any preceding financial services legislation, the *regulatory system* or the rules, regulations, statements of principles or codes of practice of other regulatory authorities, *clearing houses* or *exchanges*, *professional bodies*, or government bodies or agencies or relevant industry standards; the *FSA* will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a firm has flouted or ignored a particular code) (COND 2.5.6G(4)).

Decision Procedure and Penalties Manual (DEPP)

7. In deciding to take the action described above, the FSA has had regard to the policy it has published, in Chapter 6 of DEPP, under section 124 of the Act, which requires the FSA to "issue a statement of its policy with respect to the imposition of penalties under section 123 and the amount of" such penalties. The FSA has also had regard to the provisions of the Enforcement Manual ("ENF"), which were in force for the early part of the Relevant Period. The extracts from DEPP reflect the provisions as they were in effect between 28 August 2007 and 5 March 2010.

8. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating, generally, to firms and approved persons, the benefit of compliant behaviour (DEPP 6.1.2G).

9. DEPP 6.2.1G sets out a number of factors to be taken into account when the FSA decides whether or not to impose a financial penalty. They are not exhaustive but include:

"(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*;

…

(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;

(f) the loss or risk of loss caused to *consumers* or other market users;

…

(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 FSA 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;

(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*…

…

(5) Action taken by the *FSA* in previous similar cases

10. DEPP 6.2.2G sets out additional factors specific to the decision whether to take action for market abuse or for requiring or encouraging it. These include:

"The impact, having regard to the nature of the *behaviour*, that any financial penalty or *public censure* may have on the financial markets or on the interests of *consumers*:

(a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;

(b) a penalty may protect the interests of *consumers* by deterring future *market abuse* and improving standards of conduct in a market."

11. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the manipulation of shares in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness and the FSA's protection of consumers objective, as well as deterring potential future market abuse.

12. DEPP 6.4.1G states, more generally, that the "*FSA* will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a *public censure*."

Relevant guidance as to level of penalty

13. DEPP 6.5.1G states that the "*FSA* will consider all the relevant circumstances of a case when it determines the level of a financial penalty (if any) that is appropriate and in proportion to the *breach* concerned."

14. DEPP 6.5.2G sets out a non-exhaustive list of factors which might be relevant to the level of financial penalty imposed by the FSA, as follows:

"(1) Deterrence

When determining the appropriate level of penalty, the *FSA* 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.

(2) The nature, seriousness and impact of the *breach* in question

The FSA will consider the seriousness of the *breach* in relation to the nature of the *rule*, requirement or provision breached. The following considerations are among those that may be relevant:

(a) the duration and frequency of the *breach*;

…

(c) in market abuse cases, the *FSA* will consider whether the *breach* had an adverse effect on markets and, if it did, how serious that effect was, which may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk …;

(d) the loss or risk of loss caused to *consumers*, investors or other market users;

…

(3) The extent to which the *breach* was deliberate or reckless

The *FSA* will regard as more serious a *breach* which is deliberately or recklessly committed. The matters to which the *FSA* may have regard in determining whether a *breach* was deliberate or reckless include, but are not limited to, the following:

(a) whether the *breach* was intentional, in that the *person* intended or foresaw the potential or actual consequences of its actions;

…

If the *FSA* decides that the *breach* was deliberate or reckless, it is more likely to impose a higher penalty on a *person* than would otherwise be the case.

(4) Whether the *person* on whom the penalty is to be imposed is an individual

When determining the amount of a penalty to be imposed on an individual, the *FSA* will take into account that individuals will not always have the resources of a *body corporate*, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a *body corporate*. The *FSA* will also consider whether the status, position and/or responsibilities of the individual are such as to make a *breach* committed by the individual more serious and whether the penalty should therefore be set at a higher level.

…

(8) Conduct following the *breach*

The *FSA* may take the following factors into account:

(a) the conduct of the *person* 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 co-operation the *person* showed during the investigation of the *breach* by the *FSA*…

(c) any remedial steps taken since the *breach* was identified, ...

…

(9) Disciplinary record and compliance history

…

(10) Other action taken by the *FSA*…"

Enforcement Guide EG

15. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval.

16. EG 9.3 provides that the FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.

17. EG 9.4 provides that the FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm, or any firm.

18. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or to the market generally.

19. EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.

20. EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit the person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider

in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions or by issuing a private warning.

21. EG 9.9 provides that when it decides whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to:

    (a) 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).

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

        i. failed to comply with the Statements 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).

    (c) Whether the approved person has engaged in market abuse.

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

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

    (f) 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.

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

    (h) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

22. EG 9.10 provides that the FSA 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 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.

23. EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may 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. EG 9.12 sets out a list of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person, including:

(a) severe acts of dishonesty, e.g. which may have resulted in financial crime.

(b) serious lack of competence.

(c) serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients, consumers or third parties.

24. EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

25. EG 9.23 provides that in appropriate cases, the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its powers to impose a financial penalty.

Fit and Proper Test for Approved Persons

26. The purpose of the part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ("FIT") is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. In this instance the criteria set out in FIT are relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with the EG 9.9.

27. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.

28. FIT 2.1.3G refers to various matters, including: whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation (FIT 2.1.3G(9)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)); or 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 (FIT 2.1.3G(13)).