

**FINAL NOTICE DATED 1 JUNE 2011**

**Mr Stephen Derek Foster**

**SUMMARY OF THE MATTER TO WHICH THE NOTICE RELATES**

**Date of issue: 1 June 2011**

On 18 May 2010, the FSA decided to refuse an application made by Gardner Massey Wright IFA Limited (GMW) under Section 60 of the Financial Services and Markets Act (the Act) for Mr Stephen Foster to perform the customer function (controlled function 30) (the Application).

GMW withdrew its support for the Application on 17 January 2010. In order for the Application to be formally withdrawn within the provisions of Section 61(5) of the Act, Mr Foster's consent was necessary. Mr Foster did not provide his consent and asked the FSA to determine the Application as though GMW had not withdrawn its support.

The FSA refused the Application on the following grounds:

1. Mr Foster does not have an arrangement as required by Section 59 of the Act and therefore cannot be approved to hold a controlled function in the absence of an arrangement; and
2. the FSA cannot be satisfied that Mr Foster is a fit and proper person due to concerns over his competence and capability to perform the controlled function to which the application related.

From 26 May 2004 until 22 December 2008, Mr Foster was employed as a financial adviser (CF21) for an IFA firm – Young Financial Services Limited (YFS) – that served as an Appointed Representative of the Sesame Network (Sesame).

On 22 December 2008, Sesame terminated the Appointed Representative arrangement as a result of its concerns with the suitability of the advice given by YFS. Mr Foster's approval to perform controlled functions was withdrawn at the same time.

Four of Mr Foster's cases were reviewed by Sesame, and were judged by the network to contain advice that was unsuitable. Further, Sesame was concerned about the level of single premium investment bonds sold by all of the advisers at YFS, including Mr Foster, which they considered to be unacceptably high.

Mr Foster breached FSA requirements in selling unacceptably high levels of investment bonds and in failing to demonstrate that the product sold was suitable for his clients. Until 31 October 2007, the relevant rules were set out in the Conduct of Business Sourcebook (COB). After 31 October 2007, the relevant sourcebook was COBS. In failing to appropriately advise

clients, he breached COB 5.3.5R and COBS 9.2.1R and, in failing to substantiate these sales in his suitability letters, he breached COBS 9.4.7R.

In light of the reasons set out above, and after consideration of Mr Foster's representations, the FSA has concluded that it cannot be satisfied that Mr Foster is a fit and proper person to perform the controlled function to which the application relates, in that he lacks competence and capability.

By a reference dated 7 June 2010, Mr Foster referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (the Tribunal). Mr Foster and the FSA agreed to conclude the reference by consent. The Tribunal issued an order on the terms agreed between the parties on 8 April 2011.