Financial Services Authority

FINAL NOTICE

To:	James Joseph Corr
FSA Individual Reference Number:	JJC01102
Date:	28 March 2012

TAKE NOTICE: The Financial Services Authority, of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about the following action:

1. ACTION

1.1. The Financial Services Authority ("the FSA") served on you, James Corr, a Decision Notice on 18 January 2012 which notified you that, for the reasons set out below and pursuant to:

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

(2) section 91 (Penalties for breach of Part 6 rules); and

(3) section 56 (Prohibition orders);

of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose on you:

(1) a financial penalty of £400,000 for:

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

(b) being knowingly concerned in breaches of Listing Rule 1.3.3R (misleading, false or deceptive information) and Listing Principles 3 (integrity) and 4 (creation of a false market); 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 demonstrated a lack of integrity.

1.2. The financial penalty would have been £750,000 but for evidence that imposing such a penalty would have caused you serious financial hardship.

1.3. You have not referred the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4. Accordingly, for the reasons set out below, the FSA hereby imposes on you:

(1) a financial penalty of £400,000; 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.

2. SUMMARY REASONS FOR THE ACTION

2.1. Between August 2007 and February 2009 ("the Relevant Period"), you were the Finance Director of Cattles Limited, then known as "Cattles plc" ("Cattles"), a subprime lender. Most of Cattles' business was conducted through a subsidiary, Welcome Financial Services Limited ("Welcome"). You described yourself as 'Group Finance Director'.

The false and misleading statements

2.2. In its Annual Report and Financial Statements for the period ending 31 December 2007 ("the Cattles' 2007 Annual Report") and its rights issue prospectus dated 23 April 2008 that raised £200 million ("the Rights Issue Prospectus"), Cattles published false and misleading information about the credit quality of Welcome's loan book by stating that:

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

(2) the business (ie the business of Cattles conducted through Welcome) treated a loan account as impaired when the account was 120 days in contractual arrears; and

(3) Cattles had made a pre-tax profit of £165.2 million for the year to 31 December 2007.

2.3. Cattles also announced misleading arrears and profit figures to the market on 28 August 2008 and it announced misleading arrears figures to the market on 18 December 2008 ("the 2008 Announcements").

2.4. The Cattles' 2007 Annual Report, the Rights Issue Prospectus and the 2008 Announcements (together referred to as "the Public Statements") contained false and misleading information about the credit quality of Welcome's loan book in that they provided arrears figures and profit figures based on International Financial Reporting Standard 7 ("IFRS 7") without clarifying the role played by deferments in calculating the figures provided.

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 IFRS7 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. Had loans which had been deferred been treated as being in contractual arrears, the application of Cattles' stated impairment trigger would have resulted in a pre-tax loss of £96.5 million (a reduction of £261.7 million against the disclosed pre-tax profit of £165.2 million).

Your responsibilities

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

2.8. In particular, and in relation to the auditor, the director's report had to contain a statement that in the case of each director, so far as you as Finance Director were aware, there was no relevant audit information of which the auditor was unaware; that each director had taken all steps that he ought to have taken to make himself aware of that information; and that he had taken all steps to establish that the auditor was aware of that information.

2.9. In relation to the Audit Committee, it was essential that there was a frank, open working relationship between you as Finance Director (amongst other senior members of the management executive) and the Audit Committee. As the director in the group with responsibility for financial matters, you were under an obligation to ensure that the committee was kept properly informed and you should have taken the initiative in supplying information rather than waiting to be asked.

Your actions

2.10. On 27 February 2008, you signed the representation letter to Cattles' auditor PricewaterhouseCoopers ("PwC") as to the veracity of the information provided to compile the Cattles 2007 Annual Report (see paragraph 2.8).

2.11. In taking the following steps, you disseminated false and misleading information as to Cattles' shares:

(1) you signed the financial statements contained in the Cattles' 2007 Annual Report on behalf of the Cattles Board on 28 February 2008;

(2) you approved the Rights Issue Prospectus dated 23 April 2008; and

(3) you approved the 2008 Announcements.

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 your actions in relation to the Public Statements, you engaged in market abuse contrary to section 118(7) of the Act by disseminating information that gave a false and misleading impression to the market as to the value of Cattles' shares.

2.14. You were knowingly concerned in Cattles' breaches of Listing Rule 1.1.3R (misleading, false or deceptive information), Listing Principle 3 (integrity) and Listing Principle 4 (creation of a false market).

2.15. In the light of all the circumstances, the FSA considers it appropriate to impose on you a financial penalty of £400,000 which would have been £750,000 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 with all appropriate persons and bodies, including the external auditors and the Audit Committee, leading to a proper application of IFRS 7 in the accounts, and for the reasons given more fully in paragraphs 6.11 to 6.14, 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

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

Relevant legislative provisions

3.2. The FSA has 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 power, pursuant to section 91 of the Act, to impose a financial penalty on a director of an issuer of listed securities if the FSA considers that he was knowingly concerned in a contravention of the listing rules by the issuer in question.

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 ("the 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) of the Act 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. Listing Rule 1.3.3R provides that:

> "An *issuer* must take reasonable care to ensure that any information it notifies to a *RIS* or makes available through the *FSA* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information."

3.11. Listing Principle 3 (LR 7.2.1R) provides that:

> "A *listed company* must act with integrity towards holders and potential holders of its *listed equity securities*."

3.12. Listing Principle 4 (LR 7.2.1R) provides that:

> "A *listed company* must communicate information to holders and potential holders of its *listed equity securities* in such a way as to avoid the creation or continuation of a false market in such *listed equity securities*."

3.13. 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.

3.14. 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 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. You qualified as a chartered accountant in 1976 and have remained qualified since then. You have held various roles as Finance Director in a number of private and public companies, and joined Cattles as Finance Director in April 2001.

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 Annual Report and Financial Statements for the year ending 31 December 2007 ("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, a Local Management Branch or a Local Collection Unit 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.

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, an entity is required to give both qualitative information on the risks (how they have changed in the period and how they are managed) and quantitative disclosures in respect of the risks. IFRS 7 states that the risks are 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 or 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 Cattles' 2007 Annual Report

4.15. The information required to be disclosed by IFRS 7 was not information that Cattles had previously 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 on 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 (including you) and John Blake the Managing Director of Welcome, 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 either 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 other Cattles directors present and John Blake, 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 communications with PwC in August and September 2007

4.18. On 28 August 2007, an internal IFRS 7 progress report was prepared for the Cattles Board, the contents of which were approved by you, in which it was explained that:

> *"We propose to acknowledge that while re-writes represent a form of renegotiation ... deferments do not. Our argument is based on the "10 out of 12 instalments being a good Welcome customer" view and deferments typically being used as a normal management tool in the non-standard consumer finance market ... This view is fundamental to our approach to complying with IFRS 7 and is something we must secure PWC's agreement to. They may be expecting deferments to be included in the value of renegotiated loans and we expect to debate this point with them."*

4.19. On the same day, a different IFRS 7 progress report was sent to PwC, again the contents of which you approved, that made no reference whatsoever to deferments.

4.20. You decided not to include it in the formal Board pack which you knew would be received by PwC as a matter of routine and instead you sent it separately to the Board after the upcoming Board meeting. This had the effect of failing to highlight the issue with PwC. You committed to the Board that PwC's agreement should and would be obtained in respect of Cattles' treatment of deferments under IFRS 7.

4.21. A Cattles' Audit Committee meeting took place on 6 September 2007, attended by you and John Blake among others. 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 John Blake 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."*

4.22. 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.

4.23. Following the 20 September meeting, a member of the IFRS 7 project team updated you and others 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?"*

(the request to update Peter Miller, Welcome's Finance Director, and John Blake was not addressed to you). As a result, you failed to ensure that the issues surrounding deferments were properly debated with PwC and thereby resolved.

October and November 2007

4.24. In October 2007, a further IFRS 7 Progress Report was prepared to update certain members of Cattex (a committee including Cattles' executive directors including you and also including John Blake). 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, John Blake and Peter Miller were receiving information in the form of contractual delinquency graphs that clearly distinguished between Welcome's *"contractual arrears"* and *"deferred arrears"*. 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 a Cattles Audit Committee meeting. At that meeting, it was explained by John Blake 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."* John Blake 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 4.5 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 John Blake 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 received in draft a paper intended to brief the Cattles Board on IFRS 7 disclosures. The paper 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 state 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 fact that you had failed to debate and agree the treatment of deferments under IFRS 7 with PwC, despite the assurances you had previously given to the Board that this would be done; 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 internal arrears calculation was not explained.

4.30. However, you did not flag up this wholly inadequate explanation of deferments. Rather, the single reference to deferments in the draft paper was deleted at the behest of Peter Miller (a request also made by John Blake), who had also received it. The finalised paper on IFRS 7 disclosures that went to the Cattles Board, following your review and under your direction, therefore 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. Your covering note to the paper addressed to the Board simply advised that *"120 days arrears* [was] *the appropriate impairment trigger point"*, and that this view was supported by PwC.

The Audit Committee meeting and Annual Report in February 2008

4.31. 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.

4.32. 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 ..."*.

4.33. 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.

4.34. During the Audit Committee meeting on 21 February 2008 which reviewed this report, you 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 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.

4.35. On 27 February 2008, you signed a representation letter to PwC in connection with its audit of the financial statements of Cattles for the year ended 31 December 2007 in which, among other representations, you made the following representations:

(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 having made adequate enquiries to satisfy yourself that these statements were true.

4.36. On 28 February 2008, you (and the rest of Cattles' Board) approved the Cattles' 2007 Annual Report.

4.37. Cattles' 2007 Annual Report stated that IFRS 7 had been adopted and 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."*

4.38. You were aware that this was not a detailed explanation of the commercial reality of Welcome's business (which you had specifically undertaken to provide in Cattles' Audit Committee meeting on 21 February 2008) 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 4.41 below), which gave the impression that all loans that were more than 120 days in contractual arrears were treated as impaired.

4.39. Cattles' 2007 Annual Report, and subsequently the Rights Issue Prospectus, contained highly misleading information in relation to the credit quality of Welcome's loan book because they stated that:

(1) IFRS 7 had been adopted when, 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) Cattles had made a pre-tax profit of £165.2 million for the year to 31 December 2007. In the re-stated accounts, this figure, on the basis of the stated impairment trigger, was given as a pre-tax loss of £96.5 million.

4.40. At the time you approved and signed Cattles' 2007 Annual Report, the requirements of IFRS 7 (see paragraphs 4.8 to 4.13) were in effect. As illustrated in paragraph 4.41, the accounts did not comply with IFRS 7. Consequently, Cattles' 2007 Annual Report contained information which was false and misleading.

4.41. 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**	**Restated 2007**
	(£m)	**(£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

Loans and receivables (Welcome)	Original 2007	Restated 2007
	(£m)	(£m)
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**

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

4.43. Cattles' 2007 Annual Report was published on Cattles' website on 28 February 2008 and made available for public inspection through the document viewing facility located at the FSA's offices on 9 April 2008.

Events after publication of Cattles' 2007 Annual Report

Preparing for questions from analysts in March 2008 and how you dealt with them

4.44. In preparation for questions from analysts in relation to the arrears figures contained in Cattles' 2007 Annual Report, you were sent a 'Questions and Answers' document in early March 2008 that made no reference to deferments. The person responsible for drafting the 'Questions and Answers' made it clear that he had deliberately not referred to deferments but that he was uncomfortable with this approach as he considered they formed a significant element of any explanation of the arrears figures.

4.45. However, you deliberately avoided informing analysts about deferments. Later in March 2008, two analysts from one of Cattles' major shareholders asked you directly why the company did not treat debt with arrears of less than 120 days as impaired and told you that the *"general feedback from the analyst community is that they still need more information to fully understand what is going on with impairments"*.

4.46. The response, approved by you, stated that:

> *"... we do not believe that there is objective evidence of impairment until a customer reaches the 120 day contractual arrears point. This trigger point is not 4 consecutive monthly payments missed but 4 misses since inception ...We*

> *are currently analysing investor feedback re our disclosure around impairment. Once we have completed this exercise we will be better placed to understand what further information we might be able to provide in order to aid the market's understanding of the* [Welcome] *business model".*

It gave no explanation of what comprised 'contractual arrears'.

4.47. This was a highly misleading and disingenuous answer as loans with 'deferments' were not included in loans with 'contractual arrears'. You knew that the impairment trigger was not as simple as "4 misses since inception". It was also obvious what further information would have aided the market's understanding, namely an explanation of Welcome's use of deferments, and their significance.

April 2008

4.48. On 23 April 2008, Cattles issued the Rights Issue Prospectus. Like Cattles' 2007 Annual Report, it contained misleading information because it contained the same statement as that set out in paragraph 4.37 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.

4.49. You were aware, as set out at paragraph 4.45 above, that the analyst community needed more information to understand impairment and that this was not set out in the Rights Issue Prospectus. You nevertheless approved the Rights Issue Prospectus along with the rest of Cattles' Board and the Rights Issue Prospectus was made available through the FSA's viewing facility on 24 April 2008. 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.

The events of August 2008 including the estimate for removing deferments from the impairment figures

4.50. In August 2008, you were aware that a key area of concern for the internal auditors was a £42 million "bulk deferment" processed in May 2008, apparently outside of

Welcome's standard policy requirements, and its attendant impact on the company's profit.

4.51. 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 the £42 million "bulk deferment".

4.52. 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 but you took no steps to pass on your knowledge about the overall level of deferments or their impact on reported profit.

4.53. On 21 August 2008, you and John Blake attended a 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.

4.54. On 28 August 2008, Cattles published its interim announcement (which you approved) for the six months to 30 June 2008, reiterating, by reference to the accounting policies as set out in the 2007 Annual Report, its adoption of IFRS 7 and the misleading statement that Welcome's impairment trigger was 120 days contractual arrears. Pre-tax profit for the six months to 30 June 2008 was stated to be £70.2 million. This was misleading because the stated impairment trigger made no mention of the significant role played by deferments. In addition, the announcement stated that *"customer balances with a proportion in arrears were 31.4% (FY 2007: 29.2%)"* without mentioning the role played by deferments in calculating these figures. In fact, on a contractual basis, the proportion of customer balances with a proportion in arrears for financial year 2007 was much higher at 48.6%. This was misleading because the arrears percentages were in fact calculated on a deferred arrears basis rather than the contractual basis required by IFRS 7. You failed to take the necessary

steps to ensure that IFRS 7 was being complied with, and failed, again, to resolve the matter with PwC.

The events of October and December 2008 including the concern of the Audit Committee at the lack of provision

4.55. In October 2008, a member of Cattles' management team reported to PwC that he was concerned over the level of provisioning on Welcome's loan book, in particular on debt housed within a sub-set of the LMBs (which, as mentioned above, dealt with loans between 60 and 120 days in arrears) known as the Asset Management Branches ("the AMBs"). In response, a paper was drafted to provide Cattles' Audit Committee with an explanation on the rationale behind the AMBs. The Audit Committee had not previously been briefed on this.

4.56. Having reviewed the paper, you distributed it at a Cattles' Audit Committee meeting on 4 December 2008. The paper informed the Audit Committee that the 120 days arrears trigger in fact allowed for multiple deferments (on the basis that that these were only allowed *"within strictly controlled circumstances"*) and that debt in the AMBs was permitted to remain within that division for twelve months and not be treated as impaired even if contractually due payments were not being received during that period.

4.57. 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. At no stage during that meeting, specifically convened to address the Audit Committee's concerns over the level of deferments in the AMBs and the effect on impairment, did you explain the true extent to which deferments were used in the business, namely that there was over £600 million of debt (approximately 20% of Welcome's loan book) that was only unimpaired because of the application of deferments. This was despite the fact that you had received an email explaining how, if impairment was at 120 days but with no deferments, the estimated IFRS 7 disclosure would move £611 million of debt from not impaired to impaired (see paragraph 4.52).

4.58. On 18 December 2008, Cattles published its pre-close trading statement (which you approved) for the period ended 30 November 2008. Cattles reported that trading was in line with expectations, repeating IFRS 7 arrears figures (as percentages) for 2007 and providing corresponding figures for June, September and November 2008. It claimed that IFRS 7 arrears had grown from 29.2% for financial year 2007 to 35.0% in November 2008 (this significantly downplayed the true percentage of the book in arrears - as stated above for financial year 2007 the proportion in arrears, calculated on a contractual basis, was 48.6%). You failed to take steps to ensure that IFRS 7 was being complied with and therefore that the information provided was not misleading. You failed to resolve the matter with PwC.

February 2009

4.59. 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.

April 2009

4.60. 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 21 June 2011 and orally 7 September 2011. What follows is a brief summary of the key representations on liability.

Legal submissions

Criminal charges for purposes of Article 6

5.2. You said that market abuse under section 118(7) of the Act and ‘knowing concern’ under section 91(2) of the Act are both criminal charges for the purposes of Article 6 of the European Convention of Human Rights.

Standard of proof

5.3. You said that the appropriate standard of proof in cases of market abuse and knowing concern is the criminal standard. The sliding scale no longer applied. The evidence had to be ‘extremely cogent’.

Market abuse: dissemination and knowledge of false or misleading information

5.4. You said that a finding of market abuse under section 118(7) of the Act requires a 'dissemination' of information which is either false or misleading or has an 'overwhelming chance' of being so; and subjective or objective knowledge of such circumstances, objective knowledge being imputed only upon a finding of recklessness as to the existence of such circumstances.

Breach of the listing rules: knowing concern

5.5. You said that a finding of knowing concern under section 91(2) of the Act requires actual knowledge of each of the facts needed to show the underlying contraventions of the listing rules; dishonesty as defined in Twinsectra v Yardley [2002] 2 All ER 377; and active involvement in the key elements of each underlying contravention.

Integrity

5.6. The allegations as to your lack of integrity are unfair and unwarranted. You were unaware of the deliberate manipulation and distortion of Welcome's Standard Operating Policies and Procedures ("SOPPs") which appears to have occurred. You did not deliberately avoid bringing the extensive use of deferments to the attention of others.

Representations on other matters

Acceptance of responsibility but not whether the accounts were misleading or non-compliant

5.7. You accepted that you must take ultimate responsibility for the accounts, without conceding that they were actually misleading, and whether there was any non-compliance with the relevant accounting standards.

The 'elision' of issues by the FSA

5.8. The FSA has 'elided' the issues of your actual knowledge of wrongful conduct and issues concerning legitimate debate about appropriate financial reporting standards. The investigation had failed to deal fairly with or analyse properly the true elements of your culpability.

The treatment of deferments in principle and your knowledge of what was happening in practice

5.9. On the question of how deferments were to be treated, your knowledge was the same as PwC, the internal auditors, the Audit Committee and the executive management of Cattles and Welcome. Each of those people or entities were well aware that deferments were routinely employed within Welcome and that the SOPPs governed their use. A deferment restarted the clock. It was neither a missed payment, past due or re-negotiated.

5.10. However, it appears that the SOPPs relating to deferments were systematically ignored or abused. Everybody was being deferred 'willy-nilly'. You were not aware of this and could not reasonably have been expected to have been aware of it.

5.11. The business of Welcome as it was actually operating bore no relation to the description of the business as that appeared in the accounts. It had become, it would appear, a fantasy operation divorced from the business and commercial reality of what was supposed to be a business governed by the SOPPs.

5.12. You said that the highest the case against you that could be put was that you may not have appreciated as quickly as you might, or investigate as proactively as you could, whether the representations you received that the SOPPs were being followed were correct. You also said that the case could be put that you should have ensured that the matter of deferments was specifically raised again with PwC after the events of August 2008.

5.13. You said that on reflection it would have been more appropriate to have made sure that other people knew of the figure of £611 million of difference taking into account deferments (see paragraph 4.57). It did not strike you at the time that you should seek auditor advice on whether you should make additional disclosure.

IFRS 7 and the steps that you took to ensure accuracy of reporting

5.14. You took significant and substantial steps to ensure that financial reporting was as accurate and open as possible.

5.15. You believed that IFRS 7 had been complied with and had not deliberately avoided seeking advice on the matter. A project team, comprising well qualified accountants, was set up to advise on the requirements of IFRS 7 and you engaged PwC to advise on the requirements. In December 2007, you engaged another specialist team of external accountants to advise on IFRS 7 disclosures. At the time, neither PwC nor the external accountants ever suggested that the 2007 Accounts did not comply with IFRS 7 or that the stated approach to impairment was false or misleading.

Reliance on others

5.16. You were entitled to rely on information provided by the management and finance teams in Welcome, the Cattles Group finance team and the internal and external audit functions. You did not routinely receive the information that distinguished between contractual and deferred contractual.

5.17. The internal and external auditors of Cattles, who were fully aware of the fact that deferments were part of the business of Welcome and governed by the SOPPs, approved and sanctioned their treatment in the Cattles 2007 Annual Report;

5.18. Both sets of auditors approved the principle that deferments carried out in accordance with the SOPPs did not need to be treated for accounting purposes as defaults.

The communications with PwC in August and September 2007

5.19. Your understanding was that the project team had carefully considered the IFRS 7 requirements and were well prepared to debate the proposed treatment of deferments with PwC. You did not instruct the team not to raise the issue of deferments with PwC. The email of 20 September and the surrounding circumstances had to be seen in the context of your ill health at the time. You do not recall seeing it at the time and it was not surprising that you failed to pick up on the passing remark in the email that deferments were not particularly on PwC's radar screen. PwC did not consider Cattles' treatment of deferments, of which it was full aware, as either controversial or in need of amendment under IFRS 7. The relevant matters were not on PwC's radar screen of likely issues that might arise because PwC, in full knowledge of Cattles' treatment of deferments, did not consider the matter to be controversial or giving rise to a need for a change of policy under IFRS 7.

6. FINDINGS AND CONCLUSIONS

The legal submissions

Criminal charges for purposes of Article 6

6.1. For the purposes of these proceedings, the FSA does not need to pursue the representations that both the market abuse and listing rules allegations are criminal charges for the purposes of Article 6 of the European Convention on Human Rights. However, linked to this issue, and clearly relevant to these proceedings, is the standard of proof that the FSA should apply.

Standard of proof

6.2. 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."*

6.3. 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.

Market abuse: dissemination and knowledge of false or misleading information

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. 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 to a regulatory information service. You approved and signed

off the Cattles accounts with a view to publication and you accept that you had responsibility for the content of the financial statements including the loan book figures.

6.5. The test in section 118(7) of the Act does not include an ‘overwhelming chance’ test. However, the FSA is satisfied that the information relating to the loan book was false and misleading.

6.6. 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 finance director to know whether the figures relating to the loan book - key constituent of his financial statements - were false or misleading?’ The answer is quite clearly ‘Yes’. Such a finance director had a duty to take all necessary steps to be satisfied that the information was true and not misleading.

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

Breach of the listing rules: knowing concern

6.8. Your representation is not that Cattles has not breached the listing rules referred to in paragraphs 3.10, 3.11 and 3.12. It is that your involvement did not amount to a knowing concern in the contraventions. It is clear that you had as much, if not considerably more, involvement in the contraventions as any director of Cattles. As with the managing director of Skandex in SIB v Skandex Capital Management A/S and another (ie the managing director) [1998] 1 WLR 712, all the facts were known to you. Indeed, you had a high responsibility to discharge, or to assist in the discharge of, the very duties imposed by the rules.

6.9. In Skandex, the ‘knowing concern’ did not require an element of dishonesty. Neither does it in these proceedings. This Final Notice makes no such finding.

6.10. The FSA is satisfied that you were ‘knowingly concerned’ as required by section 91 of the Act (see paragraph 3.3) in the contraventions of the listing rules by Cattles.

Integrity

6.11. 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 Group Finance Director and Finance Director of a listed company;

(2) your experience;

(3) 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);

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

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

6.12. 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 Group Finance Director;

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

(3) to ensure a group structure in relation to finance which delivered the proper balance in which the key roles are filled with people delivering according to their responsibilities; and

(4) to take a particularly close and rigorous interest in the treatment of deferments and their impact on impairment, both from a policy point of view and the delivery of the policy;

so that he can, with integrity, satisfy himself that the figures for which he has responsibility are true and fair.

6.13. Measured against these factors, the FSA noted the absence of convincing evidence over a period of some 18 months to demonstrate that you had taken all necessary steps to ensure that the facts and issues relating to deferments and the impact of IFRS 7 were fully debated by all concerned (both internally with staff and committees including the Audit Committee and externally with your auditors and advisers), understood and resolved. Indeed, you failed to take the initiative to ensure that the issues were debated with those concerned, but rather left it to them to raise them. You knew, or had ready access to others who knew or could find out, for example, the volume of deferments used in the LMBs. As a consequence, you failed to ensure that the value of the loan book in 120 day contractual arrears, and therefore the impairment provision, both in the Cattles' Annual Report and the Rights Issue Prospectus, was correct.

6.14. In these circumstances, the FSA concludes that you failed to act with integrity in not doing what you, as the Group Finance Director, should have done.

Other matters

Acceptance of responsibility but not whether the accounts were misleading or non-compliant

6.15. The FSA noted your acceptance of responsibility for the accounts without conceding that they were misleading. The FSA accepts the expert evidence which clearly demonstrated that the accounts were non-compliant and that therefore the figures were misleading.

The 'elision' of issues by the FSA and your knowledge of what was happening in practice

6.16. In the context of the allegations made against you, your actual knowledge is one of the factors to take into account. In considering your culpability, the FSA has also taken into account the standards expected of a person in your position.

6.17. The FSA makes no finding as to whether, as a matter of fact, you did know about the abuse of the SOPPs.

IFRS 7 and the steps you took in practice

6.18. You said that you had taken a number of steps to ensure, in principle, accurate financial reporting under IFRS 7. You also said that you did not know about the abuse of the SOPPs and therefore the effect this would have on the impairment figure.

6.19. The responsibility to ensure that the value of the loan book was accurately represented (as with every other key element in the financial statements) was an active one. Knowing that the impact of deferments on the arrears and impairment figures was highly material, the responsibility was not discharged simply by appointing others to advise, or relying on information from others in the absence of appropriate challenge on your part. The discharge of the trust placed upon you, and accepted by you, meant that you had to satisfy yourself, in whatever way was appropriate, that the advice or information you relied on was itself reliable.

6.20. One way to have discharged this duty would have been to satisfy yourself that others fully understood the circumstances in which they were giving you that advice or information. That was particularly so in a situation where the information you depended on for the accuracy of the financial statements was dependent on the faithful implementation of the advice in relation to that information. On the evidence before it, the inescapable conclusion is that some at least of those advising you, and those giving you information, did not fully understand what was going on and that you failed to satisfy yourself that they did. You did not discharge the duty placed upon you to satisfy yourself that the information and advice given to you and relied on by you was accurate. You did not take the necessary steps to ensure that Cattles' 2007 Annual Report complied with IFRS 7 by resolving the matter with all concerned, including the auditors.

6.21. Given the extent of the consequences to the Cattles Group and the market if the figures were false or misleading, amply borne out by what happened in fact, it was not an option for a person in your position to accept information or advice without a high degree of satisfaction and appropriate challenge. The duty and expectation on you was to be the guardian of the accuracy of the figures.

6.22. There were a number of occasions between August 2007 and February 2009 when you had the opportunity to satisfy yourself on the integrity of the advice and information being given to you either personally, as part of Cattex or as part of the Cattles Board, and you failed to do so with the rigour and tenacity expected of a person in your position with your responsibilities.

6.23. The evidence before the FSA is that you fell below the standard expected of a person in your position, knowing, as you did, the importance of the figures and having access, as you did, to all the people and the information that you needed to satisfy yourself of their accuracy.

6.24. As a result of the approach taken by the Cattles Group in the Public Statements, the arrears and impairment figures were not calculated solely on the basis of missed contractually due payments and the use of deferments was not adequately disclosed to the market.

Reliance on others and communications with others, including PwC

6.25. As part of your responsibilities as Finance Director, Cattles, including its Board and shareholders, and the market, looked to you to ensure the accuracy of its financial statements. You knew that you were exposing the company to risk if the information was false or misleading. You also knew the risks involved in the transition to financial reporting under IFRS 7.

6.26. The greater the risks, the greater is the degree of responsibility to ensure accuracy. The evidence before the FSA is that there were a number of occasions when the opportunity to ensure a full and open debate with all concerned on policy and practice was not taken. You knowingly adopted the course of action that you did. It was not enough to wait for others to ask the questions or to rely on the conclusions reached if they were not fully appraised of the facts behind the course of action contemplated. It was for you to lead on the proper application of the aims and requirements of IFRS 7 in the context of Cattles' business. It was not enough, for example, to fail to bring to light before the Board, the Audit Committee and external auditors the estimated and significant effect of taking deferments into account in calculating contractual arrears and therefore the impairment provision (see paragraphs 4.52, 4.57 and 5.13).

6.27. From the evidence before it, the FSA concludes that PwC, Cattles' Audit Committee and one of Cattles' major shareholders were given insufficient information regarding the use, extent and significance of deferments and that this was the result of the approach adopted by you, which failed to ensure there was an explicit and fully informed debate of the issues arising.

Sanction

6.28. In the light of these findings, and having regard to your personal circumstances, the FSA considers it appropriate to impose the financial penalty and make the order referred to in paragraph 1.1 above.

7. ANALYSIS OF SANCTION

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

(1) you are an experienced chartered accountant and, as Finance Director, you held a very senior position at Cattles;

(2) your misconduct rendered misleading the arrears and profit figures within Cattles' 2007 Annual Report, the Rights Issue Prospectus and the 2008 Announcements which fell directly within your area of expertise and responsibility and in relation to which Cattles' Audit Committee could reasonably have expected to rely on you;

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

(4) you had a number of opportunities over that period to provide full details to PwC and Cattles' Audit Committee of the business' use of deferments and to seek advice as to the correct accounting treatment of deferments.

(5) there was a very serious impact on shareholders, who have lost all or virtually all of their investment, and on market confidence. During the period of the market abuse, 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 Cattles' 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 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 the loan book.

Penalty

7.2. The FSA considers it appropriate to impose a financial penalty of £400,000 against you, reduced from £750,000 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

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

9. IMPORTANT

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

Manner of and time for Payment

9.2. The financial penalty must be paid in full by James Corr to the FSA by no later than 11 April 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 12 April 2012, the FSA may recover the outstanding amount as a debt owed by James Corr and due to the FSA.

Publicity

9.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

9.6. 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).

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

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."

Decision Procedure and Penalties Manual (DEPP)

6. 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.

7. 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).

8. 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.

9. 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."

10. 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.

11. 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

12. 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."

13. 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)

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

25. 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 EG 9.9.

26. 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.

27. 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)).