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## FINAL NOTICE

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To: **Leigh Mackey**

IRN: **LXM01328**

Date: **11 November 2024**

### 1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby:

- (1) imposes on Mr Mackey a financial penalty of £1,102,879 (comprising disgorgement of £968,479 and a penal element of £134,400) pursuant to section 66 of the Act;
- (2) makes an order prohibiting Mr Mackey from performing any function in relation to any regulated activities carried on or by any authorised or exempt persons, or exempt professional firm pursuant to section 56 of the Act; and
- (3) withdraws, pursuant to section 63 of the Act, the approval given to Mr Mackey under section 59 of the Act to perform the controlled function of SMF3 (Executive Director) at Inspire.

1.2 Mr Mackey agreed to resolve this matter and qualified for a 30% (Stage 1) discount to the penal element under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £1,160,479 (comprising disgorgement of £968,479 and a penal element of £192,000) on Mr Mackey.

- 1.3 Mr Mackey has recently been made bankrupt and as such realisation of assets is currently uncertain. The Authority will keep under review whether to give preference to creditors (some of whom may be consumers) with a valid provable debt, ahead of its financial penalty, in order to maximise the funds available for redress.

## **2. SUMMARY OF REASONS**

- 2.1. Mr Mackey was the CF1 (Director) controlled function holder (from 12 September 2011 to 8 December 2019) and is the SMF3 (Executive Director) controlled function holder (from 9 December 2019) of Inspire. Mr Mackey was at all material times, and remains, the only controlled function holder at Inspire.
- 2.2. Inspire was an insurance broker which specialised in arranging cover for customers in the construction sector. Mr Mackey was the beneficial owner of Inspire (via its parent holding company which he owned, now dissolved) and was its only director and had sole management control of the business. Inspire was placed into liquidation by Mr Mackey on 6 November 2020 (following intervention action by the Authority (see paragraph 4.30 below)) and remains in liquidation as of the date of this Notice.
- 2.3. Mr Mackey has admitted to the Authority that, over a period of more than 4 years, from 2016 (and possibly earlier) until 23 October 2020 (“the Relevant Period”), he used premia held by Inspire, which Inspire should have paid to insurers (who provided the insurance cover for Inspire’s customers), to fund the operating costs of Inspire and to pay personal living expenses – a practice Mr Mackey referred to as the taking of ‘advance commission’.
- 2.4. In addition, during the Relevant Period, a large number of other fund transfers were made by Inspire to Mr Mackey, or for Mr Mackey’s benefit (sometimes directly and sometimes via Inspire’s holding company), which were only made possible by Mr Mackey’s use of insurer premia to artificially enhance the revenue of Inspire.
- 2.5. Premia should have been held on trust by Inspire so they could be paid by Inspire to insurers, in accordance with agreements between the insurers and Inspire. Instead, as a direct result of the actions referred to above those funds were used

to pay the operating costs of Inspire such as employee wages and expensive company cars, and Mr Mackey's remuneration, via payments from Inspire's holding company (which received dividends from Inspire paid using premia) and direct money transfers from Inspire's bank accounts.

- 2.6. Mr Mackey has admitted to the Authority that his practice of taking advance commission (i.e. taking funds from net premia due to insurers) took place over a period of several years. Mr Mackey has also admitted to the Authority he was aware for 3 years that there was a shortfall in funds due to insurers and that this shortfall constituted a significant amount.
- 2.7. On 6 November 2020, Inspire stopped trading and was placed into liquidation. The amounts estimated as being owed to insurers by Inspire vary. By his own admission, Mr Mackey accepts that, as a result of his actions, Inspire owes insurers over £660,000. In May 2019, an employee of Inspire told Mr Mackey that the shortfall was over £1.2m. In August 2020, the same employee told Mr Mackey the shortfall was over £1.4m. Estimates of the amounts owing to insurers provided by Inspire's liquidator are significantly higher and suggest a shortfall of over £2.2m.
- 2.8. Mr Mackey has also admitted to the Authority that he was not being truthful when he stated to the Authority, when submitting regulatory reports over a 4-year period, that client asset audits had been carried out during the Relevant Period. No such audits had been carried out and Mr Mackey was aware of this.
- 2.9. The Authority considers that, due to Mr Mackey's engagement in the behaviour referred to above during the Relevant Period whilst approved by the Authority to perform controlled functions at Inspire, Mr Mackey failed to:
  - (1) act with integrity in contravention of both Statement of Principle 1 of APER and Individual Conduct Rule 1 of the COCON (as were applicable during the Relevant Period); and
  - (2) deal in an open and cooperative way with the Authority in contravention of Statement of Principle 4 of APER and be open and cooperative with the Authority in breach of Individual Conduct Rule 3 of COCON.

- 2.10. In light of the contravention of the Authority's rules, the Authority hereby imposes on Mr Mackey a financial penalty of £1,102,879, pursuant to section 66 of the Act.
- 2.11. In addition, because of the conduct taken as a whole, Mr Mackey is not a fit and proper person as he lacks honesty and integrity and poses a risk to consumers and to the integrity of the UK financial system. The Authority therefore hereby imposes an order prohibiting Mr Mackey from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm, pursuant to section 56 of the Act. Further, the Authority has decided, pursuant to section 63 of the Act, to withdraw the approval given to Mr Mackey under section 59 of the Act to perform the controlled function of SMF3 (Executive Director) at Inspire.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

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

"advance commission" means Mr Mackey's practice of taking funds from the net premia due to insurers

"APER" means the Statements of Principle and Code of Practice for Approved Persons, part of the Authority's Handbook

"the Authority" means the Financial Conduct Authority

"Business Account A" means a bank account used by Inspire which was set up to hold insurance premia on trust for insurers

"Business Account B" means a bank account used by Inspire which was set up to hold customer funds related to Inspire's surety bond business

"COCON" means the Code of Conduct sourcebook, part of the Authority's Handbook

"DEPP" mean the Decision Procedure and Penalties manual, part of the Authority's Handbook

"EG" means the Enforcement Guide, part of the Authority's Handbook

"Inspire" means Inspire Insurance Services Ltd (in Liquidation)

"the Inspire office bank account" means a bank account held by Inspire set up for the purposes of paying Inspire's operating costs

"the Relevant Period" means the period from 1 January 2016 to 23 October 2020

"RMA-C" means the RMA-C Client Money and Assets return filed with the Authority by firms that hold client money accounts

"SUP 15 Notification" means a notification made to the Authority by Inspire on 6 October 2020 in light of the notification requirements described in Chapter 15 of the Supervision section of the Authority's Handbook

"TOBA" means terms of business agreement

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

#### **4. FACTS AND MATTERS**

##### **Inspire's business**

- 4.1. Inspire was an insurance broker. It has been authorised by the Authority since 12 September 2011 and has permission to advise on and arrange deals in insurance contracts and to engage in credit broking. Inspire also has permission to hold and control client money. As stated above, Mr Mackey was the only controlled function holder at Inspire throughout the Relevant Period.
- 4.2. Inspire's business saw it sit between customers who required insurance cover, and who predominantly worked in the construction sector, and insurers who provided insurance policies to those customers. Inspire arranged insurance for the customers who then paid their insurance premia to Inspire, which then paid (or should have paid) the premia to the insurers minus the commission due to Inspire.

4.3. For example, if a customer bought an insurance policy from an insurer via Inspire and the premium was £1,000 and Inspire was entitled to a 15% commission on the sale and the agreement with the insurer required payment of the net premium within 30 days, the steps that should have taken place were for:

- (1) the customer to pay the £1,000 gross premium to Inspire;
- (2) Inspire to place the entire amount into a designated bank account set up to only accept premia (referred to in this Notice as Business Account A);
- (3) Inspire to calculate and extract its commission of £150 (which should have been transferred to Inspire's office bank account); and
- (4) Inspire to transfer the net premium of £850 to the insurer within 30 days.

#### **TOBAs**

4.4. Inspire (as broker) entered into agreements with a number of insurers that set out the terms on which those parties would conduct business. These agreements were referred to as TOBAs.

#### Receipt of premia

4.5. The TOBAs contained provisions concerning the basis on which Inspire was to receive insurance premium payments from its customers. In most cases, Inspire held the funds as agent or trustee of the insurer and the premia should have been paid into a trust bank account in accordance with the applicable rules (such as the Authority's CASS rules).

4.6. One example of a TOBA dealing with premia, dated September 2016, states:

*"6.5. Pending payment to the Underwriting Agent or Client, the Broker shall hold the monies described in clause 6.1 as the agent and trustee of the Insurer within its client monies account, which shall be a trust account, established in accordance with CASS 5."*

4.7. Another example, dated April 2019, states:

*"6.1. ... the Broker may hold Insurer Monies as the agent and trustee of the Insurer(s). Insurer Monies must be held by the Broker ... (i) in a client bank account as described in CASS 5.3 ("Statutory trust") or CASS 5.4 ("Non-Statutory Client Money Trust") or (ii) in a bank account designated as an "Insurer Trust Account" ... the Broker must write to the bank requesting the bank to acknowledge to the Broker in writing that all Monies standing to the credit of the trust account are held by the Broker as trustee of the Insurer(s)."*

#### Payment of commission to Inspire

4.8. The TOBAs also set out the circumstances in which Inspire was permitted to take its commission, which in all cases was upon receipt of the premium from the customer.

4.9. One example of a TOBA, dated July 2016, with one of Inspire's main insurers states:

*"5.2. The Broker [i.e. Inspire] may deduct the Commission upon receipt of the premium."*

4.10. Another TOBA, dated December 2016, with another of Inspire's main insurers states:

*"3.4. You may not withdraw commission from the trust account until You have received the retail premium in cleared funds from the customer concerned, or from any person funding the premium on behalf of the customer."*

4.11. Consistent with these examples, the position governing commission payments was described in Inspire's year-end accounts as follows:

*"All commission earned during the year have been incorporated in the accounts. Commission is taken when the client pays the premium either in full or by way of a deposit."*

#### Risk transfer arrangements

4.12. The substantial majority of the TOBAs between Inspire and insurers included risk transfer arrangements. This meant that, from the point of sale, when the premium was paid, the customer was insured under the terms of the policy regardless of when, or whether, Inspire subsequently paid the net premium (or part of it) to the insurer. This arrangement ensured that a customer would not find themselves uninsured in the event Inspire failed to pay a premium to an insurer (as transpired in this case).

4.13. For example, a TOBA dated July 2018, states:

*"5.3. Risk transfer is cascaded to the Intermediary by the Company unless otherwise advised."*

#### **Information provided to the Authority by Inspire**

4.14. In keeping with the obligations placed upon regulated firms, Inspire was required to submit a number of recurring regulatory returns to the Authority, including one relating to client money and assets (the RMA-C return). Inspire was also required to have a client money audit every 12 months.

4.15. In March 2020, Inspire submitted its RMA-C return to the Authority for the period 1 September 2019 to 29 February 2020. The report:

- (1) stated that Inspire had received or held client money in the course of or in connection with its insurance distribution activity and that this money was held under CASS 5.3;
- (2) described the amount of client money held at the end of the reporting period;
- (3) stated Inspire was not exempt for the client assets audit requirements; and
- (4) declared that the firm had obtained a client money audit in the last 12 months, named the firm that carried out the audit, and stated that the auditor provided a "*clean*" opinion of Inspire's compliance with the client money rules.

4.16. In response to the question:



*"Have any notifiable client money issues been raised, either in the firm's last client assets audit report or elsewhere, that have not been notified to the FCA since the last reporting period for this return"*

Mr Mackey (for Inspire) stated "No".

- 4.17. In each return preceding this, Inspire had also confirmed that it: (i) held client money; (ii) had performed an audit (in respect of those funds); (iii) the audit was "clean"; and (iv) there were no notifiable events.
- 4.18. In October 2020, Inspire submitted its final RMA-C return for the period 1 March 2020 to 31 August 2020. This return differed from all those previously submitted as it stated, for the first time, that Inspire did not hold client money; Inspire also did not answer any questions relating to audits or notifiable events.
- 4.19. On 6 October 2020, Mr Mackey (for Inspire) submitted a SUP 15 Notification to the Authority which declared Inspire had a "*client money shortfall of £663,570.50 as of 31/08/2020*". This served to inform the Authority of a "*notifiable event*" and Mr Mackey stated that the notification related to CASS rules and guidance 5.5.62G and 5.5.63R (which relate to client money calculation and reconciliation), 5.5.65R (which relates to client money resource), 5.5.76R (which relates to failure to perform calculations or reconciliation) and the "*CASS Audit Requirements*".
- 4.20. The SUP 15 Notification was submitted by Inspire 6 months after Mr Mackey submitted the RMA-C return for Inspire for the period 1 September 2019 to 29 February 2020 (referred to above at paragraph 4.15 above), in which he stated there were no notifiable client money issues at Inspire.
- 4.21. Following the SUP 15 Notification, the Authority contacted Mr Mackey and on 8 October 2020, a call took place between the Authority and Mr Mackey in which Mr Mackey made the following statements:
- (1) he admitted he had been taking money from Business Account A to supplement Inspire's office bank account with a view to supporting company cashflow (a practice he described as taking "*advance commission*");
  - (2) he initially kept a total of the amount taken in advance commission and admitted that the shortfall due to insurers this caused had grown over time;

- (3) he had been taking advance commission since 2016;
- (4) the premia he was taking money from were risk transfer funds, meaning that it was insurer money rather than client (i.e. customer/policyholder) money and his actions had never resulted in a customer not having insurance cover;
- (5) he was able to take "*advance commission*" as there was a gap of several months between gross premium being received and when the net premium were due to be paid to insurers;
- (6) he was not proud of what he had done and was deeply sorry and wished to resolve the issue as a matter of urgency;
- (7) he was responsible for completing Inspire's regulatory returns (which include the RMA-C returns referred to above) and he had completed them incorrectly in declaring funds were held in a CASS 5 account. He also stated that it was wrong of him to incorrectly state that Inspire had performed annual audits (in respect of client money) when this was not the case;
- (8) that Inspire's last client money audit was performed in 2016 and he stopped Inspire having audits because he believed the auditor would have identified issues had an audit been performed;
- (9) he admitted that it was wrong to use money in Business Account A to pay premia that fell due from earlier transactions and that this was a breach of the TOBAs;
- (10) insurers had not discovered the shortfall as Inspire had made premium payments to them as and when they fell due; and
- (11) he admitted he was solely responsible for the shortfall and that he made the movements of monies from Business Account A to the office bank account look like commission payments so no-one at Inspire would realise.

4.22. In the call, Mr Mackey also set out to the Authority, in brief, the options as he saw them that were available to him to pay back the shortfall to the insurers.

4.23. In a second call between the Authority and Mr Mackey, on 21 October 2020, Mr Mackey explained:

- (1) his reference to "*client money*" in the SUP 15 Notification was not a reference to the technical meaning of client money (which the Authority infers to be a reference to that term as used in the Authority Handbook – i.e. funds held for customers/policyholders);
- (2) the surety bond business (a separate type of business carried out by Inspire – funds in respect of which should have been routed through Business Account B) was not impacted by the shortfall as premia were not retained as part of that business (although the Authority's analysis suggests there was significant mixing of funds between Business Account B and Business Account A; see paragraph 4.27 below);
- (3) Inspire did retain a bank account designed to hold client money (as per its technical meaning);
- (4) how the shortfall to be paid to insurers had grown over time: in 2016 he described it as "*incidental*" at c.£50,000; in 2017 it grew to £200,000; in 2018 it became "*materially higher*" (he thought it likely higher than the amount recorded in the SUP 15 Notification); and in 2019 became £660,000 and had not materially changed since that time;
- (5) Inspire had taken more money than it was owed from Business Account A, but that money was used to support business cashflow;
- (6) despite the shortfall, dividends were paid to the holding company and that these funds were needed for his personal income;
- (7) he had calculated the shortfall on a monthly basis since 2016; and
- (8) the shortfall was not accounted for in Inspire's balance sheet or regulatory capital calculations, and that if these had recorded the shortfall they would have showed Inspire had a net asset value of minus £550,000.

- 4.24. In March 2023, Mr Mackey again told the Authority that he thought the last client money audit was carried out in 2016. Mr Mackey also admitted that he was not being truthful in the RMA-C returns when he stated that client money audits had been carried out.
- 4.25. The Authority has contacted the firm Mr Mackey stated in the returns had carried out client money audits at Inspire and the firm confirmed it had not undertaken client money audits for Inspire at any time, either before or after 2016. In its response to the Authority, the firm stated they:

*"took on this client in 2014 and were not engaged to provide CASS audit services to this client."*

#### **Mixing of funds between Business Account A and Business Account B**

- 4.26. Mr Mackey provided information to the Authority in October 2020 that stated Business Account A was a trust account used for the insurance business and Business Account B was used for a separate non-insurance business involving surety bonds. Mr Mackey further explained that the fund activities in each account were segregated from each other.
- 4.27. However, analysis conducted by the Authority has identified that during the Relevant Period, approximately £1.869m was transferred from Business Account A to Business Account B and approximately £1.254m was transferred from Business Account B to Business Account A. This was notwithstanding that those two accounts were set up to handle funds for different parts of Inspire's business, which funds (in the case of gross premium paid into Business Account A) were required to be segregated from other assets as explained above.
- 4.28. Based on the fund flows described in the previous paragraph, the Authority considers that Mr Mackey's explanation in paragraph 4.26 is unreliable as it does not accord with how the two accounts were used in practice.
- 4.29. In reality, funds from Business Account B were regularly transferred to Business Account A and vice versa, at Mr Mackey's instruction; the Authority infers that this was done in order to attempt to manage the shortfall that had been accumulating in funds held in Business Account A relative to what was owed to insurers. This practice of transferring funds between the two accounts resulted at

times in there being insufficient funds in Business Account B to make timely repayments of surety bond deposits.

### **The Authority's intervention**

- 4.30. On 23 October 2020, following the disclosures made by Mr Mackey set out above, the Authority issued a First Supervisory Notice to Inspire. The First Supervisory Notice required Inspire to, amongst other things, immediately cease all Authority regulated business on the grounds that:

*"2.2 The Authority ... considers that Inspire is failing, or likely to fail, to satisfy the Authority's Appropriate Resources Threshold Condition ... because it is already, or likely to be, in insolvent and does not currently have any effective management. Inspire is also failing, or is likely to fail, to satisfy the Suitability Threshold Condition ... and Effective Supervision Threshold Condition ... because it does not have adequate systems and controls to prevent it from being used for the purposes of financial crime.*

*2.3 The Authority's concerns relate to the fact that Inspire appears to have:*

- 1) Knowingly provided false information in its regulatory returns to the Authority indicating that it had undergone client money audits when it had not. Inspire's last client money audit took place in 2016.*
- 2) A shortfall in client funds between £660,000 and £745,000. It is currently unclear whether the shortfall comprises client money or money held on trust for insurers with whom it had risk transfer agreements.*
- 3) Misused client funds to support its cashflow since 2016, and for the personal benefit of its sole director."*

- 4.31. Inspire did not seek to challenge the First Supervisory Notice before the Tribunal.

### **Liquidation of Inspire**

- 4.32. Following the Authority's intervention by way of the First Supervisory Notice, on 6 November 2020 Mr Mackey placed Inspire into insolvent liquidation. The ongoing management of Inspire became the responsibility of Inspire's liquidator.

- 4.33. The liquidator of Inspire has worked to determine who the creditors of Inspire are and how much they are owed by the firm. The liquidator has noted that this work has been problematic not least because:

*"... it is apparent that the bank accounts have not been reconciled to the [accounting programme] since 30 April 2016, this has hindered the investigation and my ability to identify sums due to Insurance companies and specific payments from the trust accounts which were not in line with the commission earned."*

- 4.34. The liquidator has been dealing with at least 84 different insurer creditors of Inspire, from which the Authority infers that Inspire had a TOBA in place with each of these insurers that provided for risk transfer (as otherwise it would be the customer who paid the premia and not the insurer who would be the creditor). As of January 2024, the liquidator estimated that the insurer creditor claims total £2,234,306. The liquidator stated in January 2024 that, due to numerous issues that have arisen in attempting to unravel the finances of Inspire, they were unable to estimate the date when the liquidation may close.

- 4.35. In addition to the above, the liquidator has made the following comments on the management of Inspire:

*"... I have spent considerable time reviewing and attempting to reconcile the system to complete transaction trails for Individual clients. This has proved impossible as the system only details spasmodic payments made and has no direct search facility for clients or transactions. The commissions reflected on the system does not reconcile to the actual sums drawn."*

...

*"I also used the services of an [accounting programme] competent account manager who was dismayed at the fundamental tasks and interrogation procedures which could not be achieved using the system as it is set up."*

...

*"It is apparent on the company's general account, that only spasmodic transactions are recorded. Indeed, I have established that not all the*

*transactions have been reflected through the [accounting programme] system ... The above demonstrates that no reliance can be placed on the [accounting programme] system information and indeed every transaction has had to be individually investigated ...".*

### **Reasons given by Mr Mackey for the shortfall in Business Account A**

#### 8 October 2020

- 4.36. As described in paragraph 4.21 above, on 8 October 2020 Mr Mackey explained to the Authority that the reason for the shortfall was because he began (in early 2016) to take funds from Business Account A to supplement Inspire's office bank account with a view to supporting company cashflow. Mr Mackey acknowledged that this was a breach of the TOBAs.
- 4.37. At that time, Mr Mackey admitted he was solely responsible for the shortfall and that he made the transfers from Business Account A to the Inspire office bank account look like commission payments so no-one at Inspire would realise.

#### 21 October 2020

- 4.38. As stated in paragraph 4.23 above, on 21 October 2020 Mr Mackey admitted to the Authority that he had taken more money than Inspire was owed from Business Account A. Mr Mackey maintained that the money was used to support business cashflow, whilst at the same time acknowledging that, despite knowing of the shortfall, dividends were paid to Inspire's holding company and that these funds were needed for his personal income.

#### March 2023

- 4.39. In March 2023, Mr Mackey provided a more detailed explanation to the Authority as to why there was a shortfall. Mr Mackey explained he first started the practice of taking funds from net premia held for insurers on the basis that the amount taken could be repaid by reducing the amount of commission Inspire was due from gross premia on sales anticipated but not yet made.
- 4.40. Mr Mackey stated that Inspire was in financial difficulty in late 2015 or early 2016, despite growing in size as a business. Mr Mackey claimed that a silent investor in Inspire (who had neither shareholding, nor worked for the firm in any capacity)

demanded an “*exit fee*” to leave the business. In order to meet that fee, Mr Mackey claimed that the silent investor had suggested to Mr Mackey that it could be funded by commission not yet earned (i.e. via an advance commission) on the basis that it would be earned in the future and that this was an acceptable business practice.

- 4.41. Mr Mackey stated that he took the silent investor’s advice and used advance commission payments to pay-off the investor and to also support office costs incidental to running the business.
- 4.42. Mr Mackey stated that the plan had been to take a lower level of commission from future gross premia received than otherwise would have been due to Inspire and to apply the difference towards the amount taken in advance. However, he described the practice of taking advance commission as continuing thereafter whenever similar issues with operating costs, such as wages and bills needing to be paid, were encountered. Mr Mackey maintained that, had the Authority not required that Inspire cease carrying on regulated activities in October 2020, he would have been able to balance up the shortfall from future anticipated commission and by reducing running costs by dismissing staff and cutting other costs (something he had not managed to do previously).
- 4.43. Mr Mackey confirmed that he was aware that the shortfall was significant since 2017, but claimed not to know the full extent until he had a conversation with an employee in 2020. This does not accord with email correspondence which shows Mr Mackey being made aware of the total shortfall in May 2019 (see paragraph 4.52, below).

Differences in Mr Mackey’s account

- 4.44. In October 2020 Mr Mackey informed the Authority that he calculated the shortfall monthly. However, in March 2023 Mr Mackey claimed that he did not keep track of the insurer shortfall and acknowledged that he should have done so, stating:

*“I was the Director of the that company, and I should have monitored [the shortfall] more.”*

- 4.45. In March 2023, Mr Mackey also told the Authority that he did not have the technical ability or means to keep track of the shortfall and stated:



*"... my experience of any type of accounting prior to Inspire was 0 [zero] ... I still couldn't use an accounting system now ... about four years of the business, I didn't even have a login to the accounting platform."*

- 4.46. Mr Mackey made a similar statement to the liquidator of Inspire, although the liquidator did not accept this, stating in January 2024:

*"I also engaged the attendance of the director [Mr Mackey] who advised that he would try to assist but was not very technically experienced. It was apparent from overseeing his ability to navigate the system that he was fully coherent with its workings but was unable or unwilling to access specific details I requested, or indeed was unable to find the information as it does not exist."*

- 4.47. An employee of Inspire told the Authority in October 2021 that Mr Mackey had told them he (Mr Mackey) was tracking the amount of advance commission taken and the employee stated that they (the employee) did not keep an ongoing record. The employee also said that Mr Mackey was solely responsible for the decision to take advance commission and that Mr Mackey told them this practice had been permitted by the insurers. The employee stated that they thought at the time that the advance commission was being used to support office costs and they were unaware Mr Mackey was also transferring funds from Inspire for his personal use and they were unaware of the amount of dividends being paid.

#### **The increase in the shortfall in Business Account A**

- 4.48. In March 2023, Mr Mackey told the Authority that the shortfall in Business Account A began to build in "late 2015" or "early 2016" when he took a "fixed amount ... it was either £15,000 or £25,000" from Business Account A to pay an 'exit fee' to the silent investor as part of ceasing their involvement with Inspire.
- 4.49. It appears that by January 2017, the shortfall had risen and more than £130,000 had been taken by Mr Mackey in advance commission, as he emailed an employee to discuss his plan to "put back an initial £130,000" stating: "What I may be able to do is put all income from bonds back in to the advances to do this I need to declare 0% income from the premium and then when we pay the insurer the net amount it will leave a surplus which I will contra off any advances ...". The

Authority infers from the word "initial" that an amount substantially greater than £130,000 had been taken in advance commission at that point.

- 4.50. On 7 September 2018, Mr Mackey emailed the same employee describing what appeared to be a shortfall of at least £550,000 which needed to be paid back to insurers. Mr Mackey went on to say that:

*"I'm currently reviewing a few things to come up with a plan to get this on track and ultimately repay all advances we have taken over time and bring the accounts back to a better position but this will take a little time and if you can help me to keep things running smoothly for now while I do this that would be appreciated".*

- 4.51. The employee responded on the same day attaching a spreadsheet which indicated a shortfall of c.£670,000.

- 4.52. In May 2019, the same employee emailed Mr Mackey attaching a spreadsheet which assessed the shortfall owing to the insurers as £1.2m.

- 4.53. On 13 August 2019, Mr Mackey emailed the employee summarising the position he faced:

*"We need to chat and come up with an urgent plan. [two insurers] are threatening to go to the regulators. In a nut shell we need to get some money in and out fast.*

*We also need to cut costs and fast. Are there any quick wins on cost we can stop immediately to help as the less out goings we have the more commission we can move back to client money to help restore it.*

*It may be we have no alternative but to look at salaries and make savings and redundancies which is the last thing I've ever wanted but the main reason we are in this situation.*

*If we don't come up with a plan to get the client money back up we really could be in a shit situation."*

- 4.54. In October 2019, one insurer was chasing Inspire for overdue premia of £438,160. In December 2019, a different insurer was chasing Inspire for overdue premia of c.£280,000 of which £255,699.88 was still outstanding in January 2020 (and it was noted that overdue premia had increased to that level from £89,000 in July 2019). This indicates there was substantial amount of unpaid premia due at this time.
- 4.55. On 26 August 2020, Mr Mackey asked the employee for the "*current position of advance and what is owed back*". The employee responded: "*I have done a quick basic position as of today, we are £1,447,913.12 from where we should be on the insurer account*" and outlined a host of pressing financial issues.
- 4.56. Mr Mackey responded on 7 September 2020 stating:
- "I ran some reports yesterday and I get the following .... This shows a deficit of £663,570.50."*
- 4.57. As stated above, in the SUP 15 Notification submitted in October 2020 Mr Mackey notified the Authority that the shortfall owed to insurers was £663,570.50. This mirrors the amount he told his employee it was on 7 September 2020.
- 4.58. Based on the liquidator's investigations and analysis, Mr Mackey appears to have under-calculated the amount of the shortfall:
- (1) On appointment, the liquidator's first estimate of the amounts owed to insurer creditors was £1,992,823 (with client aged debtors recorded as £436,963, although it is not known if any debtor funds were due to the insurer creditors in which case some amounts may cancel each other out). This information was presented in a Statement of Affairs as of 6 November 2020, submitted to Companies House by the liquidator on 21 November 2020, which Mr Mackey refused to sign.
  - (2) As of January 2022 (for the period 6 November 2020 to 5 November 2021), the liquidator recorded insurer creditors making claims for £2,234,306 based on proof of debts received.

- (3) The position, in terms of amounts claimed by insurers, has remained the same since and is repeated in the liquidator's most recent report to creditors of January 2024.

### **Fund transfers from Inspire**

- 4.59. Mr Mackey has admitted he used insurer premia to fund the operating costs of Inspire. Over time, the amount of insurer premia he took, and did not repay, built up. As detailed below, the minimum amount he took as advance commission and did not repay was £663,570.50 (based on his own estimate), but it is likely the amount is far more significant.
- 4.60. Mr Mackey made transfers between Business Account A and Business Account B, and payments from Business Account A and Business Account B to various other bank accounts, without being able to determine whether the funds he was moving were revenue or profit, or if they were owed to insurers (or other entities) and held on trust for them. This was exacerbated by the inappropriate intermingling of funds between Business Accounts A and B which, together with an absence of accurate record keeping, made it even harder for Mr Mackey to keep track of the shortfall owed to the insurers.
- 4.61. Transfers were made by Mr Mackey from Business Account A to the following bank accounts: (i) the Inspire office bank account (from where operating costs were paid); (ii) his own personal bank account; (iii) the holding company bank account (from which his dividends were paid); and (iv) a horse racing company linked to Mr Mackey.
- 4.62. Transfers were made by Mr Mackey from Business Account B to the following bank accounts: (i) his own personal bank account; (ii) the holding company; and (iii) a construction company developing one of Mr Mackey's properties.
- 4.63. The Authority infers that the purpose of these transfers, given the destination of them, went beyond the funding of the operating costs of Inspire and many were for Mr Mackey's direct benefit.
- 4.64. The following table summarises the Authority's understanding of the minimum amount of funds that were transferred from Business Account A and Business

Account B for various purposes during the Relevant Period, when a shortfall of funds owing to insurers was building:

<b>From/to</b>	<i>Personal Account</i>	<i>Holding Company</i>	Office account (transfers labelled as 'advance commission')	<i>Horse Racing Company</i>	<i>Property Company</i>	<b>Total</b>
<i>Business Account A</i>	£74,375		£600,000	£9,500		£683,875
<i>Business Account B</i>	£247,445	£67,183			£50,000	£364,628
<b>Total</b>	£321,820	£67,183	£600,000	£9,500	£50,000	<b>£1,048,503</b>

4.65. In light of the shortfall identified by the liquidator of Inspire (see paragraph 4.58, above), the actual amount of premia transferred from Business Account A to Inspire's office bank account was likely much higher than the £600,000 figure in the table above. The transactions totalling £600,000 had transaction narratives in the bank statements stating they were 'advance commission', but from the material the Authority has reviewed it appears that the premia taken as advance commission was not always labelled as such (for example there were often transactions with no accompanying narrative). Therefore, the Authority has been unable to determine the exact amount of premia that was paid as advance commission.

## **5. FAILINGS**

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

### **Statement of Principle 1/Individual Conduct Rule 1**

5.2. Statement of Principle 1 and Individual Conduct Rule 1 required Mr Mackey to act with integrity in carrying out his controlled functions. The Authority concludes that Mr Mackey acted without integrity and dishonestly:

- (1) in carrying out Inspire's regulated business, he deliberately used funds which he knew Inspire was holding as agent or trustee of insurers (and to

which Inspire had no claim or right to use) to pay the operational costs of Inspire and to fund his own lifestyle;

- (2) he sought to transfer insurer funds from Business Account A in a way that would hide the true nature/purpose of those transfers from others at Inspire; and
- (3) in completing Inspire's regulatory returns he dishonestly informed the Authority that Inspire had carried out client asset audits over a number of years, when he knew that it had not done so.

5.3. As a result, during the Relevant Period Mr Mackey breached Statement of Principle 1 and Individual Conduct Rule 1 whilst approved to perform the CF1 (Director) and SMF 3 (Executive Director) functions respectively at Inspire.

#### **Statement of Principle 4/Individual Conduct Rule 3**

5.4. Statement of Principle 4 and Individual Conduct Rule 3 required Mr Mackey to deal/be open and cooperative with the Authority. The Authority concludes that Mr Mackey failed to be open and cooperative with the Authority, in breach of those requirements, as in completing Inspire's regulatory returns he deliberately (and dishonestly) provided the Authority with information that he knew to be inaccurate (see paragraph 5.2(3) above).

#### **Lack of fitness and propriety**

5.5. The Authority considers that Mr Mackey's actions as described in paragraphs 5.1 to 5.4 (and more generally in this Notice) demonstrate that he lacks honesty and integrity and, therefore, fitness and propriety.

5.6. As a consequence of the failings described in this Notice, the Authority considers that Mr Mackey is not fit and proper to perform any function in relation to any regulated activities carried on or by any authorised or exempt persons or exempt professional firm (including but not limited to Inspire).

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

**Step 1: disgorgement**

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this. Where the success of a firm's entire business model is dependent on the breach (as is the case here) and the individual's breach is at the core of the firm's regulated activities, the Authority will seek to deprive the individual of all the financial benefit they have received from such activities.
- 6.3. Mr Mackey did derive a financial benefit from his breach, having transferred large amounts of premia from Business Account A and Business Account B to his personal bank account and to other entities in which he had a personal interest (see table at paragraph 4.64 above – i.e. the amounts paid to his personal account, the horse racing company and the property company) and by making payments for his benefit from the bank account of Inspire's holding company that were attributable to his use of premia to fund Inspire's operating costs.
- 6.4. From the material it has seen, the Authority has identified benefit to Mr Mackey of £732,723. In accordance with DEPP 6.5B.1G, the Authority has applied interest on the amount of benefit Mr Mackey directly gained from his breach, calculated from the end of the Relevant Period (23 October 2020) to the date of settlement. The Authority has applied simple interest at the rate of 8% per annum.
- 6.5. Step 1 is therefore £968,479 (£732,723 plus interest of £235,756).

**Step 2: the seriousness of the breach**

- 6.6. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.7. The period of Mr Mackey's breach was from 1 January 2016 until 23 October 2020. The Authority considers Mr Mackey's relevant income for this period to be £60,000.

6.8. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into 5 fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following 5 levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

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

#### Impact of the breach

6.10. DEPP 6.5B.2G(8) sets out factors relating to the impact of the breach. Of these, the Authority considers the following factors to be relevant to Mr Mackey's breaches:

(1) the breach resulted in a significant benefit being obtained by Mr Mackey (DEPP 6.5.2G(8)(a)); and

(2) the breach resulted in loss to insurers who did not receive the net premia to which they were entitled yet still were on risk under the policies provided from the time Inspire received the gross premia from the policyholders (DEPP 6.5.2G(8)(c)).

#### Nature of the breach



6.11. DEPP 6.5B.2G(9) sets out the factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to Mr Mackey's breaches:

- (1) as the sole director and controlled function holder of Inspire, with over 10 years of industry experience, Mr Mackey knew, or ought to have known, the importance of:
  - (a) safeguarding funds held on trust or as agent for third parties (in this case insurers); and
  - (b) providing accurate information to the Authority in regulatory returns (DEPP 6.5B.2G(9)(a), (j) and (k));
- (2) they occurred over a prolonged 4-year period (DEPP 6.5B.2G(9)(b));
- (3) he failed to act with integrity (DEPP 6.5B.2G(9)(e)); and
- (4) Inspire held a position of trust whilst safeguarding insurer funds, and Mr Mackey (as the sole officer of Inspire) abused that trust (DEPP 6.5B.2G(9)(f)).

6.12. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) the breach caused a significant loss to insurers (DEPP 6.5B.2G(12)(a));
- (2) Mr Mackey failed to act with integrity (DEPP 6.5B.2G(12)(d));
- (3) Mr Mackey abused a position of trust (DEPP 6.5B.2G(12)(e)); and
- (4) the breach was committed deliberately (DEPP 6.5B.2G(12)(g)).

6.13. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these factors apply.

6.14. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £60,000.

6.15. Step 2 is therefore £24,000.

### **Step 3: mitigating and aggravating factors**

6.16. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

6.17. There are no factors which mitigate or aggravate the breach. Step 3 is therefore £24,000.

### **Step 4: adjustment for deterrence**

6.18. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.19. The Authority considers that, in order to achieve credible deterrence, a multiplier of 8 should be applied to the Step 3 figure.

6.20. The Step 4 figure is therefore £192,000.

### **Step 5: settlement discount**

6.21. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.22. The Authority and Mr Mackey reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.23. Step 5 is therefore £134,400.

### **Penalty**

- 6.24. The Authority hereby imposes a financial penalty of £1,102,879 (comprising disgorgement of £968,479 and a penal element of £134,400) on Mr Mackey for breaching Statement of Principle 1/COCON Individual Conduct Rule 1 and Statement of Principle 4/COCON Individual Rule 3 as applied during the Relevant Period.

### **Withdrawal of approval and prohibition**

- 6.25. If it appears to the Authority that an individual is not a fit and proper person, it has the power to:
- (1) prohibit an individual under section 56 of the Act; and
  - (2) withdraw pursuant to section 63 of the Act an individual's approval under section 59 of the Act.
- 6.26. In light of the serious nature of Mr Mackey's misconduct, involving a lack of honesty and integrity, the Authority has determined that Mr Mackey is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Authority has determined that it is therefore appropriate and proportionate in the circumstances to impose a prohibition order on Mr Mackey under section 56 of the Act, in those terms, and to withdraw, pursuant to section 63 of the Act, Mr Mackey's existing approval under section 59 of the Act.
- 6.27. In deciding to impose a prohibition order on Mr Mackey, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority has taken account of the fact that Mr Mackey held a controlled function (CF1 (Director) then SMF3 (Executive Director)) for the entire 4-year period in which the misconduct occurred. The Authority considers that the seriousness of Mr Mackey's misconduct, which involved him:
- (1) misappropriating funds that Inspire held on trust for third parties and applying them for other purposes (including to fund his own personal expenses); and
  - (2) deliberately misleading the Authority that there was no shortfall in the funds Inspire held despite knowing that was not the case,

is such that Mr Mackey poses a serious risk to consumers and to confidence in the UK financial system. The Authority hereby imposes a prohibition order on Mr Mackey in order to advance the Authority's operational objectives of protecting consumers and protecting and enhancing the integrity of the UK financial system.

- 6.28. Likewise, in deciding to withdraw Mr Mackey's approval, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority has determined that it is necessary and proportionate, in order to achieve its regulatory objectives, for it to exercise its powers to withdraw his approval.

## **7. PROCEDURAL MATTERS**

- 7.1. This Notice is given to Mr Mackey under and in accordance with section 390 of the Act.

- 7.2. The following statutory rights are important.

### **Decision maker**

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

### **Manner and time for payment**

- 7.4. The financial penalty must be paid in full by Mr Mackey to the Authority by no later than 25 November 2024.

### **If the financial penalty is not paid**

- 7.5. If all or any of the financial penalty is outstanding on 26 November 2024, the Authority may recover the outstanding amount as a debt owed by Mr Mackey and due to the Authority.

### **Publicity**

- 7.6. 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 Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published

in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Mackey or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority contacts**

- 7.8. For more information concerning this matter generally, contact Gareth Buttrill at the Authority (email: [gareth.buttrill@fca.org.uk](mailto:gareth.buttrill@fca.org.uk)).

**Kerralie Wallbridge**

**Head of Department**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **Relevant statutory provisions**

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection, integrity and competition objectives.
- 1.2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.4. Section 63 of the Act provides that the Authority may withdraw an approval under section 59 given by the Authority in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.

#### **Relevant regulatory provisions**

##### **APER**

- 1.5. APER has been issued under section 64 and section 64A of the Act.
- 1.6. Statement of Principle 1 states:

*"An approved person must act with integrity in carrying out his accountable functions."*

1.7. Statement of Principle 4 states:

*"An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or PRA would reasonably expect notice."*

#### COCON

1.8. COCON has been issued under section 64A of the Act.

1.9. Individual Conduct Rule 1 of COCON states:

*"You must act with integrity."*

1.10. Individual Conduct Rule 3 of the COCON states:

*"You must be open and cooperative with the FCA, the PRA and other regulators."*

#### The Fit and Proper Test for Approved Persons ("FIT")

1.11. FIT sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

1.12. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

1.13. FIT 2.1.3G lists the matters which the Authority will have regard to in determining a person's honesty, integrity and reputation. The following factors are relevant in the current circumstances:

*"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 or within one year of that connection.” (FIT 2.1.3G(9)); and*

*“Whether, in the past, the person has been candid and truthful in all their 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))*

The Authority’s policy for exercising its power to make a prohibition order

1.14. The Authority’s policy in relation to prohibition orders is set out in Chapter 9 of EG.

1.15. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

1.16. EG 9.3.2 lists the matters which the Authority will have regard to in whether to make a prohibition order against an approved person and/or withdraw their approval. The following factors are relevant in the current circumstances:

*“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).” (EG 9.3.2(2));*

*“Whether, and to what extent, the approved person has failed to comply with the Statements of Principle or COCON, as applicable, issued by the FCA with respect to the conduct of approved persons.” (EG 9.3.2(3)(a));*

*“The relevance and materiality of any matters indicating unfitness.” (EG 9.3.2(5));*

*“The length of time since the occurrence of any matters indicating unfitness.” (EG 9.3.2(6));*



*“The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.” (EG 9.3.2(7)); and*

*“Where the approved person is an SMF manager, whether they would be a fit and proper person to perform functions in relation to regulated activities if the FCA varied their approval by imposing one or more conditions. If so, whether it is appropriate for the FCA to exercise its power to impose such conditions, instead of making a prohibition order or withdrawing the approved person’s approval.” (EG 9.3.2(10)).*

## DEPP

- 1.17. Chapter 6 of DEPP sets out the Authority’s statement of policy with respect to the imposition and amount of financial penalties under the Act.