
FINAL NOTICE

To: Martin Christopher Sarl

To: Perry Prowse (Insurance Consultants) Ltd

IRN: MCS01109

FRN: 311916

Date: 14 August 2024

1. ACTION

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

- (1) imposes on Mr Martin Sarl a financial penalty of £5,021 pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act");
- (2) makes an order prohibiting Mr Sarl from performing any function in relation to any regulated activities carried on by any authorised or exempt person, or exempt professional firm pursuant to section 56 of the Act; and
- (3) withdraws, pursuant to section 63 of the Act, the approval given under section 59 of the Act to Mr Sarl to perform the function of SMF3 Executive Director at Perry Prowse (Insurance Consultants) Ltd in liquidation ("Perry Prowse").

1.2. Mr Sarl agreed to resolve this matter and was able to demonstrate serious financial hardship. Had it not been for his financial circumstances, the Authority would have imposed a financial penalty of £63,600 (or £46,000 adjusted for a 30% discount if settled early).

2. SUMMARY OF REASONS

- 2.1. The Authority expects individuals in senior management roles at authorised firms to act with honesty and integrity when managing the business for which they are responsible. When individuals in these roles fail to act with honesty and integrity, the firm's clients are exposed to a significant risk of detriment.
- 2.2. Mr Sarl was the sole director and approved as CF1 (Director) at Perry Prowse throughout the Relevant Period. In this role he was responsible for the management of Perry Prowse's business and, in particular, for handling client money and for passing on insurance premiums to insurers to ensure insurance cover for Perry Prowse's customers.
- 2.3. In performing the CF1 (Director) controlled function role, the Authority considers that between 7 November 2017 and 24 October 2019 (the "Relevant Period") Mr Sarl acted dishonestly in his failure to pass premiums on to insurers and in his interactions with Perry Prowse's customers and recklessly in relation to the handling of client money in the insurance brokerage business of Perry Prowse.

Dishonest dealings with customers

- 2.4. The Authority considers that Mr Sarl acted dishonestly in his dealings with customers because he:
 - (1) failed to pass on to insurers' premiums paid by customers for insurance policies, even after the failure had been pointed out to him by insurers and in some instances queried by customers, thereby leaving customers uninsured. In particular, two customers were left without home insurance, after Mr Sarl failed to pass on their premium payments to the insurer, which resulted in a claim for £4,444.90, which had to be paid by the Financial Services Compensation Scheme after Perry Prowse had entered into liquidation;
 - (2) misled customers when they questioned him about their insurance cover, examples of which include:

- a) falsely blaming an "IT glitch" for his own failure to pass on a customers' premiums to insurers; and
 - b) after customers had asked Mr Sarl why their insurance policies were not in place when they had already paid the premiums to him, he claimed that he had put in place alternative insurance with a different insurer, when he had in fact not done so, and he continued to maintain this untrue position even when questioned further by the customer; and
- (3) on 21 October 2019, in breach of a First Supervisory Notice from the Authority, which notified Perry Prowse that it was not permitted to carry on regulated activities, including holding and/or controlling client money for its insurance distribution activities, Mr Sarl allowed Perry Prowse to accept a payment from a customer for an insurance premium, which he then failed to pass on to the insurer.

Reckless handling of client money

2.5. Mr Sarl's actions in relation to his handling of client money in the firm's insurance brokerage business were reckless, because he failed to pay due regard to the obligation of protecting client monies despite being aware of the Authority's Client Money rules and their importance in ensuring that customers did not suffer loss or harm. Instead, Mr Sarl transferred large amounts of money from Perry Prowse's Client Account (the "Client Account") without keeping adequate records of commissions due to the firm and without undertaking and recording any client money calculations in the required timelines as required under the Authority's Client Money Rules. As a result, Mr Sarl made payments from the Client Account to the firm which the Authority estimates to be over £100,000 in excess of what was due to the firm by way of commission, which included, during the Relevant period:

- (1) 132 occasions when funds from the Client Account were transferred through to Mr Sarl's personal account (the "Personal Account") via Perry Prowse's office account (the "Office Account") on the same day.

- (2) On 97 of the 132 occasions, the transfers from the Office Account to his Personal Account remedied an overdrawn balance in his Personal Account.
- (3) On several occasions, amounts were transferred from the Client Account via the Office Account to Mr Sarl's Personal Account, and the same amounts were then transferred, on the same day, from his Personal Account to pay personal expenses. In one such example, Mr Sarl transferred £500 from the Client Account via the Office Account to his Personal Account, and then transferred the same amount, on the same day, from his Personal Account to a firm of debt collectors who were collecting debts in relation to unpaid council tax.

2.6. Mr Sarl made those payments despite knowing that this was in breach of the Authority's Client Money Rules and carried the significant risk that there would be a shortfall in the Client Account. This meant that there would not be sufficient funds in the Client Account to pay insurance premiums due to insurers to ensure that the firm's customers had the policy cover in place for which they had paid.

Fitness and propriety

2.7. The Authority considers that, for the reasons set out above, and as a result of the facts and matters set out in section 4 of this Notice, Mr Sarl has demonstrated a lack of honesty in his dealings with customers, as well as a lack of integrity in the performance of his CF1 (Director) controlled function. As a result, he is not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised or exempt person, or exempt professional firm.

Sanctions

2.8. The Authority hereby imposes a financial penalty on Mr Sarl for the amount of £5,021 for his failure to comply with Statement of Principle 1 pursuant to section 66 of the Act.

2.9. As a result of Mr Sarl's lack of fitness and propriety, the Authority also hereby:

- (1) withdraws the approval, pursuant to section 63 of the Act, granted to Mr Sarl to perform the SMF3 (Executive Director) senior management function at Perry Prowse; and

(2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Sarl from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.

2.10. The Authority considers that making these orders is necessary in order to secure an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000

“the Authority” means the Financial Conduct Authority

“CASS” means Authority’s Client Assets Sourcebook, also referred to as the Authority’s “Client Money Rules”

“Client Account” means the statutory client bank account for Perry Prowse

“Client Money Rules” means the Authority’s Client Assets Sourcebook in the FCA Handbook

“COCON” means the FCA’s Code of Conduct for Staff Sourcebook

“CVA” means Company Voluntary Arrangement

“DEPP” means the Authority’s Decision Procedure and Penalties Manual

“DVLA” means the Driver and Vehicle Licensing Agency

“FSCS” means the Financial Services and Compensation Scheme

“Office Account” means the office bank account for Perry Prowse

“the Ombudsman” means the Financial Ombudsman Service

“Perry Prowse” means Perry Prowse (Insurance Consultants) Ltd, now in liquidation

“Personal Account”, means the personal bank account of Mr Sarl

“Relevant period” means 7 November 2017 to 24 October 2019

“RDC” means the Regulatory Decisions Committee of the Authority

“Statements of Principle” means the Authority’s Statements of Principle and Code of Practice for Approved Persons

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

Background

- 4.1. Mr Sarl was the controller and sole director of Perry Prowse, a small independent insurance broker based in Exeter. Perry Prowse was authorised by the Authority on 14 January 2005 to conduct regulated insurance broking, credit broking and investment advisory business. The firm focused principally on brokering vehicle and home insurance policies for UK insurers.
- 4.2. Mr Sarl was approved to perform the CF1 (Director) role at Perry Prowse at its authorisation and performed this function throughout the Relevant Period. As the only director and approved person at Perry Prowse, Mr Sarl had ultimate responsibility for the firm.
- 4.3. Perry Prowse fell into financial difficulty and agreed a CVA on 15 June 2016 in order to meet its obligations and stay solvent. Perry Prowse agreed to repay its debts through monthly instalments which agreement was subsequently varied on 18 February 2019.

- 4.4. In February 2019, the Authority received a complaint from a customer, and a concern was expressed by an insurer, which suggested that Perry Prowse may have been accepting premiums from customers but not passing them on to insurers, thereby leaving customers uninsured.
- 4.5. Despite receiving a number of requests for information from the Authority regarding these issues, Mr Sarl failed to provide a satisfactory explanation of what had occurred. Moreover, Mr Sarl also failed to provide financial information for the firm which fell due on 13 June 2019, in breach of the Authority's rules. As a result of these matters, and the risk that Perry Prowse posed to consumers, the Authority concluded that Perry Prowse was not a fit and proper person to conduct regulated activities in breach of the Authority's Suitability Threshold Condition. The Authority exercised its own initiative power on 13 September 2019 to issue the First Supervisory Notice to Perry Prowse, varying its Part 4A permission by removing all regulated activities from its permission. This action was confirmed by the Second Supervisory Notice, issued on 5 November 2019.
- 4.6. Following concerns that the firm may have been involved in misconduct which could cause customer losses, and in light of the firm's deteriorating financial position, on 10 January 2020, the Authority imposed an asset requirement on Perry Prowse which required it to not dispose of, deal with or diminish the value of its assets, any client funds and monies it holds without the prior consent of the Authority. Perry Prowse went into liquidation on 15 January 2020.

The Authority's Client Money Rules

- 4.7. The Authority's Client Money Rules require a firm to arrange adequate protection for clients' assets when a firm is responsible for them. An essential part of that protection is the proper accounting and handling of client money.
- 4.8. The following rules set out in the Authority's Client Money Rules are relevant to Mr Sarl's handling of client money at Perry Prowse:
- 1) *Commission*: a firm may draw down commission from its client bank account, if this is consistent with the terms of business it has agreed with the client and the insurer. However, it must make any drawdown from the client account as soon as

reasonably practicable and no later than 25 business days from the date when cleared funds are received in the client account or, if earlier, when the firm has completed the client money calculation required at intervals of not more than 25 business days in accordance with the Authority's Client Money Rules and this calculation has shown this money is represented as an excess over the client money requirement.

- 2) *Client money calculation*: a firm must, as often as necessary and at least at intervals of not more than 25 business days, check whether its client money resource (the amount of client money segregated in appropriate accounts) is at least equal to the client money requirement (the amount that a firm has to segregate to meet its obligations to clients) and ensure that any shortfall is paid into a client account by the close of business on the day the calculation is performed. If a firm identifies any discrepancies, it must identify the reason for the discrepancy and correct it as soon as possible.

- 3) *Notifying the Authority*: a firm must notify the Authority immediately if it becomes aware that (i) it is unable to or does not perform the calculation required by the Authority's Client Money Rules; or (ii) it may not be able to make good any shortfall in the required timings.

Mr Sarl's Client Money Arrangements at Perry Prowse

- 4.9. From 1 December 2017 onwards, Mr Sarl was in charge of handling client money at Perry Prowse and was responsible for ensuring that the firm was in compliance with the Authority's Client Money Rules. Mr Sarl was the only person at Perry Prowse who could access the Client Account and the Office Account.

- 4.10. The main purposes of the Client Account were to receive client premiums in the process of arranging insurance contracts, and to forward these premium payments to the relevant insurers. Payments received from Perry Prowse clients to the Client Account also contained a portion of commission, and are therefore qualified as "mixed remittance" (part client money and part other money) under the Authority's Client Money Rules. The firm was responsible for the payment of the premium to the insurers, retaining a commission as payment for their services.

4.11. During the Relevant Period, Mr Sarl regularly made payments from the Client Account to the Office Account which he claimed constituted commission payments. Despite the obligation to regularly perform client money calculations as set out above the Authority has not found any evidence of client money calculations being performed at Perry Prowse and Mr Sarl admitted that *"for me personally, but also the business, I took money kind of as and when it was needed from commissions, leaving as much in the Client Account as I could at the time."*

4.12. The following examples illustrate Mr Sarl's approach to handling client money, namely where he took money out of the Client Account on an ad hoc basis as needed:

- 1) Mr Sarl made various transfers from the Client Account to the Office Account to finance the debts of Perry Prowse which were funded by same day transfers from the Client Account for the same amounts. For example, Mr Sarl transferred:
 - a) Eight payments, totalling £45,000, between December 2017 and May 2019, to fund Perry Prowse's payments in respect of its CVA; all of those payments were funded by same day transfers from the Client Account to the Office Account for the same amounts; and
 - b) One payment of £8,000 on 18 February 2019, to a government authority in respect of a debt, which Mr Sarl later admitted was a *"reaction to an emergency"* and that he *"didn't have time to actually calculate the proper amount"* of commissions owed to Perry Prowse.
- 2) During the Relevant Period, there were 132 occasions when funds from the Client Account were transferred through to Mr Sarl's Personal Account via the Office Account on the same day. On 97 of the 132 occasions, the transfers from the Office Account to Mr Sarl's Personal Account remedied an overdrawn balance in his Personal Account. On several occasions, Mr Sarl transferred amounts from the Client Account via the Office Account to Mr Sarl's his Personal Account, and he transferred the same amounts on the same day, from his Personal Account to pay personal expenses. For example, on 18 February 2019, Mr Sarl transferred £500 from the Client Account via the Office Account to his Personal Account, and

the same amount was then transferred, on the same day, from his Personal Account to a firm of debt collectors who were collecting debts in relation to unpaid council tax.

- 4.13. The Authority has not identified records of any client money calculations or any records of commission payable to the firm from the Client Account. By taking money from the Client Account *as and when it was needed* Mr Sarl risked taking out more money from the Client Account than was due to the firm, thereby creating a shortfall in the Client Account.
- 4.14. Due to the lack of records on the calculation of client money and commissions due to Perry Prowse, the Authority cannot establish the exact amount of shortfall. However, based on the calculation set out in this paragraph and the circumstances detailed in paragraphs 4.11 and 4.13 above, the Authority is of the view that there must have been a significant shortfall of client monies. Between 1 December 2017 and 24 October 2019, the Client Account received £680,686; of this, £241,205 was transferred on to the Office Account, which constituted 35% of all client money received for this period. Assuming an average commission of 20%, this means that Mr Sarl transferred approximately £105,068 above the amount that Perry Prowse was entitled to transfer as commission from the Client Account to the Office Account.
- 4.15. Mr Sarl was aware of the requirements of the Authority's Client Money Rules. He personally effected the transfers made from the Client Account to the Office Account and his Personal Account outlined above. He knew or should have known, when making these transfers, that Perry Prowse was not free to use the monies in the Client Account according to its needs, that no client money calculations showing how much commission was due to the firm had been produced, and nonetheless made the transfers as required for Perry Prowse's own use, to ensure that the firm continued trading. In doing so, Mr Sarl had to be aware of the risk of a shortfall in the Client Account and the possibility that not all premium payments received could be paid on to insurers, with the result that the cover, for which the customer had paid, would not be put in place.

Mr Sarl's failure to pass premiums on to insurers and misleading of customers

- 4.16. After receipt of the premium payment (along with commission due to Perry Prowse) from a customer into the Client Account, the firm was responsible for paying the premium to the relevant insurer to ensure that policy cover was put in place. If an insurer did not receive the premium payment for a policy for which policy documents were issued, the insurer would consider the policy Not Taken Up (NTU) which means that the policy was cancelled from the moment of inception and cover effectively never existed. A customer would not be able to claim under a policy that was considered Not Take Up. During the Relevant Period, Mr Sarl failed to pass on at least 20 (but likely many more) customer premiums to insurers. As well as failing to make sure customers were insured, Mr Sarl knowingly misled them on various occasions about the fact that they were not validly insured.
- 4.17. Two examples are provided below of situations where Mr Sarl acted dishonestly in his dealings with customers and customers suffered loss or harm or were put at risk of loss or harm as a result of Mr Sarl's actions:

Customer A

- 4.18. Customer A paid £380.09 to Perry Prowse for a home insurance policy with Insurer W due to commence on 14 June 2018. However, Perry Prowse did not pass the premium on to Insurer W. When Customer A and her partner sought confirmation from Mr Sarl in April 2019 that she was validly insured, Mr Sarl claimed that her premium had not been passed on to Insurer W in June 2018 due to an "IT glitch". Mr Sarl then claimed to have insured Customer A with a different policy, from Insurer Z, for the coming year, confirming that "all was in order". Mr Sarl told Customer A that she was validly insured with Insurer Z, when in fact he had obtained a quotation from Insurer Z but again failed to pass on the premium which would have put her on cover. Mr Sarl again left Customer A uninsured.
- 4.19. Even when Customer A was informed by Insurer Z that the policy number that she had been provided with was not recognised, Mr Sarl continued to insist that she was validly insured. He claimed in an email to Customer A that Insurer Z would not possess details of individual policyholders, due to the fact that the scheme was

organised by another intermediary. Given that Mr Sarl did not pass on the customer premium to Insurer Z in April 2019, and therefore this policy was regarded as “*not taken up*” by Insurer Z, and there is no evidence that any other intermediary was involved, Mr Sarl’s explanation to Customer A was dishonest.

Customers B and C

- 4.20. Customer B and C, who were partners, paid £270.78 to Perry Prowse for a home insurance policy with Insurer Y on 3 October 2018. Mr Sarl confirmed receipt of their payment and sent documentation which indicated that they were insured. In December 2018, Customers B and C discovered that there were issues with their septic tank. In February 2019, Customers B and C attempted to pursue a claim under their home insurance policy, only to discover that they were not validly insured with Insurer Y after all. Their policy had not been incepted due to Perry Prowse not passing on the premium paid by Customer B and C to Insurer Y.
- 4.21. In November to December 2018, Insurer Y had repeatedly pursued Mr Sarl for payment in respect of up to 50 policies that it had set up on account for Perry Prowse customers, which led to Insurer Y informing Mr Sarl that if it did not receive payment, all unpaid policies would be cancelled from inception. Mr Sarl confirmed to Insurer Y that all of the policies had been replaced by other insurers and consequently Insurer Y cancelled all of the policies in question. Mr Sarl allowed all of the policies with Insurer Y to be cancelled, even though Perry Prowse had received premiums in respect of at least 16 of those customers. The Authority is not aware that Mr Sarl took any steps to ensure that customers’ premiums were passed on to other insurers, as he had stated he would to Insurer Y. Customer B and C’s policy was one of this batch of policies which had been set up by Mr Sarl, but not incepted, due to a lack of payment by Perry Prowse.
- 4.22. Despite being aware that he had failed to pass on the premium for Customers B and C to insurer Y at that time, which was clear from correspondence with Insurer Y, and being aware that the policy had been cancelled in December 2018 due to his failure to pass on the premium, Mr Sarl provided misleading and dishonest responses to Customers B and C:

- 1) When Customers B and C found out via a third party that their policy with Insurer Y had not been incepted, Mr Sarl continued to assure them that he would *"deal with matters"*, *"should be able to get matters progressed [...] so that there is no further delay"* and that he was *"dealing with it to ensure it reaches the relevant person"*.
 - 2) When Customer B visited Mr Sarl's office on 18 February to deliver a letter of complaint, Mr Sarl claimed that they were still validly insured, but that their original policy had been transferred to Insurer Z in December 2018. Mr Sarl agreed to provide copies of that insurance policy to them that day, but failed to do so.
 - 3) Customers B and C identified through a third party that Insurer Z also had no record of a valid policy being in place for them. When Customer C sought an explanation from Mr Sarl for the apparent lack of insurance being in place with Insurer Z, after receiving assurances from Mr Sarl that their policy had been transferred in December 2018, Mr Sarl reassured her on 20 February 2019 that insurance was in place, but that Insurer Z, *"would not necessarily have a record of them, as the policy is underwritten by them on a scheme through another broker who we use, which is quite a normal way of trading."*
- 4.23. Mr Sarl in fact took no steps to obtain an insurance policy with Insurer Z for Customers B and C until 21 February 2019, after the event of their claim. When Mr Sarl confirmed on 18 February 2019 that Customer B and C's original policy had been transferred to Insurer Z in December 2018, and agreed to provide copies of that insurance policy to them that day, and when he wrote to Customer C on 20 February 2019 to assure her that insurance was in place, he was being dishonest.
- 4.24. Customers B and C rejected Mr Sarl's offer to obtain new insurance with Insurer Z, and arranged cover with a separate broker. They did not receive a refund for the premium paid in 2018 of £270.78. Customers B and C made a claim to the Ombudsman which, upon Perry Prowse's liquidation, was later met by the FSCS.

Breach of the First Supervisory Notice

Customer D

- 4.25. Customer D paid £422.50 to Perry Prowse for a home insurance policy with Insurer Z on 21 October 2019. Mr Sarl accepted money for the insurance premium. This was in clear breach of the First Supervisory Notice which varied Perry Prowse's permission to remove all regulated activities with effect of 13 September 2019. A policy number was issued in the documentation provided by Perry Prowse to Customer D which indicated that his insurance had been incepted.
- 4.26. On 30 March 2020, Customer D attempted to contact Mr Sarl regarding his home insurance policy. Mr Sarl did not respond to Customer D's requests for an explanation, and he was eventually informed by Insurer Z that his policy was not in place because the premium had not been passed on to Insurer Z. Following receipt of correspondence and proof of payment, Insurer Z was able to ensure that cover was in place from 17 September 2019, in spite of Mr Sarl's failure to pass on the premium.
- 4.27. Mr Sarl accepted that failures had occurred in transferring premiums to insurers. He could not explain why these failings had occurred, nor why customers were not informed that their insurance policies were not in place, but he accepted that they should have been told, and that these failings were his responsibility. Mr Sarl also agreed that for all three customer cases, if the client money had been appropriately segregated in the Client Account, they would have been protected and their premiums could have been returned to them.

5. FAILINGS

- 5.1 Based on the facts and matters described above, the Authority considers that during the Relevant Period, Mr Sarl failed to act with honesty and integrity in breach of Statement of Principle 1. The regulatory provisions relevant to this Notice are referred to in Annex A.

Failure to pass on premiums to insurers

- 5.2 Mr Sarl breached Statement of Principle 1 in that he failed to ensure that premiums paid by customers for home and motor insurance policies were passed on to insurers and was dishonest in his dealings with customers when questioned about the insurance they had in place, providing information which he knew to be false.
- 5.3 By failing to ensure that premiums were passed on to insurers, thereby leaving customers without valid insurance cover, and in failing to be open and honest in his communications with clients and the Authority, Mr Sarl's conduct displayed a lack of honesty and integrity in breach of Statement of Principle 1.

Reckless handling of Client Money

- 5.4 Mr Sarl breached Statement of Principle 1 by failing to act with integrity in that he made a number of transfers from the Client Account to the Office Account and his Personal Account without undertaking and recording any client money calculations to ensure that client money was protected.
- 5.5 Mr Sarl was cognisant of his obligations to segregate client money under the Client Money Rules to ensure that commission payments were made within set timeframes and to perform regular client money calculations to check that there was sufficient client money in the Client Account. Despite this, in his haste to pay his debts and those of Perry Prowse and maintain the solvency of the firm, he recklessly put clients' money at risk.
- 5.6 The Authority therefore concludes that Mr Sarl has behaved in a way that was lacking in integrity and he breached Statement of Principle 1.
- 5.7 As a result of the above failings, the Authority considers that Mr Sarl lacks honesty and integrity and is not a fit and proper person.

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.

6.3 During the Relevant Period, Mr Sarl transferred £3,650 from the Client Account directly to his Personal Account. In transferring client money, which had been paid to Perry Prowse predominantly to cover insurance premiums, directly to his Personal Account, Mr Sarl could not plausibly claim that he was transferring commission to Perry Prowse. He was clearly using client money to make payments to himself or his creditors. Therefore, Mr Sarl derived a financial benefit of at least £3,650 from his misconduct. Interest at 8% has been applied since the end of the Relevant Period, which increases the figure to £5,021.20.

6.4 Step 1 is therefore £5,021.

Step 2: the seriousness of the breach

6.5 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.

6.6 The period of Mr Sarl's breach was from 7 November 2017 to 24 October 2019. The Authority considers Mr Sarl's relevant income for this period to be £25,485.

6.7 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 five 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 five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.8 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. 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:

Impact of the breach

6.9 Mr Sarl derived a direct financial benefit of at least £3,650 as a result of the breach (DEPP 6.5B.2G(8)(b)).

6.10 The breach caused a significant risk of loss to individual consumers – the Authority is aware of at least 20 customers left without valid insurance and three customers who suffered a loss (DEPP 6.5B.2G(8)(b)). The Authority considers that far more instances of customer loss could easily have occurred as a result of Mr Sarl's misconduct in not putting in place insurance for customers, which could have led to more claims and a larger financial exposure for the FSCS.

6.11 The breach also caused inconvenience and distress for those customers who tried to claim under their insurance and found out that they had no cover and faced difficulties and delays in dealing with their claim (DEPP 6.5B.2G(8)(e)).

Nature of the breach

- 6.12 Mr Sarl's failings in his mishandling of client money, failing to pass on premiums to insurers and dishonest dealings with customers continued for over two years, and occurred on numerous occasions, and would likely have continued but for the Authority's intervention (DEPP 6.5B.2G(9)(b)).
- 6.13 Mr Sarl failed to act with honesty and integrity throughout the Relevant Period (DEPP 6.5B.2G(9)(e)). He dishonestly failed to pass on insurance premiums to insurers and acted dishonestly in his dealings with customers, providing them with information in relation to their insurance cover which he knew to be false.
- 6.14 Mr Sarl was the sole director and CF1 (director) (later SMF3) within a very small firm. As the only approved person at the firm, and the only person with access to the Perry Prowse bank accounts, he had a responsibility to ensure that the firm followed the Authority's Client Money Rules and the premiums were passed on to insurers which he failed to do (DEPP 6.5B.2G(9)(k)).

Whether the breach was deliberate or reckless

- 6.15 The Authority regards Mr Sarl's misconduct in relation to the handling of client money reckless, as he was aware of the Authority's Client Money Rules, and yet he made numerous transactions over the Relevant Period without carrying out the required client money calculations and therefore taking the unreasonable risk that he would transfer money in excess of the commission due to the firm.
- 6.16 Mr Sarl knew that he had not passed on customers' premiums to insurers and was informed by at least one insurer, that policies were being cancelled due to non-payment. In addition, he gave false information to customers, persuading them that they were insured when they were not. Mr Sarl's actions in relation to his failure to pass on insurance premiums and his dealings with customers were therefore deliberate (DEPP 6.5B.2G(10)).
- 6.17 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 £25,485.

6.18 Step 2 is therefore £10,194.

Step 3: mitigating and aggravating factors

6.19 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.

6.20 Mr Sarl has repeatedly failed to respond adequately to the Authority's requests for information and the Authority considers that this is an aggravating factor (DEPP 6.5B.3G(2)).

6.21 The Authority considers that there are no factors that mitigate the breach.

6.22 Having taken into account the aggravating factor, the Authority considers that the Step 2 figure should be increased by 15%.

6.23 Step 3 is therefore £11,723.

Step 4: adjustment for deterrence

6.24 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.

6.25 The Authority considers that the Step 3 figure of £11,723 is insufficient to act as a deterrent to Mr Sarl and others. In coming to this view, the Authority has considered the seriousness of his misconduct and its dishonest and deliberate nature. The Authority has therefore decided to increase the penalty by way of a multiplier of 5.

6.26 Step 4 is therefore £58,616.

Step 5: settlement discount

- 6.27 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.
- 6.28 The Authority and Mr Sarl reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.29 Step 5 is therefore £46,021 - £46,000 rounded to lowest £100.

Serious Financial Hardship

- 6.30 The Authority's approach to determining penalties described in DEPP 6.5 to DEPP 6.5C is intended to ensure that financial penalties are proportionate to the breach. The Authority recognises that penalties may affect persons differently, and that the Authority should consider whether a reduction in the penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship (DEPP 6.5D.1(a)).
- 6.31 Pursuant to DEPP 6.5D.2(1), the Authority, in assessing whether a penalty would cause an individual serious financial hardship, considered the individual's ability to pay the penalty over a reasonable period (normally no greater than three years). Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the threshold levels that apply in that case (DEPP 6.5D.2(6)).
- 6.32 The Authority considers from the verifiable evidence provided by Mr Sarl, that the payment of a penalty of £41,000 not including disgorgement at £5,021 would cause him serious financial hardship. Whilst the Authority considers it appropriate to reduce the penalty for serious financial hardship, the Authority does not consider it appropriate to allow Mr Sarl to retain the financial benefit derived directly from his breaches. The Authority therefore considers that a financial penalty of £5,021, this

being the disgorgement element, is the appropriate penalty figure. The Authority will allow the financial penalty of £5,021 to be paid over a three-year period.

Conclusion as to financial penalty

- 6.33 The Authority hereby imposes a total financial penalty of £5,021 on Mr Sarl for breaching Statement of Principle 1.

Prohibition Order and Withdrawal of Approval

- 6.34 The Authority has the power to prohibit individuals under section 56 of the Act and to withdraw an approval given by the Authority in relation to the performance by a person of a function under section 63 of the Act. The Authority has had regard to the guidance in Chapter 9 of EG and FIT 2 of the Handbook, including the criteria at EG 9.3.2 and FIT 2.1.3, in considering whether to impose a prohibition order on Mr Sarl, and whether to withdraw his approval in relation to his performance of the SMF1 (Executive Director) function at Perry Prowse.
- 6.35 In considering whether to impose a prohibition order, the Authority has had regard to all relevant circumstances of the case. In particular, in relation to EG 9.3.2 and FIT 2.1.3, the Authority has considered Mr Sarl's fitness and propriety, specifically his dishonesty and lack of integrity, his disregard for customers' interests and the regulatory system, and the severity of the risk which Mr Sarl poses to consumers and to confidence in the financial system.
- 6.36 The Authority hereby withdraws Mr Sarl's approval in relation to his performance of the SMF3 (Executive Director) function at Perry Prowse, and makes an order prohibiting Mr Sarl from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, on the grounds that his conduct during the Relevant Period demonstrates dishonesty and a lack of integrity.

7. PROCEDURAL MATTERS

- 7.1 This Notice is given to Mr Sarl 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 Authority will allow the financial penalty to be paid over a three-year period in scheduled payments as set out below, with the final payment due to be paid by Mr Sarl no later than 31 July 2027:

- i. £1,521 by 31 October 2024;
- ii. £1,500 by 31 July 2025;
- iii. £1,000 by 31 July 2026; and,
- iv. £1,000 by 31 July 2027.

If the financial penalty is not paid

7.5 If any or all of the scheduled instalments of the financial penalty is outstanding after its due date for payment, the full amount outstanding of the financial penalty shall then become immediately due and payable including all future instalments, and the Authority may recover the outstanding amount as a debt owed by Mr Sarl to the Authority, including interest thereon.

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 you 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 Final Notice relates as it considers appropriate.

Authority contacts

- 7.8 For more information concerning this matter generally, contact Jonathan Smart (direct line: 020 7066 9312 / email: Jonathan.Smart@fca.org.uk) or Craig Drury (direct line: 020 7066 0216 / email: Craig.Drury@fca.org.uk) at the Authority.

Nicholas Hills

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective of securing an appropriate degree of protection for consumers (section 1C) and the integrity objective of protecting and enhancing the integrity of the UK financial system (section 1D).
- 1.2 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.
- 1.3 Section 63 of the 2000 Act provides that the Authority may withdraw an approval issued under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4 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.

Client Money Rules

- 1.5 The Client Assets section of the Authority's Handbook ("CASS") sets out the requirements relating to holding client assets and client money. Set out below are

relevant extracts from CASS 5, which is relevant to a firm that receives or holds money in the course of or in connection with its insurance distribution activity:

1.6 CASS 5.5.16R states that:

(1): "A firm may draw down commission from the client bank account if:

- a) it has received the premium from the client (or from a third party premium finance provider on the client's behalf; and
- b) this is consistent with the firm's terms of business which it maintains with the relevant client and the insurance undertaking to whom the premium will become payable;

and the firm may draw down commission before payment of the premium to the insurance undertaking, provided that the conditions in (a) and (b) are satisfied.

(2) If a firm receives a mixed remittance (that is part client money and part other money), it must:

- a) pay the full sum into a client bank account in accordance with CASS 5.5.5 R; and
- b) pay the money that is not client money out of the client bank account as soon as reasonably practicable and in any event by not later than twenty-five business days after the day on which the remittance is cleared (or, if earlier, when the firm performs the client money calculation in accordance with CASS 5.5.63 R (1))."

1.7 CASS 5.5.63 states that:

(1) "A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days:

- a) check whether its client money resource, as determined by CASS 5.5.65 R on the previous business day, was at least equal to the client money requirement, as determined by CASS 5.5.66 R or CASS 5.5.68 R, as at the close of business on that day; and

b) ensure that:

(i) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or

(ii) any excess is withdrawn within the same time period unless CASS 5.5.9 R or CASS 5.5.10 R applies to the extent that the firm is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and

c) include in any calculation of its client money requirement (whether calculated in accordance with CASS 5.5.66 R or CASS 5.5.68 R) any amounts attributable to client money received by its appointed representatives, field representatives or other agents and which, as at the date of calculation, it is required to segregate in accordance with CASS 5.5.19 R.

(2) A firm must within ten business days of the calculation in (a) reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.

(3) When any discrepancy arises as a result of the client money calculation carried out in (2), the firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the firm.

(4) While a firm is unable to resolve a difference arising from a client money calculation, and one record or a set of records examined by the firm during its client money calculation indicates that there is a need to have a greater amount of client money than is in fact the case, the firm must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own money into a relevant account or make a withdrawal of any excess.

Statements of Principle and Code of Practice for Approval Persons

- 1.8 The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 1.9 During the Relevant Period, Statement of Principle 1 stated: "*An approved person must act with integrity in carrying out his accountable functions.*"
- 1.10 APER 4.4.11G states that APER 4.1.10G includes (3) misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients; (5) using a client's funds for purposes other than those for which they were provided; and (6) retaining a client's funds wrongly. APER 4.1.5 states that "Deliberate acts, omissions or business practices that could be reasonably be expected to cause consumer detriment fall within APER 4.1.2G".

The Fit and Proper Test for Approved Persons

- 1.11 The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("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.

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

- 1.13 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

1.14 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.

Enforcement Guide

1.15 The Authority's policy in relation to prohibition orders and withdrawals of approval is set out in Chapter 9 of the Enforcement Guide ("EG").

1.16 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.

1.17 EG 9.3.1 provides that when the FCA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both.

1.18 EG 9.3.2 provides that when the Authority decides whether to make a prohibition order against an approved person and/or withdraw their approval the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to:

(2) Whether the individual is fit and proper to perform functions in relation to regulated activities;

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

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

1.19 EG 7 sets out the Authority's approach to exercising its power to impose a financial penalty.

DEPP

- 1.20 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.
- 1.21 Chapter 6 of Decision Procedures and Penalties Manual ("DEPP") which forms part of the Authority's Handbook, sets out the Authority's policy for imposing a financial penalty. 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 to financial penalties imposed on individuals in non-market abuse cases, which can be accessed here:
<https://www.handbook.fca.org.uk/handbook/DEPP/6/5B.html>
- 1.22 The Authority's approach to financial penalties is set out in Chapter 7 of EG, which can be accessed here:
<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>