



FINAL NOTICE

NOTE: This prohibition order was revoked by the FCA on 08/06/2020

To: **Mr Martin Peter Gwynn**

Individual

Reference

Number: **MPG01039**

Date of

Birth: **10/01/1956**

Date: **16 December 2013**

ACTION

1. For the reasons given in this Notice, the Authority hereby makes an order prohibiting Mr Gwynn from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 16 December 2013.

SUMMARY OF REASONS

2. Mr Gwynn was a director of G&G, an IFA appointed to provide independent financial advice to CBWPF, the corporate trustee for a number of Pension Schemes. In his role as director, Mr Gwynn was responsible for authorising payments, including commission payments, made by G&G and for monitoring the investment advice provided by the advisors working for G&G.
3. For the reasons set out below, Mr Gwynn lacks competence and capability and is therefore not fit and proper to perform any function in relation to any activities carried on by any authorised or exempt persons, or exempt professional firm.
4. As a CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting Officer) at G&G during the relevant period, Mr Gwynn failed to act with due skill, care and diligence in that, he:
 - (a) authorised significant payments to Michael Conway, the director of CBWPF, and others without taking reasonable steps to satisfy himself as to the basis of payment;
 - (b) failed adequately to monitor the investment advice of Andrew Powell, a G&G client advisor, with the effect that G&G advised a number of the Pension Schemes to invest significant assets in investments which were potentially unsuitable;
 - (c) authorised the transfer of funds from G&G to a third party unknown to G&G without taking reasonable steps to satisfy himself that there was a proper basis for payment and thereby exposed G&G to the possibility of being used as a vehicle to facilitate financial crime; and
 - (d) failed to register Andrew Powell as a holder of a CF1 Director controlled function at G&G following his appointment as a director with Companies House on 21 March 2007.
5. Accordingly the Authority has decided to impose a Prohibition Order on him.

6. As a result of Mr Gwynn's conduct, the assets of four of the Pension Schemes were placed in investments which were potentially unsuitable, in that a number of the investments have been assessed by an independent expert as being highly concentrated, risky and potentially illiquid. These investments generated significant commissions in the sum of £4.1 million for G&G which were distributed between G&G's client advisor (Mr Powell) and other third parties. The investments may have affected the current value of the Pension Schemes and may impact the amounts members are able to draw down from the Pension Schemes when they reach retirement age.
7. The Authority has not identified any benefit paid directly to Mr Gwynn as a result of his misconduct, but some £500,000 was retained in his firm, G&G.
8. TPR removed CBWPF as trustee to the Pension Schemes in October 2010 and appointed an Independent Trustee to the six Pension Schemes. Following its appointment the Independent Trustee obtained an injunction against CBWPF, Michael Conway and others freezing all relevant assets and commenced redress and recovery proceedings on behalf of the Pension Schemes. Those proceedings were subsequently settled on terms acceptable to the Independent Trustee. Taking into account the redress measures taken by the Independent Trustee, the Authority does not believe it would be appropriate to impose a separate penalty on Mr Gwynn since this would diminish the level of assets potentially available to be recovered and returned to the Pension Schemes.
9. This action supports the Authority's statutory objectives of maintaining market confidence in the UK financial system and securing the appropriate degree of protection for consumers.

DEFINITIONS

10. The definitions below are used in this Warning Notice:

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

The "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

The "Authority Handbook" means the Authority Handbook of rules and guidance;

"CBWPF" means CBW Pensions Forensic Limited;

"CF1" means the Authority controlled function of Director;

"CF10" means the Authority controlled function of Compliance Oversight;

"CF11" means the Authority controlled function of Money Laundering Reporting;

"DEPP" means the Decision Procedures and Penalties Manual in the Authority Handbook;

"EG" means the Enforcement Guide in the Authority Handbook;

"Fund M" means the property investment fund into which the assets of four Pension Schemes were invested following the advice given by G&G on 6 April 2010;

"G&G" means G&G Financial Services Limited;

"IFA" means independent financial advisor;

"Independent Trustee" means the independent trustee referred to in paragraph 19;

"Independent Expert Report" means the independent expert report referred to in paragraph 23;

The "Investment Regulations" means the Occupational Pension Schemes (Investment) Regulations 2005;

"Mr Conway" means Michael Conway;

"Mr Gwynn" means Martin Gwynn;

"Mr Powell" means Andrew Powell;

The "Pension Schemes" means the six distressed occupational pension schemes to which CBWPF was appointed corporate trustee;

"Prohibition Order" means the order to be made pursuant to section 56 of the Act prohibiting Mr Gwynn from performing any function in relation to any regulated

activity carried on by any authorised person, exempt person or exempt professional firm;

The “relevant period” means 21 March 2007 to 22 September 2010;

“SOIPs” means the Statements of Investment Principles of the Pension Schemes;

“TPR” means the Pensions Regulator; and

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

FACTS AND MATTERS

G&G

11. G&G was an IFA incorporated in April 1985. It was authorised to carry out regulated activities such as advising, arranging and managing investments.
12. Mr Gwynn owned G&G and held all of its shares. Throughout the relevant period, Mr Gwynn held the following controlled functions at G&G:
 - (1) CF1 Director;
 - (2) CF10 Compliance Oversight; and
 - (3) CF11 Money Laundering Reporting.
13. Mr Gwynn was responsible for supervising his investment advisors and monitoring their work in conjunction with external compliance advisors.
14. In or around late 2005, Mr Gwynn engaged Mr Powell as an investment advisor.
15. In 2007, Mr Powell was registered as a director of G&G with Companies House. Mr Gwynn had responsibility for Compliance Oversight and it was also his responsibility to register Mr Powell as holding the CF1 Director function with the Authority. He failed to do this, claiming that “*I didn't actually realise that I had to register [Mr Powell]*”.

16. G&G has ceased trading and its permission to carry on regulated activities under Part IV of the Act was cancelled on 20 September 2012. G&G has been wound up and was dissolved on 5 July 2012.

CBWPF

17. CBWPF was incorporated on 12 June 2001. Mr Conway was the owner of CBWPF and held all of its shares. He remained as director of CBWPF until its dissolution on 10 January 2012.
18. Between June 2007 and July 2008, CBWPF was appointed as trustee to the Pension Schemes. It remained the sole trustee for the Pension Schemes until July 2010 and exercised its power of investment and disinvestment as trustee in relation to the assets of the Pension Schemes. CBWPF was able to control the assets and investments of the Pension Schemes in its capacity as corporate trustee to the Pension Schemes.
19. CBWPF was not authorised to conduct regulated activities. It therefore appointed G&G to act as an IFA in relation to the Pension Schemes. The first appointment took place in February 2008. G&G acted as the IFA to CBWPF until June 2010.

TPR findings

20. In July 2010, TPR received a report which raised questions about the conduct of CBWPF. An investigation by TPR followed, and, as a result, the Determinations Panel of TPR made a determination on 28 October 2010 to appoint the Independent Trustee to each of the Pension Schemes pursuant to sections 7(3)(a), (c) and (d) of the Pensions Act 1995.
21. On 28 March 2011 the Determinations Panel of TPR met to conduct a Compulsory Review of its earlier October 2010 determination in light of representations received from the parties involved. Following this meeting, the Determinations Panel of TPR issued a Final Notice on 18 April 2011 in which it upheld the determination made on 28 October 2010. References below to conclusions by TPR refer to conclusions contained in the TPR's Final Notice, with which the Authority agrees.

22. In reaching its decision, the Determinations Panel of TPR made several findings in relation to the investments made by CBWPF, on behalf of the Pension Schemes, including:
- a) Unsuitability of investments – many and persistent failures to observe section 36 of the Pensions Act 1995, which required the trustee to obtain and consider proper advice on the question of whether the investment is satisfactory.
 - b) SOIPs – a number of failures to observe section 36 of the Pensions Act 1995, which required the trustee to have regard to the SOIPs and exercise their powers of investment with a view to giving effect to the SOIPs.
 - c) Security, quality, liquidity and profitability – breaches of regulation 4(3), 4(5) and 4(6) of the Investment Regulations, which required the trustee to: (i) exercise their powers of investment in a manner calculated to ensure security, quality, liquidity and profitability of the portfolio; (ii) ensure the assets of the Pension Scheme consist predominantly of investments admitted to trading on regulated markets; and (iii) ensure that for investments not invested on regulated markets, the assets be kept to a prudent level.
 - d) Diversification – a breach of regulation 4(7) of the Investment Regulations which required the assets of the Pension Scheme to be diversified properly so as to avoid excessive reliance on a particular asset, issuer or group of undertakings and to avoid accumulations of risk in the portfolio as a whole.
 - e) Conflicts of interest – breach of regulation 4(2)(b) of the Investment Regulations which required the trustee to exercise their powers of investment such that the assets be invested, in the case of a potential conflict of interest, in the sole interests of members and beneficiaries.
23. The Authority agrees with the findings of the Determination Panel of TPR as set out in the Final Notice of 18 April 2011. Those findings have not been referred to the Tribunal or otherwise formally challenged by any party to the TPR proceedings.

24. The Independent Trustee appointed an independent expert to advise it in relation to the Pension Schemes. The independent expert produced a preliminary report providing an initial overview of the investments made by CBWPF in relation to the Pension Schemes. This report was included in the representations of the Independent Trustee submitted to the Determinations Panel by TPR. The Determinations Panel of TPR considered this report and made reference to it in its Final Notice.

Commission payments and introducer agreements

25. To remunerate G&G for its investment advice and activities relating to the Pension Schemes, CBWPF agreed that G&G should retain the commission paid to it by the providers of the investment products in which the Pension Schemes assets were invested.
26. Mr Gwynn, on behalf of G&G, entered into three introducer agreements with third parties, the first of which was entered into in April 2007. Under the terms of the introducer agreements, G&G promised to pay its counterparties a percentage of the initial commission or fee received by G&G in respect of any business introduced by the counterparties to G&G. These agreements were entered into by Mr Gwynn on the basis of his understanding that only when they were in place could payments properly be made to the parties to those agreements. The introducer agreements therefore facilitated commission payments and the commission sharing arrangements with those third parties.
27. On 10 May 2007, G&G entered into its second introducer agreement, with an entity connected to Mr Conway. An undated manuscript addition to that agreement suggests that Mr Conway may also have been a party in his personal capacity. Mr Gwynn was responsible for signing that and the other introducer agreements on G&G's behalf. Under the terms of the introducer agreements, G&G promised to pay its counterparties a percentage of the initial commission or fee received by G&G in respect of any business introduced by the counterparties to G&G.
28. In early 2008, Mr Gwynn, on behalf of G&G, entered into its third and final introducer agreement, between G&G and a third party, brought to G&G by Mr Conway. The third party was an executive car hire firm which provided taxi

services to Mr Conway. It had never worked in, nor had it any contacts with, the financial services industry. The third party signed the agreement with G&G, which it received through the post, but did not meet with Mr Gwynn or any other representative from G&G or introduce any business to G&G.

29. Mr Gwynn admitted that G&G had not received business from the third party. Nor had he met any representative of it or know what its field of business was. There is no evidence that any due diligence was performed prior to entering into the introducer agreement, or that Mr Gwynn had asked for any due diligence to be performed. Mr Gwynn stated that the reason for the agreement was that Mr Conway had advised Mr Powell, G&G's client advisor, of the need to pay commission to the third party (although no record exists to support this contention) and that this was because the third party had introduced work to Mr Conway who, in turn had introduced it to G&G. Consequently, Mr Conway *"wanted them [the third party] to have the £20,000..."*. Mr Gwynn wanted an introducer agreement to be in place as supporting documentation for the payment. Mr Gwynn took no steps to test the veracity of the contention that the third party had introduced any business, but, in March 2008, Mr Gwynn, on behalf of G&G, paid the third party £100,000 pursuant to the introducer agreement. £56,000 of this was then paid by the third party to Mr Conway.
30. Commission payments were usually deducted from the investment itself and were effectively funded by the Pension Schemes. Every time funds were moved between investments, transfer fees and commission payments were funded by the Pension Schemes.
31. The commission payments received by G&G were not commensurate to the value of the work performed by G&G. The total commission paid, as a percentage of the Pension Schemes' funds, amounted to between 3% and 6% for each pension scheme and the total amount of redemption fees and initial charges paid by the Pension Schemes amounted to a further 2-3% of the assets of each pension scheme.
32. Throughout the relevant period, G&G received substantial commission payments. Where these sums were not paid on to the counterparties to the introducer agreements or to Mr Powell they were retained by G&G. In the period between

February 2008 and July 2010, G&G received commission payments totalling £4.1 million.

33. TPR's investigation found that over 50% of the commission received by G&G in relation to the Pension Schemes was shared with Mr Conway and other third parties pursuant to introducer agreements. G&G also shared renewal commissions with Mr Conway. It was not normal practice for G&G to share renewal commissions with introducers. Mr Gwynn was responsible for authorising the commission payments to third parties on behalf of G&G, pursuant to the introducer agreements.
34. The introducer agreements did not specify what business would be introduced. Mr Gwynn confirmed he would simply pay the amount of commission required on to Mr Conway and other third parties when asked to do so by Mr Powell. Mr Gwynn did not appear concerned about the amount of money paid to, for example, Mr Conway pursuant to the introducer agreements. When questioned about such payments, Mr Gwynn claimed there was nothing "strange" about the arrangements and appeared to believe, erroneously, that the existence of introducer agreements satisfied any responsibilities he had in relation to the making of payments.
35. The commission sharing arrangements between G&G and others continued until 2010. The last onward payment of commission to a third party from G&G was made on 22 September 2010.

Suitability of Investment advice

36. During the relevant period, Mr Powell, as a representative of G&G, was appointed independent financial advisor by CBWPF in relation to the Pension Schemes. This required him to provide independent advice to CBWPF regarding potential investments for those Pension Schemes. Generally, he did this by producing investment reports recommending investments for the Pension Schemes' funds.
37. Mr Gwynn was responsible for supervising and monitoring his client advisors, including Mr Powell. He did not monitor Mr Powell adequately.

38. In the period from November 2008 to August 2010 the commissions from the Pension Schemes comprised over 85% of the inflows to G&G's bank account. This high level of income, as a result of a single advisor's business, should have alerted Mr Gwynn to the need to monitor adequately the advice being given by Mr Powell.
39. Mr Gwynn admitted that he lacked the necessary knowledge and experience to evaluate critically Mr Powell's advice stating, "*I couldn't question [Mr Powell] because he knew more about it than I did...*". He would inform Mr Powell, "*if you're happy with it [investment decisions] then, you know, go with your gut feel.*" Mr Gwynn was unable to explain what kind of research Mr Powell had performed prior to issuing his advice but maintained nonetheless that he had "*never, ever been worried about the quality of advice that Andrew [Powell] has given.*"
40. A consequence of Mr Gwynn's failure to monitor adequately Mr Powell's advice was that on 6 April 2010, Mr Powell prepared four almost identically worded investment reports for CBWPF. These reports, each of which advised in relation to a distinct Pension Scheme, recommended investment in Fund M, along with other investments, and were the result of Mr Powell being improperly influenced by Mr Conway, a director of CBWPF. Over £8 million was invested in Fund M by four of the Pension Schemes in April 2010.
41. The four Pension Schemes were the only investors in Fund M which would have made exit from the fund problematic. Moreover, the Independent Expert Report highlighted the "*significant concentration risk arising from the fact that the [Fund M] invests in the small number of property developments of a single property developer.*"
42. Mr Powell's four investment reports of 6 April 2010 advised on the investment of a total of almost £29 million across the four Pension Schemes. In addition to advising in relation to the investment of £8 million in Fund M, Mr Powell also advised CBWPF to invest the assets of the four Pension Schemes in other funds, including totals of:
- a) Nearly £5 million in a Romanian property fund; and
 - b) Over £1.6 million in a Brazilian teak forestry fund.

43. TPR considered that both Funds were, according to their own documentation, *"high risk and illiquid."*

FAILINGS

44. The regulatory provisions relevant to this Final Notice are referred to in the Annex to this Notice.
45. Mr Gwynn failed to act with the necessary competence and capability and is therefore not fit and proper to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm in that, he:
- (1) authorised significant payments to Michael Conway, the director of CBWPF, and others without taking reasonable steps to satisfy himself as to the basis of payment;
 - (2) failed adequately to monitor the investment advice of Andrew Powell, a G&G client advisor, with the effect that G&G advised a number of the Pension Schemes to invest significant assets in investments which were potentially unsuitable;
 - (3) authorised the transfer of funds from G&G to a third party unknown to G&G without taking reasonable steps to satisfy himself that there was a proper basis for payment and thereby exposed G&G to the possibility of being used as a vehicle to facilitate financial crime; and
 - (4) failed to register Andrew Powell as a holder of a CF1 Director controlled function at G&G following his appointment as a director with Companies House on 21 March 2007.

SANCTION

Prohibition Order

46. The Authority has had regard to the guidance in Chapter 9 of EG and has decided that it is appropriate and proportionate in all the circumstances to prohibit Mr

Gwynn from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because his conduct demonstrates a lack of competence and capability. The relevant provisions of EG are set out in the Annex to this Notice.

47. Given the nature and seriousness of the failures outlined above, the Authority has decided that Mr Gwynn's conduct demonstrates that he is not fit and proper to perform any function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm.
48. In the interests of consumer protection, the Authority has decided that it is appropriate and proportionate in all the circumstances to impose a Prohibition Order on Mr Gwynn in the terms set out above.

PROCEDURAL MATTERS

Decision maker

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

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

Publicity

50. 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.

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

52. Authority contacts

53. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954 / email: paul.howick@fca.org.uk) of the Enforcement and Financial Crime Division of the Authority.

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Bill Sillett

Head of Department

Financial Conduct Authority, Enforcement and Financial Crime Division

Annex

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory Provisions under the Act

1. The Authority's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
2. Section 56 of the Act provides that the Authority may make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

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

3. The section of the Authority handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
4. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's competence and capability.
5. In determining a person's competence and capability FIT 2.2.1 provides that the Authority will have regard to matters including, but not limited to:
 - (1) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform; and

- (2) whether the person has demonstrated by experience and training that the person is suitable or will be suitable if approved to perform the controlled function.

EG

6. The Authority's approach to exercising its powers to make a Prohibition Order under section 56 of the Act is set out in Chapter 9 of EG.
7. EG 9.1 states that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those 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.
8. EG 9.4 sets out the general scope of the Authority's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
9. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
10. In circumstances where the Authority has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the Authority may consider whether it should prohibit that person from performing functions in relation to regulated activities, and that the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

11. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) 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; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
12. EG 9.12 gives examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order, including severe acts of dishonesty and serious breaches of Statements of Principle and Code of Conduct for Approved Persons.

Requirements under the Pensions Act 1995 and related legislation

13. Section 36(1) of the Pensions Act 1995 and Regulation 4(2) of the Occupational Pensions Schemes (Investment) Regulations 2005 (“the Regulations”) impose requirements on trustees of pension schemes to act in the best interest of scheme members.
14. Section 36(1) requires that the trustees of a trust scheme must exercise their powers of investment in accordance with subsections (3) and (4) of the Regulations.

15. Subsections (3) and (4) of the Regulations are detailed provisions, but in summary they provide that trustees of a scheme must, *inter alia*:
- (1) invest assets in the best interests of members and beneficiaries;
 - (2) in the case of a potential conflict of interest invest the assets in the sole interest of members and beneficiaries;
 - (3) exercise the powers of investment in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and
 - (4) ensure that the assets of the scheme are properly diversified in such a way to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole.
16. Section 36(3) of the Pensions Act 1995 states that “before investing [pension scheme assets] in any manner... the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the ... [SOIPS].”