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## FINAL NOTICE

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**To: Bar Professions Limited (in liquidation)**

**FRN: 480860**

**Address: c/o DDJ Insolvency Limited  
100 Borough High Street  
London Bridge  
London  
SE1 1LB**

**Date 1 February 2016**

### **ACTION**

1. For the reasons given in this notice, the Authority hereby publishes a statement to the effect that Bar Professions Limited ("Bar") has contravened regulatory requirements.
2. The Authority would have imposed a financial penalty of £509,700 on Bar given the serious failings in this case. However, the Authority has considered the impact that a financial penalty would have on Bar given that it is currently in liquidation and there is likely to be a significant liability to creditors. Taking this into account, the Authority does not consider that it is appropriate to impose a financial penalty on Bar and that instead a statement should be issued to the effect that Bar has contravened regulatory requirements.
3. The statement will be published on 1 February 2016 and takes the form of this Final Notice.

### **SUMMARY OF REASONS**

4. Bar was a specialist London based insurance broker predominantly providing solicitors' professional indemnity insurance ("Solicitors' PII"). Bar negligently failed to conduct adequate due diligence concerning insurance arrangements for policyholders and sent a letter to over 1,300 customers inducing them to enter into contracts of insurance on the basis of materially inaccurate and misleading information.
5. Bar operated two binding authority agreements ("BAAs") during the period from 14 March 2013 to 23 September 2013 ("the Relevant Period"), which were

designed to provide Solicitors' PII cover for the 2012/13 and 2013/14 underwriting years for approximately 1,300 solicitors across the UK. Without valid Solicitors' PII, those firms would have been unable to practise.

6. The two BAAs were written through the same London based managing general agent, Aderia UK Limited ("Aderia"), but were insured at different times, with two European insurers, Balva Insurance Company AAS ("Balva") and Berliner Versicherung Aktiengesellschaft ("Berliner").
7. In April 2013, Balva's operating licence was suspended by its home state regulator, thereby exposing UK policy holders, including those solicitors insured through the first of the two binding authority agreements with Aderia, to the risk that no valid insurance was in place.
8. In an attempt to put in place replacement Solicitors' PII for policy holders, Bar entered into a second BAA with Aderia. This BAA purported to give Bar authority to write Solicitors' PII on behalf of Berliner up to an annual premium income limit of £50 million.
9. At the time that Bar entered into the second BAA with Aderia, Bar had concerns about a number of matters including the level of the premium income limit. Bar also had reasonable grounds to question the position, standing and authority of Mr Shay Reches ("Mr Reches"), the individual who controlled and was the principal decision maker at Aderia, but was not approved by the Authority.
10. These grounds for concern should have caused Bar to scrutinise more carefully the nature of its business relationship with Mr Reches, Aderia and Berliner and to exercise greater due diligence concerning the arrangement. Instead, between late May and early June 2013, Bar issued a letter to each of its solicitor customers, numbering over 1,300, which stated that "alternative arrangements" had been made with Berliner and inviting them to accept replacement Solicitors' PII on the basis set out in the letter.
11. Over 900 solicitors accepted the replacement cover on those terms. The letter was materially inaccurate and misleading in that the underlying managing general agency agreement ("MGA Agreement") was neither signed nor effective at the time the letter was sent and the premium income limit of €5 million, ultimately agreed by Berliner, would have been insufficient to provide the cover offered in the letter.
12. The MGA agreement between Berliner and Aderia ("the Berliner MGA Agreement") was finalised and signed some six weeks after the letter was sent and was annulled on 23 September 2013. As a consequence, over 900 solicitors, originally insured through the second BAA, were required to seek new compulsory Solicitors' PII from different providers or cease to practise.
13. During the Relevant Period, Bar breached Principle 2 in that Bar did not exercise due skill, care and diligence, prior to sending the letter, in that it failed to:
  - a) carry out sufficient and adequate due diligence to ensure that the Berliner MGA Agreement was in place and there was a sufficient premium income limit to meet the proposed cover, when Bar had reason to doubt that was the case; and
  - b) take reasonable care to ensure that the advice given to its customers to cancel their current policies with Balva and take out the cover with Berliner was suitable, in breach of ICOBS 5.3.1R.

14. Bar breached Principle 7, by failing to communicate information to its customers in the letter it sent in late May/early June in a way which was clear, fair and not misleading.
15. Regulatory action in relation to this matter underlines the need for authorised firms and approved persons in the distribution chain to ensure that adequate steps are taken to satisfy themselves that robust and effective arrangements are in place to mitigate risks to customers. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
16. This action recognises that failure by one or more firms to comply with regulatory requirements that safeguard consumers and/or protect market integrity can distort competition. Tackling conduct failures, such as those detailed in this Final Notice, in order to ensure firms act with integrity, implement appropriate systems and controls, and arrange adequate protection for client assets, therefore supports the Authority's statutory objective to promote effective competition in the interests of consumers.

## **DEFINITIONS**

17. The definitions below are used in this Final Notice.

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

"Aderia" means Aderia UK Limited, now known as II&B UK Limited and previously known as JCM Insurance Brokers Limited and JCM Brokers Ltd.

"Apro" means Apro Management Limited, Bar's AR.

"AR" means appointed representative.

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

"BAA" means a binding authority agreement, an agreement whereby an insurer (or its MGA) delegates underwriting authority to another party known as the Coverholder (often an insurance broker) which will act on behalf of the insurer to the extent permitted by the agreement, which frames the responsibilities, entitlements and obligations of the parties.

"the First BAA" means a BAA between Aderia and Bar signed on 20 February 2013 governing the marketing and sale of Solicitors' PII policies underwritten by Balva.

"the Second BAA" means a BAA between Aderia and Bar signed on 17 May 2013 purportedly governing the marketing and sale of Solicitors' PII policies underwritten by Berliner.

"Balva" means Balva Insurance Company AAS, a Latvian insurer and a Passported Firm.

"Bar" means Bar Professions Limited, a UK-based Coverholder.

"Berliner" means Berliner Versicherung Aktiengesellschaft, a German insurer and a Passported Firm.

"the Berliner MGA Agreement" means the MGA Agreement, which was signed between Berliner and Aderia on 15 July 2013, and took effect respectively from 1 June 2013.

"Coverholder" means a company (often an insurance broker) authorised to enter into contracts of insurance, on behalf of an insurer in accordance with the terms of a BAA.

"DEPP" means the Authority's Decision Procedure and Penalties Manual.

"EG" means the Authority's Enforcement Guide.

"the FCMC" means Financial and Capital Market Commission, the Latvian regulatory authority, also known as Finanšu un Kapitāla Tirgus Komisija (the FKTK).

"financial promotion" means an invitation or inducement to engage in investment activity that is communicated in an authorised firm's course of business.

"ICOBS" means Insurance Conduct of Business Sourcebook.

"MGA" means a managing general agent, an insurance intermediary which has contractual authority from one or more insurers to provide underwriting services on their behalf.

"MGA Agreement" means a contractual agreement giving an MGA contractual authority from one or more insurers to provide underwriting services, including negotiating and entering into binding authorities with Coverholders for the sale and fulfilment of policies, on behalf of the insurers.

"the Offer Letter" means the letter sent by Apro in late May/early June 2013 to most of Bar's and Apro's Solicitor Customers or the brokers who introduced those customers to Bar.

"Passported Firm" means a European Economic Area firm exercising its right to conduct activities and services regulated under EU legislation in the UK on the basis of its authorisation in its European Economic Area home state.

"PII" means professional indemnity insurance.

"Principles" means the Authority's Principles for Businesses.

"Relevant Period" means the period from 14 March 2013 to 23 September 2013.

"the renewal cover" means the policy which was intended to automatically renew for the 2013/2014 underwriting year.

"the replacement cover" means the new policy, which was intended to be incepted on 1 June 2013 to replace the previous cover for the 2012/13 underwriting year.

"RPPD" means the Regulatory Guide in the FCA Handbook named The Responsibilities of Providers and Distributors for the Fair Treatment of Customers.

"Shay Reches" or "Mr Reches" means Shay Jacob Reches.

"Solicitor Customers" means Bar's solicitor customers, numbering approximately 1,300.

"Solicitors' PII" means professional indemnity insurance provided to solicitors.

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

## **FACTS AND MATTERS**

### **Background**

18. Bar was a London based specialist insurance broker. Its principal business was as a Coverholder authorised under the Act to undertake general insurance mediation activities. With the authority, or purported authority, of insurers Balva and Berliner, and through the BAAs it held with their MGA, Aderia, Bar entered into contracts of insurance, predominantly PII for solicitors in England and Wales. Bar went into administration on 22 October 2014 and liquidation on 29 January 2015.
19. Bar arranged PII cover for approximately 1,300 Solicitor Customers for the 2012/13 underwriting year with Balva through the First BAA.
20. Aderia had made Bar aware on 14 March 2013 that Balva was required by the FCMC to cease temporarily writing various lines of business, including solicitors' PII business. During the following three months, Balva's licence to write new business in the UK was formally suspended and then withdrawn by the FCMC. As a consequence, from March 2013 onwards, Bar discussed and then made plans with Aderia to replace Balva's cover. Mr Reches, acting through Aderia, introduced Berliner to Bar in March 2013 as a possible replacement for Balva, and discussions about this arrangement took place between Bar, Mr Reches and Aderia. This culminated in Bar and its AR, Apro, entering into the Second BAA with Aderia for Berliner on 17 May 2013.
21. The terms of the Second BAA provided that Bar had authority to write solicitors' PII business on behalf of Berliner up to an annual premium income limit of £50 million.
22. Both before and after it entered into the Second BAA, Bar had grounds for concern as to whether the Berliner MGA Agreement had been concluded, signed and was in effect, as well as what premium income limits were in place for business written on behalf of Berliner. Bar asked questions of Aderia in respect of those grounds for concern, but did not receive satisfactory answers to its questions before entering into the Second BAA, not seeing the substantive provisions of the signed Berliner MGA Agreement until 15 July 2013.

### **Due diligence**

23. Under ICOBS 2.5.3G(2), Bar would have been entitled to rely on information provided to it in writing (such as the Second BAA and the written assurances from Aderia) by an unconnected authorised person (such as Aderia) unless it was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of that information. Bar had reasonable grounds to question the accuracy of information, in particular the provisions of the Berliner MGA Agreement, under which it held its binding authority. It did not receive satisfactory responses to the enquiries which it made about those concerns. In the circumstances, Bar should have undertaken further and more detailed enquiries in order to satisfy its concerns.
24. The grounds for concern that Bar raised with Aderia relating to the Berliner MGA Agreement prior to the Offer Letter being sent in late May/early June 2013 included whether:

- a) the Berliner MGA Agreement was in place and had been signed;
  - b) Berliner's premium income limit was sufficient to enable Bar to write the level of business for which the Second BAA made provision; and
  - c) Berliner was appropriately capitalised.
25. Prior to sending the Offer Letter, Bar had taken some steps through Aderia to satisfy itself that the Berliner MGA Agreement, and other arrangements, were in place and effective for the purposes of the Second BAA. However, the steps that Bar took were inadequate in the following ways:
- a) on a number of occasions, prior to the Offer Letter being sent, Bar asked Aderia to provide a signed copy of the Berliner MGA Agreement. Notwithstanding those requests, Bar did not see a signed copy of the Berliner MGA Agreement until after 15 July 2013, following intervention by the Authority and over six weeks after sending the Offer Letter;
  - b) Bar made a number of requests from March 2013 onwards to meet the chief executive of Berliner in order to discuss the PII arrangements. That meeting only took place in July 2013 following intervention by the Authority; and
  - c) Bar had concerns about Berliner's reinsurance arrangements and pressed Aderia for information between April and May 2013, but only received details of a draft reinsurance slip on 23 June 2013.

### **Shay Reches**

26. Throughout the Relevant Period, Bar's dealings with Aderia were conducted principally through Mr Reches. This should have led Bar to conduct adequate due diligence in order to satisfy itself concerning the fitness and propriety of the individual acting on behalf of Aderia. Among the facts and matters (which were known, or would reasonably have been known, to Bar), which should have led Bar to make further enquiries were that:
- a) Mr Reches was the controller and majority owner of Aderia but was not approved by the Authority;
  - b) Mr Reches was attempting to purchase shares in Berliner, which was a potential provider of PII to Bar's Solicitor Customers, creating a potential conflict of interest for Mr Reches;
  - c) Mr Reches, together with the companies controlled by him, was the subject of certain restrictions imposed by overseas regulators concerning the carrying out of unlicensed insurance business, which might adversely affect his status and standing as a participant in any UK regulated activity; and
  - d) Bar had recently experienced difficulties with Balva, which, like Berliner, was a European insurer, introduced to Bar by Mr Reches and over which Bar believed that Mr Reches had sought to exert some control and hold shares.
27. The specific grounds for concern, outlined above, regarding the fitness and propriety of Mr Reches was further reason for Bar to conduct greater due diligence concerning the validity and effectiveness of the arrangements being put in place on behalf of its Solicitor Customers prior to sending the Offer Letter, which, as a result, contained inaccurate and misleading information.

### **The role of Apro**

28. Bar notified the Authority in February 2011 of the appointment of Apro as its AR. Bar did not, however, have an AR agreement with Apro. Bar and Apro had common directors. The original intention was that Bar would undertake the broking side of the business with Apro effectively acting as a separate underwriter. However, in time, the distinction between Bar and Apro became blurred. Bar and Apro acted as one entity with the same offices, management and directors.
29. Apro's role was effectively to act as a vehicle to facilitate liaison with wholesale brokers, who would not want to deal with a rival broker (Bar) directly, which was why the Offer Letter was sent on Apro-headed paper. However, in effect, there was no distinction between Bar and Apro.
30. Bar was, in any event, responsible for communicating and approving financial promotions sent by its AR, Apro in accordance with ICOBS 1.1.1R and ICOBS 2.2.2R. Bar should have taken reasonable steps to ensure that such communications or financial promotions were clear, fair and not misleading.

### **The Offer Letter**

31. Bar, through its AR, Apro, sent the Offer Letter between late May/early June 2013 to most of its Solicitor Customers or to the brokers who had introduced those customers to Bar. The Offer Letter, among other things, stated that:
  - a) Balva had been "temporarily suspended";
  - b) Bar/Apro had made "alternative arrangements" with Berliner;
  - c) Berliner had "agreed to honour all quotations previously offered by [Balva] securing all discounted premiums accepted last year on either the 1 or 2 year deal";
  - d) Bar/Apro remained "very confident that Balva's position will change";
  - e) Bar/Apro was "suggesting [to its Solicitor Customers that] the current Balva policy will be cancelled from 1<sup>st</sup> June and a new policy with Berliner be incepted on the same day to run continuously to 30<sup>th</sup> September 2013"; and
  - f) Bar/Apro would "be including an automatic extension to the policy effective 1<sup>st</sup> October 2013 to either 30<sup>th</sup> September 2014 or 30<sup>th</sup> April 2015".
32. Over 900 of Bar's Solicitor Customers agreed to this arrangement.

### **The Berliner MGA Agreement**

33. At the time that Bar entered into the Second BAA with Aderia on 17 May 2013, and sent the Offer Letter, Berliner had not signed the MGA Agreement authorising Aderia to delegate authority for Bar and Apro to write Solicitors' PII on behalf of Berliner. The Berliner MGA Agreement was not agreed and signed until 15 July 2013 – the day before a short notice visit from the Authority was due to take place and approximately six weeks after the Offer Letter was sent.
34. The Berliner MGA Agreement stated that Berliner would provide insurance up to an annual premium income limit of only €5 million, whereas the Second BAA purported to provide Bar with the facility to write business on behalf of Berliner

up to an annual premium income limit of £50 million. As a consequence, the actual premium income limit for 2013 of €5 million would have been exhausted by the replacement cover for the 2012/13 year alone (and which was due to expire on 30 September 2013); there would have been no underwriting capacity available for the renewal cover offered in the Offer Letter for the 2013/14 year.

## **FAILINGS**

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

### **Principle 2**

36. Principle 2 states that: "A firm must conduct its business with due skill, care and diligence."
37. Bar breached Principle 2, by failing to exercise due skill, care and diligence, prior to the Offer Letter being sent, by not ensuring that:
- a) the Berliner MGA Agreement was in place, and that there was a sufficient premium income limit to meet the proposed renewal cover, when Bar had reason to doubt that was the case. Bar had made enquiries in respect of those doubts, but received reassurances which did not satisfy those doubts, as set out in paragraphs 24 and 25;
  - b) reasonable care was taken to make sure that the advice to the Solicitor Customers to cancel their current policies with Balva and take out the replacement and renewal cover with Berliner was suitable, in breach of ICOBS 5.3.1R; and
  - c) it satisfied itself in relation to facts about which it was aware, or should have been aware, in respect of Mr Reches as set out in paragraphs 26 and 27.

### **Principle 7**

38. Principle 7 states that: "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."
39. Bar breached Principle 7, by failing to:
- a) communicate information to its Solicitor Customers in a way which was clear, fair and not misleading in that the Offer Letter was written so as to lead Solicitor Customers to believe that:
    - i) Bar/Apro had made arrangements with Berliner for Berliner to guarantee replacement cover for the existing Balva policies, which in fact, was not the case; and
    - ii) PII cover would automatically be renewed, when, in fact Bar/Apro had no authority to arrange an automatic renewal nor was there sufficient underwriting capacity available from Berliner to meet any insurance so renewed; and
  - b) take reasonable steps to communicate to its Solicitor Customers a financial promotion within the Offer Letter in a way which was clear, fair and not misleading, in breach of ICOBS 2.2.2R.



40. The Offer Letter was materially inaccurate and misleading and Solicitor Customers seeking replacement and renewal PII cover on the basis proposed by the Offer Letter would have been at risk of being uninsured or of having otherwise legitimate claims rejected. Bar should have ensured that each aspect of the Offer Letter was correct, before it was sent.
41. Based on the facts and matters described above, the Authority considers that Bar failed to:
  - a) carry out its business with due skill, care and diligence, in breach of Principle 2; and
  - b) pay due regard to the information needs of clients, and communicate information to them in a way which was clear, fair and not misleading, in breach of Principle 7.
42. Bar also breached related ICOBS rules.

## **SANCTION**

### **Financial penalty**

43. 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 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.
44. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to Bar's breaches of Principles 2 and 7.
45. In determining the financial penalty to be attributed to Bar's misconduct, the Authority had particular regard to the following matters as applicable:
  - a) the need for credible deterrence;
  - b) the nature, seriousness and impact of the breach;
  - c) the risk of consumer detriment as a result of Bar's failings; and
  - d) the consideration of serious financial hardship.
46. The Authority would have imposed a financial penalty of £509,700 on Bar for breaching Principles 2 and 7. However, taking into account the financial circumstances of Bar, the Authority did not impose a financial penalty.

## **PROCEDURAL MATTERS**

### **Decision maker**

47. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
48. This Final Notice is given under, and in accordance with, section 390 of the Act.

## **Publicity**

49. 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.
50. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **Authority contacts**

51. 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**

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

## **ANNEX A**

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

#### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Section 205 of the Act provides:  
  
"If the [Authority] considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect."
3. Section 206(1) of the Act provides:  
  
"If the [Authority] considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

#### **RELEVANT REGULATORY PROVISIONS**

##### **Principles for Businesses**

4. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.
5. Principle 2 provides:  
  
*"A firm must conduct its business with due skill, care and diligence."*
6. Principle 7 provides:  
  
*"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

##### **Relevant Handbook rules and guidance**

##### **DEPP**

7. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act (please see Annex B).

8. DEPP 6.5D.4G states that:

- (1) *The FCA will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the FCA will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The FCA will also take into account its statutory objectives, for example in situations where consumers would be harmed or market confidence would suffer, the FCA may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.*
- (2) *There may be cases where, even though the firm has satisfied the FCA that payment of the financial penalty would cause it serious financial hardship, the FCA considers the breach to be so serious that it is not appropriate to reduce the penalty. The FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:*
  - a) *the firm directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;*
  - b) *the firm acted fraudulently or dishonestly in order to benefit financially;*
  - c) *previous FCA action in respect of similar breaches has failed to improve industry standards; or*
  - d) *the firm has spent money or dissipated assets in anticipation of FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FCA or other authorities.*

### **Insurance Conduct of Business Sourcebook (ICOBS)**

9. ICOBS applied to Bar throughout the Relevant Period. Chapter 1 of ICOBS sets out the Authority's rules and guidance on the general application of ICOBS; Chapter 2 of ICOBS sets out the Authority's rules and guidance on General Matters; and Chapter 5 of ICOBS sets out the Authority's rules and guidance on identifying client needs and advising.
10. ICOBS 1.1.1R provides:

*"This sourcebook applies to a firm with respect to the following activities carried on in relation to a non-investment insurance contract from an establishment maintained by it, or its appointed representative, in the United Kingdom:*

- (1) *an insurance mediation activity;*
- (2) *effecting and carrying out contracts of insurance;*
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;*
- (4) *communicating or approving a financial promotion; and activities connected with them."*

11. ICOBS 2.2.2R provides:

*"When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading."*

12. ICOBS 2.5.3G provides:

*"(1) Where it is compatible with the nature of the obligation imposed by a particular rule and with the Principles, in particular Principles 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), firms may rely on third parties in order to comply with the rules in this sourcebook.*

*(2) For example, where a rule requires a firm to take reasonable steps to achieve an outcome, it will generally be reasonable for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a firm cannot delegate its responsibility under the regulatory system. For example, where a rule imposes an absolute obligation (such as the requirement for an insurer to handle claims promptly and fairly) although a firm could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required."*

13. ICOBS 5.3.1R provides:

*"A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment."*

## **RELEVANT HANDBOOK REGULATORY GUIDES**

### **The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)**

14. The RPPD sets out the Authority's view on what the combination of Principles for Businesses and detailed rules require respectively of providers and distributors in certain circumstances to treat customers fairly.

15. Paragraph 1.22 provides:

*"In the area of financial promotions, Principles 3, 6 and 7 are particularly relevant. In particular, a firm:*

*(1) should have in place systems and controls to manage effectively the risks posed by financial promotions;*

*(2) in passing on a promotion created by a provider, must act with due skill, care and diligence. A firm will not contravene the financial promotions rules where it communicates a promotion produced by another person provided the firm takes reasonable care to establish that another firm has confirmed compliance with the relevant detailed rules, amongst other matters".*

### **The Enforcement Guide (EG)**

16. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
17. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose a financial penalty.

## **ANNEX B**

### **PENALTY ANALYSIS**

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 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.
2. The application of the Authority's penalty policy is set out below in relation to Bar's breaches of Principles 2 and 7.

#### **Step 1: disgorgement**

3. Pursuant to DEPP 6.5A.1G, at Step 1, the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
4. The Authority has not identified any financial benefit that Bar derived directly from the breaches.
5. Step 1 is therefore £0.

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

6. Pursuant to DEPP 6.5A.2G(1), at Step 2, the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
7. The Authority considers that the revenue generated by Bar is indicative of the harm or potential harm caused by its breach. The period of Bar's breach was from March 2013 to September 2013. Pursuant to DEPP 6.5A.2G(2), where a breach lasts less than 12 months, the Authority determines a firm's "relevant revenue" as the revenue derived by the firm in the 12 months preceding the end of the breach. The Authority considers Bar's relevant revenue for this period to be £5,097,984.
8. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. 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 firms, there are the following five levels:  
  
Level 1 – 0%  
Level 2 – 5%  
Level 3 – 10%  
Level 4 – 15%  
Level 5 – 20%
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. DEPP 6.5A.2G(11) lists factors likely to be

considered 'level 4 or 5 factors'. Of those factors, the Authority considers the following factor to be relevant:

a) *The breach caused a significant risk of loss to individual consumers (DEPP 6.5A.2G(11)(a))*: Had Bar's customers accepted the proposal to cancel and replace their policies, given that Bar was not in a position to write the replacement and renewal policies, there was a risk of Bar's customers being uninsured or of having otherwise legitimate claims rejected. Due to the withdrawal of Berliner, none of the replacement and renewal policies were ever put in place, so there has been little or no actual loss to Bar's customers as a result of the breaches.

10. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of those factors, the Authority considers the following factors to be relevant:

a) *Little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly (DEPP 6.5A.2G(12)(a))*: Although Bar's intention was to facilitate the continuation of the solicitors' PII business, and the commission that flowed from it, Bar was unable to secure a replacement broker, lost its entire book of solicitors' PII business and caused it considerable financial difficulty which was the principal reason for Bar being placed into administration.

b) *The breach was committed negligently or inadvertently (DEPP 6.5A.2G(12)(e))*: For the reasons set out in paragraphs 36-42 of this Notice, the Authority's view is that Bar's failures occurred as a result of negligence, rather than deliberate misconduct, recklessness or a lack of honesty or integrity on the part of Bar.

11. Taking all of these factors into account, the Authority considers the level of seriousness to be 3 and the Step 2 figure is consequently £509,798 (10% of £5,097,984).

12. Step 2 is therefore £509,798.

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

13. Pursuant to DEPP 6.5A.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.

14. The Authority considers that there are no aggravating or mitigating factors in this case.

15. Step 3 is therefore £509,798.

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

16. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 to be insufficient to deter the firm which committed the breach, or other firms, from committing further or similar breaches, then the Authority may increase the penalty.

17. In the Authority's view, the Step 3 figure of £509,798 represents a sufficient deterrent to Bar and others, and has not increased the penalty at Step 4.



18. Step 4 is therefore £509,798.

### **Serious financial hardship ("SFH")**

19. Pursuant to DEPP 6.5D.4G, the FCA will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty the Authority will take into consideration the firm's financial circumstances. As Bar is in liquidation, the Authority is not seeking to impose a financial penalty on Bar. The Authority considers that any realised assets should be made available to its creditors. Were it not for Bar's liquidation, the Authority would have imposed a financial penalty of £509,700 (rounded down from £509,798) on Bar.

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

20. Pursuant to DEPP 6.5A.5G, if the Authority, and the firm on which 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 firm reach agreement.
21. As the Authority is not seeking to impose a financial penalty on Bar due to the matters set out above, a settlement discount is not relevant.

### **Penalty**

22. The Authority would imposed a financial penalty of £509,700 on Bar for breaching Principles 2 and 7. However, taking into account the financial circumstances of Bar, the Authority is not seeking to impose a financial penalty.

### **Statement of Misconduct**

23. The Authority's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non-exhaustive factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. DEPP 6.4.2G (1) indicates that it may be a factor whether or not deterrence may be effectively achieved by issuing a public censure. Further DEPP 6.4.2G (7) indicates that a relevant factor is the Authority's approach in previous similar cases to ensure a consistent approach to its decisions.
24. The Authority has had regard to the need to balance deterrence against the need to act in the wider interests of creditors. The Authority would, in the interests of creditors, want any assets to be made available to its creditors. The Authority has not imposed penalties in cases involving insolvent firms where the imposition of a penalty would impact adversely on creditors. On that basis, the Authority has not imposed a financial penalty on Bar but instead issue a statement of Bar's misconduct under section 205 of the Act.