

Variation of Part IV Permission – Failure to submit Retail Mediation Activities Return on time – Failure to obtain professional indemnity insurance – whether failure showed that Applicant not conducting business soundly and prudently – Condition 5 – whether failure to respond to Authority in relation to Retail Mediation Activities Return involved a breach of Principle 11 (Relations with Regulators)

FINANCIAL SERVICES AND MARKETS TRIBUNAL

LITAIID LIMITED

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

**Tribunal: TERENCE MOWSCHENSON QC
MR I B ABRAMS
MR N W DOUCH**

Sitting in public in London on 10 January 2008

Mr Prashant Sengar, a director of the Applicant, for the Applicant

Mr Simon Gerrish, instructed by the Financial Services Authority, for the Authority

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DECISION

1. The Applicant has referred two matters to the Tribunal:

1.1 A First Supervisory Notice dated 21 March 2007 removing all regulated activities with immediate effect; and

1.2 A Decision Notice dated 2 May 2007, cancelling the Applicant's Part IV permission.

2. The Applicant previously applied for the suspension of the Supervisory Notice. This application was refused by the Tribunal by a decision delivered on 17th October 2007.

The Background

3. The Applicant was authorised on 14 January 2005 to carry on general insurance business. The Applicant has only one director and approved person, Mr Prashant Sengar. He is not an approved person in relation to any other FSA authorised firm. The Applicant was authorised by the Authority under Part IV of the Act to carry on the following regulated activities:

- (1) agreeing to carry on a regulated activity;
- (2) dealing in investments as agent*;
- (3) making arrangements*.
activities marked * permitted in respect of non-investment insurance contracts only.

4. The Applicant's business includes arranging After the Event Insurance ("ATE") whereby it acts as a broker to law firms seeking ATE in respect of their costs in personal injury cases. It assists law firms acting on behalf of clients or potential clients to progress a compensation claim by arranging the ATE by filling in proposal forms and forwarding them to an insurance company. It receives a commission from the insurance company in so far as a proposal is accepted.

5. By a First Supervisory Notice dated 21 March 2007 ("the Supervisory Notice"), the Authority varied the Applicant's Part IV permission by removing all regulated activities with immediate effect. The Authority did this because the Applicant failed to obtain the necessary Professional Indemnity Insurance ("PII") cover despite repeated requests and warnings from the Authority and because the Applicant had repeatedly not submitted RMAR forms on time, or not at all.

6. As a result of the variation of the Applicant's Part IV permission and the removal of all regulated activities, the Authority, by a Warning Notice dated 21 March 2007 ("the Warning Notice"), proposed to cancel the Applicant's Part IV permission.

7. By a Decision Notice dated 2 May 2007 (“the Decision Notice”), the Authority decided to cancel the Applicant's Part IV permission.

5 8. On 4th May 2007 the Applicant referred the Decision Notice to the Tribunal and on 25th June 2007 confirmed that it wished to refer the Supervisory Notice dated 21st March 2007 to the Tribunal. The Authority indicated that it took no point in relation to the timing of that reference (the period for referring that Notice having expired).

10 9. The Authority opposed the reference on the grounds that the Applicant:

15 9.1 failed to satisfy the threshold conditions set out in Schedule 6 to the Financial Services and Markets Act 2000 (the "Act") in that it failed to submit the Retail Mediation Activities Returns (“RMAR”) promptly on three separate occasions and has been referred to the Authority's Enforcement Division ("Enforcement") on three separate occasions. In persistently failing to submit the RMAR promptly, the Applicant has failed, in the opinion of the Authority, to satisfy the Authority that it is conducting its business soundly and prudently (as required by threshold condition 5 – Suitability);

25 9.2 failed to satisfy the threshold conditions by its failure to obtain and maintain adequate Professional Indemnity Insurance (“PII”). As a consequence of this failure the Authority considers its resources are not adequate in relation to its permitted activities (as required by threshold condition 4 – Adequate Resources). Further, in failing to obtain and maintain adequate PII the Authority considers the Applicant to be unable to demonstrate that it is ready, willing and organised to comply with the requirements and standards under the regulatory system (as required by threshold condition 5 – Suitability); and

30 9.3 failed to be open and co-operative in its dealings with the Authority, by failing to respond adequately or at all to the Authority's communications requesting it to submit the RMARs and to clarify its PII position and has therefore failed to comply with Principle 11 (Relations with Regulators) of the Principles for Businesses and by extension, fails to satisfy the criteria set out in threshold condition 5.

35 40 10. Accordingly the Authority submits that it is necessary and proportionate for the Authority to remove all regulated activities from the Part IV permission and to cancel the Applicant's Part IV permission as set out in the Decision Notice. The Authority contends that the failure to supply the RMARs on time or at all or to obtain PII would each on its own justify the course taken by the Authority

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11. The Applicant submitted that :

5 11.1 It did not file the RMARs as the Authority returned the RMARs to the Applicant with the request that it complete the RMAR with details of the PII and thus the RMAR could not be properly completed without details of the PII;

10 11.2 that it could not obtain PII because of the nature of its business; and

11.3 that it was not given the opportunity to make submissions on the Warning Notice that gave rise to the giving of the Decision Notice.

12. The Tribunal was supplied with two witness statements on behalf of the Authority. One witness, Mr Andrew Honey the Head of the Insurance Division in the Small Firms Division of the Authority was cross examined by Mr Sengar. However the evidence of the other witness Mr Allen Goodchild an Associate in the Small Firms Division of the Authority was unchallenged. The Tribunal (with the consent of the Authority) treated the Applicant's Response to the Statement of Case (in so far as it contained statements of fact) as evidence given by Mr Sengar and granted him a degree of latitude in his submissions which involved him giving additional evidence. The Authority did not admit all his evidence but in general there was little dispute of fact between the parties other than in relation to the availability of PII for a person carrying on the Applicant's activities in relation to assistance in relation to the completion of applications for insurance.

PII

13. Under the Insurance Markets Directive ("IMD") which took effect on 14 January 2005, firms must maintain a minimum level of PII. Firms are also required to maintain PII which, in some respects, exceeds the cover required by the IMD. The Authority may accept an application for a waiver from the requirements which exceed those of the IMD, if the firm can demonstrate to the Authority that it has adequate resources.

14. Alternatively, where sought by a firm, the Authority may issue individual guidance if the firm has non-compliant cover and the firm demonstrates to the Authority that it has adequate resources to address the defects in its PII. In assessing whether a firm has adequate resources the Authority will require detailed information about the firm's financial position, the nature of any PII it has, its PII claims record, and its past business activities. This means that some firms will be permitted to continue to trade with non-compliant PII, albeit with some additional financial resources reporting requirements. It has not been suggested that the Applicant had adequate resources to cover its potential liability to third parties in the absence of insurance.

15. On 29 June 2006, the Applicant submitted to the Authority its RMAR for the period ended 31 January 2006. In Section E of the RMAR the Applicant stated that it was exempt from the requirement to maintain PII in respect of its regulated activities.

5 16. On 20 July 2006, the Authority emailed a letter to the Applicant, in response to the RMAR. The letter stated the Authority's view that it was likely that, as the exemption applied to a very limited number of firms, the Applicant had incorrectly completed the RMAR. The letter stated that if the Applicant had incorrectly claimed exemption from the PII requirement and did not hold PII, then the Applicant would
10 need immediately to obtain compliant PII and resubmit the RMAR with correct information within the next ten working days. It also stated that failure to take action could lead to the Applicant being referred to Enforcement for action to be taken to prevent the Firm from conducting regulated activities. No response was received from the Applicant.

15 17. On 29 September 2006, the Authority telephoned the Applicant, requesting resubmission of the 31 January 2006 RMAR and submission of the 31 July RMAR which was by then overdue. The Authority gave the Applicant a deadline of 6 October for the resubmission of the 31 January 2006 RMAR. The Firm said it would
20 have PII by 4 October 2006 (the Authority's note of the telephone call erroneously refers to 4 June 2006). The RMAR was not resubmitted within the deadline.

18. On 31 October 2006, the Authority emailed the Applicant, requesting the Applicant provide the Authority with confirmation that it had PII in place. The
25 Authority gave the Applicant a deadline of 7 November to provide a copy of a valid PII certificate, or confirmation that the Applicant had applied to cancel its Part IV permission.

19. Later on 31 October 2006, the Applicant emailed the Authority, informing the
30 Authority it was having difficulties obtaining PII, although it was now in contact with a firm which had assured the Applicant it should have PII in the next "couple of days".

20. On 8 November 2006, the Authority responded to the Applicant's email of 31
35 October 2006. The email noted the Applicant had failed to provide confirmation that it had PII in place and failed to confirm the basis for its claimed exemption. In addition it had also noted that the Applicant had failed to resubmit the 31 January 2006 RMAR as required by the Authority. The Authority gave the Applicant a deadline of 15 November 2006 to confirm it had adequate PII and to resubmit the
40 RMAR, or it would be referred to Enforcement.

21. Later on 8 November 2006, the Applicant resubmitted the 31 January 2006
45 RMAR. Section E of the RMAR this time stated that the Applicant was not exempt from the PII requirement but no PII details were included. This is because the Applicant did not have PII.

22. On 20 November 2006, the Authority telephoned the Applicant, and was advised by Mr Sengar that after numerous attempts the Applicant had not managed to obtain PII. The Authority outlined the options open to the Applicant: to obtain PII, become an appointed representative or stop carrying out regulated activities. Mr Sengar explained that the Applicant sold only legal expenses insurance and that he would respond to the Authority with a solution by 23 November 2006.

23. On 27 November 2006, the Authority emailed the Applicant, noting it had not received a response from the Applicant following the telephone conversation on 20 November 2006. The email also stated that if the Applicant did not respond by 28 November 2006 it would be referred to Enforcement to stop it from conducting regulated activities. No response was received from the Applicant.

24. On 12 January 2007, Enforcement wrote to the Applicant, stating it had received papers relating to the Applicant's failure to:

24.1 maintain PII;

24.2 demonstrate that it was meeting the capital resources requirement; and

24.3 submit the RMAR in a timely manner

24.4 co-operate with the Authority as its regulator.

25. The 12 January 2007 letter also notified the Applicant that Enforcement was preparing to take action to vary and cancel its Part IV permission, unless the Applicant itself applied to cancel the permission by 19 January 2007.

26. On 15 January 2007, Enforcement telephoned the Applicant to confirm receipt of its letter of 12 January 2007. The Applicant confirmed receipt of the letter and advised that Mr Sengar was on annual leave returning on 29 January 2007. A member of staff at the Applicant agreed to email the letter to Mr Sengar.

27. On 31 January 2007, Enforcement telephoned the Applicant and spoke to Mr Sengar. Although other RMAR matters were discussed, the PII issue was raised. Mr Sengar said that he could not submit an RMAR because he could not enter any PII details. He said the Authority's Firms-On-Line system would not accept an RMAR without PII details. At Mr Sengar's request, it was agreed that Enforcement would telephone the next day to discuss the Applicant's outstanding issues to allow Mr Sengar an opportunity to refer to his file notes.

28. On 1 February 2007, Enforcement telephoned Mr Sengar, and was advised by him that he had tried to obtain PII on various occasions but had been told there were no insurance companies in the market that would underwrite the Applicant's particular business. Enforcement reminded Mr Sengar of the various telephone and written communications where the Authority had given deadlines for the Applicant to resolve

its PII position. The Applicant had given assurances to the Authority it would obtain PII but had failed to do so.

29. On 5 March 2007, Enforcement sent an email to the Applicant stating that it
5 did not accept that the Applicant was unable to obtain PII but that if the Authority received a written statement from an insurance broker to this effect, it would reconsider the position. No such statement has been provided to the Authority.

30. Mr Sengar gave evidence to the effect that he had tried to obtain insurance
10 from as many as 47 different insurance providers but only provided written evidence showing an attempt to obtain insurance from one company. He said that a file containing evidence of other applications might be in the Applicant's archive of documents but he had not managed to find the file in the time available. He also said that any applications by email would have been destroyed through his computer
15 system's automatic archiving system which did not retain emails over a certain age. We note that at the hearing on 17th October 2007 the failure by the Applicant to produce evidence of its efforts to obtain PII was commented on by the Tribunal. We refer to the judgment of the Tribunal dated 12 November 2007 at paragraph 27. In the
20 light of the failure to produce any documentation supporting attempts to obtain PII cover (other than the one attempt referred to earlier) the Tribunal conclude that the Applicant has not made a serious attempts to procure PII.

31. Mr Sengar also referred the tribunal to a February 2007 Department for
25 Constitutional Affairs Consultation Paper on 'Claims Management Regulation – Professional Indemnity Insurance' as purporting to support its assertion that PII cover is somehow not available in the industry that it operates in. This Consultation Paper applies to claims management companies which now fall under the regulation of the Ministry of Justice. The Applicant seems to be conflating the regulation of claims
30 managers with firms regulated by the Authority and is ignoring the fact that PII cover is mandatory under the IMD. The Consultation Paper was not referring to the business of completing insurance proposals but to the wider business of Claims Management.

32. Mr Honey gave evidence to the effect that had insurance been unavailable to
35 firms supplying services similar to those supplied by the Applicant in completing insurance proposal forms he would have expected to have heard about the unavailability of insurance and the Authority would have raised the issue with representatives of insurers. In addition the Authority had authorised other firms carrying on a business similar to that of the Applicant and was not aware of other
40 firms claiming that insurance was not available.

33. We find that insurance to cover the Applicant's insurance activity is available. We also note that the Applicant had been informed by the Authority that it required
45 PII cover as long ago as 20 July 2006 and on 31 October 2006 informed the Authority that it would obtain PII cover in the next few days. The absence of PII places third parties at risk. Having failed to effect compliant PII or otherwise to obtain adequate resources, it is failing to make adequate provision in respect of its liabilities, including

contingent and future liabilities, in breach of Principle 4 of the FSA's Principles for Businesses. That failing is material in relation to the regulated activities for which it has permission and the Applicant therefore fails to satisfy threshold condition 4: Adequate resources.

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34. Further, in failing to obtain and maintain adequate PII the Applicant is unable to demonstrate that it is ready, willing and organised to comply with the requirements and standards under the regulatory system (as required by threshold condition 5 – Suitability).

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35. In the light of the terms of requirement imposed by the IMD and in circumstances where the Applicant does not contend that it has other adequate resources, the Tribunal considers that it was not open to the Authority to allow the Applicant to continue that part of its business relating to the completion of insurance proposals in the absence of PII. Accordingly on that ground alone the Authority was correct to decide to cancel the Applicant's Part IV permission.

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Retail Mediation Activities Return (RMAR")

36. The RMAR brings together, in one return, important information about regulated firms, upon which the Authority relies to fulfil its regulatory objectives and to conduct effective risk-based regulation. For example, through the RMAR, in addition to firms having to certify whether they have compliant PII, firms must provide the Authority with information about their financial resources, from which the Authority will determine whether the firms are satisfying threshold condition 4 (Adequate resources). The RMAR is a form of self certification which enhances the need for strict compliance with time limits for the submission of RMARs.

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37. The failure by a firm to submit promptly the RMAR therefore places at risk the ability of the Authority to discharge its risk-based supervisory functions and its statutory consumer protection objective. The Applicant was required to submit a RMAR half yearly for the periods ending 31 January and 31 July each year within a prescribed period (approximately six weeks).

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38. To emphasise the importance of submitting the RMAR, and submitting it on time, the Authority has notified firms that the reporting requirements are subject to strict time limits, that an administrative fee of £250 will be imposed on firms that fail to meet the submission deadlines and that the Authority will take cancellation action if they still do not submit the RMAR. The requirement to submit the RMAR promptly is particularly important given the currency of the information contained within the RMAR and its importance in informing the Authority about the current position of both individual firms and industry sectors.

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39. The Authority's Late Returns Team ("LRT") is responsible for chasing firms failing to submit the RMAR by the submission deadline. The LRT sends:

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- 39.1 a communication reminding the firm about the expiry of its RMAR reporting date and notice that an administrative fee will be levied;
- 5 39.2 a communication about the failure to submit the RMAR, informing the firm that an administrative fee will be charged and giving notice that regulatory enforcement action may be taken against it;
- 39.3 an invoice for the administrative fee;
- 10 39.4 a communication notifying the firm that it was being referred to Enforcement.

40. Finally, a "letter before action" is sent from Enforcement about proposed cancellation action.

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RMAR for the period ended 31 July 2005

41. On 2 September 2005, the Authority sent an email to the Applicant, stating that the Applicant was required to submit the RMAR for the period ended 31 July 2005 by 12 September 2005, and that failure to do so by the deadline would result in an administrative fee of £250 being charged and possible enforcement action. The Authority did not receive a response from the Applicant.

42. On 7 October 2005, the Authority sent an email to the Applicant, stating that as the Applicant had failed to submit the RMAR for the period ended 31 July 2005, it would be charged an administrative fee of £250. The Authority stated that the Applicant was required to submit the RMAR within ten working days, failing which disciplinary action might be taken. The email also explained how the Applicant could obtain assistance from the Authority in completing and submitting the RMAR. The Authority did not receive a response from the Applicant.

43. On 14 October 2005, the Authority sent an invoice to the Applicant, requesting payment by 13 November 2005 of £250 in respect of the administrative fee for the late submission of the RMAR for the period ended 31 July 2005. The Authority stated that the late or non-submission of the RMAR might lead to the cancellation of the Applicant's Part IV permission. The Applicant paid the administrative fee but did not otherwise respond.

44. On 5 December 2005, Enforcement wrote to the Applicant, stating that as the Applicant had failed to submit the RMAR for the period ended 31 July 2005 despite repeated requests to do so, the Authority would recommend the cancellation of the Applicant's permission. Enforcement advised that no further action would be taken if the Applicant submitted the outstanding RMAR or an application for the cancellation of its permission. The Authority did not receive a response from the Applicant.

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45. On 2 January 2006, the Applicant submitted the 31 July 2005 RMAR, over three months after the due date.

46. On 3 January 2006, Enforcement wrote to the Applicant, stating that following submission of its RMAR on 2 January 2006, the Authority would not proceed with enforcement action. The letter also stated that, should the Applicant fail to submit
5 future RMARs promptly, the Authority might consider action to cancel its permission even if the RMAR was subsequently submitted.

RMAR for the period ended 31 January 2006

10 47. On 22 February 2006, the Authority sent an email to the Applicant, stating that the Applicant was required to submit the RMAR for the period ended 31 January 2006 by 14 March 2006, and that failure to do so by the deadline would result in an administrative fee of £250 being charged and possible enforcement action. The Authority did not receive a response from the Applicant.

15 48. On 27 March 2006, the Authority sent an email to the Applicant, stating that as the Applicant had failed to submit the RMAR for the period ended 31 January 2006, it would be charged an administrative fee of £250. The Authority stated that failure to submit the RMAR within ten working days would result in the matter being
20 referred to Enforcement. The Authority did not receive a response from the Applicant.

49. On 31 March 2006, the Authority sent an invoice to the Applicant, requesting
25 payment by 30 April 2006 of £250 in respect of the administrative fee for the late submission of the RMAR for the period ended 31 January 2006. The Authority stated that the late or non-submission of the RMAR might lead to the cancellation of the Applicant's Part IV permission. The Applicant paid the administrative fee but did not otherwise respond.

30 50. On 8 June 2006, Enforcement wrote to the Applicant, stating that as the Applicant had failed to submit the RMAR for the period ended 31 January 2006, the Authority would recommend that the Applicant's permission be cancelled.

35 51. On 27 June 2006, Enforcement attempted to telephone the Applicant, however the telephone number in the Authority's records was not recognised.

52. Later on 27 June 2006, Enforcement emailed the Applicant, referring to its
40 previous letter of 8 June and stating that the 31 January 2006 RMAR should now be treated as a matter of urgency as it had been overdue since 14 March 2006, and since this was the second time that the Applicant had been referred to Enforcement for failure to submit an RMAR. The email also notified the Applicant that the telephone number recorded in the Authority's records for the Applicant was not recognised by BT, and an Authority email address was provided to notify the Authority of any changes to the Applicant's contact details.

45 53. On 29 June 2006, the Applicant submitted the 31 January 2006 RMAR, over three months after the due date.

54. On 30 June 2006, Enforcement wrote to the Applicant, stating that as the RMAR for the period ended 31 January 2006 had been submitted, no further action would be taken to cancel the Applicant's permission, however should the Applicant fail to submit future RMARs promptly, the Authority might consider action to cancel the Applicant's permission even if the RMAR was subsequently submitted.

RMAR for the period ended 31 July 2006

55. On 22 August 2006, the Authority sent an email to the Applicant, stating that the Applicant was required to submit the RMAR for the period ended 31 July 2006 by 12 September, and that failure to do so by the deadline would result in an administrative fee of £250 being charged and possible enforcement action. The Authority did not receive a response from the Applicant.

56. On 26 September 2006, the Authority sent an email to the Applicant, stating that as the Applicant had failed to submit the RMAR for the period ended 31 July 2006, it would be charged an administrative fee of £250. The Authority stated that failure to submit the RMAR within ten working days would result in the matter being referred to Enforcement. The Authority did not receive a response from the Applicant.

57. On 29 September 2006, the Authority sent an invoice to the Applicant, requesting payment by 29 October 2006 of £250 in respect of the administrative fee for the late submission of the RMAR for the period ended 31 July 2006. The Authority stated that the late or non-submission of the RMAR might lead to the cancellation of the Applicant's Part IV permission. The Authority did not receive a response from the Applicant.

58. On 31 October 2006, the Applicant emailed the Authority, stating it had not submitted the RMAR for 31 July 2006 due to problems with obtaining PII insurance.

59. On 11 December 2006, the Authority wrote to the Applicant, stating that the RMAR for the period ended 31 July 2006, remained outstanding and that failure to submit the RMAR within ten working days would result in the matter being referred to Enforcement. The letter also stated that as the Applicant had been referred to Enforcement on two previous occasions, a further referral would result in action being taken to cancel its permission, even if the outstanding RMAR was subsequently submitted. Again, the Authority did not receive a response from the Applicant.

60. On 6 February 2007, Enforcement telephoned the Applicant, and notified Mr Sengar it had received papers concerning the Applicant's referral to Enforcement for the third time for repeatedly failing to submit the RMAR by the relevant due date. Mr Sengar was informed that this new matter superseded the Applicant's other outstanding regulatory issues. Mr Sengar stated that he was unable to submit the RMAR because he could not complete the PII section. Enforcement pointed out to him that this would not prevent submission of the RMAR.

61. On 7 February 2007, Enforcement wrote to the Applicant, stating that it had repeatedly failed to submit RMARs to the Authority promptly, including the most recent RMAR for the period ended 31 July 2006. The letter also stated that, as a consequence of these failures, the Authority would be recommending the cancellation of the Applicant's permission even if the outstanding RMAR for the period ended 31 July 2006 was later submitted.

62. On 9 February 2007, Enforcement telephoned Mr Sengar to confirm receipt of its letter of 7 February 2007. Mr Sengar confirmed he had received the letter and informed the Authority he would be taking legal advice.

63. On 5 March 2007, Enforcement sent an email to the Applicant stating that it did not accept that the Applicant was unable to obtain PII but that if the Authority received a written statement from an insurance broker to this effect, it would reconsider the position. No response was received from the Applicant to the Authority's email of 5 March 2007.

64. A summary of the late or failure to submit RMARs is set out below:

<u>RMAR Period</u>	<u>RMAR due date</u>	<u>Submission Date</u>	<u>Days Late</u>
<u>End</u>			
31/07/2005	12/09/2005	02/01/2006	112
31/01/2006	14/03/2006	29/06/2006	107
31/07/2006	12/09/2006	Not submitted	
31/01/2007	14/03/2007	Not submitted	

65. The history of the failure to submit RMARs on time and in the case of the last two returns at all) manifests a failure to recognise the importance of compliance with regulatory requirements. The fact that the RMAR could not be completed with insurance details (as the Applicant had none) was not a reason for not submitting the form but illustrates the importance of the timely submission of the return. Submission of the form with an indication that there was no insurance would alert the Authority to the fact that the Applicant had no insurance. The failure to submit the RMAR might alert the Authority to there being something amiss, but would not identify the problem.

66. Accordingly we reject the submission of the Applicant that there was no point in submitting the RMAR on the basis that it would be returned to the Applicant for completion in relation to the omitted information relating to PII. That submission shows a lack of understanding of the purpose of the RMAR.

67. We find that the Applicant failed to:

5 67.1 satisfy the threshold conditions set out in Schedule 6 to the Financial Services and Markets Act 2000 (the "Act"/"FSMA") in that it failed to submit the RMARs promptly. In persistently failing to submit the RMAR promptly, the Applicant has failed to conduct its business soundly and prudently (as required by threshold condition 5 – Suitability); and

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67.2 be open and co-operative in its dealings with the Authority, by failing to respond adequately or at all to the Authority's communications requesting it to submit the RMAR and to clarify its PII position and has therefore failed to comply with Principle 11 (Relations with Regulators) of the Principles for Businesses and fails to satisfy the criteria set out in threshold condition 5.

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68. We do not consider that the fact that the Applicant was not given the opportunity to make submissions in relation to the Warning Notice that gave rise to the giving of the Decision Notice affects the matter. The hearing before the Tribunal is a fresh hearing in which the Applicant participates fully and the Tribunal reaches its determination upon all the evidence and submissions before it.

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69. We should say that in the light of the self certification aspect of RMARs the failure to comply with time limits for their submission is a very serious matter. However, in the light of the failure to obtain PII and submit the RMARs as described above we consider that the Authority acted justifiably. However we do not need to determine whether a failure to submit the RMARs alone (without the failure to obtain PII) would have justified the course taken by the Authority. That might have been affected by proposals as to future conduct by the Applicant.

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70. In the light of the above matters we conclude that the Authority was correct to exercise its powers under section 45 of the Act to vary the permission as it did on the 21 March 2007 and in deciding to cancel the Applicant's permission on 2 May 2007 under the same section.

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71. Accordingly the references are rejected and the permission should be cancelled.

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**TERENCE MOWSCHENSON QC
CHAIRMAN**

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