
FINAL NOTICE

To: Darren Lee Newton

Address: 22 Silverston Drive, Manchester M40 1WF

Date: 14 November 2018

1. ACTION

- 1.1. For the reasons given in this Notice and pursuant to section 56 of the Act, the Authority has made an order prohibiting Mr Darren Lee Newton from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 1.2. Mr Newton referred the Decision Notice to the Tribunal on 16 April 2018. On 5 October 2018, his reference was struck out by the Tribunal because of non-compliance with the Tribunal Procedure (Upper Tribunal) Rules 2008.
- 1.3. Accordingly, the Authority has today made the Prohibition Order in respect of Mr Newton.

2. SUMMARY OF REASONS

- 2.1. The Authority considers that Mr Newton is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm because his conduct as the director of First Step demonstrates a serious lack of honesty and integrity.
- 2.2. First Step was a debt management firm providing a full and final settlement product to its customers whereby First Step held significant amounts of client money before making a full and final settlement offer on behalf of its customers to their creditors.
- 2.3. The Authority considers that between 18 October 2013 and 28 May 2014 (the "Relevant Period"), when he was the director of First Step, Mr Newton was dishonest and lacked integrity in that:
- (a) Mr Newton knew that First Step was not permitted to use client money other than for the benefit of its customers; and
 - (b) Mr Newton directed or allowed First Step to transfer money, some or all of which was client money, totalling £322,500, to Christine Whitehurst, the former sole director and former shareholder of First Step. Those payments by First Step were stated to be deferred consideration due by D Newton Limited to Mrs Whitehurst, for D Newton Limited's purchase of her shares in First Step. Mr Newton was the sole director and sole shareholder of D Newton Limited.
- 2.4. At 18 October 2013 the client money shortfall of First Step exceeded £6 million. By 28 May 2014, when First Step went into administration, First Step should have been holding client money for over 4,000 customers and the client money shortfall was £7,156,036. Mr Newton was the sole director of First Step during that period.
- 2.5. The Authority considers that as a result of the seriousness of the matters referred to in this Notice, Mr Newton is not a fit and proper person. The Authority therefore has made the Prohibition Order. This action will advance the Authority's regulatory objectives, in particular the objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

"the 2013 Order" means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013;

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

"the Authority" means the Financial Conduct Authority;

"the CCA" means the Consumer Credit Act 1974;

"client account" means a bank account, separate from an office bank account, into which client money is held and segregated from a firm's own money;

"client money" means money paid by customers to a firm which is held by that firm on trust for its customers;

"client money shortfall" means the shortfall between the amount of money in the First Step client money bank account and the client money liability of First Step to its customers;

"Debt Help and Advice Limited" means the company incorporated on 6 November 2008 of which Mr Newton was appointed as a director on 1 June 2013. Debt Help and Advice Limited was placed into administration on 28 May 2014 and dissolved on 12 August 2015;

"deferred consideration" means the amount of £480,000 payable by D Newton Limited to Mrs Whitehurst in 24 monthly instalments of £20,000 commencing on 1 November 2013 for the purchase of her shares in First Step as set out in the Sale Agreement;

"Determination to Revoke Notice" means the notice issued to First Step under section 34(3) of the CCA dated 14 November 2012;

"D Newton Limited" means the company incorporated on 4 September 2013 of which Mr Newton was the sole director and shareholder. D Newton Limited was dissolved on 28 April 2015;

"EG" means the Authority's Enforcement Guide;

"First Step" means First Step Finance Limited (dissolved on 23 February 2016);

"FIT" means the Fit and Proper Test for Approved Persons and specified significant-harm functions section of the Authority's Handbook;

"full and final settlement" means a model in which a consumer credit firm holds money on behalf of its customer and does not distribute that money promptly to creditors, but instead retains the money pending negotiation of a settlement with the customer's creditors;

"the Handbook" means the Authority's Handbook of rules and guidance;

"Mr Newton" means Darren Lee Newton;

"Mrs Whitehurst" means Christine Whitehurst;

"office account" means the bank account, separate from a client bank account, into which funds of First Step, and not client money, were to have been held and segregated from client money;

"OFT" means the Office of Fair Trading;

"Prohibition Order" means an order prohibiting Mr Newton, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm;

"the Relevant Period" means the period from 18 October 2013 to 28 May 2014;

"Sale Agreement" means the Agreement for the Sale and Purchase of the Entire Share Capital of First Step Finance Ltd dated 18 October 2013 between D Newton Limited and Mrs Whitehurst; and

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

4. FACTS AND MATTERS

Regulation of First Step and its business model

- 4.1. First Step was incorporated on 28 September 2007 and commenced trading on or about 13 November 2007. First Step offered a debt reduction service (a form of debt management) to its customers.
- 4.2. On 26 November 2007, the OFT issued a consumer credit licence to First Step. That licence, issued under the CCA, permitted First Step to conduct debt counselling and debt adjusting services.
- 4.3. On 1 April 2014, consumer credit regulation transferred from the OFT to the Authority. On that date firms holding a consumer credit licence issued by the OFT were, on application, automatically granted interim permission to continue trading under article 56 of the 2013 Order. First Step did not have a licence from the OFT at that date and accordingly was not granted interim permission by the Authority.
- 4.4. A standard debt management plan is an informal arrangement conducted on behalf of customers by a debt management firm. The firm usually seeks to freeze interest and charges on its customer's debts. Customers make monthly payments to the firm from which the firm's fee is deducted. The balance of each monthly

payment is paid by the firm on a pro-rata basis to the customer's creditors. It may take many years for the debts to be paid off. However, with each monthly payment the customer's debts should be reduced.

- 4.5. First Step offered its customers a different model of debt reduction. First Step sought to reduce the total indebtedness of each customer by challenging the enforceability of the debt contracts; seeking to set off mis-selling claims (payment protection insurance or others) against certain debts on behalf of the customer; and negotiating a compromise of the customer's debts overall. As First Step undertook this process it received monthly payments from its customers but made no, or only token, payments to the creditors.
- 4.6. With this model, First Step was supposed to use its customers' monthly payments, less fees due to First Step, to build up a "pot" of money for each customer. The money in this pot was client money and should have been used to make an offer of full and final settlement of the debts with each of the customer's creditors. The client money was not to be used by First Step for any purpose other than paying the customer's creditors or for repayment to the customer.

OFT investigation and the revocation of First Step's licence

- 4.7. On 30 November 2009, the OFT visited First Step following receipt of a number of customer complaints. It reviewed First Step's business and on 6 December 2010 issued First Step with a notice stating that it was minded to revoke its licence. The OFT contended, amongst other things, that First Step had engaged in business practices appearing to be deceitful or oppressive or otherwise unfair or improper.
- 4.8. In response, First Step provided information and made representations to the OFT. However, on 14 November 2012, the OFT issued a notice of a determination to revoke First Step's licence. This was based on findings that First Step had engaged in deceitful, oppressive, improper and unfair business practices.
- 4.9. First Step referred the Determination to Revoke Notice to the First-Tier Tribunal General Regulatory Chamber (Consumer Credit) on 7 December 2012, but withdrew the reference on 27 July 2013. Its licence was revoked on 29 July 2013, and, subject to requirements, First Step was permitted to continue carrying out its licensed activities until 4pm on 18 October 2013.

- 4.10. Mr Newton controlled and managed First Step after 18 October 2013. Although the customers of First Step were to have been transferred to Debt Help and Advice Limited from that date, the transfer did not take place. First Step continued to receive payments from existing clients until it was placed into administration in May 2014.

The role of Mr Newton at First Step

- 4.11. Mr Newton was employed by First Step from 6 December 2010 as its financial controller responsible for oversight of the Finance Department. On 18 October 2013, Mr Newton was appointed as the director of First Step, replacing Mrs Whitehurst who resigned as a director on that day. As the sole director of First Step, Mr Newton had ultimate responsibility for all the financial affairs of the firm during the period of his appointment. On 18 October 2013, D Newton Limited purchased First Step's issued shares from Mrs Whitehurst. Mr Newton was the sole director and sole shareholder of D Newton Limited.
- 4.12. The agreed price for D Newton Limited's purchase of First Step's shares was £480,000, payable in 24 monthly instalments of £20,000 each. The first payment was due on 1 November 2013. An additional payment conditional upon the financial performance of First Step was to have been calculated at the end of the 24 month period following the sale.

First Step's bank accounts

- 4.13. From the start of trading on 13 November 2007 until 8 July 2009, First Step traded without a client account. Its customers made payments directly into First Step's office bank account. First Step did open a client account on 9 July 2009, but did not instruct its customers to make payments into that account and accordingly payments continued to be made into First Step's office account.
- 4.14. Rather than receive customer payments into the client account, First Step decided to receive client money into its office account (commingling its own monies and client monies). At various times client money was transferred from the office account to the client account. This was known as the "sweep".

4.15. The first sweep of client money to the client account took place on 26 November 2009. However, as a result of payments made from First Step’s office account, the amount of money in the office account was less than the amount of client money that First Step should have been holding on trust for its customers. Consequently, neither that sweep, nor subsequent sweeps, resulted in the transfer of all of the client money that First Step should have been holding on trust for its customers to the client account. There was therefore a client money shortfall, which existed when Mr Newton joined First Step in December 2010 as its financial controller. From that time the increase in the shortfall as recorded in First Step’s accounting records is shown in the table below:

Date	Client money shortfall £
30 November 2010	1,687,838
30 November 2011	3,869,472
30 November 2012	5,761,943
31 October 2013	6,119,716
28 May 2014	7,156,036

4.16. From December 2010, Mr Newton was at all relevant times aware of First Step’s bank balances and of the client money shortfall.

4.17. When Mr Newton became the sole director of First Step on 18 October 2013 the firm’s accounting records showed that the client money shortfall exceeded £6 million. When First Step entered into administration on 28 May 2014 that shortfall was £7,156,036 according to returns filed at Companies House. No dividend was paid to any creditor in the administration and over 4,000 customers of First Step have not had returned to them any of the client money that First Step should have been holding on their behalf in a segregated account.

Mr Newton’s misappropriation of client money

4.18. In the period from 26 November 2013 to 16 May 2014, as the sole director of First Step and with knowledge that there was a sizeable client money shortfall, Mr

Newton directed or allowed First Step to make payments from its office account, which contained commingled funds (see paragraph 4.14 above), totalling £322,500 to Mrs Whitehurst. Mr Newton told the Authority in interview that those payments were in respect of the deferred consideration due by D Newton Limited to Mrs Whitehurst under the terms of the Sale Agreement. The terms of the Sale Agreement actually required D Newton Limited to make seven monthly payments of £20,000 to Mrs Whitehurst, totalling £140,000, between November 2013 and May 2014.

4.19. On a monthly basis, the amounts that were actually transferred by First Step to Mrs Whitehurst were as follows:

Total payments in the month	Amount £
November 2013	40,000
December 2013	45,000
January 2014	62,500
February 2014	20,000
March 2014	55,000
April 2014	30,000
May 2014	70,000
Total	322,500

4.20. The May 2014 payments to Mrs Whitehurst comprised payments of £20,000 and £50,000 made on 15 May 2014 and 16 May 2014 respectively. Mr Newton first met the proposed administrators of First Step on 19 May 2014, three days after First Step made a £50,000 transfer to Mrs Whitehurst. First Step was subsequently placed into administration on 28 May 2014.

4.21. In relation to the deferred consideration, Mr Newton:

- (a) intended that First Step, and not D Newton Limited, would make the payments to Mrs Whitehurst;

- (b) was aware that First Step had a client money shortfall exceeding £6 million when D Newton Limited purchased First Step's issued shares in October 2013;
- (c) was aware that client money was not permitted to be used by First Step otherwise than for the benefit of its customers;
- (d) knew that First Step would have to utilise client money to make the payments to Mrs Whitehurst; and
- (e) directed or allowed First Step to make the payments to Mrs Whitehurst at more than twice the contractual rate set out in the Sale Agreement, including two payments totalling £70,000 within four days prior to his meeting with the proposed administrators of First Step.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. In light of the facts and matters described above, the Authority considers that Mr Newton's conduct was dishonest and that he lacks integrity. Accordingly, he lacks the fitness and propriety to perform any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.
- 5.3. Mr Newton knew that client money held by First Step was only to be used for the benefit of its customers: to pay the customers' creditors or to be returned to the customers. Notwithstanding this, during the Relevant Period, Mr Newton directed or allowed First Step to transfer money, some or all of which was client money, totalling £322,500, to Mrs Whitehurst, in order to pay a debt due by D Newton Limited to Mrs Whitehurst. In doing so he knew that he was using client money and that he was doing so at a time when First Step had a significant client money shortfall. The Authority considers that Mr Newton's conduct was dishonest and demonstrates a lack of integrity.
- 5.4. Given the serious nature of Mr Newton's misconduct the Authority is of the view that he poses a serious risk to consumers.

6. SANCTION

- 6.1. The Authority considers that Mr Newton has acted dishonestly and lacks integrity. It therefore considers it appropriate and proportionate in all the circumstances to make the Prohibition Order. This action will advance the Authority's consumer protection and market integrity objectives.
- 6.2. In making the Prohibition Order the Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A to this Notice).

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Newton, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Newton, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given under, and in accordance with, section 390 of the Act.

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

Publicity

- 8.3. 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. However, the Authority may not publish information if such publication would in the opinion of the Authority, be unfair to Mr Newton or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 8.4. For more information concerning this matter generally, contact Andrew Baum (direct line: 020 7066 8898 / andrew.baum@fca.org.uk) of the Enforcement and Market Oversight Division of the Authority.

Bill Sillett

**Head of Department, Enforcement and Market Oversight
Financial Conduct Authority**

Annex A

1. Relevant statutory and regulatory provisions

- 1.1. By virtue of article 56 of the 2013 Order licensees holding consumer credit licences issued by the OFT as at 31 March 2014 were granted interim permission by the Authority. Article 56(9) of the 2013 Order provides that an interim permission is to be treated as a Part 4A permission (except in certain circumstances, not relevant to this Warning Notice).
- 1.2. The Authority's statutory objectives, set out in section 1B of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 1.3. The Authority has power, under section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. Such an order may relate to specific regulated activity, any regulated activity falling within a specified description, or all regulated activities.

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

- 1.4. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in paragraphs 9.5.1 and 9.5.2 (referencing paragraph 9.3.2) of Chapter 9 of EG. In making a prohibition order the Authority's considers all relevant circumstances and the scope of the prohibition will take into account the reasons why the individual is not a fit and proper person, the severity of the risk the person poses to consumers or the market generally.
- 1.5. EG paragraph 9.3.2 includes the following: "*When the [Authority] decides whether to make a prohibition order against an approved person and/or withdraw their approval, the [Authority] will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.*"

9.3.2 (2) *Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).*

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

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

1.6. EG paragraph 9.5.1 states: *"Where the [Authority] is considering making a prohibition order against an individual other than an individual referred to in paragraphs 9.3.1 to 9.3.7 [in respect of an approved person], the [Authority] will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives."*

1.7. EG paragraph 9.5.2 states: *"When considering whether to exercise its power to make a prohibition order against such an individual, the [Authority] will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in paragraph 9.3.2."*

Fit and Proper Test for Approved Persons

1.8. The Authority has issued guidance on the fitness and propriety of individuals in FIT. Paragraph 9.3.2 of EG references the provisions of FIT.

1.9. FIT 1.3.1BG(1) states that, in the Authority's view, the most important considerations when assessing the fitness and propriety of a person include that person's honesty, integrity and reputation. FIT 2.1.1G provides that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters, including those set out in FIT 2.1.3G.

1.10. FIT 2.1.3G(7) notes that the Authority will have regard to whether the person has been involved with a company, partnership or other organisation that has been

refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body.

- 1.11. FIT 2.1.3G(9) notes that the Authority will have regard to whether the person has been a director or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.

OFT Guidance

- 1.12. The OFT Debt Management Guidance issued in September 2008 states at paragraph 2.23:

“Any monies held on behalf of consumers must be kept in a client account not usable by the [debt management company] for the purposes of its own business. This includes, in particular, any deposit which under the contract may be returned to the client at any date in the future and any monies received by the company for payment to creditors.”

- 1.13. The OFT Debt Management (and credit repair service) Guidance issued in March 2012 states at paragraph 3.42:

“Any monies held on behalf of consumers should always be kept in a separate ring-fenced client bank account and not be used by the licensee for its own purposes..... It is unlawful for a licensee to spend consumer client’s money on its own account since it is held in trust on behalf of the consumer client and is not the licensee’s to spend..... We would expect consumer client monies to be held in a separate ring-fenced bank account in such a way as to be “protected” in the event of a licensee holding such monies ceasing to trade...”

Annex B

Representations

1. Mr Newton's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

Unreliable evidence

2. *The administrators of First Step and Debt Help and Advice Limited did not retain a large number of electronic and paper records. As Mr Newton does not himself hold records, the lack of these records significantly affects the Authority's ability to understand the true factual position and Mr Newton's ability to defend himself against the allegations.*
3. *First Step's accounting records, which the Authority relies upon, were not audited or checked during the Relevant Period. In light of the lack of records retained by the administrators, the figures quoted from those records can therefore not be assumed to be correct.*
4. The Authority accepts that the administrators did not retain all records that may be of relevance to the matters set out in this Notice. However, Mr Newton has not produced an adequate analysis of what the missing records comprise or of how such records may undermine the case against him, and the Authority considers that the evidence that it has obtained and reviewed, which includes accounting records, financial statements, bank accounts and interview evidence, is sufficient for it fairly to conclude that Mr Newton's conduct shows a lack of honesty and integrity.
5. The Authority does not consider that the lack of audits by First Step of its accounting records during the Relevant Period undermines the case against Mr Newton. The Authority has cross-checked the accounting records against bank statements and payment lists, and is satisfied that the accounting records are generally reliable in relation to the payments made to Mrs Whitehurst.

Factual inaccuracies in the Authority's Enforcement Submissions Document ("ESD")

6. *The ESD contains factual inaccuracies in relation to: (i) the OFT Debt Management Guidance; (ii) the ownership of Debt Help and Advice Limited; and (iii) the meeting with the proposed administrators of First Step on 19 May 2014.*
7. The Authority considers that only the description of the OFT's Guidance in the ESD was in some respects inaccurate and that, in any case, neither that nor any of the other alleged factual inaccuracies materially affect the matters set out in this Notice.

Increase in the client money shortfall during the Relevant Period

8. *The client money shortfall did not increase during the Relevant Period. The apparent increase shown on First Step's accounting records (from £6,119,716 on 31 October 2013 to £7,156,036 on 28 May 2014) was due to accounting adjustments that Mr Newton made in order to correct client balances, which were understated as at October 2013. On account of the administrators not retaining all electronic and paper records, Mr Newton is unable to quantify the total adjustment, but considers it was significant enough to have exceeded £1 million.*
9. Mr Newton has not provided any evidence in support of his explanation for the apparent increase in the client money shortfall and, as is mentioned at paragraph 4 above, although the Authority accepts that the administrators did not retain all of First Step's records, Mr Newton has not produced an adequate analysis of what the missing records comprise or of how such records may undermine the case against him. Notwithstanding this, the Authority is not alleging that Mr Newton was responsible for the entirety of the apparent increase in the client money shortfall from over £6 million in October 2013 to over £7 million in May 2014. However, as the payments to Mrs Whitehurst were made from First Step's office account, which contained commingled funds (i.e. funds comprising a mixture of First Step's own monies and client monies), the Authority considers that these payments used client money and therefore must have increased the client money shortfall. As Mr Newton was aware that First Step's office account contained commingled funds and that there was a significant client money shortfall, the Authority considers Mr Newton acted dishonestly in directing or allowing First Step to make the payments to Mrs Whitehurst.

Payments to Mrs Whitehurst

10. *The Authority is unable to prove that client money was used to pay Mrs Whitehurst because the evidence provided by the Authority to support this allegation comprises unaudited accounting records of potential payments.*
11. *The total amount alleged to have been transferred to Mrs Whitehurst, as set out in the table at paragraph 4.19 of this Notice, is inconsistent with the figure inserted in the ESD and with the figure calculated by the Insolvency Service in its investigation of Mr Newton's conduct as a director of First Step.*
12. *The arrangement for D Newton Limited to purchase the shares in First Step, for payments to be made to Mrs Whitehurst by way of deferred consideration, and for the payments to be made by First Step, was on the basis of advice that Mr Newton received from two firms of accountants; Mr Newton is unable to provide a copy of this advice as it was not retained by the administrators. Further, two sets of solicitors reviewed and wrote up the Sale Agreement and did not raise any concerns.*
13. *Mr Newton did not know that First Step would have to use client money to make payments to Mrs Whitehurst. He expected the payments to be made from office funds as First Step was still generating fees.*
14. *Mr Newton had no knowledge of, and did not authorise, the payments of £20,000 and £50,000 to Mrs Whitehurst which were made in May 2014. He informed Mrs Whitehurst in April 2014 that he would be making no further payments to her in respect of the Sale Agreement. Therefore, in accordance with the terms of the Sale Agreement, and in accordance with a charge on First Step in favour of Mrs Whitehurst, control of First Step reverted to Mrs Whitehurst from that point.*
15. *The Authority considers that the evidence supports its view that client money was used to pay Mrs Whitehurst. In addition to the accounting records, other records demonstrate that the payments were made from First Step's office account, and as the office account contained commingled funds, at least some of the money paid to Mrs Whitehurst was client money.*
16. *The Authority considers the £322,500 total payment figure in paragraph 4.19 of this Notice is accurate. The ESD stated that the total was £288,500. However, this included a negative £40,000 year end accounting adjustment which has been omitted from the table at paragraph 4.19 in order for the table to reflect the actual payments*

made during the Relevant Period. In June 2016, following an investigation by the Insolvency Service, Mr Newton signed a director's disqualification undertaking, in which he undertook not to act as a director for a period of three years and six months. The schedule to this disqualification undertaking states that the payments to Mrs Whitehurst totalled at least £302,500. The Authority is not aware of how the Insolvency Service calculated this figure, but considers its own calculations are accurate as they are based on the accounting records. In any case, the relatively small differences in the figures do not affect the Authority's conclusion regarding Mr Newton's misconduct.

17. The Authority has not seen the advice that Mr Newton states he received from two firms of accountants, and nor has it been provided with any relevant evidence in support of Mr Newton's assertion. However, even if Mr Newton did receive such advice, it does not address the issue that First Step used client money to make the payments to Mrs Whitehurst. Mr Newton was aware that client money was not permitted to be used by First Step otherwise than for the benefit of its customers.
18. Mr Newton was aware, when D Newton Limited entered into the Sale Agreement, that First Step had a large client money shortfall, that First Step did not segregate client money from office funds and that there was an intention to transfer First Step's customers to Debt Help and Advice Limited, which would have led to lower fees being generated over time. Accordingly, the Authority does not consider it credible that Mr Nelson did not know that First Step would have to use client money to make the payments to Mrs Whitehurst.
19. The Authority has not seen any evidence that control of First Step did in fact revert to Mrs Whitehurst in April 2014. The Sale Agreement does not provide that control of First Step would revert to Mrs Whitehurst if the payments to her were to cease, and the Authority does not agree that, as a result of the charge, control of First Step would automatically revert to Mrs Whitehurst in such circumstances. Companies House records and the papers filed by the administrators demonstrate that Mr Newton remained the sole director of First Step until it went into administration. Accordingly, Mr Newton remained responsible for First Step's financial affairs, and the Authority concludes that, as First Step's director, he directed or allowed First Step to make all the payments to Mrs Whitehurst, including those made in May 2014.

First Step's business model

20. *The description of First Step's business model, at paragraphs 2.2 and 4.5 of this Notice, is inaccurate, particularly in respect of how First Step operated its business during the Relevant Period.*

21. Mr Newton has not explained in his representations how he considers the business model was different during the Relevant Period. The Authority notes that, in interview with the Authority, Mr Newton stated that there was an intention to review First Step's client base to determine if it was more appropriate for some clients to move from the First Step business model to an Involuntary Voluntary Arrangement ("IVA"), and that First Step would transfer the client's funds if an IVA was deemed to be a more appropriate solution. However, this did not happen.