

# Financial Supervision Commission

## Prohibition Policy

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## **1. Introduction**

The Financial Supervision Commission (“the Commission”) has powers (under section 10A of the Financial Services Act 2008 and section 11B of the Collective Investment Schemes Act 2008) to prohibit individuals who are not fit and proper<sup>1</sup> from carrying out functions in relation to regulated activities or from being a member of the governing body of a collective investment scheme. These powers assist the Commission in fulfilling its regulatory objectives<sup>2</sup>.

The Commission may exercise its powers to impose a prohibition where it considers that it is appropriate to prevent an individual from performing any function in relation to regulated activities, or from being a member of the governing body of a scheme, or to restrict the functions which that individual may perform.

The power to prohibit can be used against any individual in connection with performing functions relating to regulated activities or being a member of a governing body of a scheme. It is not limited to individuals acting as director, manager, controller, company secretary, compliance officer, Money Laundering Reporting Officer (“MLRO”), deputy MLRO, or key staff (such persons being referred to in this document as persons in vetted roles).

## **2. The Commission’s general policy regarding imposing prohibitions**

In deciding whether to impose a prohibition the Commission will consider all the relevant circumstances including whether any other disciplinary action should be taken or has already been taken against that individual by the Commission or other enforcement agencies or professional bodies.

As noted below, in some cases the Commission may take other disciplinary action against the individual in addition to imposing a prohibition.

The Commission has the power to make a range of prohibition notices depending on the circumstances of each case and the range of regulated activities (or schemes) to which the individual's lack of fitness and propriety is relevant.

In relation to regulated activities, depending on the circumstances the Commission may prohibit individuals from performing any type of function in relation to any class of regulated activity, or it may limit the prohibition to specific functions in relation to specific regulated activities. The Commission may also prohibit an individual from

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<sup>1</sup> The Commission’s General Licensing Policy details the criteria for assessing a person’s fitness and propriety, and includes consideration of a person’s competence, integrity and solvency.

<sup>2</sup> The regulatory objectives of the Commission are set out in the Financial Services Act 2008 at section 2(2) and consist of:

- (a) securing an appropriate degree of protection for the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) supporting the Island’s economy and its development as an international financial centre.

being employed by a particular licenceholder or permitted person in relation to regulated activities, a particular type of regulated activity or all regulated activities. In all cases the prohibition must relate to regulated activity and / or roles where regulated activity is undertaken.

In relation to collective investment schemes, depending on the circumstances the Commission may prohibit individuals from being a member of the governing body of a specific scheme, schemes of a specific description or any scheme.

The scope of a prohibition will depend on the range of functions which the individual concerned performs or may perform in relation to regulated activities or schemes, the reasons why that person is not fit and proper as well as the severity of risk which he or she poses to consumers or the financial services industry generally.

Where the Commission imposes a prohibition, it may indicate in the notice that it would be minded to vary or revoke it on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the Commission gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on application. However, the Commission will only adopt this approach in cases where it considers it appropriate in all the circumstances. In deciding whether to adopt this approach, the factors the Commission may take into account include, but are not limited to, those at 3 below.

**The Commission is not obliged to revoke a prohibition after any indicated period despite giving such an indication.** Furthermore, if an individual's prohibition is revoked, he or she would still have to satisfy the Commission as to his or her fitness for any vetted role<sup>3</sup> applied for thereafter. The effect of revocation of a prohibition is NOT to determine a person to be fit and proper.

### **3. The Commission's approach to imposing prohibitions against persons in vetted roles**

When the Commission has concerns about the fitness and propriety of a person in a vetted role it may simply decide to direct that the person may not continue in that particular role (under powers in section 10 of the Financial Services Act 2008). Depending on the reason for its concern the Commission may also consider whether it should prohibit that person (under powers in section 10A of the Financial Services Act 2008) from performing functions in relation to any or all regulated activities.

In deciding the most appropriate action to take the Commission will consider in each case whether its regulatory objectives can be achieved adequately by imposing alternative disciplinary action, for example, public censures by way of press statements, or issuing a warning notice under section 11 of the Financial Services Act 2008.

When it is deciding whether to impose a prohibition in relation to a person in a vetted role and / or withdraw its approval for that person to continue in that role, the

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<sup>3</sup>. For more details on the vetting process see the Commission's General Licensing Policy available on: [http://www.fsc.gov.im/Authorisations/apply\\_for\\_licence.xml](http://www.fsc.gov.im/Authorisations/apply_for_licence.xml)

Commission will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below:

- (1) The risks to the Commission's regulatory objectives if a prohibition is not imposed.
- (2) Whether the individual is fit and proper to perform functions in relation to regulated activities, including whether, and to what extent, the individual has:
  - (a) failed to meet the fit and proper criteria; or
  - (b) been knowingly concerned in a contravention by a licenceholder or permitted person of a requirement imposed on that licenceholder or permitted person by or under the Financial Services Act 2008, Collective Investment Schemes Act 2008, and any of the secondary legislation made under those Acts (such as the Financial Services Rule Book).
- (3) Whether the individual has engaged in market abuse.
- (4) The relevance and materiality of any matters indicating unfitness.
- (5) The length of time since the occurrence of any matters indicating unfitness.
- (6) The particular vetted role the individual is (or was) performing, the nature and activities of the licenceholder, permitted person or scheme concerned and the markets in which it operates.
- (7) The severity of the risk which the individual poses to consumers and to confidence in the financial system.
- (8) The previous disciplinary record and general compliance history of the individual including whether the Commission, any professional body or other domestic or international regulator has previously imposed disciplinary action on the individual.

The Commission may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a vetted role or any other function in relation to regulated activities. Such matters are likely to have been the subject of cumulative regulatory action, for example, the issuance of penalties, directions, conditions, warning notices, etc. The Commission may also take account of the particular vetted role which a person is performing, the nature and activities of the permitted person concerned and the markets within which it operates.

Due to the diverse nature of the activities which the Commission regulates, it is not possible to produce a definitive list of matters which the Commission might take into account. The following are examples of types of behaviour which may result in the Commission deciding to impose a prohibition (under section 10A of the Financial Services Act 2008) and / or deciding to direct that the person may not continue in that particular role (under powers in section 10 of the Financial Services Act 2008):

- (1) Providing false or misleading information to the Commission; including information relating to identity, ability to work in the Isle of Man, previous employment history and disciplinary issues.
- (2) Failure to disclose material considerations on application and other forms, such as details of court judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant.
- (3) Serious acts of dishonesty, e.g. which may have resulted in financial crime.
- (4) Serious lack of competence.
- (5) Serious breaches of the regulatory requirements, such as:
  - (a) providing misleading information to clients, consumers or third parties;
  - (b) using intimidating or threatening behaviour towards clients or former clients; and / or
  - (c) failing to remedy breaches of the general prohibition or to ensure that a licenceholder acts within the scope of its financial services licence.

Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the Commission will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

Where it considers it is appropriate to direct that the person may not continue in his vetted role within a particular licenceholder, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.

#### **4. Prohibitions in relation to exempt persons**

In cases where the Commission is considering whether to exercise its power to impose a prohibition against an individual performing functions in relation to exempt regulated activities by virtue of an exemption from the general prohibition under the Financial Services (Exemption) Regulations 2011, it will consider whether the particular unfitness might be more appropriately dealt with by withdrawing the exemption using its power under section 44(2)(b) of the Financial Services Act 2008.

In most cases where the Commission is concerned about the fitness and propriety of a specific individual in relation to exempt regulated activities, it will be more appropriate to impose a prohibition on the individual from performing functions in relation to exempt regulated activities than to withdraw the exemption.

When considering whether to exercise its power to impose a prohibition in relation to an exempt person, the Commission will consider all relevant circumstances including, where appropriate, the factors set out in 3.

## **5. Prohibitions against other individuals**

Where the Commission is considering imposing a prohibition against an individual other than an individual referred to in 3 or 4 it 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 regulatory objectives.

When considering whether to exercise its power to impose a prohibition against such an individual, the Commission will consider all the relevant circumstances of the case which may include, but are not limited to, the factors set out in 3 or 4. It is likely that the Commission would consider prohibition if such a person were involved in regulated activity and was convicted of a relevant offence, e.g. a member of general staff of a licenceholder that is not a key person but who may have been convicted of theft or fraud in relation to the licenceholder's regulated activities, such as stealing from a clients' account.

## **6. Publication of prohibitions**

Under section 10D of the Financial Services Act 2008 and section 11E of the Collective Investment Schemes Act 2008 the Commission must maintain and publish a list of all prohibitions. All prohibitions will be listed on the Commission's website. This is because it is easily accessible, it informs the public and helps to maximise the deterrent effect of disciplinary action.

The list must specify the name of the individual prohibited and the functions or descriptions of functions to which the prohibition applies. In relation to schemes the list must specify the scheme, schemes or class or classes of schemes in respect of which the prohibition applies.

**The Commission expects that public statements relating to prohibitions which are still in effect will not be removed from the website regardless of the length of time they have been published.** For those that are no longer in effect the Commission expects usually to conclude that items in the list and any related public statements that have been published should be removed from the website.

## **7. Appeals**

Section 32 of the Financial Services Act 2008 provides for appeals to be made to the Financial Services Tribunal against the imposition of a prohibition, the variation or refusal to vary a prohibition and the refusal to revoke a prohibition.

## **8. Publication of further details regarding prohibitions**

When the decision to impose a prohibition is no longer open to appeal, the Commission will consider what additional information about the person subject to the prohibition or about the reasons for the prohibition it may make in a public statement.

The Commission will balance any possible prejudice to the individual concerned against the interests of risk mitigation and consumer protection.

The Commission's normal approach to providing further details about a prohibition is as follows:

- (1) The Commission is statutorily obliged to maintain and publish a list of all individuals against whom a prohibition is imposed. This will be published on the Commission's website while a prohibition is in effect. If the Commission subsequently grants an application to vary the notice, it will make a note of the variation on the website.
- (2) Where the Commission grants an application to revoke a prohibition, it will make a note on the website that the notice has been revoked giving reasons for the revocation. The availability to licenceholders and consumers of a full record of the Commission's prohibition action taken in relation to an individual's fitness and propriety will help the Commission in furthering its regulatory objectives. In particular, by maintaining confidence in the financial system it will protect consumers.

## **9. Applications for variation or revocation of prohibitions**

When considering whether to grant or refuse an application to revoke or vary a prohibition, the Commission will consider all the relevant circumstances of a case. These may include, but are not limited to:

- (1) The seriousness of the misconduct or other unfitness that resulted in the prohibition and the amount of time since the prohibition was imposed.
- (2) Any steps taken subsequently by the individual to remedy the misconduct or other unfitness.
- (3) Any evidence which, had it been known to the Commission at the time, would have been relevant to the Commission's decision to impose the prohibition.
- (4) All available information relating to the individual's honesty, integrity or competence since the prohibition was imposed, including any repetition of the matters which resulted in the prohibition being imposed.
- (5) Where the Commission's finding of unfitness arose from incompetence rather than from dishonesty or lack of integrity, evidence that this unfitness has been remedied.
- (6) The financial soundness of the individual concerned.
- (7) Whether the individual will continue to pose the level of risk to consumers or confidence in the financial system which resulted in the original prohibition if it is lifted.

When considering whether to grant or refuse an application to revoke or vary a



prohibition, the Commission will take into account any indication given by the Commission in the prohibition that it may have been minded to revoke or vary the prohibition on application after a certain number of years.

If the individual applying for a revocation or variation of a prohibition proposes to take up an offer of employment to perform a vetted role then he or she will need also to apply to be vetted for that particular role in the normal way.

The Commission will not generally grant an application to vary or revoke a prohibition unless it is satisfied that the proposed variation or revocation will not result in a recurrence of the risk to consumers or confidence in the financial system that resulted in the prohibition being imposed.

#### **10. Other powers that may be relevant when the Commission is considering whether to exercise its power to impose a prohibition**

In appropriate cases, the Commission may take other action against an individual in addition to imposing a prohibition notice and / or directing that the person may not continue in their role as a vetted person. This may include the use of powers to: issue a public statement; seek their disqualification under the Company Officers (Disqualification) Act 2009 or seek prosecution for certain criminal offences.

#### **11. The effect of the Commission's decision to impose a prohibition**

A permitted person commits an offence if, without reasonable excuse, the permitted person permits an individual to perform a function which he or she has been prohibited from performing.

The Commission considers that a search by a permitted person of the Commission's published list of prohibitions is an essential element of staff or officer recruitment and good governance.