



Jersey Financial Services Commission

Public Statement

Mr Timothy James McKimmon (“Mr McKimmon”), born 25 October 1958.

Former principal person of Horizon Trustees (Jersey) Limited (in liquidation) (“HTJL”)

Financial Services (Jersey) Law 1998, as amended (the “FS(J)L”)

1. Action

- 1.1. The Jersey Financial Services Commission (the “**Commission**”) issues this public statement under Article 25(a) of the FS(J)L with respect to directions issued to Mr McKimmon under Article 23 of the FS(J)L.
- 1.2. The Commission’s actions support its objectives of reducing the risk to the public of financial loss and protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters.
- 1.3. An investigation into the fitness and propriety of Mr McKimmon, in his capacity as a former principal person of HTJL, has taken place and the Commission has concluded that, in all the circumstances, Mr McKimmon acted without integrity, and his displayed level of incompetence was of the most serious kind.
- 1.4. The Commission has, therefore, concluded that it is necessary and proportionate in all the circumstances of the case that directions are issued under the FS(J)L.
- 1.5. The directions prevent Mr McKimmon from:
 - 1.5.1. performing any function at all for;
 - 1.5.2. engaging in any employment at all by; and
 - 1.5.3. holding any position at all in the business of any registered person.
- 1.6. The directions shall remain in force until such time as Mr McKimmon successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. Mr McKimmon has also been issued with directions under the equivalent provisions of the other regulatory laws.¹

¹ The Banking Business (Jersey) Law 1991, as amended
The Collective Investment Funds (Jersey) Law 1988, as amended
The Insurance Business (Jersey) Law 1996, as amended



2. Background

- 2.1. On 7 November 2013, the Commission issued a public statement in respect of the findings of its investigation into HTJL.² The Commission's investigation focussed on the period from 1 January 2008 to 30 May 2012.
- 2.2. HTJL was one of a number of related companies bearing the Horizon name ("**the Horizon Group**") and had a diverse customer base. Whilst some of HTJL's customers were sophisticated ultra-high net worth individuals ("**UHNWI**"), others were unsophisticated and, indeed, vulnerable individuals.
- 2.3. HTJL provided trust company business services to a number of private fund structures. These structures were established to provide a number of the UHNWI customers with the opportunity to invest in alternative asset classes, including shipping, property and media rights.
- 2.4. A number of the UHNWI customers had financial exposure to a UK media rights company ("**the Film Co.**"). This exposure was either by way of direct shareholder interest or by virtue of investing in a media fund ("**the Media Fund**"): one of HTJL's private in-house fund structures which effectively operated as a joint venture with the Film Co.
- 2.5. In January 2010, the Film Co.'s AIM listing was suspended due to financial uncertainty. In April 2010, a successful bid was made for the Film Co. by a company HTJL's CEO claimed to beneficially own ("**Bid Co.**"). A significant factor in the decision to acquire the Film Co. was the protection of the interests of the UHNWI customers, a number of whom assisted in financing the bid. The Film Co.'s equity was acquired for one penny and its Convertible Loan Notes ("**CLNs**") for £0.55 per £1.00 nominal value.
- 2.6. Subsequent to the acquisition, HTJL, a company devoid of media or film experience, was appointed to administer the Film Co. Directors of HTJL were also appointed as directors of Film Co. This acquisition and HTJL's administration appointment created numerous conflicts of interest.
- 2.7. Shortly after the acquisition of Film Co., a New Zealand Limited Partnership ("**Structure X**") was created. This structure, which became a focus of the Commission's investigation, was used as a vehicle, funded by investments from HTJL's wider customer base, to purchase the Film Co.'s CLNs from the Bid Co. The CLNs were each sold for £1.00 despite only recently having been acquired for £0.55.
- 2.8. In total, £3.445 million was transferred from customer structures and invested into Structure X. The monies were not routed to Structure X but were transferred to Bid Co. and were then used to discharge the Film Co.'s numerous and pressing creditors. In essence, Bid Co. became a financing vehicle to the Film Co. which is currently in liquidation with creditor claims of circa £43 million.

² [www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-\(Jsy\)-Limited-November-2013.pdf](http://www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-(Jsy)-Limited-November-2013.pdf)



- 2.9. Concerns over the serious financial position of the Film Co. were first documented by officers of HTJL shortly after the acquisition by Bid Co. Such were these concerns, placing the Film Co. into a company voluntary arrangement was considered only one month after Bid Co.'s acquisition, namely in May 2010.
- 2.10. Despite the Film Co.'s serious financial difficulties, during 2010 and 2011 valuations were sent to customers, in which their investments were recorded at cost. The financial statements of the Media Fund were signed reporting that the assets were not impaired. At no time were the HTJL customers informed about the Film Co.'s serious financial difficulties.
- 2.11. HTJL's customers have not been able to recover their investments or loans and it appears that HTJL customers have incurred substantial losses.

3. Role

- 3.1. Mr McKimmon was appointed as a director of HTJL on 8 June 2009, occupying the position of Head of Trust and Fund Administration. In this position, two of Mr McKimmon's fellow HTJL directors reported to him.
- 3.2. The majority of Mr McKimmon's time was spent dealing with the issues arising from HTJL's administration of private fund structures, including the Media Fund in respect of which Mr McKimmon acted as a director to its General Partner.

4. Summary of Findings

- 4.1. The Commission has previously concluded that HTJL breached all seven principles of the Codes of Practice for Trust Company Business, including failing to conduct business with integrity, failing to ensure conflicts of interest were managed and failing to act in the best interests of customers. As a director and Head of Trust and Fund Administration of HTJL, Mr McKimmon bears significant responsibility for these failings.
- 4.2. Mr McKimmon, as a director and Head of Trust and Fund Administration of HTJL, shares responsibility for the following:
 - 4.2.1. a confused and ineffective corporate governance structure;
 - 4.2.2. a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
 - 4.2.3. a failure to realise a Horizon services company was conducting unauthorised financial services business;
 - 4.2.4. a lack of transparency over fees levied to customers; and
 - 4.2.5. a failure to manage risk and to identify and address issues facing HTJL.

Mr McKimmon's conduct lacked integrity and competence.



Structure X

- 4.3. Mr McKimmon was aware the Film Co. remained solvent through the use of customer monies to discharge its numerous and significant liabilities. In spite of his complete lack of understanding of the investment structure, Mr McKimmon co-authorized 16 investments, totalling £2.63 million into Structure X, thereby placing customer assets at inappropriate and avoidable risk. This conduct was reckless and lacked integrity.
- 4.4. In some cases, the relevant trustee or directors meeting, in respect of the customer structure in question, was held after monies had been transferred for the purposes of investing in Structure X. The Commission's investigation revealed that the minutes and resolutions were executed in the following circumstances:
 - 4.4.1. the decisions to invest were based purely on an instruction issued by a colleague;
 - 4.4.2. little, if any, consideration had been given to the key documents associated with the investments;
 - 4.4.3. no bespoke consideration had been given to the interests of the customers;
 - 4.4.4. the investments were made in the knowledge the monies were not to be remitted to Structure X but would be transferred directly to the Bid Co. for the purposes of discharging the Film Co.'s creditors;
 - 4.4.5. no proper consideration was given to the numerous and significant conflicts of interest associated with an investment in Structure X, including that the CLNs had, only a short time earlier, been acquired by the Bid Co.;
 - 4.4.6. customer structures acquired their respective interests in the CLNs by paying 80% more (the difference between £0.55 and £1.00) than had recently been paid by the Bid Co.;
 - 4.4.7. there remained significant concerns over the previous management of the Film Co.; and
 - 4.4.8. the investments were high risk, suitable for professional investors only and were made knowing those officers of HTJL directing the affairs of the Film Co. had no experience whatsoever of the film and media industry.
- 4.5. The minutes and resolutions authorising investments in Structure X were taken from a bank of pro-forma precedents, bore little or no resemblance to the facts and therefore presented a false record. The circumstances in which the investments were authorised by Mr McKimmon revealed a failure to discharge the function of a professional fiduciary. Mr McKimmon's conduct was reckless and lacked integrity.
- 4.6. Mr McKimmon acted with a wilful disregard to his fiduciary obligations. He knew that customers' assets, including those of vulnerable individuals, were used to reduce the risks to which a number of HTJL's UHNWI customers were already exposed. This conduct was not in the best interests of customers concerned. Mr McKimmon's conduct lacked integrity.



- 4.7. Mr McKimmon knew HTJL's customers received valuations in circumstances where questions were being raised about the reliability of the valuations. Further, Mr McKimmon knew there was insufficient information available to HTJL to support the amounts recorded in the valuations. This conduct lacked integrity.
- 4.8. As a result of the conduct of Mr McKimmon and others, HTJL's customers face the loss of very significant sums of money.

The Media Fund

- 4.9. Despite being a director to the General Partner of the Media Fund, Mr McKimmon possessed little knowledge of the activities of this fund, including the security of significant loans advanced by the fund. Despite being aware of serious concerns over the fund's joint venture partner, Mr McKimmon failed to ensure any appropriate action was taken to include effective and timely communication to investors.
- 4.10. In respect of the Media Fund, Mr McKimmon authorised the signing of financial statements and a letter of representation which included material misstatements. This conduct lacked integrity.

5. Conclusions

- 5.1. The Commission has therefore concluded that, in all the circumstances, Mr McKimmon acted without integrity, and his displayed level of incompetence was of the most serious kind.

6. Sanctions

- 6.1. The directions prohibit Mr McKimmon from performing any function, holding any position or being employed by any business licensed to conduct financial services business in Jersey.
- 6.2. The directions shall remain in force until such time as Mr McKimmon successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions.
- 6.3. Mr McKimmon will commit an offence, under Article 23(15) of the FS(J)L, in the event he fails to comply with the provisions of the directions.
- 6.4. Pursuant to Article 23(15A) of the FS(J)L, any person who allows Mr McKimmon to perform a function, engage in employment or hold a position knowing that such performance, engagement or holding is in contravention of the directions shall be guilty of an offence.

Jersey Financial Services Commission

14-18 Castle Street
St Helier
Jersey
JE4 8TP

Contact: Barry Faudemer, Director, Enforcement Division

Telephone 01534 822137 or Email: b.faudemer@jerseyfsc.org