
FINAL NOTICE

To: **Christopher John Riches**

Address: **23 Suttons Lane
Hornchurch
Essex
RM12 6RD**

FRN: **313549**

Dated: **5 June 2013**

ACTION

1. For the reasons listed below, the Authority hereby:
 - (i) imposes on Mr Riches, pursuant to section 206 of the Act, a financial penalty of £63,000 in respect of Mr Riches' breaches of Principles 1 (Integrity) and 11 (Relations with regulators) of the Authority's Principles for Businesses, and for his breaches of section 20 of the Act. Were it not for Mr Riches' financial position the Authority would have imposed on him a financial penalty of £139,851.77 (plus interest);
 - (ii) makes an order, pursuant to section 56 of the Act, prohibiting Mr Riches from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, as he is not a fit and proper person because he lacks honest and integrity. This order takes effect from 5 June 2013; and
 - (iii) cancels Mr Riches' Part 4A permission pursuant to section 55J of the Act.
2. The Authority issued a Decision Notice to Mr Riches on 8 April 2013 which notified him that it had decided to take the above action. Mr Riches has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to him.

SUMMARY OF REASONS

3. Between 12 January 2010 and 30 April 2012, Mr Riches: (i) deliberately and for personal benefit conducted regulated activities despite being subject to a requirement, and despite repeated warnings from the Authority, not to do so; (ii) deliberately submitted false and misleading information to the Authority; and (iii) failed to be open and co-operative with the Authority.

DEFINITIONS

4. The definitions below are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000

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

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“RMAR” means Retail Mediation Activities Return

“PII” mean Professional Indemnity Insurance

FACTS AND MATTERS

5. Mr Riches was granted authorisation by the Authority on 31 October 2004 to conduct regulated home finance business, and on 14 January 2005 was also permitted to conduct insurance mediation business.
6. In December 2009, the Authority discovered that Mr Riches did not have the requisite PII cover. Following this, to address the Authority’s concerns, on 12 January 2010 Mr Riches signed an application to vary his permission to add a requirement to cease to conduct regulated activities. Mr Riches’ permission was varied on that date to add the requirement.
7. On 14 January 2010, the Authority wrote to Mr Riches to notify him that his application had been approved and that he should therefore cease conducting all regulated activities with immediate effect.
8. On 17 May 2010, Mr Riches submitted an RMAR for the period ended 31 March 2010 claiming to have PII in place when he did not.
9. On 9 November 2010, Mr Riches submitted an RMAR for the period ended 30 September 2010 claiming to have PII in place when he did not.
10. On 16 May 2011, Mr Riches submitted an RMAR for the period ended 31 March 2011 claiming to have PII in place when he did not.
11. On 8 July 2011, the Authority contacted Mr Riches to inform him that it had evidence that he had conducted regulated activities since 12 January 2010. The Authority asked for an explanation for this and reminded Mr Riches that he was not permitted to conduct any regulated activities.
12. On 3 August 2011, the Authority spoke to Mr Riches by telephone and explained that he should not have conducted any regulated activities since 12 January 2010, whether on an advised or non-advised basis. This was reiterated by emails to Mr Riches on 3 and 11 August 2011.

13. The Authority wrote to Mr Riches on 10 January 2012 detailing its concerns that Mr Riches had been conducting regulated activities in breach of the requirement placed on his permission. The Authority subsequently met with Mr Riches on 25 January 2012 to ask for an explanation of his conduct. At this meeting Mr Riches accepted that he had breached the requirement, but sought to mislead the Authority by disputing the Authority's then understanding that: (i) he had acted in breach of the requirement in relation to 49 mortgage transactions, claiming it was not as many as 49, when in fact it subsequently became apparent he had breached the requirement in relation to at least 97 mortgage transactions (65 completed and 32 that did not complete); and (ii) he had done business in breach of the requirement with nine different mortgage providers, claiming it was only two, when in fact it was eleven different providers.
14. At the 25 January 2012 meeting the Authority made it clear to Mr Riches that he should have withdrawn his involvement in open regulated mortgage applications. Nevertheless a further four mortgage applications on which Mr Riches had advised completed after 25 January 2012.
15. As a result of his deliberate misconduct Mr Riches earned approximately £40,000 in fees that he would not have earned if he had complied with his obligations.
16. By a First Supervisory Notice dated 26 June 2012, Mr Riches' permission was varied with immediate effect to remove all regulated activities, as Mr Riches had failed to act with honesty and integrity, and had failed to be open and co-operative with the Authority.

FAILINGS

17. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.
18. Between 12 January 2010 and 30 April 2012, in breach of Principles 1 and 11 and section 20 of the Act, Mr Riches: (i) deliberately, and for personal benefit, conducted regulated activities despite being subject to a requirement, and despite repeated warnings from the Authority, not to do so; (ii) deliberately submitted false and misleading information to the Authority; and (iii) failed to be open and co-operative with the Authority.
19. The Authority therefore considers that Mr Riches is not a fit and proper person as he lacks honesty and integrity, and that he poses a risk to consumers and to confidence in the financial system.

SANCTION

Penalty

20. The Authority has imposed a financial penalty on Mr Riches for his breaches of Principles 1 and 11, and section 20 of the Act.
21. The financial penalty is determined by a five-step framework, set out in DEPP, having regard to all the circumstances of the case. The penalty therefore consists of:

Step 1 – disgorgement

22. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this and will ordinarily charge interest on the benefit. The pre-interest disgorgement amount (and the Step 1 figure) is therefore £39,851.77 i.e. the fees

that Mr Riches wrongfully obtained. For the purposes of this Final Notice, interest on each individual fee received by Mr Riches has been calculated based on (i) an interest rate of 8 % simple per year and (ii) the number of whole months since the date the fee was received by Mr Riches (assumed to be the date of completion of the relevant mortgage) to the date of this Final Notice.

Step 2 – the seriousness of the breach

23. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
24. The Authority considers that the revenue generated by Mr Riches is indicative of the harm or potential harm caused by his breach. The Authority has therefore determined a figure based on a percentage of Mr Riches' relevant revenue. His relevant revenue is the revenue derived by him during the period of the breach. The period of breach was from 12 January 2010 to 30 April 2012. The Authority considers Mr Riches' relevant revenue for this period to be £39,851.77, being the total amount of the fees that he wrongfully obtained.
25. In deciding on the percentage of relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:
 - Level 1 – 0%
 - Level 2 – 5%
 - Level 3 – 10%
 - Level 4 – 15%
 - Level 5 – 20%
26. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors' and in this regard the Authority considers the following factors to be relevant:
 - (a) Mr Riches failed to conduct his business with integrity; and
 - (b) the breaches were deliberate and for his personal benefit and were conducted over a considerable period of time.
27. The Authority has therefore determined the seriousness of Mr Riches' breaches to be Level 4.
28. A Level 4 breach equates to 15% of Mr Riches' relevant revenue, being £5,937.26. The Step 2 figure is therefore £45,789.03 (£39,851.77 plus £5,937.26) plus interest.

Step 3 – mitigating and aggravating factors

29. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged in accordance with Step 1, to take into account factors which aggravate or mitigate the breach.
30. The Authority considers the following to be aggravating factors: (1) many of Mr Riches' breaches were committed in spite of warnings and reminders from the Authority; and (2) even after the meeting with the Authority on 25 January 2012 Mr Riches took no steps to remedy the breaches that had occurred despite being informed by the Authority that one way to remedy the breaches would be to withdraw any uncompleted mortgage applications. The Authority does however note that Mr Riches has now made significant admissions to the Authority in respect of his behaviour.
31. The Authority considers it necessary to increase the £5,937.26 figure from Step 2 by 75% to take into account the aggravating factors. The additional penalty figure after Step 3 is therefore £10,390.20 giving a total at Step 3 of £50,241.97 plus interest.

Step 4 – adjustment for deterrence

32. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
33. The Authority does not consider that the non-disgorgement element of the financial penalty (£10,390.20) calculated after Step 3 represents a sufficient deterrent given Mr Riches' repeated and deliberate disregard of his regulatory obligations in spite of the Authority's warnings. Fixing the non-disgorgement element of the financial penalty at this low level would be an insufficient deterrent to Mr Riches and/or others from committing similar breaches (DEPP6.5A.4G(1)(a)). The Authority considers the appropriate non-disgorgement element of the financial penalty to be £100,000, an uplift of £89,609.80. The total figure after Step 4 is therefore £139,851.77 plus interest (£100,000 plus the Step 1 figure).

Step 5 – settlement discount

34. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.
35. The Authority and Mr Riches have not reached an agreement and therefore no discount applies. The penalty figure after Step 5 is therefore £139,851.77 plus interest.

Serious financial hardship

36. Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if an individual will suffer serious financial hardship as a result of having to pay the entire penalty.
37. Mr Riches has provided verifiable evidence to satisfy the Authority that payment of a penalty above £63,000 would cause him serious financial hardship. Were this

not the case the Authority would have imposed on him a penalty of £139,581.77 plus interest.

Financial penalty

38. The Authority has therefore imposed a total financial penalty of £63,000 on Mr Riches for breaching Principles 1 and 11, and section 20 of the Act.

Prohibition

39. Mr Riches lacks honesty and integrity and is therefore not fit and proper, and so poses a risk to consumers and to confidence in the financial system. The Authority therefore considers it appropriate to prohibit him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

Cancellation

40. Pursuant to section 55J(8) of the Act the Authority must, once it is satisfied that it is no longer necessary to keep Mr Riches' empty permission in force, cancel that permission. The Authority is so satisfied and accordingly has a duty to cancel Mr Riches' Part 4A permission.

PROCEDURAL MATTERS

Decision Maker

41. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.
42. This Final Notice is given to Mr Riches under and in accordance with section 390(1) of the Act and it is being served on Mr Riches at the address he last notified to the Authority as his principal place of business.

Manner of and time for payment

43. The financial penalty must be paid in full by Mr Riches to the Authority by no later than 19 June 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

44. If all, or any, of the financial penalty is outstanding on 19 June 2013, the Authority may recover the outstanding amount as a debt owed by Mr Riches and due to the Authority.

Publicity

45. 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 matters to which this notice related as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Riches or prejudicial to the interests of consumers.
46. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contact

47. For more information concerning this matter generally, please contact Kathryn Willis at the Enforcement and Financial Crime Division of the Authority (direct line: 0207 066 2098).

John Kirby
Enforcement and Financial Crime Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
2. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
3. Section 20(1) of the Act provides that if an authorised person carries on a regulated activity, or purports to do so, otherwise than in accordance with the permission given to him by the Authority under Part 4A, or resulting from any other provision of the Act, he is to be taken to have contravened a requirement imposed on him by the Authority under the Act.
4. Section 55J(8) of the Act requires that, if, as a result of a variation of a Part 4A permission under that section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel that permission.
5. The Authority has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that 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.
6. Section 206 of the Act provides that if the Authority considers that an authorised person has contravened a requirement imposed on him by or under the Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

RELEVANT HANDBOOK PROVISIONS

Relevant Principles

7. Principle 1 (Integrity) requires a firm to conduct its business with integrity.
8. Principle 11 (Relations with regulators) requires a firm to deal with its regulators in an open and co-operative way, and to disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice.

Relevant Rules and Guidance

9. The section of the Handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an individual who is not an approved person.
10. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.

11. In determining a person's honesty, integrity and reputation, FIT 2.1.1G provides that the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G includes:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

OTHER RELEVANT REGULATORY PROVISIONS

Authority's policy on the imposition of financial penalties

12. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. The misconduct in respect of which the Authority has decided to impose a financial penalty on Mr Riches occurred on or after 6 March 2010, and the Authority has therefore had regard to the penalty regime introduced on 6 March 2010.
13. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
14. The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to take action for a financial penalty, which include the following:-
 - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.
 - (b) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority, the degree of co-operation the person showed during the investigation of the breach, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority.
 - (c) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.
15. DEPP 6.4.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

16. DEPP 6.5A sets out the five steps for calculating financial penalties to be imposed on firms.

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

17. The Authority's approach to exercising its powers to make prohibition orders is set out in the Enforcement Guide (EG).
18. EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its operational objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
19. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
20. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
21. EG 9.17 to 9.18 provide guidance on the Authority's exercise of its power to make a prohibition order against an individual who is not 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 operational objectives.
22. 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, the factors set out in EG 9.9.
23. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:
 - (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 an approved person are contained 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;
 - (6) the length of time since the occurrence of any matters indicating unfitness; and
 - (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
24. EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order including the use of its power to impose a financial penalty.