
FINAL NOTICE

To: Andrew Barlas

Address: 17 Kellie Grove
Stewartfield
East Kilbride
Glasgow
Lanarkshire
G74 4DN

IRN: AXB00098

Dated: 24 September 2014

ACTION

1. For the reasons given in this Notice, the Authority hereby takes the following action against Andrew Barlas:
 - (a) publishes a statement of his misconduct, pursuant to section 66 of the Act, for failing to comply with Statement of Principle 1; and
 - (b) makes an order, pursuant to section 56 of the Act, prohibiting Mr Barlas from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
2. The Authority considers that Mr Barlas' misconduct also merits a financial penalty pursuant to section 66 of the Act. Had Mr Barlas not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship, the Authority would have decided to impose on him a financial penalty of £80,000.

3. The Authority gave Mr Barlas a Decision Notice on 7 August 2014 which notified him that the Authority had decided to take the above action. Mr Barlas 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

4. On the basis of the facts and matters described below, the Authority has concluded that Mr Barlas failed to act with honesty and integrity in carrying out his controlled functions in breach of Statement of Principle 1, by knowingly submitting, through Capital, two mortgage applications to mortgage lenders containing false and misleading information about his income.
5. The serious nature of these breaches leads the Authority to conclude that Mr Barlas is not a fit and proper person to perform functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.
6. This action supports the Authority's statutory objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

DEFINITIONS

7. The following definitions are used in this 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;

"Capital" means Capital Managers LLP;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"ENF" means the Authority's Enforcement Manual which was in force between 1 December 2004 and 27 August 2007;

"FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

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

"HMRC" means Her Majesty's Revenue and Customs;

"the relevant mortgage applications" means the mortgage applications submitted to Lender A and Lender B respectively as referred to at paragraphs 10 to 13 below;

"the Statements of Principle" means the Statements of Principle and Code of Practice for Approved Persons;

"Statement of Principle 1" means Statement of Principle 1 of the Statements of Principle;

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

“the Warning Notice” means the warning notice given to Mr Barlas dated 18 July 2014.

FACTS AND MATTERS

Background

8. On 3 October 2005 Mr Barlas was approved to perform the CF4 (Partner), CF11 (Money Laundering Reporting) and CF21 (Investment Adviser) controlled functions at Capital. On 1 November 2007 Mr Barlas was approved to perform the CF30 controlled function at Capital, in place of the CF21 controlled function.
9. On 21 November 2013 Capital gave notice to the FCA that Mr Barlas had ceased to perform his controlled functions. Mr Barlas was not approved to perform any controlled functions from that date.

Mr Barlas’ personal mortgage applications

10. On 29 November 2006 Mr Barlas submitted, through Capital, an online mortgage application to Lender A in his own name. The application was for a loan of £55,000. On 30 November 2006 Lender A approved the application and issued a mortgage offer to Mr Barlas.
11. In his mortgage application to Lender A, Mr Barlas stated that his gross earned income was £42,750. The income declared by Mr Barlas to HMRC in his tax return for the year ended 5 April 2006 was significantly lower at £19,486. Mr Barlas’ stated income in his mortgage application to Lender A was also inconsistent with Capital’s annual accounts, which stated that Mr Barlas’ taxable profit for the year ended 31 March 2006 was £24,314.
12. On 17 June 2008 Mr Barlas submitted, through Capital, an online mortgage application to Lender B in his own name. The application was for a loan of £135,000. On 30 June 2008 Lender B approved the application and issued a mortgage offer to Mr Barlas.
13. In his mortgage application to Lender B, Mr Barlas stated that his average earned taxable income for the last three years (or the most recent year if lower) was £52,000. The income declared by Mr Barlas to HMRC in his tax returns for the years ended 5 April 2007 and 5 April 2008 was significantly lower at £29,287 and £11,169 respectively. Mr Barlas’ stated income in his mortgage application to Lender B was also inconsistent with Capital’s annual accounts, which stated that Mr Barlas’ taxable profit for the year ended 31 March 2007 was £38,039, and for the year ended 31 March 2008 was £20,851.

Explanations given by Mr Barlas

14. Mr Barlas informed the Authority that he had “negligently entered gross income figures” in the relevant mortgage applications. The Authority considers that this does not explain the figures submitted as both Lender A and Lender B did ask Mr Barlas to provide gross income figures.
15. Mr Barlas also submitted that his true income, when added to his co-applicant’s income, would have met the relevant lending criteria at the time, and so he would have gained no advantage from intentionally inflating his income in the relevant mortgage applications. The Authority considers that it was for the lenders to decide whether Mr Barlas met the relevant lending criteria at the time of submitting the relevant mortgage applications, not Mr Barlas.

FAILINGS

16. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.

Breach of Statement of Principle 1

17. Mr Barlas, while carrying out his controlled functions at Capital, failed to act with honesty and integrity in that he knowingly submitted, through Capital, two mortgage applications in his own name to lenders which contained false information, in that they materially overstated his income. The Authority considers that Mr Barlas knew at the time of submitting the relevant mortgage applications that the income information was false and misleading.
18. Mr Barlas, as an approved person and as an experienced mortgage and investment adviser, was aware, or should have been aware, of the need to make full and accurate disclosure in mortgage applications. The false information provided by Mr Barlas could have affected the lenders' decision to lend or, at least, the extent to which they sought further information regarding proof of his income or the amount of due diligence they carried out in assessing his applications. The size of the income inflation and the lack of any plausible explanation by Mr Barlas indicate that Mr Barlas acted deliberately.
19. Accordingly, Mr Barlas breached Statement of Principle 1 by knowingly submitting false and misleading information to lenders. Mr Barlas' actions demonstrate a lack of honesty and integrity.

Not fit and proper

20. By reason of the facts and matters described above, the Authority considers that Mr Barlas lacks honesty and integrity and therefore is not a fit and proper person.

SANCTION

Financial penalty

21. The Authority's policy in relation to the issuing of a public censure or the imposition of a financial penalty is set out in Chapter 6 of DEPP. The regulatory provisions governing the determination of financial penalties changed on 6 March 2010. As Mr Barlas' misconduct occurred before that change, the Authority has applied the penalty regime as set out in DEPP that was in place up to 5 March 2010. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010.
22. The Authority has also had regard to the corresponding provisions of Chapter 7 of EG and to Chapter 13 of ENF, which was in force during part of Mr Barlas' misconduct.
23. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2G(1))

24. In determining the level of penalty, the Authority has had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(2))

25. In determining the appropriate sanction, the Authority has had regard to the seriousness of the breaches, the nature of the requirements on Mr Barlas, the number of breaches and the period over which they occurred, the nature and extent of the financial crime attributed to the breach, the extent to which the breaches demonstrate a lack of honesty and integrity and the number of lenders exposed to a risk of loss. Mr Barlas' failings are considered to be particularly serious because the Authority places emphasis on the responsibilities of senior management.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

26. The Authority considers that Mr Barlas acted in a deliberate and dishonest manner.

Whether the person on whom the penalty is to be imposed is an individual (DEPP 6.5.2G(4)) and the size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

27. The Authority has taken into account, in determining the amount of penalty to be imposed, that Mr Barlas is an individual and that the imposition of a financial penalty of any amount would cause him serious financial hardship.

The amount of benefit gained or loss avoided (DEPP 6.5.2G(6))

28. The Authority has had regard to the amount of benefit gained by Mr Barlas from using false and misleading information in the relevant mortgage applications. Mr Barlas obtained loans of £55,000 and £135,000 which he may not otherwise have obtained.

Conduct following the breach: DEPP 6.5.2G(8)

29. The Authority has taken Mr Barlas' co-operation into consideration, including his resignation as a partner of Capital and his agreement to cease conducting regulated activities on a voluntary basis.

Disciplinary record and compliance history: DEPP 6.5.2G(9)

30. There has been no previous disciplinary action against Mr Barlas.

Other action taken by the Authority (DEPP 6.5.2G(10))

31. In determining what action to take, the Authority has also taken into account action taken in relation to other approved persons for similar behaviour. This has also been considered alongside the deterrent purpose for which the Authority imposes such sanctions.

Financial penalty

32. Having regard to all the circumstances, the Authority considers that £80,000 is an appropriate financial penalty to impose on Mr Barlas. However, the Authority considers that Mr Barlas has provided verifiable evidence that he would suffer serious financial hardship if he was required to pay any financial penalty.

Public censure

33. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and DEPP 6.4.2G (regarding whether to issue a public censure rather than impose a financial penalty), the Authority considers that a financial penalty would have been an appropriate sanction, given the nature of the breaches, were it not for the fact that Mr Barlas has provided verifiable evidence that he would suffer serious financial hardship. The Authority therefore considers that a public censure is an appropriate sanction. This is in accordance with guidance set out in DEPP 6.4.2G(8)(a).

Prohibition

34. The Authority considers that Mr Barlas is not a fit and proper person as he lacks honesty and integrity, and therefore poses a serious risk to consumers and to the integrity of the UK financial system. The Authority therefore considers it appropriate to prohibit Mr Barlas from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

REPRESENTATIONS

35. By the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr Barlas was given the opportunity to make representations to the Authority about that proposed action.
36. Mr Barlas informed the Authority that he did not wish to make any representations and that he was prepared to accept the proposed action.

PROCEDURAL MATTERS

Decision Maker

37. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.
38. This Final Notice is given under and in accordance with section 390 of the Act.

Publicity

39. Section 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates 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 Barlas or prejudicial to the interests of consumers.

40. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contacts

41. For more information concerning this matter generally, contact Stephanie Prowse at the Authority (direct line: 0207 066 9404).

Bill Sillett
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. The Authority's statutory objectives, set out in section 1(B) of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. 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, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to the activity.
3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

RELEVANT HANDBOOK PROVISIONS

Fit and Proper Test for Approved Persons (FIT)

4. FIT sets out the 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 approved person.
5. FIT 1.3 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.

Statements of Principle and Code of Practice for Approved Persons (APER)

6. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
7. APER 2.1.2P sets out Statement of Principle 1 which, at the relevant time, stated that an approved person must act with integrity in carrying out his controlled function.

OTHER RELEVANT REGULATORY PROVISIONS

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

8. The Authority's approach to exercising its powers to make prohibition orders is set out in Chapter 9 of EG.
9. EG 9.1 states that 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.