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## FINAL NOTICE

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To: **Mr Andrew David Bowden trading as Scott Jarrett Bowden & Partners**

Of: **Homecroft, Church Lane, Surrey, CR5 3RD**

FRN: **304111**

Dated: **19 December 2008**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (the “FSA”) gives you final notice about a decision to prohibit you, Andrew David Bowden, from performing any function in relation to any activity carried on by any authorised person, exempt person or exempt professional firm:**

### **1. ACTION**

- 1.1. The FSA gave you, Mr Bowden, a Decision Notice on 19 December 2008 which notified you that the FSA has decided to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”), pursuant to section 56 of the Financial Services and Markets Act (“the Act”).
- 1.2. You confirmed on 15 December 2008 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. The prohibition order has effect from today and shall be without limit of time.

### **2. REASONS FOR THE ACTION**

- 2.1. On the basis of the facts and matters and conclusions described in the Warning Notice and Decision Notice, the FSA has concluded that:
  - (1) in your capacity as sole trader and mortgage advisor of Scott Jarrett Bowden &

Partners (“SJB”), you failed to take reasonable care to organise and control SJB’s affairs responsibly and effectively, with adequate risk management systems. In particular you failed to:

- (i) record how or why SJB concluded that recommended mortgages were suitable for customers; and
  - (ii) ensure that personal and confidential customer information was stored securely and appropriately.
- (2) you failed to inform the FSA that SJB had vacated its offices and ensure that sufficient arrangements were in place to forward any correspondence; and
- (3) you failed to take reasonable steps to ensure that SJB complied with the relevant requirements and standards of the regulatory system regarding arranging and effecting regulated mortgage contracts. These include failings regarding the implementation of adequate systems and controls, the suitability of advice and appropriate compliance monitoring.
- 2.2. The FSA considers that the failures referred to in 2.1(i) and 2.1 (ii) are particularly serious because your customers were exposed to:
- (1) the risk that the mortgages you advised them to purchase were unsuitable; and
  - (2) the risk that customers’ personal and confidential information was accessible to persons outside SJB and could be disclosed inappropriately. Consequently, this posed a risk that SJB could be used for the purposes of financial crime.
- 2.3. You also admitted that the information on SJB’s Retail Mediation Activities Return (“RMAR”) was inaccurate, false and misleading, and was completed using unverified and inaccurate information.
- 2.4. As a result of the nature and seriousness of these breaches, the FSA concluded that you failed to meet minimum regulatory standards in terms of competence and capability and honesty and integrity and are not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and professional firms. The FSA has decided to make a Prohibition Order against you since you are the principal responsible for ensuring SJB meets its responsibilities.

### **3. RELEVANT STATUTORY PROVISIONS**

- 3.1. The FSA’s statutory objectives, set out in section 2(2) of the Act, include the maintenance of market confidence, the protection of consumers and the reduction of financial crime.

#### **Prohibition**

- 3.2. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a

specified description or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

### **FSA's policy for exercising its power to make a prohibition order**

- 3.3. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG"). Although the references in this notice are to EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during the majority of the relevant period during which your misconduct occurred.
- 3.4. The relevant sections of EG are set out in Annex A.

### **Fit and Proper Test for Approved Persons**

- 3.5. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper test for assessing the continuing fitness and propriety of approved persons and for assessing candidates for becoming approved persons. FIT also applies to firms and applicants for Part IV permissions and therefore is relevant in assessing the fitness and propriety of you given that you are responsible for ensuring SJB meets its regulatory requirements as an authorised firm. In accordance with EG 9.17 and EG 9.9 FIT is a relevant consideration for the FSA in deciding whether to make a prohibition order against an unapproved person.
- 3.6. The relevant sections of FIT are set out in Annex A.

## **4. FACTS AND MATTERS RELIED ON**

### **Background**

- 4.1. SJB is a sole trader mortgage broker. You are responsible for mortgages in SJB and advise on regulated mortgage contracts. You are not an approved person but you are a sole trader responsible for meeting the FSA's relevant requirements and standards of the regulatory system.
- 4.2. SJB has been authorised by the FSA to sell regulated mortgage contracts since 31 October 2004.
- 4.3. Following the FSA's failure to contact SJB at their registered offices in December 2007 and subsequently in May 2008, the FSA interviewed you on 24 June 2008 and subsequently visited SJB's former principal place of business in Thornton Heath on 2 July 2008.
- 4.4. The FSA attempted to obtain a number of client files from you on their visit as well as a comprehensive new business register. Due to the fact that SJB's files were stored in a number of locations, one of which suffered fire and then water damage causing the

destruction of many files, you were unable to provide these files to the FSA. You were also unable to provide the FSA with an accurate new business register.

- 4.5. Unless otherwise stated the facts and matters set out in paragraphs 4.6 to 4.31 below, relate to the period from 31 October 2004 to 4 August 2008 (“the Relevant Period”).

### **Record keeping**

- 4.6. When required by the FSA to provide a list of all customer files, you, on behalf of SJB were unable to comply with the requirement because you stored SJB’s customer files at a number of different locations. They included (i) the offices of an estate agent in Thornton Heath that was formally SJB’s principal place of business and (ii) the residence of one of SJB’s advisors. You admitted you did not know which files were at which location and, to date, have been unable to provide the FSA with a list of your customer files.
- 4.7. It is unclear what steps, if any, you took to ensure that SJB’s customer files were not accessible to persons other than SJB employees. Where SJB’s customer files which contained personal and confidential customer information were left unsecured, you ran the risk that the information could be used for the purposes of financial crime.
- 4.8. You informed the FSA of the destruction of a number of files which were being held at the residence of one of SJB’s advisors. Your failure to keep a record of the location of SJB’s customer files meant you were unable to ascertain which files had been destroyed.
- 4.9. Neither you nor SJB have been able to provide the FSA with a comprehensive new business register or an accurate list of business that had been undertaken at SJB.

### *Conclusion*

- 4.10. SJB’s record keeping was inadequate in that it failed to ensure that it:
- (1) stored personal and confidential customer information securely; and
  - (2) maintained a register of business undertaken at SJB.
- 4.11. SJB therefore failed to establish or maintain appropriate management and control arrangements to ensure that business and customer records were maintained and stored securely.
- 4.12. Further, the lack of control regarding the storage of customer files meant that customer information was exposed to the unacceptable risk that it could be used for financial crime.
- 4.13. As a sole trader, trading as SJB, you were responsible for ensuring that SJB maintained adequate records and stored information appropriately. You failed to take reasonable steps to do this.

### **Demonstrating suitability of advice**

*Gathering customer information*

- 4.14. The FSA reviewed a sample of customer files that you were able to locate and provide. The FSA found that none of the customer files contained sufficient Know Your Customer (“KYC”) information in the form of a detailed fact find.
- 4.15. On occasions, SJB completed fact find questionnaires which were headed “*In order for the SJB team to be able to offer you the correct mortgage product*”. They included a series of tick boxes as follows:
- (1) the type of buyer;
  - (2) the importance of certain risk factors;
  - (3) whether the customer had ever had a loan refused;
  - (4) whether the customer was employed or self-employed;
  - (5) whether the customer’s income was provable; and
  - (6) a general “other points” box to provide extra information that “*you feel relevant*”.

Two SJB customer files showed that these fact find questionnaires were signed by the customer before being completed.

- 4.16. The FSA’s review of SJB’s customer files showed that application forms were often incomplete and, on occasion, not kept on file at all.
- 4.17. SJB failed to demonstrate that advisors had questioned customers’ income or carried out adequate affordability assessments. There was evidence on one customer file that an “Affordability Declaration” had been signed by the customer before being completed.

*Evidence of product research*

- 4.18. In an interview at the FSA’s offices on 24 June 2008, you stated that SJB used a single electronic sourcing system in the majority of cases unless the fact find resulted in there being only one or two products available. The FSA’s review of SJB’s customer files was unable to find any record of this sourcing system ever being used.

*Evidence of product suitability*

- 4.19. SJB often failed to send out or maintain copies of a Key Facts Illustration (“KFI”), or failed to update or keep a copy of a revised KFI if the product had changed or been updated.
- 4.20. SJB recommended self-certified mortgages to customers who were employed, rather than recommending full status mortgages whereby income can be verified through pay slips, bank statements and so on. SJB did not record an explanation as to why

self-certification was recommended as suitable for employed customers. In addition, there was no evidence on the files that customers had been made aware that self-certification reduces the range of available products and could result in higher costs.

- 4.21. From an analysis of the product sales data submitted to the FSA, 83% of mortgages sold by SJB between April 2005 and March 2008 were interest only mortgages. The FSA's review of SJB's customer files highlighted a lack of explanation on file to indicate why those mortgages has been sold on an interest only basis. There was no evidence that SJB explained the implications of interest only mortgages to its customers.
- 4.22. Further, as referred to in paragraph 4.17 above, SJB failed to demonstrate whether it had taken into account affordability when sourcing a particular product for a particular customer.

#### *Conclusion*

- 4.23. SJB failed to demonstrate that it:
- (1) obtained adequate and complete KYC information; and
  - (2) recorded how or why specific mortgages had been recommended as suitable to specific customers.
- 4.24. SJB is therefore unable to demonstrate that the advice given to customers was suitable for their needs and preferences. Customers were therefore exposed to the risk of unsuitable sales.
- 4.25. Further, in the absence of any product research and the lack of evidence of suitability on customer files, SJB was unable to monitor the adequacy of its sales processes and customer documentation.
- 4.26. As the sole trader of SJB, you were responsible for ensuring that SJB had adequate procedures to ensure it complied with relevant regulatory standards concerning the recording of recommendations given. You failed to take reasonable steps to do this.

#### **Appropriate systems and controls to ensure suitability of advice**

##### *Training and competence of advisors*

- 4.27. There were no records of training and competence measures such as observed sales, knowledge assessments or role plays conducted by SJB. SJB is therefore unable to demonstrate how it ascertained and monitored the competence of its advisors.

##### *Compliance function*

- 4.28. You told the FSA that in the year to 24 June 2008, SJB failed to conduct any file reviews. Instead of file reviews, SJB held weekly meetings attended by all SJB's advisors. These weekly meetings involved the discussion of SJB's business activity rather than involving file reviews or the discussion of compliance issues.

- 4.29. The FSA was unable to review SJB's training and competence and compliance manuals, if such documents existed, because you were unable to provide them to the FSA when required.

*Conclusion*

- 4.30. SJB failed to:
- (1) implement appropriate arrangements for the supervision and ongoing monitoring of its advisors; and
  - (2) make, retain or supply appropriate records to demonstrate how SJB carried out training, supervision and monitoring of its advisors.
- 4.31. SJB therefore failed to establish or maintain appropriate management and control arrangements to ensure the suitability of advice given to customers. The lack of training and competence assessments meant that customers were exposed to the unacceptable risk that they would receive advice from untrained or incompetent advisors.
- 4.32. As the sole trader of SJB, you were responsible for ensuring that SJB had adequate procedures to ensure that its advisors were and remained competent. You failed to take reasonable steps to do.

**Relations with regulators**

- 4.33. SJB failed to notify the FSA that it had vacated its registered offices last year. It also failed to put in sufficient alternative arrangements, which made it difficult for the FSA to contact you or SJB or obtain requested information in a timely manner.
- 4.34. In particular, SJB failed to respond to initial correspondence from the FSA in December 2007. SJB also failed to respond in May 2008 when the FSA sought to arrange a visit to SJB. SJB also failed to provide the FSA with a new business register which was requested by the FSA during the FSA's visit in July 2008.
- 4.35. You informed us that you had arrangements in place to forward on any correspondence and to field telephone calls. However, due to the problems the FSA have had in contacting you, these arrangements were not sufficient.
- 4.36. Further, customers may also have experienced the same difficulties in contacting you or other staff at SJB following SJB's move. This meant SJB could not handle queries or complaints arising from the sale and advice given on mortgages.
- 4.37. You admitted to the FSA that information on SJB's RMAR submitted to the FSA may be inaccurate. You admitted to submitting false and misleading information on the most recent RMAR for the period ending 1 April 2008. This included stating that you had conducted a monitoring visit to an advisor, carried out file reviews on business written by an advisor and relied upon unverified information to complete the financial sections on the RMAR without checking its accuracy.

*Conclusion*

4.38. SJB failed to:

- (1) inform the FSA that it had vacated its registered office and provide alternative contact details; and
- (2) ensure that the information on the most recent RMAR was accurate, properly checked and not misleading.

4.39. Therefore, as the sole principal responsible for SJB, you failed to show that you had been candid and truthful in all your dealings with the FSA in breach of the guidance set out under FIT 2.1. Further, you failed to ensure that SJB had adequate procedures in place in order to comply with relevant regulatory standards concerning co-operation with the FSA.

### **Conclusion**

4.40. As a result of the breaches and failings identified above, it is clear that you failed to understand, and comply with, your regulatory responsibilities. The conduct described above has led the FSA to conclude that you lack not only the competence and capability to comply with your regulatory responsibilities, but also demonstrated a failure to act with the requisite honesty and integrity with regard to submitting misleading information to the FSA.

## **5. ANALYSIS OF BREACHES AND SANCTIONS**

5.1. The FSA has considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA has considered its findings in Section 4 above with regard to the statutory and regulatory requirements referred to in Section 3 and Annex A. The FSA has found that you:

- (1) failed to act with competence and capability, by failing to have adequate systems and controls in place that are required for an authorised firm;
- (2) failed to act with honesty and integrity, by misleading the FSA; and
- (3) demonstrated a serious lack of compliance with regulatory standards in the way you managed SJB for which you are responsible.

5.2. As a result, the FSA considers that you lack both competence and capability and honesty and integrity and that therefore you are not fit and proper to carry on functions in relation to any regulated activity carried on by any authorised person, exempt person, exempt professional person.

5.3. The FSA has concluded that the nature of these matters, the period of time during which they occurred and the gravity of them directly impugn your competence and capability. The FSA considers that you pose a serious risk to lenders and customers, and therefore to the FSA's regulatory statutory objectives of maintaining confidence



in the financial system, protecting consumers and the reduction of financial crime.

5.4. The FSA has therefore decided to exercise its powers to make a prohibition order in the terms proposed.

**6. DECISION MAKERS**

6.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

**7. IMPORTANT**

7.1. This Final Notice is given to you in accordance with section 390 of the Act.

**Publicity**

7.2. Sections 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 FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

**FSA contacts**

7.8. For more information concerning this matter generally, you should contact Catherine Harris of the FSA (direct line: 020 7066 4872/fax: 020 7066 4873).

Signed:

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**Jonathan Phelan, Project Sponsor**

**FSA Enforcement Division**

## 1. ANNEX A

### EG

- 1.1. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power 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.
- 1.2. EG 9.4 sets out the general scope of the FSA's powers in this respect, 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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 1.3. EG 9.17 to 9.18 provide guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA 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 make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 1.4. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
  - (1) the matters set out in section 61(2) of the Act;
  - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing FIT 2.2 (Competence and capability);
  - (3) whether, and to what extent, the approved person has:
    - (i) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
    - (ii) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
  - (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 controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
  - (7) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 1.5. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.
- 1.6. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:
- (1) providing false or misleading information to the FSA; including information relating to identity, ability to work in the United Kingdom, and business arrangements;
  - (2) severe acts of dishonesty, for example those which may have resulted in financial crime;
  - (3) serious lack of competence; and
  - (4) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

## **FIT**

- 1.7. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. Among the most important considerations will be the person's honesty, integrity and reputation and their competence and capability.
- 1.8. In determining a person's honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance 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)).
- 1.9. In determining a person's competence and capability FIT 2.2 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. This guidance includes:

- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
- (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).