
FINAL NOTICE

To: **Mary Dorothy Wright**

Individual Ref No: **MDW01088**

Dated: **22 April 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mary Wright, final notice about the withdrawal of your individual approval, and 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:

1. ACTION

1.1 The FSA gave you, Mrs Wright, a Decision Notice on 22 April 2010 (“the Decision Notice”), which notified you that the FSA had decided:

- (1) pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”), to withdraw the approval given to you to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and oversight); and
- (2) to make a prohibition order, pursuant to section 56 of the Act, to prevent you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

2. REASONS FOR THE ACTION

- 2.1 The FSA has concluded that you are not fit and proper to perform functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm and should be prohibited from doing so because you have failed to demonstrate competence and capability in exercising the controlled functions you are approved to perform. You did not understand, and took no steps to understand, Moorgate's regulatory obligations as an authorised firm or your own regulatory obligations as an approved person.
- 2.2 You are approved to perform controlled functions 1 (Director) and 8 (Apportionment and Oversight), which are significant influence functions, on behalf of Moorgate. You failed to exercise due skill, care and diligence in managing the business of Moorgate for which you were responsible in the performance of these functions. You delegated all your functions to Derek Wright ("Mr Wright"), your husband, who performed duties consistent with being Managing Director of the company although he was not an approved person and you exercised no oversight of these functions.
- 2.3 During this period you took no steps to satisfy yourself that the business of Moorgate was being conducted in accordance with the FSA's regulatory requirements.
- 2.4 The misconduct described in this notice, in the FSA's opinion, merits a financial penalty. Were it not for your serious personal financial difficulties, the FSA would have sought to impose a financial penalty upon you in the amount of £40,000. However, you have gained no financial benefit through your actions; you have made admissions in respect of your conduct and have co-operated fully with the FSA.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

- 3.1 The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 Moorgate is a general insurance intermediary firm based in Essex which has been authorised by the FSA since 14 January 2005. You are the sole director and the only

approved person at Moorgate, having carried out the controlled functions CF1 (Director and CF8 (Apportionment and Oversight) until the firm cancelled its Part IV Permissions on 28 August 2008. However, Moorgate has in fact been operated and controlled by Mr Wright since its inception.

Background to the FSA's Investigation

- 4.2 The FSA became concerned about the organisation of the firm because five of the firm's Retail Mediation Activities Returns (RMAR) submitted between August 2005 and June 2008 showed that the firm consistently reported capital resources below the level required by the FSA rules. Despite the FSA's correspondence with the firm between 2005 and 2008 this matter was not resolved.
- 4.3 On 9 June 2008, as a result of continuing problems concerning Moorgate's capital resources, Moorgate voluntarily varied its permission to cease conducting regulated activities and agreed to cease operating its client bank account with immediate effect.
- 4.4 On 9 June 2008 Moorgate transferred its insurance business, including all of its clients, to another regulated insurance intermediary ("Company A") but failed to inform the FSA of this transfer at that time. The FSA would have expected Moorgate to notify it of the transfer prior to its completion because of its relevance to the FSA's concerns regarding Moorgate's RMARs.
- 4.5 In an interview on 18 June 2008, Mr Wright informed the FSA that Moorgate's business had been transferred to Company A and that the transfer had taken effect on 9 June 2008. This transfer comprised Moorgate's entire book of business together with all its agencies.
- 4.6 On 27 June 2008 Moorgate, via the firm's accountants, provided a client money calculation which had been requested by the FSA in order to identify the firm's creditors. The calculation showed that the firm's client account had a deficit of £9,985.44 as at 9 June 2008. The FSA instructed Moorgate to make up this deficit and then provide evidence to the FSA that Moorgate's client account had sufficient funds to meet its client account creditors. Moorgate failed to comply with this requirement and instead arranged for Company A to pay Moorgate's client account creditors and to receive monies directly that had been due to be paid into Moorgate's client account.

Mrs Wright's role at Moorgate

- 4.7 Notwithstanding the fact that you were the sole director and held controlled functions, you had little involvement in the running of the business at Moorgate. You undertook general administrative duties, but you had no involvement in decision-making, compliance or finance at Moorgate. You delegated these roles entirely to Mr Wright. You took no steps to supervise Mr Wright and you only visited the offices of Moorgate intermittently.
- 4.8 You stated in your interview with the FSA on 12 February 2009 that immediately following Moorgate's formation you attended the firm's office regularly. However, you stated that you subsequently attended the firm's office less frequently due to a serious medical condition affecting a family member who required your care.
- 4.9 However, even under those extenuating circumstances you were nevertheless under a duty to inform the FSA that you were not able to carry out your role as holder of a controlled function. You had sufficient opportunity to inform the FSA, but failed to do so.
- 4.10 As a result of your lack of involvement in the running of Moorgate's business, you failed to take reasonable steps to ensure that the business of Moorgate complied with the relevant requirements and standards of the regulatory system.

Competence and Capability

- 4.11 You demonstrated in your interview on 12 February 2009 that you fail to understand your role as a CF1 director and you lack the requisite competence, skill and diligence to perform the controlled functions. You did not seek to inform yourself about the requirements of your controlled function or your responsibilities as a director. Mr Wright was therefore able to run Moorgate unsupervised and unchallenged by you.

5. ANALYSIS OF BREACHES

- 5.1 The FSA has considered whether you are a fit and proper person to perform any function in relation to regulated activities. In doing so, the FSA has considered its regulatory requirements and relevant guidance. The facts and matters described above lead the FSA to conclude that you failed to:

- (1) take reasonable steps to inform yourself about your responsibilities as an approved person;
- (2) significantly participate or engage with the running of Moorgate's business;
- (3) exercise your functions as a director of Moorgate properly, allowing Mr Wright, who was not approved, to operate and control Moorgate; and
- (4) inform the FSA of the true position regarding the operation and control of Moorgate.

5.2 The FSA considers that these failings demonstrate your failure in contravention of Statement of Principle 6 of APER to exercise due skill, care and diligence in managing the business of Moorgate for which you were responsible.

5.3 The FSA further considers that as a result of the nature and gravity of these matters you lack sufficient competence and capability and that they demonstrate you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

5.4 The FSA therefore considers it necessary to withdraw your approval pursuant to section 63 of the Act and to prohibit you pursuant to section 56 of the Act.

6. DECISION MAKERS

6.1 The decision which gave rise to the obligation to give this Notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties Manual.

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 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 contact

- 7.4 For more information concerning this matter generally, you should contact Paul Howick at the FSA (direct line: 020 7066 7954).

Tom Spender
Head of Department
Financial Services Authority

ANNEX 1

RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

1. Statutory provisions

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

Withdrawal of Approval

- 1.2 Under section 63 of the Act, the FSA may withdraw the approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

Prohibition

- 1.3 The FSA has the power pursuant to 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, an exempt person, and/or an exempt professional firm. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

Regulatory Requirements and Guidance

- 1.4 In deciding on the action proposed, the FSA has had regard to the relevant rules and guidance published in the FSA Handbook and accompanying regulatory guides, in particular in the Enforcement Guide ("EG"), the Decision, Procedure and Penalties Manual ("DEPP"), the Fit and Proper Test for Approved Persons ("FIT"), and the Statements of Principle and Code of Practice for Approved Persons ("APER").

2. Regulatory provisions

The Fit and Proper Test for Approved Persons

- 2.1 The purpose of FIT is to outline 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.
- 2.2 In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual in accordance with EG 9.9.
- 2.3 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's honesty, integrity and reputation.
- 2.4 In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance includes:
- (1) whether the person has been a director, partner, or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection (FIT 2.1.3G(9));
 - (2) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately (FIT 2.1.3G(10)).
- 2.5 In assessing a person's fitness and propriety, another important consideration for the FSA set out in FIT 1.3 will be the person's competence and capability.
- 2.6 FIT 2.2.1G explains that the FSA will have regard to matters including (but not limited to) 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.

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

- 2.7 The Statements of Principle and Code of Practice for Approved Persons are issued under section 64 of the Act. The Code of Practice for Approved Persons is issued for the purpose of helping to determine whether or not an approved person's conduct complies with a Statement of Principle.
- 2.8 The relevant Statement of Principle in this case is Statement of Principle 6 which states that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.
- 2.9 APER 3.3.1E sets out factors which, in the opinion of the FSA, should be taken into account in relation to whether an approved person exercising a significant influence function has breached Statements of Principles 5 to 7. These factors are:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function;
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.10 APER 4.6.5E provides that delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business is a breach of Statement of Principle 6.
- 2.11 APER 4.6.6E provides that failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to

an individual or individuals (whether in-house or outside contractors) is a breach of Statement of Principle 6. APER 4.6.7E provides that behaviour of this type includes (but is not limited to):

- (1) disregarding an issue or part of the business once it has been delegated;
- (2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated;
- (3) accepting implausible or unsatisfactory explanations from delegates without testing their veracity.

2.12 APER 4.6.8E further provides that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated is a breach of Statement of Principle 6. APER 4.6.9E explains that this includes (but is not limited to):

- (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;
- (2) failing to review the performance of an outside contractor in connection with the delegated issue or business.

2.13 APER 4.6.14G explains that an approved person performing a significant influence function may delegate the resolution of an issue, or authority for dealing with a part of the business. However, that person cannot delegate responsibility for it. It is his responsibility to ensure that he receives reports on progress and questions those reports where appropriate.

3. FSA guidance

The Enforcement Guide (“EG”)

3.1 The FSA's approach to exercising its powers to make prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

- 3.2 In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 3.3 EG 9.1 states that the FSA's power under section 56 of the Act to make prohibition orders against individuals who are not fit and proper helps the FSA 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 function in relation to regulated activities or to restrict the functions which he may perform.
- 3.4 EG 9.3 provides that the FSA can make a prohibition order and/or withdraw an approved person's approval. EG 9.4 sets out the general scope of the FSA's prohibition order power, which includes 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 functions which the individual concerned 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.
- 3.5 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) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial Soundness);

- (a) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issues by the FSA with respect to the conduct of approved persons;
- (b) the relevance and materiality of any matters indicating unfitness;
- (2) the length of time since the occurrence of any matters indicating unfitness;
- (3) 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;
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (5) the previous disciplinary record and general compliance history of the individual.

3.6 E.G 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) severe acts of dishonesty, for example those which may have resulted in financial crime;
- (2) serious lack of competence; and
- (3) serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients, consumers or third parties.

3.7 EG 9.23 provides that in appropriate cases the FSA may take action against an individual in addition to making a prohibition order. This can include imposing a financial penalty.