
FINAL NOTICE

To: **Richard Fairley**
Date of Birth: **17 November 1977**
Dated: **27 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr Richard Fairley, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt profession firm.

1. ACTION

- 1.1. The FSA gave you, Mr Richard Fairley, a Decision Notice on 25 January 2010 (“the Decision Notice”) which notified you that it had decided to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), 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”).
- 1.2. You confirmed on 20 January 2010 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting 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”). The Prohibition Order takes effect from 27 January 2010.

2. REASONS FOR THE ACTION

2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are not a fit and proper person to carry out any functions in relation to regulated activities carried on by authorised or exempt persons and that you should be prohibited from doing so.

2.2. In the opinion of the FSA you are not a fit and proper person because you have failed to act with honesty and integrity. Whilst acting as the head of mortgage administration for the firm for which you were working (“the Firm”), between 1 October 2006 and 14 January 2008 (“the relevant period”) you submitted:

(1) a residential mortgage application on your own behalf through the Firm which contained false and misleading information about your income; and

(2) three buy-to-let mortgage applications for your own benefit through the Firm which you knew contained false and misleading information regarding your income and identity.

2.3. You pose a risk to lenders and consumers and to confidence in the financial system. This action also supports the FSA’s objective to reduce financial crime.

2.4. As a result of the nature and seriousness of these breaches, the FSA has concluded that it is proportionate to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because you have failed to meet the minimum regulatory standards required in terms of honesty and integrity.

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 UPON

Background

- 4.1. You commenced working for the Firm at the end of 2004 and were employed by them initially as a pensions adviser before you moved into mortgage administration. On the 1 October 2006 you became the head of administration and you were employed by the Firm until August 2008. You held a CF30 (Customer) controlled function from 10 June 2008 to 18 June 2008.
- 4.2. During your employment at the Firm, you submitted four mortgage applications (one residential and three buy-to-let) for your own benefit which included false and misleading information.

Residential Mortgage Application

- 4.3. On 1 October 2006 you submitted an application for a residential remortgage on your own behalf for a property in Bromley, Kent. You applied for a loan amount of £170,000 and the mortgage completed in November 2006.
- 4.4. In your interview on the 3 March 2009 you stated that the income recorded on the application was £40,000 and that income had been inflated. You admitted in your interview that you had included another individual's rental income in the amount despite this application only being submitted in your name. It was later discovered that the gross income declared by you on the application form was actually £60,000.
- 4.5. For the tax year ending 5 April 2007 you declared an income of £1,749.99 to Her Majesty's Custom and Revenue ("HMRC").

Buy-to-let Mortgage Applications

- 4.6. You submitted three unregulated buy-to-let mortgage applications in January 2008. All three mortgage applications were submitted to the lender by a mortgage consultant called Richard Alan, which was a false name that you used during your employment at the Firm. All three mortgages however, were for your benefit and the name recorded on the applications was Richard Fairley. In all of these applications you knowingly inflated your own income details to obtain an increased loan amount. The details of these buy-to-let applications are as follows:

- (1) Using the alias Richard Alan as the mortgage consultant you submitted a buy-to-let mortgage on 14 January 2008. You applied for a loan of £108,906 and declared your total personal income as £60,000, comprising £40,000 salary and £20,000 bonus per annum. This application was declined.
 - (2) Also using the alias Richard Alan as the mortgage consultant, you submitted another buy-to-let mortgage on the same date. You applied for a £82,365 loan and declared your income to be £60,000, comprising a salary of £40,000 and bonus of £20,000. This application was also declined.
 - (3) You also submitted another buy-to-let mortgage on the same date, again using the name Richard Alan as the mortgage consultant. You applied for a £82,365 loan and declared your income to be £60,000, comprising a salary of £40,000 and bonus of £20,000. This application was declined.
- 4.7. In all three buy-to-let applications your total income was recorded as £60,000. This represents a substantial inflation compared to the income declared to HMRC. The annual income you declared to HMRC for the period covering these three applications was £6,999.96. You therefore tried to obtain three buy-to-let mortgage loans, totalling approximately £273,636, by knowingly inflating your income details in your applications to lenders.

5. ANALYSIS OF BREACHES

- 5.1. The facts and matters described above lead the FSA to conclude that you knowingly misled lenders by submitting mortgage applications on your own behalf which contained false and misleading income information.
- 5.2. The FSA has concluded that as a result of the nature and gravity of these matters you failed to act with honesty and integrity.
- 5.3. Your failings demonstrate that 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 considered it necessary to prohibit you pursuant to section 56 of the Act.

6. DECISION MAKER

- 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 of the Enforcement and Financial Crime Division 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.

Prohibition

- 1.2. Section 56 of the Act provides that if it appears to the FSA that an 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 exempt professional firm, the FSA may make a prohibition order.
- 1.3. Section 56(2) of the Act provides that the FSA may make a prohibition order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function. The prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

2. Relevant FSA Policy

Prohibition Orders

- 2.1. The FSA's policy in relation to the exercise of its powers to make a prohibition order is set out in Chapter 9 of The Enforcement Guide (EG).
- 2.2. 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/she may perform.

- 2.3. EG 9.4 sets out the general scope of the FSA's powers in this respect. The FSA has 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 that the individual performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk posed by him to the consumers or the market generally.
- 2.4. When prohibiting someone who does not hold controlled functions the FSA will consider all of the relevant circumstances of the case and where appropriate, the factors set out at EG 9.9.
- 2.5. 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) 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 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);
 - (3) whether, and to what extent, the person has 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 function the person is (or was) performing, the nature and activities of the firm concerned and the markets in which it operates; and
 - (7) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

- 2.6. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.
- 2.7. 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 severe acts of dishonesty, for example those which may have resulted in financial crime;
- 2.8. 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.

Fit and Proper Test for Approved Persons

- 2.9. 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 approved person.
- 2.10. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its powers to withdraw your approval and/or make a prohibition order against you in accordance with the guidance set out in EG 9.8 to 9.14.
- 2.11. FIT 1.3.1 G 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.
- 2.12. In determining a person's honesty, integrity and reputation, FIT 2.1.1 G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3 G. Those matters include:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3 G (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 2.1.3 G (13)).