
FINAL NOTICE

To: **Miriam Cummings**

Individual Ref: **MXC01842**

Date: **20 October 2010**

TAKE NOTICE: The Financial Services Authority of 25, The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice that it has taken the following action:

1. THE ACTION

- 1.1 The FSA gave you, Miriam Cummings ("Mrs Cummings") a Decision Notice on 12 October 2010 which notified you that, the FSA had decided to withdraw your approval to perform controlled functions in relation to Bridging Loans Ltd ("BLL") pursuant to section 63 of the Financial Services and Markets Act 2000 ("the Act") and to make a prohibition order, pursuant to section 56 of the Act, prohibiting you from performing controlled functions in relation to any regulated activity carried on by any authorised person or exempt professional firm on the grounds that you are not a fit and proper person.
- 1.2 You confirmed on 6 October 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3 Accordingly, for the reasons set out below, the FSA hereby withdraws your approval to perform controlled functions in relation to BLL pursuant to section 63 of the Act and also makes an order, pursuant to section 56 of the Act, prohibiting you from performing controlled functions in relation to any regulated activity carried on by any authorised person or exempt professional firm. This order has effect from 20 October 2010.

2. REASONS FOR THE ACTION

2.1 The FSA has decided to take the following action based upon the facts and matters described below.

2.2 In summary, while performing controlled functions at BLL between 31 October 2004 and 25 August 2009 (the “relevant period”), you failed to:

- (1) take reasonable steps to inform yourself about the affairs of BLL; and
- (2) take reasonable steps to ensure that the business of BLL complied with the relevant requirements, including by failing to implement adequate and appropriate systems and controls.

2.3 The FSA considers that, as you became an approved person solely because you were told to by your husband, there is a risk that you will continue to exercise a controlled function over a firm or permit yourself to be used as a proxy for someone else to do so.

2.4 The FSA has therefore concluded that you are not fit and proper to perform controlled functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm, because you lack competence and capability, and should be prohibited from doing so.

2.5 The FSA considers that your conduct was serious because your failings meant that you were effectively detached from the business of the firm that you were approved by the FSA to run. In your absence that firm, BLL a mortgage lender, lent money to customers irresponsibly and then failed to treat customers in arrears fairly.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1 The relevant statutory provisions and regulatory requirements are set out at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

4.1 BLL is a mortgage lender, specialising in bridging loans, incorporated in Scotland. It has been authorised and regulated by the FSA since 31 October 2004 to carry on the following regulated activities:

- (1) Administering a regulated mortgage contract;
- (2) Agreeing to carry on a regulated activity;
- (3) Dealing in investments as principal; and
- (4) Entering into a regulated mortgage contract as lender.

4.2 During the relevant period, BLL operated as a non-bank specialist lender in the entering into and administration of first and second charge secured finance, with initial terms of between three and 18 months. BLL was visited by the FSA in June 2009 as part of its intrusive approach to supervision of firms operating in this sector. During the relevant period approximately 25% of BLL's business was made up of FSA regulated mortgage contracts. The remaining 75% of BLL's business consisted of second charge residential lending, commercial lending or mortgages for the purposes of buy-to-let, and therefore is not regulated by the FSA. Management Information produced by the firm showed that approximately 35% of regulated mortgage contracts entered into by BLL went into arrears and similar proportions were extended beyond the initial term.

4.3 You became a director of BLL on 29 June 1998. You are also a director of nine other companies (none of which are regulated by the FSA).

4.4 There are four other directors at BLL, three of whom are approved persons holding CF1.

Application to be an approved person

4.5 You became a director of BLL on 29 June 1998. On 30 January 2004 you signed an application to become an approved person at BLL. You have held CF1 (Director) at BLL since 31 October 2004.

4.6 During an interview with the FSA you made a number of admissions:

(1) whilst you could not recall specifically, you believe that you signed the application to be an approved person at the suggestion of your husband, who was also a director at BLL;

(2) you have no understanding of BLL's business;

(3) you have no understanding of the roles and responsibilities of a director;

(4) you played no active role at BLL;

(5) you were unaware that you were an approved person; and

(6) you were unaware of your responsibilities as an approved person or the responsibilities of BLL as an authorised person.

4.7 Despite these admissions, you told the FSA that you intended to continue as a director of BLL.

5. ANALYSIS OF PROPOSED SANCTION

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 at paragraphs 4.1 to 4.7 above lead the FSA to conclude that you failed to:

- (1) take steps to inform yourself about your responsibilities as an approved person; and
- (2) ensure that BLL met or continued to meet its regulatory responsibilities. You have had no material involvement in the operation of the business since your approval.

5.2 The FSA has therefore concluded that your conduct demonstrated a lack of competence and capability and you are therefore not fit and proper to carry out any controlled functions in relation to any regulated activities carried on by any authorised persons. In particular, you have demonstrated that you are capable of agreeing to take on significant regulatory responsibilities despite knowing that you are not capable of doing so. The FSA considers that you pose a risk to consumers in this regard.

5.3 It is therefore necessary and proportionate, in order for it to achieve its regulatory objectives, for the FSA to exercise its powers to withdraw your approval and make a Prohibition Order against you.

6. DECISION MAKER

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

7. IMPORTANT

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

Publicity

7.2 Sanctions 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 FSA must publish such information about the matter to which this notice relates 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

- 7.4 For more information concerning this matter generally, you should contact Mario Theodosiou at the FSA (direct line: 020 7066 5914 / email: mario.theodosiou@fsa.gov.uk).

Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX A:

1. Relevant Statutory and regulatory provisions

Prohibition and Withdrawal of Approval

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act are: market confidence; public awareness; the protection of consumers; and the reduction of financial crime.
- 1.2. The FSA has the power, pursuant to section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that 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 person.
- 1.3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 1.4. Pursuant to section 63 of the Act, the FSA may withdraw an approval given under section 59 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.

The Fit and Proper Test for Approved Persons

- 1.5. The part of the FSA Handbook entitled the Fit and Proper Test for Approved Persons ("FIT") sets out guidance on how the FSA will assess the fitness and propriety of a person to perform a particular controlled function.

- 1.6. 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.
- 1.7. FIT 1.3.1G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and that the most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 1.8. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regards to factors including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3.G sets out the following factors, amongst others which are relevant to this matter:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3(5) G);
 - (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 systems and with other legal, regulatory and professional requirements and standards (FIT 2.1.3(13)G); and
 - (3) 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.

The FSA's policy in relation to prohibition orders and withdrawal of approval

- 1.9. The FSA's policy in relation to prohibition orders and withdrawal of approval is set out in Chapter 9 of the Enforcement Guide ("EG").
- 1.10. EG 9.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular:

- 1.11. *“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. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.”*
- 1.12. EG 9.5 continues as follows: *“The scope of a prohibition order will depend on 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 the risk which he poses to consumers of the market generally.”*
- 1.13. EG 9.8 provides: *“When the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example public censures or financial penalties, or by issuing a private warning.”*
- 1.14. EG 9.9 states that, when it decides to exercise its power to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2. One criterion is the honesty, integrity and reputation of the individual (FIT 2.1);
 - (2) whether and to what extent the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;

- (3) the relevance and materiality of any matters indicating unfitness;
- (4) 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
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

1.15. EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any firm. However, EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or to withdraw the approval of an approved person. These examples include:

- (1) serious lack of competence; and
- (2) serious breaches of the Statements of Principles for approved persons.