
FINAL NOTICE

To: Aaron Nickols trading as Warwick Finance

Of: 1st Floor
Elizabeth House
St Mary's Road
Hinckley
Leicestershire
LE10 1EQ
United Kingdom

Date: 24 November 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about an order prohibiting you, Aaron Nickols trading as Warwick Finance, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and final notice of the cancellation of Warwick Finance's Part IV permission:

1. THE ACTION

1.1. The FSA gave you a Decision Notice on 24 November 2009 which notified you that the FSA had decided to take the following action against you, Mr Aaron Nickols, trading as Warwick Finance ("you" or "Warwick"):

- (a) to make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to prevent 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"); and

- (b) to cancel, pursuant to section 45 of the Act, the permission granted to Warwick pursuant to Part IV of the Act (“Warwick’s Part IV permission”).
- 1.2. You confirmed by written agreement on 5 November 2009 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes:
- (a) 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; and
 - (b) an order pursuant to section 45 of the Act cancelling the permission granted to Warwick pursuant to Part IV of the Act.

The Prohibition Order and cancellation of Warwick’s Part IV permission will take effect from 5 November 2009.

2. REASONS FOR THE ACTION

Prohibition

- 2.1. In the period since 31 October 2004, you failed to ensure that mortgage and insurance sales practices in your business were appropriate and you therefore failed to ensure the fair treatment of your customers.
- 2.2. In particular, you have failed to conduct your business with honesty and integrity by failing to prevent your staff:
- (a) using high pressure mortgage sales practices, which included making unsolicited telephone calls to customers and sending couriers to customers’ addresses with mortgage documentation for them to sign in the presence of the courier;
 - (b) using high pressure insurance sales practices, which included falsely claiming to represent or to be high street product providers and questioning the financial stability of providers of customers’ existing policies when telephoning potential customers in order to persuade them to purchase a new policy; and
 - (c) obtaining direct debit details from potential customers and setting up insurance policies in their name without permission.
- 2.3. You have also failed to conduct your business with competence and capability by failing to maintain and implement appropriate systems and controls to ensure compliance with the regulatory regime. In particular, you failed to ensure:
- (a) that each customer’s specific needs and circumstances were taken into account when selling mortgage and/or insurance products to them on a non-advised basis;

- (b) that no advice was given in the context of purportedly non-advised mortgage and/or insurance sales;
 - (c) the suitability of any mortgage and/or insurance advice that was given; and
 - (d) that you had an adequate training programme in place for your staff.
- 2.4. You have also failed to act with honesty and integrity by failing to deal with the FSA in an open and cooperative way. In particular, you:
- (a) made incorrect statements to the FSA during its investigation; and
 - (b) failed to make improvements that you assured the FSA you would make following its visit to your offices in July 2008.
- 2.5. These breaches are particularly serious because they have put customers at risk of purchasing unsuitable products and of receiving unsuitable advice.
- 2.6. As a result of the nature and seriousness of these breaches, the FSA considers that you have failed to meet minimum regulatory standards in terms of honesty and integrity and competence and capability, and that you are therefore not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm and should be prohibited from doing so.
- 2.7. This action supports the FSA's regulatory objectives because you pose a risk to consumers and to confidence in the financial system. It also supports the FSA's objective of reduction of financial crime by preventing your staff from setting up insurance policies in your customers' names without their knowledge or consent (as to which see paragraph 4.14 below).

Cancellation

- 2.8. By a First Supervisory Notice dated 4 February 2009, Warwick's Part IV permission was varied by removing all regulated activities with immediate effect.
- 2.9. Subsection (3) of section 45 of the Act requires that if, as a result of a variation of a Part IV permission under that section, there are no longer any regulated activities for which the authorised person concerned has permission, the FSA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- 2.10. The FSA is so satisfied and accordingly has a duty to cancel Warwick's Part IV permission.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY GUIDANCE AND OTHER PROVISIONS

- 3.1. The relevant statutory provisions, regulatory guidance and policy relied upon are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Warwick is a broker based in Leicestershire and Belfast selling mortgage and general insurance products on a purportedly non-advised basis. Warwick's turnover for the period ending 31 October 2007 was £1,165,279 and during the two year period between April 2005 and April 2007 ("the relevant period") it sold 703 regulated mortgage contracts.
- 4.2. The FSA authorised you, trading as Warwick, on 31 October 2004 to conduct the following regulated activities:
- (a) Advising on regulated mortgage contracts;
 - (b) Agreeing to carry on a regulated activity;
 - (c) Arranging regulated mortgage contracts; and
 - (d) Making arrangements with a view to regulated mortgage contracts.
- 4.3. On 14 January 2005 the FSA further authorised you, trading as Warwick, to conduct the following regulated activities:
- (a) Advising on investments (except on Pension Transfers and Opt Outs);
 - (b) Arranging (bringing about) deals in investments; and
 - (c) Making arrangements with a view to transactions in investments.
- 4.4. The FSA appointed investigators into your mortgage business on 3 April 2008. The scope of this investigation was extended on 3 February 2009 due to concerns about sales practices in relation to your insurance business.
- 4.5. As a sole trader, you had sole responsibility for ensuring that your business had in place adequate management and control arrangements. You were also responsible for ensuring that your business complied with its regulatory requirements and treated its customers fairly.
- 4.6. As at 31 October 2008, you employed 30 staff, including ten telesales staff, six packagers, three "quoters" (who would take information from clients requesting a quote for an insurance policy and then quote a price for that policy), and three couriers (who would be sent to the client's home address with the policy documents to obtain the signatures). You offered sub-prime mortgages to customers with adverse credit,

generating leads through online introducers and purchasing leads from third parties. You generated revenues from both fees and commission, charging a minimum fee of £3,595 for arranging a mortgage.

- 4.7. The FSA decided to vary Warwick's Part IV permission by a First Supervisory Notice dated 4 February 2009. Accordingly, Warwick's Part IV permission no longer includes the regulated activities listed at paragraphs 4.2 and 4.3 above.

Inappropriate and pressure sales tactics

Mortgages

- 4.8. You encouraged a high pressure sales environment by creating monthly targets which required sales staff to complete a certain number of sales each month. Staff were penalised if they failed to reach these targets, creating a risk that customers may have either been sold or recommended an unsuitable mortgage product as a direct result of Warwick's staff being encouraged to reach these targets.
- 4.9. This high pressure sales environment was evidenced, for example, by unsolicited telephone calls to customers and the use of couriers. Couriers were sent to each customer's home, approximately 24 hours after the initial telephone conversation with Warwick, to collect the customer's signature. The courier waited as the customer signed the relevant documentation. This created a risk that customers may have purchased a mortgage product which was unsuitable for their needs due to:
- (a) the pressure placed upon them to make a decision on the product;
 - (b) the lack of time they were allowed to consider any product material; and
 - (c) the limited time allowed to them to understand the product itself.
- 4.10. Your staff also contacted each of your customers within six to 12 months of an initial re-mortgage arranged through Warwick in order to recommend another re-mortgage of their property. This resulted in many customers paying a high early repayment charge in order to take out a second re-mortgage, in addition to a further arrangement fee payable to Warwick.
- 4.11. You were purportedly operating as a non-advised mortgage broker. However, you and your staff failed to explain the distinction between advised and non-advised sales to customers. Further, your staff often did provide advice, for example by comparing the customer's present mortgage with the mortgage they were seeking to sell to the customer and criticising the suitability of customers' existing products. Your staff advised customers that the product they were recommending was better than their existing product, despite the fact that swapping to the new product would often entail incurring an early repayment charge and would often result in the monthly repayments being higher than the existing payments being made by the customer. Further, your staff made mortgage recommendations without obtaining customer

information relevant to any such recommendation, including the customer's income and expenditure.

Regulated insurance products

- 4.12. You also used high pressure sales practices, as outlined in paragraphs 4.13 to 4.17 below, in relation to your sale of regulated insurance products. For example, in telephone calls to potential customers, your staff criticised the suitability of customers' existing products and the financial stability of their existing provider without any justification. Your staff sought to persuade customers to cancel or sell their existing policies and take out a new policy through you without any consideration of suitability.
- 4.13. You allowed your staff to pretend to represent insurance product providers during telephone calls to potential customers despite having no authority from those providers to do so. As such you allowed your sales staff to mislead customers, which they subsequently did, in order to sell a regulated product.
- 4.14. Your sales practices and your lack of appropriate controls allowed your staff to use the personal information gathered from potential customers to set up insurance policies without their consent. Staff used personal information, obtained from customers who had only provided such information to obtain a quotation, together with the customer's own direct debit details, to enhance the adviser's sales figures by setting up insurance policies. These policies were often subsequently cancelled by your sales advisers.
- 4.15. You told the FSA investigators that your business operated on a non-advised basis for telephone sales of insurance, and on an advised basis for sales of insurance made at customers' home addresses. Your telephone sales staff were provided with a script to follow. However, they did not always follow this script and customers were therefore exposed to receiving advice in the context of purportedly non-advised sales. Since the process was purportedly non-advised, the appropriate procedures for ensuring the suitability of advice were not in place and customers were therefore exposed to the risk of receiving unsuitable advice.
- 4.16. Your lack of appropriate controls therefore allowed your staff to sell policies which did not meet individual customers' demands and needs, and resulted in the risk of unsuitable advice being given during what was purportedly a non-advised sales process. For example, often, risks specified by the customer were not covered by the new policy sold to them, and customers were sometimes persuaded to switch policies ostensibly because they were cheaper, only subsequently to discover that the new policy did not provide the same level of cover as the policy in place at the time you contacted the customer.
- 4.17. These practices put your customers at risk of receiving unsuitable advice and of entering into insurance contracts without fully understanding the products in question and therefore of being treated unfairly.

Training and competence

- 4.18. You failed to implement and document a training programme for your staff appropriately. For example, you failed to record all training which was completed and to evidence why any training was recorded as satisfactorily completed. This put customers at serious risk of being provided with incorrect details of the products they were being sold, and of receiving advice on products from sales staff who did not possess the appropriate knowledge, qualifications and training.
- 4.19. You distributed your Treating Customers Fairly (“TCF”) manual to all sales staff but informed them to ignore it. As a result, your staff failed to adhere to the relevant TCF procedures. This created the risk of customers purchasing products which were unsuitable.
- 4.20. You also provided training material to all sales staff which failed to illustrate the potential disadvantages of re-mortgaging a property. This created the risk that sales staff were unaware of the potential disadvantages involved and the risk that they might sell a product which was unsuitable for the client’s needs.

Dealing with the regulator in an open and honest way

- 4.21. During the FSA visit to your offices in July 2008, you told the FSA investigators that certain specific issues would be addressed: namely that all staff would be put on a fixed salary, that a Treating Customers Fairly culture would be implemented, that staff would be adequately trained, and that record management procedures would be developed. You stated in February 2009 that you had made these changes. In fact, you had failed to make any of these improvements.

5. ANALYSIS OF BREACHES AND SANCTION

- 5.1. The FSA has considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives and the regulatory guidance and policy referred to in Annex A.
- 5.2. In assessing your honesty and integrity and competence and capability for the purpose of determining whether you are a fit and proper person, the FSA has had regard to the following:
 - (a) you encouraged a high pressure sales environment in which the interests of customers were neglected in favour of making sales and in which staff were able to use customers’ direct debit details to set up policies without permission;
 - (b) you failed to put in place adequate systems and controls to train and monitor your staff to ensure that Warwick was complying with its regulatory responsibilities; and
 - (c) you failed to deal openly and honestly with the FSA’s investigators.

- 5.3. The FSA considers that the nature of these matters, the period of time over which they occurred and their gravity directly impugns your competence and capability and your honesty and integrity. They demonstrate that you have failed to meet the minimum regulatory standards in terms of competence and capability and honesty and integrity, and that you are therefore 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 considers that you pose a serious risk to product providers, to consumers and to the FSA's statutory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.
- 5.5. For these reasons, the FSA considers that it is necessary to prohibit you pursuant to section 56 of the Act.
- 5.6. The facts and matters described above have further led the FSA to be satisfied that it is no longer necessary to keep Warwick's Part IV permission in force. The FSA therefore considers it necessary to cancel Warwick's Part IV permission pursuant to section 45(3) of the Act.

6. DECISION MAKERS

- 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 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 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 contacts

- 7.4. For more information concerning this matter generally, you should contact Paul Howick of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 7954).

Signed:

.....

Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX A

1. STATUTORY PROVISIONS

Statutory objectives

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

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)).

Cancellation

- 1.4. Section 45(3) of the Act requires that if, as a result of a variation of a Part IV permission under that section, there are no longer any regulated activities for which the authorised person concerned has permission, the FSA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

2. RELEVANT FSA RULES AND POLICY

Prohibition

Fit and Proper Test for Approved Persons

- 2.1. 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 individual who is not an approved person.
- 2.2. 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. Among the most important considerations are the person's honesty, integrity and reputation and competence and capability.
- 2.3. 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:
 - (a) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3 G (5)); and
 - (b) 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)).

- 2.4. In determining a person's competence and capability FIT 2.2 G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1 G. Those matters include:
- (a) 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 2.2.1 G (1)); and
 - (b) 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 2.2.1 G (2)).

The Enforcement Guide

- 2.5. 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").
- 2.6. 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.
- 2.7. 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.
- 2.8. 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.
- 2.9. 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):
- (a) the matters set out in section 61(2) of the Act;
 - (b) 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);

- (c) 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);
 - (d) the relevance and materiality of any matters indicating unfitness;
 - (e) the length of time since the occurrence of any matters indicating unfitness;
 - (f) 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
 - (g) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.10. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.
- 2.11. 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:
- (a) providing false or misleading information to the FSA;
 - (b) severe acts of dishonesty, for example those which may have resulted in financial crime;
 - (c) serious lack of competence; and
 - (d) 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.

Cancellation

- 2.12. The FSA's policy in relation to the exercise of its powers to vary and/or cancel an authorised person's Part IV permission is set out in Chapter 8 of EG.
- 2.13. In particular, EG 8.16 states that where the situation appears so urgent and serious that the firm should immediately cease to carry on all regulated activities, the FSA may first vary the firm's Part IV permission so that there is no longer any regulated activity for which the firm has a Part IV permission. If it does this, the FSA will then have a duty to cancel the firm's Part IV permission once it is satisfied that it is no longer necessary to keep the Part IV permission in force.