
FINAL NOTICE

To: Antoinette Davis trading as Ability Mortgage Solutions
FRN: 462133
IRN: AXD01657
Date of Birth: 18 December 1946
Date: 23 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 a decision to prohibit you, Antoinette Davis, from carrying out any controlled function involving the exercise of significant influence at any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity.

ACTION

- 1.1. The FSA gave you, Ms Antoinette Davis, a Decision Notice on 29 September 2009 which notified you that the FSA had decided:
 - (1) to make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to prevent you from carrying out any controlled function involving the exercise of significant influence at any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity ("the Prohibition Order"); and
 - (2) to cancel, pursuant to section 45 of the Act the permission granted to you, trading as Ability Mortgage Solutions, pursuant to Part IV of the Act ("your part IV permission").
- 1.2. You did not refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly, for the reasons set out below, the FSA hereby:

- (1) Makes an order, pursuant to Section 56 of the Act, prohibiting you from performing any function involving the exercise of significant influence at any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity; and
 - (2) Cancels your Part IV permission.
- 1.4. The Prohibition Order and the cancellation of your Part IV Permission take effect from the date of this Final Notice.

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 fit and proper to carry out significant influence functions in relation to regulated activities carried on by authorised persons and should be prohibited from doing so.
- 2.2. In the opinion of the FSA, you are not fit and proper to carry out significant influence functions because you lack competence and capability. In particular, you have failed to:
- (1) understand the requirements and standards of the regulatory system;
 - (2) establish appropriate systems and controls;
 - (3) take reasonable care to ensure the suitability of advice; and
 - (4) evidence the suitability of mortgage recommendations.
- 2.3. The FSA has concluded, on the basis and the facts and matters described below, that you fail to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA:
- (1) you no longer satisfy the FSA that you are fit and proper to conduct regulated activities having regard to all the circumstances, the nature of any regulated activity that you seek to carry on and the need to ensure that your affairs are conducted soundly and prudently (Threshold Condition 5). Specifically, you:
 - (a) have failed to conduct business in compliance with proper standards;
 - (b) do not have a competent and prudent management in place; and
 - (c) have failed to conduct your affairs with due skill, care and diligence.
 - (2) you have inadequate resources in relation to the regulated activities that you have permission to carry on given that you are not a suitable person capable of acting as a sole trader (Threshold Condition 4).
- 2.4. The FSA therefore has concluded that pursuant to Section 45 of the Act, your Part IV permission should be cancelled.

3. RELEVANT STATUTORY PROVISIONS

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

4. FACTS AND MATTERS RELIED ON

- 4.1. You have been authorised by the FSA to sell regulated mortgage contacts since 23 January 2007.
- 4.2. Prior to this date, you were a mortgage adviser employed by a small mortgage broker. When this broker was forced to cease trading because its proprietor (“Adviser B”) was made bankrupt, you agreed to act as a sole trader in order to continue servicing the previous broker’s client base. Adviser B was employed as a mortgage adviser by you.
- 4.3. You were one of 50 mortgage brokers visited by the FSA in 2008 as part of a thematic project looking into the ‘quality of advice processes’ in mortgage brokers.
- 4.4. Unless otherwise stated, the facts and matters set out in paragraphs 4.5 to 4.27 below, relate to the period between 23 January 2007 and 18 February 2008 (“the relevant period”).

Understanding the requirements and standards of the regulatory system

- 4.5. You have explained that, when you became authorised as a sole trader, you did not have any understanding of the requirements imposed on an authorised firm. You have also acknowledged that you failed to take adequate steps to control the business for the first year after becoming a sole trader.

Systems and Controls

Compliance Resource

- 4.6. You used the services of a compliance consultant. The arrangements with the compliance consultant were informal and on an ad hoc basis. The level of support provided by the compliance consultant varied depending on her commitments elsewhere. There was no formal contract in place and no document describing which services she was to provide to you.
- 4.7. You have acknowledged that you need a full time compliance resource, however you have failed to appoint someone in a full time role.

Monitoring of advisors

- 4.8. You had no documented supervisory or monitoring system for advisers. You indicated that a compliance monitoring plan was installed, however you failed to provide any evidence of this plan.
- 4.9. The monitoring of your advice and that of Adviser B is informal and inadequate. For example:

- (1) you indicated that you monitored Adviser B by listening to him when in the office and sitting near him but it is not clear that you always gave the monitoring that you conducted your full attention;
- (2) you did not properly document the monitoring that you conducted of Adviser B, nor did you document any feedback that you gave as a result of this monitoring;
- (3) despite being the person responsible for conducting most of the monitoring, you have acknowledged that the quality of your monitoring is not as good as that which is conducted by the compliance consultant; and
- (4) the monitoring of your work was not documented.

4.10. The FSA has noted a number of occasions where your compliance consultant identified serious concerns with the advice given by you and Adviser B, and the lack of documentation retained on customer files. You have acknowledged that you failed to act promptly on the compliance consultant's recommendations.

Training and competence of advisers

- 4.11. At the start of the relevant period, you had no formal training and competence arrangements in place. You have acknowledged that you did not start to discuss training and competence with Adviser B until January 2008, and only did so when your compliance consultant recommended that you conduct regular meetings on a one to one basis with Adviser B.
- 4.12. From September 2007, you and Adviser B were required to spend a minimum of one hour per week on training. The FSA has not seen any evidence that you personally have undertaken any training. Adviser B only undertook training for one hour per week during two weeks out of an eight week period. Your compliance consultant provided training material for the benefit of all staff, however you failed to ensure that this was used.
- 4.13. You are unable properly to evidence your own competence to provide mortgage advice. You do not have a training and competence file, and are therefore unable to evidence any training that you have undertaken.
- 4.14. You introduced a program of tests for yourself and Adviser B following advice from your compliance consultant. Adviser B failed over half of the tests he took during an 11 month period from July 2007 to May 2008. In addition, he failed to answer the same multiple choice question correctly on four occasions. You failed to monitor the results of these assessments, and also failed to take any remedial action.

Reasonable care to ensure suitability of advice

Gathering customer information

- 4.15. You and Adviser B completed a 'New Client Details Sheet' during telephone conversations or face to face meetings with customers. This document was used to

gather and record information about the customers' circumstances, needs and preferences which was used to source a mortgage product.

4.16. You failed to ensure that sufficient information was obtained from a client before a product was recommended to them, for example:

(1) the New Client Details Sheet did not capture expected retirement dates, existing mortgage rates, sufficient information about existing debts, and the client's attitude to risk. You have acknowledged that the New Client Details Sheet failed to record sufficient information to enable you and Adviser B to source the most suitable mortgage, however you did not change this practice until the FSA visited you in early 2008; and

(2) you allowed customers to refuse to disclose information about their income and expenditure despite acknowledging that this information is necessary to assess the affordability of a mortgage product.

4.17. The FSA has reviewed 24 customer files. Information relating to the customers' circumstances is missing from 15 of these files.

Evidencing suitability

Evidencing Product Sourcing

4.18. You and Adviser B used a computer software research tool to ascertain the most suitable product for a customer. Copies of the results of this research were not always kept. You have failed, therefore, to evidence that research across the market was conducted before recommendations were made.

Evidencing suitability of advice

4.19. It was your standard practice to issue a 'suitability letter' to customers in order to document why the recommendation made was suitable for them. However, no suitability letter was sent in eight out of the 24 cases reviewed by the FSA. You acknowledged that insufficient information had been retained on some of these files in order to demonstrate whether the advice given was suitable.

4.20. Your suitability letters contained a number of standard paragraphs. Five of the 16 suitability letters reviewed by the FSA contained paragraphs which were not relevant to the recommendation that had been made. You subsequently acknowledged that the suitability letter was generic and not tailored to each customer.

4.21. Your suitability letters did not always clearly set out why the recommendation had been made. Of the 16 suitability letters reviewed by the FSA, seven did not contain sufficient detail to evidence why the advice given was suitable for the customer.

4.22. You and Adviser B sometimes changed your recommendation, for example if there was a change in the customers' circumstances, without documenting why a different product had been recommended. In addition, where a recommendation had been changed, the customer was not always sent the relevant revised documents incorporating these changes.

Conclusions

- 4.23. You have admitted to a lack of understanding of regulatory requirements during the relevant period.
- 4.24. You have failed to implement adequate systems and controls. In particular, you have failed to ensure:
- (1) adequate compliance resource;
 - (2) adequate monitoring; and
 - (3) adequate training and competence arrangements.
- 4.25. You have failed to satisfy the FSA that you have taken reasonable care to ensure the suitability of the advice given by you and Adviser B or that you have kept sufficient records to enable you to provide adequate evidence of suitability. In particular, you have failed to ensure:
- (1) adequate information about the customer's circumstances was gathered;
 - (2) adequate records relating to the advice given were retained on file; and
 - (3) that the reasons for the advice given were adequately documented.
- 4.26. Your failings have exposed customers to the risk of receiving unsuitable advice.
- 4.27. Despite having acknowledged some of your failings, and despite having been informed of the FSA's original concerns in a letter dated May 2008, you have not demonstrated that you have taken adequate action to address all of those failings. The FSA therefore considers that you have demonstrated a lack of competence and capability in the relevant period and that you continue to lack competence and capability.

5. ANALYSIS OF BREACHES

- 5.1. By reason of the facts and matters referred to in paragraphs 4.1 to 4.27 above, the FSA considers that your conduct during the relevant period, as a sole trader and the authorised person responsible for the day-to-day activities and running of your business, fell short of the standards required by the FSA's Fit and Proper test for Approved Persons.
- 5.2. In assessing your competence and capability, the FSA has had regard to:
- (1) your failure to satisfy FSA training and competence requirements and failure to understand the requirements and standards of the regulatory system;
 - (2) your failure to act with the competence and capability which would be required of a sole trader by failing to have in place adequate systems and controls; and

- (3) the fact that you have demonstrated a serious lack of compliance with regulatory standards by failing to satisfy the FSA that you have taken reasonable steps to ensure the suitability of advice given by you and Adviser B and to evidence the recommendations you made.
- 5.3. You have failed to demonstrate that all these matters have been adequately addressed and so the FSA considers that you continue to lack competence and capability and that you pose a risk to consumers and also to the fulfilment of the FSA's market confidence objective.
- 5.4. In an email to the FSA dated 18 August 2009, you indicated that you intended to close your business. However, you have not addressed the FSA's concerns regarding your competence and capability. Accordingly, the FSA remains of the view that, for the reasons set out above, you are not a fit and proper person to carry out any significant influence function. The FSA therefore considers that it is necessary to prohibit you, pursuant to section 56 of the Act, from carrying out any controlled function involving the exercise of significant influence at any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity.
- 5.5. The FSA has also concluded, for the reasons set out above, that you are failing, and are likely to continue to fail to satisfy Threshold Condition 5 (Suitability) and Threshold Condition 4 (Adequate resources). Pursuant to section 45 of the Act, your Part IV permission should be cancelled.

6. DECISION MAKERS

- 6.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

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 Mario Thedosiou (Tel: 020 7066 5914/ Fax 020 7066 5915) of the Enforcement Division of the FSA.

Tom Spender
Head of Retail Enforcement
FSA Enforcement Division

ANNEX A

1. Statutory Provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; promoting public awareness; the protection of consumers; and the reduction of financial crime.

Prohibition

- 1.2. The FSA has the power, under 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 or any regulated activity falling within a specified description or all regulated activities.

Cancellation

- 1.3. Section 41 and Schedule 6 of the Act set out the Threshold Conditions. These are the minimum standards for becoming and remaining authorised and which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.4. The FSA is permitted by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that they are failing, or likely to fail, to satisfy the Threshold Conditions.
- 1.5. Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 which provides that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on.
- 1.6. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

2. Regulatory guidance and policy

- 2.1. In considering the appropriate sanction, the FSA has had regard to its published guidance. Although the references in this notice are to the Enforcement Guide ("EG"), the FSA has had regard to the appropriate provisions of the Enforcement Manual ("ENF") which is no longer in force but applied during some of the relevant period. The FSA has also had regard to the relevant provisions in its Decision Procedure and Penalties Manual ("DEPP") which came into effect on 28 August 2007.

Prohibition

- 2.2. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG.
- 2.3. 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 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.
- 2.4. EG 9.17 to 9.18 provides 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.
- 2.5. 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 the Fit and Proper test for Approved Persons (“FIT”) in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) the relevance and materiality of any matters indicating a lack of fitness and propriety;
 - (3) the length of time since the occurrence of any matters indicating lack of fitness and propriety; and
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Fit and Proper Test for Approved Persons

- 2.6. The section of the FSA handbook entitled “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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 2.7. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety, including the person's competence and capability.
- 2.8. In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. The 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)).

Cancellation

- 2.9. In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

- 2.10. COND 2.4.1D(1) states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 2.11. COND 2.4.2G(1) provides that Threshold Condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on.
- 2.12. COND 2.4.2G(2) provides that the FSA will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources.
- 2.13. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

Threshold Condition 5: Suitability (Paragraph 4, Schedule 6 to the Act) – COND 2.5

- 2.14. COND 2.5.1D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on

or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

- 2.15. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.16. COND 2.5.3G(1) provides that the emphasis of this Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
- 2.17. COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm.
- 2.18. COND 2.5.4G(2) provides that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; or (b) has or will have a competent and prudent management.
- 2.19. COND 2.5.6G(4) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, relevant matters may include whether the firm is connected with a person who has contravened any provisions of the Act or the regulatory system.
- 2.20. COND 2.5.7G(1) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities.

The Enforcement Guide ("EG")

- 2.21. EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained in section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.22. EG 8.14 provides that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section of the Act include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.