
FINAL NOTICE

To: Akin Johnson
Trading as Lifestyle Mortgages Islington

FRN: 303931

Address: Flat D
8 Moreland Street
London
EC1V 8BE

Date: 9 June 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, Mr Akin Johnson, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and about the cancellation of your Part IV permission

1. THE ACTION

- 1.1. The FSA gave you a Decision Notice on 9 June 2009 (“the Decision Notice”), which notified you that the FSA had decided to make a prohibition order against you to prevent you from carrying out any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm (“the Prohibition Order”) pursuant to section 56 of the Financial Services and

Markets Act 2000 (the “Act”) and to cancel your Part IV permission pursuant to section 45 of the Act.

- 1.2. You agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below, 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 and has cancelled your Part IV permission pursuant to section 45 of the Act. The Prohibition Order and the cancellation of your Part IV permission take effect from 9 June 2009.

2. REASONS FOR THE ACTION

Prohibition

- 2.1. On the basis of the facts and matters described below, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of competence and capability and are not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and professional firms. The FSA had made a Prohibition Order against you since you were solely responsible for ensuring that Lifestyle Islington met its responsibilities.
- 2.2. In summary,
 - (1) you failed to take reasonable care to organise and control Lifestyle Islington’s affairs responsibly and effectively, with adequate risk management systems, thereby contravening Principle 3 of the FSA’s Principles for Business (“the Principles”). In particular:
 - (a) you employed individuals without assessing their fitness and propriety and without providing adequate training or supervision;
 - (b) you allowed those employees access to your clients’ personal data and to your computer systems, allowing them to submit false and misleading mortgage applications without your knowledge;

- (c) you failed to put in place adequate systems and controls to identify and monitor cases being submitted in the name of Lifestyle Mortgages, therefore you were not able to identify that your business could be used by others as a vehicle to commit mortgage fraud; and
 - (d) you failed to put in place adequate systems and controls to identify discrepancies in the mortgage applications you were personally submitting.
 - (2) you failed to take reasonable steps to ensure that you complied with relevant requirements and standards of the regulatory system regarding arranging and effecting regulated mortgage contracts, thereby contravening Principle 2 of the Principles. In particular you failed:
 - (a) to adequately assess and record customers' needs and circumstances;
 - (b) to document properly the business you were conducting; and
 - (c) to comply with a relevant requirement in relation to non-advised mortgage sales in the Mortgage and Home Finance: Conduct of Business sourcebook ("MCOB").
 - (3) you failed to disclose to the FSA that you had been removed from the mortgage intermediary panels of two lenders, information of which the FSA would reasonably expect notice, thereby contravening Principle 11 of the Principles.
- 2.3. The FSA considers the failures at paragraph 2.2(1) (a)-(d) particularly serious because they resulted in mortgage applications being submitted through Lifestyle Islington which contained false and misleading information.
- 2.4. This action supports the FSA's statutory objectives of market confidence, the protection of consumers and the reduction of financial crime.

Cancellation

- 2.5. You are a sole trader and there are no approved persons working at Lifestyle Islington. The FSA has concluded that Lifestyle Islington is failing to satisfy the

threshold conditions set out in Schedule 6 to the Act (“the Threshold Conditions”) in that Lifestyle Islington is not a fit and proper person having regard to all the circumstances, by virtue of its connection with you and the overall need to ensure its affairs are conducted soundly and prudently (Threshold Condition 5).

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

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

Prohibition

3.2. 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. Such an order may relate to a specified regulated activity or any regulated activity falling within a specified description or all regulated activities.

Cancellation

3.3. Section 41 and Schedule 6 of the Act set out the Threshold Conditions 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.

3.4. Paragraph 5 of Schedule 6 to the Act 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 (Threshold Condition 5: Suitability).

3.5. The FSA has the power, pursuant to section 45(2) of the Act, to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions or it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

FSA rules and guidance

Prohibition

FSA's policy for exercising its power to make a prohibition order

- 3.6. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.7. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it towards achieving its regulatory objectives. The FSA may exercise these powers where it considers that, to achieve any of its regulatory 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.
- 3.8. EG 9.4 sets out the general scope of the FSA's power 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.
- 3.9. 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.
- 3.10. 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 of approved persons are set out 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 unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

3.11. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.

Fit and Proper Test for Approved Persons (“FIT”)

3.12. The section of the FSA handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to set out and describe 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.

3.13. 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 and EG 9.18.

3.14. FIT 1.3.1G 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 will be the person’s competence and capability.

3.15. In determining a person’s competence and capability, FIT 2.2.1G(2) provides that the FSA will have regard to all relevant 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.

Cancellation

FSA's policy for exercising its power to cancel Part IV permission

- 3.16. The FSA’s policy for exercising its power to cancel a Part IV permission is set out in EG. The main considerations in relation to cancellation are set out in EG 8.13(1). This provides that the FSA will consider cancelling an authorised person'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 or it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.
- 3.17. EG 8.14 provides that the grounds on which the FSA may exercise its powers to cancel an authorised person’s permission under section 45 of the Act are set out in section 45(1). These include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.

Guidance concerning Threshold Condition 5: Suitability

- 3.18. COND 2.5.1 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.
- 3.19. 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 of its regulated activities and the overall need to be satisfied that its affairs are conducted soundly and prudently.
- 3.20. COND 2.5.6G gives guidance in respect of whether a firm satisfies Threshold Condition 5, in conducting its business with integrity and in compliance with proper standards including whether the firm has been open and co-operative in all its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and whether the firm has contravened, or is connected with any person who has contravened any provisions of the Act or the regulatory system (COND 2.5.6G(4)); and whether the firm has taken reasonable care to establish and maintain effective

systems and controls for compliance with applicable requirements and standards under the regulatory system that apply to the firm (COND 2.5.6G(6)).

- 3.21. COND 2.5.7G provides guidance on the matters that are relevant to determining a firm satisfying and continuing to satisfy Threshold Condition 5 in respect of it having competent and prudent management and exercising due skill, care and diligence. Such matters include whether the firm has conducted enquiries that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system (COND 2.5.7G(9)); and having in place systems and controls against money laundering (COND 2.5.7(10)).

The FSA's Principles for Business

- 3.22. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- 3.23. Pursuant to section 138, the FSA has published the Principles which apply either in whole or in part to all authorised persons.
- 3.24. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.
- 3.25. Being ready, willing and organised to abide by the Principles is therefore a critical factor in an application for Part IV permission and breaching the Principles may call into question whether a firm with Part IV permission is still fit and proper (PRIN1.1.4G).
- 3.26. Principle 2 provides that a firm must conduct its business with due skill, care and diligence.
- 3.27. Principle 3 provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 3.28. Principle 11 provides that a firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Relevant provisions of MCOB

- 3.29. Chapter 4.8 of MCOB sets out the requirements which a firm must comply with in the event of it completing non-advised mortgage sales.
- 3.30. MCOB 4.8.1R(1) provides that if a firm arranges a regulated mortgage contract or a variation to an existing regulated mortgage contract without giving a personal recommendation, it must ensure that all the questions it asks the customer about the customer's needs and circumstances are scripted in advance.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are an authorised person and a sole trader trading as Lifestyle Islington.
- 4.2. You became authorised on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:
- (1) agreeing to carry on a regulated activity;
 - (2) arranging regulated mortgage contracts; and
 - (3) making arrangements with a view to regulated mortgage contracts.

Background to the FSA's investigation

- 4.3. The FSA received information from two lenders ("the Lenders") regarding discrepancies in a number of mortgage applications submitted through Lifestyle Islington. This led to the Lenders removing Lifestyle Islington from their panel of mortgage intermediaries.
- 4.4. The FSA appointed investigators on 22 October 2008. The investigators reviewed mortgage applications obtained from the Lenders and a sample of client files obtained from you. They also conducted an interview with you on 30 January 2009.
- 4.5. On 11 November 2008, you agreed to vary your Part IV permission on a voluntary basis so as to cease conducting regulated activities pending the outcome of the FSA's investigation. This variation took effect on 14 November 2008.

FSA's findings

Systems & controls: recruitment, training and supervision of employees

- 4.6. You said that you employed casual labour to assist you in operating Lifestyle Islington. You gave those employees access to your computer system and provided them with your personal details and those of your clients in order for them to process mortgage applications through Lifestyle Islington. You could not recall how many employees you had used for this purpose and you could only name one of these employees.
- 4.7. You said that you gathered the relevant information to submit mortgage applications from your clients, you then passed this information to your employees for them to process the applications electronically. However, the FSA found that you did not supervise them when they submitted the mortgages and, as a result, you were not fully aware of the mortgage applications that were submitted through Lifestyle Islington.
- 4.8. The FSA's review of a sample of mortgage applications submitted to the Lenders in your name established that:
- (1) in January and February 2008 a total of seven mortgage applications were submitted in your name for residential mortgages for your home address. These mortgage applications all contained different statements of your income and employment;
 - (2) in November 2007 a residential mortgage application for your home address was submitted in the name of Josph Akin Adewumi Dada, an alias you admitted to having used in the past; and
 - (3) the information provided in these mortgage applications regarding your employment and income was different to that held by Her Majesty's Revenue and Customs ("HMRC").
- 4.9. You admitted that the employment and income figures in the above mortgage applications were incorrect. Your explanation for these mortgage applications was that you provided your employees with your personal details in order to provide training on how your computer systems worked. Your employees would enter your

details on the Lenders' online application systems as if they were submitting a 'real' mortgage. You suggested that while training they may have submitted the mortgage applications in error and without your knowledge.

- 4.10. In the FSA's opinion this represents a gross failure to put in place adequate systems and controls to prevent your firm being used for the purposes of financial crime. Further, this directly led to at least eight mortgage applications being submitted to the Lenders containing false and misleading information.

Systems and controls: identifying discrepancies in mortgage applications

- 4.11. The FSA also reviewed 16 of your client files. The employment and income details in four mortgage applications (three of which were for regulated mortgage contracts) were compared against the records kept by HMRC. In all four cases the income of the applicants had been inflated.
- 4.12. There was no evidence that you had completed any checks regarding the client's income in these four cases. In one of these cases your client file contained two different mortgage applications, signed by you within one month of each other, each with a different figure for the client's income. In interview you could not provide an adequate explanation of why you had not identified this discrepancy.
- 4.13. It is the FSA's opinion that while you were not knowingly involved in the submission of mortgage applications for your clients containing false and misleading information, your lack of systems and controls was such that it allowed Lifestyle Islington to be used to submit fraudulent mortgage applications.

Record keeping

- 4.14. The FSA found that in general your client files were of such a poor quality that in many cases it was not possible to determine which mortgage had been applied for (or indeed if a mortgage had been applied for at all) or the basis on which the customer had chosen a particular mortgage. In particular, of the 16 client files reviewed:

- (1) in 8 of the files there were either no copies of the mortgage applications submitted, or only partial copies;
- (2) in 13 of the files there was no record of information on your client's needs or circumstances, or whether this information had been gathered; and
- (3) in 1 case you had not complied with the requirement to provide the KFI, in breach of MCOB 5.5.1(R). In a further 6 cases it was not clear whether the KFI was ever produced.

4.15. These findings represent a serious failure to document properly the business you were conducting. As a result of this failure the FSA was also not able to determine whether the choice of mortgage the clients were given was suitable and in their best interests.

Your compliance with regulatory requirements

4.16. The FSA found that you could not adequately explain what constituted a non-advised mortgage sale. There were only copies of scripted questions in 2 of the 16 client files the FSA reviewed and there was no other evidence that you used scripted questions to assess the client's needs and circumstances when you conducted sales.

4.17. In the FSA's opinion you did not fully understand the process you were required to follow and the difference between an advised and a non-advised sale. The FSA therefore considers it likely that in many cases you did not use scripted questions to assess your client's needs and circumstances in non-advised mortgage sales, as required by MCOB 4.8.1R(1).

Dealing with the FSA in an open and cooperative manner

4.18. In January 2008 you were informed by the Lenders that you were being removed from their panel of mortgage intermediaries as they had serious concerns regarding a number of discrepancies in the mortgage applications you were submitting.

- 4.19. You did not inform the FSA that you had been removed from the Lenders' panels of mortgage intermediaries. When questioned on why you did not inform the FSA, you stated you were not aware it was necessary. In the FSA's opinion you should have been aware that this was information of which the FSA would reasonably expect notice.

5. ANALYSIS OF BREACHES AND SANCTIONS

Prohibition

- 5.1. Having regard to the facts and matters described above, the FSA has considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance referred to in section 3 above.
- 5.2. In assessing your competence and capability for the purpose of considering whether you are a fit and proper person, the FSA has had regard to the following:
- (1) you failed to take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems, in contravention of Principle 3 of the Principles, in that you failed:
 - (a) to assess the suitability of your employees and to provide adequate training and supervision your staff, allowing them to submit mortgage applications containing false and misleading information without your knowledge; and
 - (b) to identify that you were personally submitting mortgage applications which contained inflated income figures, including when there were clear indications on the client file that the client had inflated their income.
 - (2) you failed to conduct your business with due skill, care and diligence thereby contravening Principle 2 of the Principles, in that you failed to adequately assess and record customers needs and circumstances, to document properly

the business you were conducting and to take reasonable steps to ensure that you complied with the requirement under MCOB 4.8.1R(1) that all questions regarding a customer's needs and circumstances were scripted in advance.

- (3) you failed to disclose to the FSA that you had been removed from the Lenders' panels of mortgage intermediaries, which is information of which the FSA would reasonably expect notice, thereby contravening Principle 11 of the Principles.

5.3. The FSA considers that the failures at paragraph 5.2(1)(a) and (b) above were particularly serious as they directly led to mortgage applications being submitted which contained false and misleading information. The contravention of Principles 2, 3 and 11 is further evidence of your lack of competence and capability.

5.4. This conduct demonstrates that you are not able to perform any functions in relation to regulated activities and you have failed to meet the FSA's standards of competence and capability.

5.5. The FSA has concluded from the above that you are not fit and proper to carry on regulated activities and that, if you performed any functions in relation to regulated activities you would pose a serious risk to consumers, to lenders (and therefore to confidence in the financial system) and to the fulfilment of the FSA's reduction of financial crime objective. The FSA therefore considers that a Prohibition Order is necessary and proportionate.

Cancellation

Threshold Condition 5: Suitability

5.6. As a sole trader the Part IV permission granted to Lifestyle Islington as an authorised person is directly related to your own fitness and propriety. As a result of the FSA's conclusions with regards to your fitness and propriety the FSA considers that Lifestyle Islington is not a fit and proper person having regard to all the circumstances.

6. DECISION MAKER

6.1. The decision which gave rise to the obligation to give this Final Notice was made by 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 Division of the FSA (direct line: 020 7066 7954/fax: 020 7066 7955).

Jonathan Phelan
Head of Department
FSA Enforcement Division