
FINAL NOTICE

To: **Asim Hussain**

Date of birth: **9 September 1972**

Date: **23 September 2008**

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, Asim Hussain, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1. The Order

- 1.1. The FSA gave you a Decision Notice dated 23 September 2008 (the “Decision Notice”) which notified you that the FSA had decided to cancel your Part IV permission, pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), and to make a prohibition order against you to prevent you from carrying out any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).
- 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 cancels your Part IV permission and makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 23 September 2008.

2. REASONS FOR THE ORDER

- 2.1. The FSA has concluded that you, Asim Hussain, should not remain an authorised person and that you are not a fit and proper person to carry out any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 2.2. On the basis of the facts and matters summarised below, and set out in more detail in section 5 of this notice, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity.
- 2.3. You pose a risk to consumers, and to lenders and therefore to confidence in the financial system. Also action should be taken against you in support of the FSA's financial crime objective.
- 2.4. In summary you submitted false mortgage applications to lenders based on false and misleading information both in your own mortgage application and in the mortgage applications of customers of Lifestyle Mortgages (Ealing), ("Lifestyle Ealing").

3. RELEVANT STATUTORY PROVISIONS

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

Cancellation

- 3.2. 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.

- 3.3. Paragraph 4 of Schedule 6 to the Act 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 (Threshold Condition 4: Adequate Resources).
- 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 is authorised by 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.

Prohibition

- 3.6. 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.

4. RELEVANT REGULATORY GUIDANCE AND OTHER PROVISIONS

- 4.1. In deciding to take the proposed action described above, the FSA has had regard to the guidance published in the FSA Handbook and its relevant published policies. The relevant considerations in relation to the proposed action are set out below. Although the references in this notice are to the FSA's Enforcement Guide ("EG"), the FSA has had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during the relevant period in which Mr Hussain's misconduct occurred.

Cancellation

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

- 4.2. 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 where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

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

- 4.3. COND gives guidance on the Threshold Conditions.
- 4.4. COND 2.4.1D 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.
- 4.5. 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 and effective means by which to manage risks.
- 4.6. COND 2.4.4G(1) states that the FSA will have regard to all relevant matters which include (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.
- 4.7. COND 2.4.4G(3) requires the FSA to take into account only relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Guidance concerning Threshold Condition 5: Suitability (Paragraph 5, Schedule 6 to the Act)

- 4.8. 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.

- 4.9. COND 2.5.2G 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.
- 4.10. 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 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 provision 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)).
- 4.11. 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 putting in place systems and controls against money laundering (COND 2.5.7(10)).

Prohibition

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

- 4.12. 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.

- 4.13. 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.
- 4.14. 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.
- 4.15. 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):
- 4.16. (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 FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (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.

Fit and Proper Test for Approved Persons

4.17. 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.

4.18. 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.

4.19. In determining a person’s honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G include:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
- (2) 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 2.1.3G(13)).

5. FACTS AND MATTERS RELIED ON

Background

- 5.1. You, trading as Lifestyle Ealing are the authorised person and sole trader. You operated as a mortgage broker based in the West London area and were the only adviser.
- 5.2. 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 (requirement not to hold or control client money);
 - (2) making arrangement with a view to regulated mortgage contracts;
 - (3) arranging deals in investments;
 - (4) making arrangements with a view to transactions in insurance mediation.

You are not permitted to hold or control client money.

- 5.3. The FSA received information from a lender highlighting their concerns regarding a number of discrepancies in relation to a number of different mortgage applications submitted by you which suggested that you had submitted mortgage applications based on false and misleading information.
- 5.4. The FSA reviewed a small sample of mortgage applications, submitted by you to lenders, including your own mortgage application.
- 5.5. On 2 May 2008, you agreed to vary your Part IV permission on a voluntary basis such that you would cease conducting regulated activities pending the outcome of the FSA's investigation.

Your personal mortgage application

- 5.6. On 22 February 2005 you applied for a mortgage through Lifestyle Ealing. In your application you declared that you earned a net profit of £155,347 during the previous

year. Your application was supported by a letter dated 27 January 2005 from your accountant to the lender.

- 5.7. The FSA found that you knowingly and intentionally submitted false inflated income details to a mortgage lender. You inflated your income to such an extent that you must have known there was no prospect of you receiving an income of that level from Lifestyle Ealing, and that if you had entered your actual income, you would never have received the mortgage offer from the lender.

Information submitted to HMRC

- 5.8. The mortgage payments on your dwelling exceed your declared income to HMRC. The FSA believes that it is reasonable to assume that you have failed to make accurate and honest tax returns to HMRC as the level of income declared is unrealistically small and insufficient to support mortgage payments on your own home.

False mortgage applications

- 5.9. The FSA reviewed 21 mortgage applications submitted to lenders by you. The employment and income details provided in applications for 21 individuals were checked against HMRC's records. In only three cases did income details on the mortgage applications correspond to the information that the applicants' had reported to HMRC.
- 5.10. By submitting false mortgage applications on behalf of customers you placed customers at risk of receiving mortgages that were beyond their ability to finance, resulting in indebtedness that could lead to insolvency and/or repossession of the property acquired.
- 5.11. You admitted to the FSA that you failed to carry out the appropriate checks that are expected of you when verifying customer details for at least six of the applicants.

6. ANALYSIS OF SANCTION

- 6.1. The FSA has concluded that you have failed to meet minimum regulatory standards in respect of honesty and integrity. In assessing your honesty, integrity and reputation, the FSA has had regard to your knowing involvement in the submission of false

information onto mortgage application forms and submitting applications based on information which you knew to be false to lenders. As such you have failed to act with honesty and integrity.

- 6.2. Because of the severity of the risk posed by you to lenders and therefore to confidence in the financial system, and given the FSA's financial crime objective, it is necessary in order to achieve its regulatory objectives for the FSA to exercise its power to make a Prohibition Order against you.
- 6.3. The facts and matters described above have led the FSA to conclude that you are failing, and are likely to continue to fail to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability) of the Threshold Conditions, set out in Schedule 6 to the Act, as you do not have the human resources of adequate quality, and you are not a fit and proper person, for failing to act with integrity, in compliance with proper standards. Accordingly, the FSA considers it appropriate to cancel your Part IV permission.

7. DECISION MAKER

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

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.

FSA contacts

7.3. 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).

Signed:

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Jonathan Phelan
Head of Department
FSA Enforcement Division