
FINAL NOTICE

To: Christopher Terence Davies
Of: Newquay Investment Services (2004) Limited
FRN: 231223
Individual reference: CTD00002
Date 25 August 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 about a requirement to pay a financial penalty.

1. THE PENALTY

1.1 The FSA gave you, Christopher Terence Davies a Decision Notice on 20 August 2009 which notified you that pursuant to section 66 of the Financial Services and Markets Act 2000 ("The Act"), the FSA had decided to impose a financial penalty of £17,500 on you, for failing to comply with Principles 4, 6 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“APER”) issued under section 64 of the Act.

- 1.2 You confirmed on 13 August 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 imposes a financial penalty on you in the amount of £17,500.
- 1.4 You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £25,000 on you.

2. REASONS FOR THE ACTION

- 2.1 By a Decision Notice dated 19 August 2009, the FSA concluded that you breached Principles 4, 6 and 7 of APER in your capacity as an approved person, at Newquay Investment Services (2004) Ltd ("Newquay"), between 31 October 2004 and 3 March 2009 ("the Relevant Period").
- 2.2 The breaches, which are described in more detail below, arise because you:
- (1) failed to disclose to the FSA material information about one of Newquay's advisers ("the Adviser") in breach of APER 4. You were made aware of this information after Newquay's application for the Adviser to be approved had been submitted to the FSA. You knew or should have known that the information which you failed to disclose was material as to whether or not the Adviser was fit and proper and something of which the FSA would reasonably expect notice;
 - (2) failed to act with due skill, care and diligence in managing the business of the firm for which you are responsible in your controlled functions in breach APER 6. In particular you failed to:
 - (a) exercise appropriate control over mortgage applications submitted by the Adviser; and
 - (b) consider whether it was appropriate, in light of indications that the Adviser was not fit and proper, to allow the Adviser to continue giving advice on life and other products.

(3) failed, as an approved person performing a significant influence function, to take reasonable steps to ensure that the business of the firm for which you are responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system in breach of APER 7. In particular you failed to:

- (a) ensure that Newquay's recruitment procedures required due diligence as to the fitness and propriety of the Adviser, prior to him being recruited by Newquay and, on receiving information which concerned the Adviser's fitness and propriety, that this was considered and action was taken as appropriate; and
- (b) understand the risks associated with 'fast track' mortgages.

2.3 These failures exposed Newquay's customers to an unacceptable risk of being recommended mortgage products which may not have been suitable for them. Additionally, these failures exposed lenders to the risk of offering mortgages on the basis of false or misleading information passed through Newquay.

2.4 This action supports three of the FSA's statutory objectives: reducing the extent to which firms can be used for purposes connected with financial crime, maintaining market confidence and protecting consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1 The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1 to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1 You are one of two directors at Newquay. You were approved by the FSA on 23 April 2004 to perform the controlled functions ("CF") 1 (Director), 8 (Apportionment and Oversight), 10 (Compliance), and 11 (Money Laundering Reporting) and subsequently on 14 January 2005 became responsible for insurance mediation. On 1 November 2007 you were approved to perform CF30 (Customer) at Newquay.

4.2 Newquay has been authorised by the FSA since 23 April 2004 to conduct regulated activities in relation to mortgage broking. Since 23 April 2004, you have employed five advisers at Newquay. There are currently four advisers at Newquay.

Failure to disclose information of which the FSA would reasonably expect notice in breach of APER 4

The Adviser

4.3 On 28 April 2008, the Adviser contacted you with a view to seeking employment at Newquay. You met with the Adviser on 1 May 2008. The Adviser explained that he wanted to move to Newquay because he was unhappy with the level of administrative support provided by his previous employer (“the Previous Employer”). The Adviser also explained that, since the Previous Employer joined a Network (“the Network”), his relationship with the Previous Employer had deteriorated due to procedural and processing delays.

4.4 You agreed to hire the Adviser. On 12 May 2008 you applied to the FSA, on behalf of Newquay, for approved person status for the Adviser. In the application you declared that, on the basis of due and diligent enquiry, the Adviser was a fit and proper person to perform CF30.

4.5 Following the submission of the application, you received a telephone call (the “Telephone Call”) from a representative of the Previous Employer and a representative of the Network. Both of the representatives alerted you to concerns about the Adviser’s business ethics and methods.

4.6 You have admitted that the Telephone Call made you question whether the Adviser was a suitable adviser for Newquay. You subsequently raised your concerns with the Adviser. The Adviser assured you that the only complaints made against him were due to administrative delays caused by the Adviser’s heavy workload.

The Reference

4.7 On 11 June 2008 you received a reference (the “Reference”) from the Network in connection with the Adviser’s conduct when working for the Previous Employer. The Reference noted that the Adviser had eight complaints lodged against him, of which one was upheld, and seven which were still being investigated. The Reference also noted issues with respect to the Adviser’ ability to:

- (1) obtain sufficient 'know your customer' information;
- (2) meet regulatory standards; and
- (3) demonstrate suitability of advice.

4.8 The Reference highlighted that the Adviser had been suspended by the Previous Employer pending an investigation. The Reference explained that one of the reasons for the Adviser's suspension was that income figures on mortgage applications submitted by him appeared to have been inflated.

4.9 You have admitted that some of the information contained in the Reference led you to conclude that the Adviser had lied to you about why he was leaving the Previous Employer. In particular, the Adviser had not told you that he had been suspended by the Previous Employer.

Conclusion

4.10 The Telephone Call and the Reference raised fundamental issues about the Adviser's fitness and propriety.

4.11 You failed to disclose information of which the FSA would reasonably expect notice. In particular, you failed to disclose to the FSA information contained in the Reference which was material to the FSA's consideration of whether or not the Adviser was fit and proper.

4.12 In addition the FSA considers that, on receipt of the Reference, you became aware that the information you had previously submitted to the FSA in the application was incomplete and inaccurate in that it did not contain any of the information contained in the Reference. On receipt of the Reference, you should have immediately informed the FSA about the information contained in the Reference so as to enable the FSA to assess properly whether the Adviser was fit and proper.

Failure to control and monitor the Adviser's mortgage applications in breach of APER 6

4.13 As a result of the concerns set out in the Telephone Call and the Reference, you decided that all mortgage business written by the Adviser would be checked before it was completed. In addition, you did not allow the Adviser to write self-certified mortgages because of the risk that false or misleading information income information could be provided to lenders.

- 4.14 You also explained that, as part of Newquay's internal process, the office manager carried out an initial file review of all client files to ensure an adviser has obtained all necessary documents, that all necessary documents had been completed and put into the relevant client file. A second review was completed to ensure the advice given by an adviser was suitable. You explained that you would conduct a review of a sample of files, although this may be conducted after completion. The purpose of your review was to ensure that the office manager's checks have been conducted correctly.
- 4.15 You explained that, where a customer was self-employed, you would expect to see evidence of the applicant's income (such as accounts) to enable you to verify the income details. However, on 23 May 2008 the Adviser submitted a joint 'fast track'¹ application (the "Application") on behalf of two customers. The Application was submitted by the Adviser without any proof of income despite one customer being self-employed.
- 4.16 You admitted that Newquay's systems and controls were inadequate in that the Application was able to reach completion without the Adviser, the office manager or you having seen proof of the customers' income. You admitted that this does not comply with the internal procedures in place at Newquay.

Conclusion

- 4.17 The FSA considers that you failed to take reasonable steps to ensure the adequate supervision of the Adviser. This led to the submission of at least one mortgage application where appropriate checks had not been carried out to verify the applicant's income.
- 4.18 The FSA considers that you failed to ensure that Newquay had appropriate systems and controls in place to mitigate the risk that advisers could submit mortgage applications without proof of a customer's income. This resulted in a mortgage application reaching completion without any proof of a customer's income being obtained or seen.
- 4.19 The FSA considers that these failures are aggravated because, at the time of the Application, you were aware of concerns from the Adviser's Previous Employer

¹ In a fast track mortgage a lender can request proof of income from the applicant at any time until completion, although this may not always happen. The risk with a fast track mortgage is that mortgage applications containing false or misleading information could be submitted to a lender by an adviser without obtaining proper proof of income.

about the apparent inflation of income figures in mortgage applications written by him.

Failure to consider the appropriateness of allowing the Adviser to continue giving advice on life and other products in breach of APER 6

4.20 On 19 June 2008, you received a letter (“the Letter”) from a lender (the “Lender”) which stated that the Lender would not accept any further business from the Adviser due to concerns identified about him whilst at the Previous Employer.

4.21 You explained that, following receipt of the Letter, you decided to stop the Adviser from writing any further mortgage business. However, you continued to allow the Adviser to write life and other business through Newquay until 3 March 2009, on which date you terminated the Adviser’s employment.

Conclusion

4.22 The FSA considers that you were alerted to concerns relating to the Adviser’s honesty and integrity on 11 June 2008 (in the Reference) and again on 19 June 2008 (when you were advised by the Lender of the Adviser’s removal from their lenders panel). However, you failed to consider the appropriateness of allowing the Adviser to continue writing life and other business until 3 March 2009.

4.23 The FSA considers that, whilst you felt that the concerns identified in the Reference and in the Letter were sufficiently serious to stop the Adviser writing mortgage business, you failed to consider whether the same concerns and risks were present if you allowed the Adviser to continue writing life and other business through Newquay.

4.24 The FSA considers that your failures in this regard demonstrate that you have failed to exercise due skill, care and diligence in managing the business of Newquay for which you are responsible in performing CF10.

Failure to ensure Newquay’s recruitment process was adequate in breach of APER 7

Failure to conduct adequate checks on prospective employees

4.25 In applying for approval for the Adviser, you declared to the FSA that, on the basis of due and diligent enquiry, the Adviser was a fit and proper person.

4.26 However, at the time you applied for the Adviser to be approved, you had not conducted any due and diligent enquiry. In particular, you did not apply for the Reference from the Adviser's Previous Employer until 20 May 2008; eight days after the application was made to the FSA and after the Adviser had started working at Newquay

Failure to understand the seriousness and the nature of the information contained in the Reference

4.27 You have explained that you did not know whether the concerns highlighted in the Telephone Call and the Reference related to administrative errors or more serious matters. Your failure to understand the concerns persisted despite the fact that the concerns clearly related to the quality of the Adviser's advice and the accuracy of applicants' income figures in mortgage applications submitted by the Adviser at the Previous Employer.

4.28 The only substantive step you took to investigate the concerns was to discuss them with the Adviser. You took at face value the Adviser's assurance that the complaints against him related only to administrative issues, despite this being at odds with the information in the Telephone Call and the Reference.

4.29 Despite the serious nature of the concerns raised by the Reference, you made the Adviser's position permanent without establishing the nature of the concerns and despite the fact that the Reference highlighted concerns which led you to conclude that the Adviser had lied to you about the Adviser's reasons for wanting to join Newquay. You failed to take adequate action to investigate or address the concerns.

Conclusion

4.30 In performing your duties as CF1, CF8 and CF10 at Newquay, you failed to take reasonable steps to ensure that the firm, for which you are responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system. The Telephone Call and the Reference raised doubts about the Adviser's fitness and propriety; however, you failed:

- (1) to undertake any assessment of the fitness and propriety of the Adviser before applying to the FSA for the Adviser to receive approved person status;

- (2) to consider the appropriateness of relying on the Adviser's explanations about the concerns identified in the Reference, in the knowledge that the Adviser had already lied to you about the Advisers reasons for wanting to join Newquay; and
- (3) to investigate fully, or adequately, concerns that had been raised about the Adviser by the Previous Employer before recruiting the Adviser.

4.31 Your failures resulted in Newquay recruiting the Adviser and allowing the Adviser to provide advice to customers when there were significant concerns that the Adviser was not fit and proper.

Failure to understand the risks associated with fast track mortgages in breach of APER 7

4.32 You explained that, because of the perceived risks associated with self-certified mortgages, (the risk being that mortgage applications containing false or misleading information could be submitted to a lender without proof of income) you did not at any time allow the Adviser to submit self-certified mortgage applications through Newquay.

4.33 However, you failed to identify that the risk of mortgage applications containing false or misleading information being submitted to a lender without an adviser obtaining proper proof of income was equally as high in fast track mortgages as in self-certified mortgages.

Conclusion

4.34 You failed to identify that the risks associated with self-certified mortgages were also present in fast track mortgages.

4.35 The FSA considers that this failure is aggravated because, at the time of the Application, you were aware of concerns from the Adviser' Previous Employer about the apparent inflation of income figures in mortgage applications written by the Adviser.

5. ANALYSIS OF MISCONDUCT AND PROPOSED ACTION

5.1 The facts and matters described above lead the FSA to conclude that you:

- (1) failed to deal with the FSA in an open and co-operative way, in breach of APER Principle 4. Specifically, you failed to disclose to the FSA information relating to the fitness and propriety of the Adviser at a time when you knew that the FSA was assessing the Adviser's fitness and propriety to act as an approved person at Newquay. This was information about which the FSA would reasonably have expected to receive notice.
- (2) failed to act with due skill, care and diligence, in breach of APER Principle 6. You failed to take reasonable steps to ensure the adequate supervision of the Adviser or to prevent the submission of misleading mortgage applications through Newquay. Additionally, you failed to consider whether it was appropriate to allow the Adviser to continue to give advice on life and other products despite having been alerted to concerns surrounding the Adviser's fitness and propriety with respect to mortgage business.
- (3) failed to take reasonable steps to ensure that the business at Newquay for which you are responsible complies with the relevant requirements and standards of the regulatory system in breach of APER Principle 7. In particular, you failed to:
 - (a) take reasonable steps to ensure that Newquay's recruitment procedures required proper enquiries to be made as to the fitness and propriety of prospective employees and that, on receipt of information about a prospective employee, that information was considered and acted upon; and
 - (b) understand the risks associated with high risk mortgage products, such as fast track mortgages.

5.2 The FSA considers that the breaches of APER set out above are sufficiently serious to merit the imposition of a financial penalty.

Determining the level of the financial penalty

5.3 The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. The FSA has also had regard to the Enforcement Manual which was in force for part of the Relevant Period (from 31 October 2004 to 28 August 2007) and the Enforcement Guide which was in force from 29 August 2007.

DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Relevant extracts from DEPP are set out in Annex 1.

Deterrence: DEPP 6.5.2 G (1)

- 5.4 In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help deter others from committing similar breaches.

The nature, seriousness and impact of the breach: DEPP 6.5.2 G (2)

- 5.5 The FSA has considered the nature and seriousness of the breaches and considered the following to be relevant:

- (1) Your failings exposed customers to the risk of unsuitable mortgage advice;
- (2) the failings highlighted in the Reference included concerns that the Adviser had failed to verify applicants' income figures in mortgage applications at the Adviser's Previous Employer. Your failure to give due regard to the Reference created an unacceptably high risk that Newquay would be used for purposes connected with financial crime, specifically mortgage fraud; and
- (3) the FSA's approved person regime relies on employers conducting due diligence over individuals before applying for the individual to receive Approved Person status. Further, the FSA requires employers to disclose all material information about the applicant to the FSA. Your failure to do so created a risk that a person who was not fit and proper would be authorised by the FSA to give advice to customers.

The extent to which the breaches were deliberate or reckless (DEPP 6.5.2 G (3))

- 5.6 The FSA does not consider that you acted deliberately. However, the FSA considers that your conduct in applying for the Adviser to be approved, before receiving a reference and without conducting any substantive due diligence was reckless, in that you failed to consider the risk that, without due diligence, you could not make a

considered, accurate and complete declaration to the FSA about the Advisor's fitness and propriety.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2 G (5)

- 5.7 The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual.

Conduct following the breach

- 5.8 ***You have co-operated with the FSA's investigation and have accepted the failings set out in this notice.***

Previous action taken in relation to similar failings

- 5.9 In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

- 5.10 In determining the proposed financial penalty the FSA has considered the need to punish you as well as deter others from engaging in this type of activity.

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.

Manner of and time for Payment

- 7.2 The financial penalty must be paid in full by you to the FSA by no later than 7 September 2009.

If the financial penalty is not paid

7.3 If all or any of the financial penalty is outstanding on 8 September 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

7.4 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.

7.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

7.6 For more information concerning this matter generally, you should contact Mario Theodosiou (Tel: 020 7066 5914 /fax: 020 7066 5915) of the Enforcement Division of the FSA.

[Signed:

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William Amos

Head of Department

FSA Enforcement Division

ANNEX 1

1. STATUTORY PROVISIONS

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

2. FINANCIAL PENALTY

- 2.1 Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure by an approved person to comply with a statement of principle. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

3. RELEVANT FSA POLICY

- 3.1 In determining the level of the financial penalty and deciding to take the other action described in paragraph 1.1 above, the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies. The FSA's Decision Procedure and Penalties Manual ("DEPP") and Enforcement Guide ("EG") came into effect on 28 August 2007. Although the references in this Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF"), which preceded DEPP and EG and applied during the majority of the Relevant Period.
- 3.2 EG provides at paragraph 9.23 that the FSA may impose a financial penalty on an individual in addition to imposing a prohibition order on them and/or, in the case of an approved person, withdrawing their approval where it is appropriate to do so.

4. REGULATORY REQUIREMENTS

- 4.1 APER sets out the FSA's Statements of Principle ("Principles") in respect of approved persons and examples of conduct which, in the opinion of the FSA, do not comply with the relevant Principles. It further describes factors to be taken into

account in determining whether an approved person's conduct complies with a Principle.

4.2 APER 3.1.3 G states that when establishing compliance with, or a breach of, a Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

4.3 APER 3.1.4 G states that an approved person will only be in breach of a Principle if they are personally culpable. Personal culpability arises where the approved person's conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

4.4 In this case, the FSA considers the most relevant Principles, set out at APER 2.1.2 P, to be:

(i) Principle 4, which states that:

“an approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice”;

(ii) Principle 6, which states that:

“an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function”; and

(iii) Principle 7, which states that:

“an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.”

- 4.5 APER 4.4 sets out examples of conduct which, in the opinion of the FSA, do not comply with Principle 4. This includes failing promptly to inform the FSA of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA (APER 4.4.7 E);
- 4.6 APER 4.6 gives examples of conduct which does not comply with Principle 6. This includes:
- (i) failing to take reasonable steps to inform himself adequately about the affairs of the business for which he is responsible (APER 4.6.3E);
 - (ii) disregarding an issue or part of the business once it has been delegated (APER 4.6.7E (1); and
 - (iii) failing to supervise and monitor adequately the individual or individuals to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated (APER 4.6.8).
- 4.7 APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes failing to take reasonable steps to:
- (i) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.3E);
 - (ii) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.4E); and
 - (iii) adequately inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place) (APER 4.7.5E).

5. SUPERVISION MANUAL

5.1 SUP 15.6.4 R states that:

“If a firm becomes aware, or has information that reasonably suggests that it has or may have provided the FSA with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular, it must notify the FSA immediately. Subject to SUP 15.6.5 R, the notification must include:

- (i) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
- (ii) an explanation why such information was or may have been provided; and
- (iii) the correct information.”