

- prohibiting Graham Cole from performing any function in relation to any regulated activity carried on by any authorised or exempt person.
- 1.3. Neither Graham Cole nor Allegiance Mortgages have referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to them.
 - 1.4. Accordingly, for the reasons set out below, the FSA has withdrawn the approval granted to Graham Cole in relation to Allegiance Mortgages, pursuant to section 63(1) of the Act, and the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting Graham Cole from performing any function in relation to any regulated activity carried on by any authorised or exempt person. This order has effect from 24 July 2008.

2. REASONS FOR THE ACTION

Summary

- 2.1. The FSA has concluded, on the basis of the facts and matters described in its Warning Notice dated 30 April 2008, and in the Decision Notice (an extract from which is attached and forms part of this Final Notice), that it is satisfied that Graham Cole is not a fit and proper person to perform the functions for which he is approved in relation to Allegiance Mortgages or any function in relation to any regulated activity carried on by any authorised or exempt person. That is because, in the opinion of the FSA, he has failed to meet the criteria for fitness and propriety as set out in the Fit and Proper Test for Approved Persons in the High Level Standards block of the FSA Handbook.

Relevant statutory provisions

- 2.2. The FSA's statutory objectives are set out in section 2(2) of the Act and include the protection of consumers and the reduction of financial crime.
- 2.3. By section 63(1) of the Act, the FSA is authorised to withdraw the approval of an individual if it considers the person in respect of whom approval was given is not a fit and proper person to perform the function to which the approval relates.
- 2.4. The FSA's power to make a prohibition order is set out in section 56 of the Act and the procedure to be followed is set out in section 58 of the Act.
- 2.5. Section 64 of the Act permits the FSA to issue statements of principle with respect to the conduct expected of approved persons. If it does so it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle.

Relevant regulatory provisions

Statements of Principle and the Code of Conduct for Approved Persons ("APER")

2.6. Statement of Principle 1 provides that:

"An approved person must act with integrity in carrying out his controlled functions."

2.7. APER 4.1.3E(3) refers to deliberately misleading (or attempting to mislead) by act or omission a client, his firm or the FSA, as conduct which does not comply with Statement of Principle 1. APER 4.1.4E (11) provides that this behaviour includes, but is not limited to, providing false or inaccurate information to the FSA.

2.8. Statement of Principle 4 provides 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."

2.9. APER 4.4.9E refers to failing without good reason to inform a regulator of information of which the approved person was aware in response to questions from that regulator and to supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement.

The Enforcement Guide ("EG")

2.10. The FSA's policies in relation to exercising its power to withdraw approval and to issue a prohibition order are set out in the Enforcement Guide.

2.11. EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.

2.12. EG 9.2 states that where the FSA considers it appropriate, the FSA may prohibit an approved person in addition to withdrawing their approval.

2.13. EG 9.3 to 9.6 set out the FSA's policies on making prohibition orders and withdrawal of approval. In particular:

(a) EG 9.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken, in deciding whether to make a prohibition order and/or withdraw approval;

(b) EG 9.4 states that the FSA has power to make a range of prohibition orders: they may be unlimited or they may be limited to specific functions in relation to specific regulated activities; and

- (c) EG 9.5 states that the scope of a prohibition order will depend on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
- 2.14. EG 9.8 to 9.14 give specific guidance on prohibition orders and withdrawal of approval against approved persons. In particular:
- (a) EG 9.9(2) and (3) state that, when the FSA decides whether to exercise its power to make a prohibition order against an approved person and/or withdraw his approval, the FSA will consider all the relevant circumstances of the case including the criteria for assessing the fitness and propriety of approved persons contained in FIT, and whether and to what extent the approved person has failed to comply with the Statements of Principle;
- (b) EG 9.10 states that the FSA may have regard to the cumulative effect of a number of factors which, when considered on their own, may not be sufficient to show that the individual is not fit and proper to continue to carry out the controlled functions; and
- (c) EG 9.12(1) and (2) state that providing false or misleading information to the FSA and failing to disclose material considerations on application forms, such as details of County Court Judgments and criminal convictions are examples of the type of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person.

Fit and Proper Test for Approved Persons ("FIT")

- 2.15. The FSA has issued guidance on the fitness and propriety of individuals in the FIT module of the FSA Handbook.
- 2.16. FIT 1.1.2 G states that the purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled function. The criteria are also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.17. FIT 1.3.1 G (1) and (3) state that the most important considerations include a person's honesty, integrity and reputation and financial soundness.
- 2.18. FIT 2.1 gives specific guidance in determining a person's honesty, integrity and reputation. In particular:
- FIT 2.1.3 G (1) states that the FSA will have regard to whether the person has been convicted of any criminal offence; this must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order); particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the United Kingdom or other offences under legislation relating to companies, building societies, industrial and provident societies, credit

unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing;

- FIT 2.1.3 G (5) states that the FSA will have regard to whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;
- FIT 2.1.13 G (13) states that the FSA will have regard to whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards, and
- FIT 2.3.1 G (1) states that in determining a person's financial soundness, the FSA will have regard to any factors including, but not limited to whether the person has been the subject of any judgment debt or award, in the United Kingdom or elsewhere, that remains outstanding or was not satisfied within a reasonable period.

3. DECISION MAKER

The decision which gave rise to the obligation to issue this Final Notice was taken by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Final Notice is given to Graham Cole and Allegiance Mortgages in accordance with section 390(1) of the Act.

Publicity

- 4.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 Graham Cole or Allegiance Mortgages or if publication would be prejudicial to the interests of consumers.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 4.4. For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742/fax: 020 7066 5743).

John Kirby
FSA Enforcement Division

EXTRACT FROM THE DECISION NOTICE DATED 18 JUNE 2008 ISSUED TO GRAHAM JOHN COLE AND ALLEGIANCE MORTGAGES LIMITED

1. REASONS FOR PROPOSED ACTION

Summary

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that it is satisfied that Mr Cole is not a fit and proper person to perform any functions. That is because, in the opinion of the FSA, he has failed to meet the criteria for fitness and propriety as set out in the Fit and Proper Test for Approved Persons ("FIT") in the FSA Handbook. Specifically, in breach of Statements of Principle 1 and 4 for Approved Persons, Mr Cole has repeatedly failed to disclose material adverse information in numerous regulatory applications seeking authorisation and/ or individual approval and failed to notify the FSA of further adverse matters which occurred following the granting of authorisation and approval.

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Facts and matters relied on

- 2.19 Mr Cole was granted individual approval in relation to Allegiance Mortgages on 31 October 2004, following the consideration of his application for approval, in which he failed to disclose to the FSA the following adverse information:

- that he was convicted on 29 September 1980 at Cheltenham Magistrates Court of attempted theft, for which he was fined £50, and
- that he was convicted on 29 October 1987 at Cheltenham Magistrates Court of:
 - theft, for which he was fined £100,
 - three counts of obtaining property by deception, for which he was fined a total of £300 and ordered to pay compensation of £952.25.

- 2.20. Having been granted individual approval, and as the only approved person at

Allegiance Mortgages, Mr Cole failed to notify the FSA of the following matters:

- that he was convicted on 4 April 2005 at North Gloucestershire Magistrates Court of: driving a motor vehicle with excess alcohol, for which he was fined £220 and ordered to pay costs of £40. Mr Cole also had his driving licence endorsed and was disqualified from driving for 24 months (disqualification to be reduced by 6 months on successful completion of driver rehabilitation course);
- that he was convicted on 3 June 2005 at Cheltenham Magistrates Court of:
 - 3 counts of driving whilst disqualified, for which he was sentenced to 14 weeks imprisonment to run concurrently and had his driving license endorsed,
 - driving a motor vehicle with excess alcohol, for which he had his driving licence endorsed, was disqualified from driving for 3 years, and sentenced to 14 weeks imprisonment to run concurrently,
 - 3 counts of using a vehicle whilst uninsured, for which he had his driving license endorsed;
- on 22 August 2005, a County Court Judgment (CCJ) was made against him in the sum of £9,708, which to date has not been satisfied;
- on 7 March 2007, a CCJ was made against him in the sum of £27,300, which to date has not been satisfied;
- on 16 May 2007, a CCJ was made against Allegiance Mortgages in the sum of £2,175, which to date has not been satisfied;
- on 11 September 2007, a CCJ was made against Allegiance Mortgages in the sum of £1,136 which to date has not been satisfied;
- on 30 October 2007, a CCJ was made against him in the sum of £913, which to date has not been satisfied, and
- on 10 January 2008, a CCJ was made against Allegiance Mortgages in the sum of £418 which to date has not been satisfied.

2.21. Mr Cole has also submitted numerous other regulatory applications seeking authorisation and/ or individual approval, in which he has failed to make full disclosure, where applicable, of the above adverse matters.

2.22. By repeatedly failing to disclose material adverse information to the FSA, despite the requirement for such matters to be disclosed being clearly stated on the application forms, the FSA was not given the opportunity to consider these issues. Accordingly, Mr Cole has repeatedly prevented the FSA from making a fully informed assessment of his fitness to be approved to perform a function in relation to any regulated activity.

2.23. Mr Cole's failure to notify the FSA of subsequent convictions and CCJs is of serious

concern, particularly his failure to notify the FSA of his conviction on 3 June 2005, for which he was sentenced to 14 weeks imprisonment. Given that he is the only approved person at Allegiance Mortgages, this would have rendered him unable to manage the business of Allegiance Mortgages, but he still allowed Allegiance Mortgages to remain authorised to conduct regulated activities.

- 2.24. When the FSA approached Mr Cole about these matters, he failed to provide a satisfactory explanation for his repeated omissions in regulatory applications and failure to notify the FSA of subsequent convictions or CCJs. Instead he gave conflicting information regarding the convictions and the CCJs and only began making belated submission following prompting by the FSA on specific issues. Additionally, the tone of Mr Cole's correspondence leads the FSA to believe that he still considers the convictions and CCJs to be insignificant and unfairly imposed, which suggests a lack of rehabilitation rather than recognition of the seriousness of the convictions and CCJs. It is also material that despite being in correspondence with the FSA at the time regarding his previous non disclosures, Mr Cole failed to notify the FSA that further CCJs had been made against him personally and also against Allegiance Mortgages.
- 2.25. Furthermore, Mr Cole, as the only approved person at Allegiance Mortgages, has been responsible for Allegiance Mortgages repeatedly submitting Retail Mediation Activities Returns ("RMAR") to the FSA with inaccurate and misleading information. Specifically, Mr Cole has been responsible for Allegiance Mortgages failing to reflect the CCJs against Allegiance Mortgages in its balance sheet and failing to provide genuine financial information in any of the RMARs submitted to the FSA. In particular, the information detailed in the RMAR for the period ended 1 April 2006 bears no resemblance to the balance sheet in Allegiance Mortgages' accounts for the year ended 31 May 2006 as filed at Companies House, which showed that at that date, Allegiance Mortgages had capital resources £5,611 below the level required under the FSA's rules.

Conclusions

- 2.26. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to conclude that:
- Mr Cole has failed to act with honesty and integrity by repeatedly failing to disclose material adverse information, including convictions for dishonesty, in numerous regulatory applications seeking authorisation and/or individual approval;
 - Mr Cole has consistently failed to be open and co-operative in his dealings with the FSA by repeatedly failing to notify the FSA immediately of adverse matters which occurred following the granting of authorisation and approval, despite there being a clear requirement to do so, and by repeatedly submitting RMARs to the FSA with inaccurate and misleading information;
 - it appears to the FSA that Mr Cole repeatedly chose not to disclose or notify

adverse information to the FSA, which indicates a pattern of dishonesty, a lack of integrity and a blatant disregard for the regulatory requirements set out in the Statement of Principles, FIT and APER;

- his attempts to mislead the FSA go directly to impugn his honesty, integrity and reputation and therefore demonstrate that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person;
- Mr Cole presents a risk to consumers and to other financial institutions as well as to the FSA's statutory objective of the reduction of financial crime as he has failed to be candid and truthful in all his dealings with the FSA, and
- the severity of the risk Mr Cole poses to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to make a prohibition order in the terms proposed.

END OF EXTRACT