

David Nicholas King

Final Notice



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FINAL NOTICE

To: **David Nicholas King**

**Individual
Reference
Number:** **DNK01016**

Dated: **22 JULY 2021**

ACTION

1. For the reasons listed in this Final Notice and under section 56 of the Act, the Authority has decided to make an order prohibiting David Nicholas King from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
2. The Authority gave Mr King a Decision Notice, which notified Mr King of its decision to take the action specified above.
3. Mr King has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to him.
4. Accordingly, the Authority hereby makes a prohibition order in respect of Mr King. The prohibition order takes effect from the date of this Final Notice.

SUMMARY OF REASONS

5. Whilst an employee and an approved person at authorised firms, Mr King engaged in criminal activity.

- a) Mr King pleaded guilty to and was convicted on 3 October 2019 of:
 - i. three counts of theft, contrary to sections 1(1) and 7 of the Theft Act 1968;
 - ii. one count of fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006; and
 - iii. one count of acquiring/using/possessing criminal property, contrary to sections 329(1) and 334 of the Proceeds of Crime Act.
 - b) Mr King was sentenced on 21 November 2019 to a total term of six years and four months' imprisonment.
6. The Authority has concluded, on the basis of the facts and matters set out below, that Mr King is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. His convictions demonstrate a clear and serious lack of honesty and integrity such that he is not fit and proper to perform regulated activities. In reaching this decision, the Authority has had regard to all relevant circumstances, including the relevance and materiality of the offences, the severity of the risk posed by Mr King to consumers and financial institutions and to confidence in the market generally. The Authority considers that it is appropriate to impose the prohibition order described in paragraph 1 to advance its consumer protection and integrity objectives (sections 1C and 1D of the Act, respectively).

DEFINITIONS

7. The definitions below are used in this Final Notice (and in the Annex):
- "the Act" means the Financial Services and Markets Act 2000;
 - "the Authority" means the Financial Conduct Authority;
 - "the Decision Notice" means the decision notice given to Mr King dated 13 May 2021;
 - "EG" means the Enforcement Guide;
 - "FIT" means the Fit and Proper Test for Employees and Senior Personnel;
 - "the Handbook" means the Authority's Handbook of rules and guidance;
 - "Mr King" means David Nicholas King;
 - "OAsys" means Offender Assessment system;
 - "POCA" means the Proceeds of Crime Act 2002;

"the RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

"the Warning Notice" means the warning notice given to Mr King dated 17 December 2020.

RELEVANT STATUTORY PROVISIONS

8. The statutory and regulatory provisions relevant to this Final Notice are set out in Annex A.

FACTS AND MATTERS

9. Mr King was approved by the Authority to perform a customer function at Quilter Financial Limited (an authorised firm) from 8 September 2010 to 31 December 2012 and at Openwork Limited (an authorised firm) during various periods between 6 January 2010 and 13 October 2016. Mr King was also an appointed representative of various authorised firms during that period.
10. On 3 October 2019, Mr King pleaded guilty to and was convicted at Sheffield Magistrates Court of three counts of theft, contrary to sections 1(1) and 7 of the Theft Act 1968; one count of fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006; and one count of acquiring, using and possessing criminal property, contrary to sections 329(1) and 334 of the Proceeds of Crime Act.
11. On 21 November 2019, Mr King was sentenced at Sheffield Crown Court to a total term of six years and four months' imprisonment.
12. Mr King's offences were committed during the period in which he was an approved person at regulated and authorised financial institutions.
13. Mr King committed fraud on family members by taking their share of his grandparents' estate which they had inherited. The estate consisted of cash and assets. Rather than putting the inheritance into investments or bonds, he lied to the beneficiaries and used it to fund his own lifestyle. The beneficiaries lost their money and the ability to use their inheritance in the way they may have planned. The amount stolen from the beneficiaries totalled approximately £573,000. Mr King also committed fraud against a friend when he personally guaranteed bridging finance on a property purchase, intending to make a gain of £35,000 for himself.
14. The sentencing judge stated that Mr King "connived and contrived" to hide his "dishonesty"; he "forged documents"; he "lied to family and friends and repeated those lies time and...time again...". The sentencing judge remarked that Mr King was involved in being "utterly selfish" and "did not have a care in the world for the impact and psychological harm" that he had caused others. The sentencing judge also commented on the degree of trust breached by Mr King, stating it was "...beyond high; if it's not trust, it's responsibility". When sentencing Mr King, the judge took into account that specifically in respect of count 1 which related to Mr

King stealing over half a million pounds from the estate of his grandmother, there was "almost every imaginable aggravating feature". Mr King had returned a "sizeable" amount of money that he had taken but the judge stated that it was only returned because he was "caught out".

15. Mr King's offences were committed from 1 February 2010 to 31 December 2017, and the total amount that was defrauded and stolen from Mr King's victims was in the region of £608,000.
16. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr King was given the opportunity to make representations to the Authority about that proposed action.
17. Mr King made representations, which the Authority took into account in making the decision which gave rise to the obligation to give this Final Notice.
18. By reason of the facts and matters described above, the Authority considers that Mr King lacks honesty and integrity and poses a serious risk to consumers, financial institutions and to confidence in the market generally. Therefore, the Authority has concluded that he is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

Important

19. This Final Notice is given to Mr King in accordance with section 390(1) of the Act.

Decision Maker

20. The decision which gave rise to the obligation to give this Final Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

Publicity

21. 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 Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would in the opinion

of the Authority, be unfair to Mr King or prejudicial to the interests of the consumers or detrimental to the stability of the UK financial system.

22. The Authority intends to publish this Final Notice and such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contact

23. For more information concerning this matter generally, Mr King should contact Hema Rachhoya at the Authority (direct line: 020 7066 2770).

Anna Couzens
Enforcement and Market Oversight

ANNEX A: RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).
2. Section 56(1) of the Act provides:

"The [Authority] may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by:

 - (a) an authorised person,
 - (b) a person who is an exempt person in relation to that activity, or
 - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity."

RELEVANT REGULATORY PROVISIONS

3. In exercising its power to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

The Enforcement Guide

4. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
5. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's regulatory objectives.
6. EG 9.2 sets out the Authority's general policy on making prohibition orders. In particular—
 - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (b) EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case; and
 - (c) EG 9.2.3 states that the scope of a prohibition order will depend on, among other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.

7. EG 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.
8. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against someone who is not an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2, and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Fit and Proper Test for Employees and Senior Personnel

9. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
10. FIT 1.3.1BG(1) states that the most important considerations when assessing the fitness and propriety of a person to perform a controlled function include that person's honesty, integrity and reputation.
11. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. It notes, amongst other things and by way of example, that:

"... conviction for a criminal offence will not automatically mean an application will be rejected. The [Authority] treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation."
12. FIT 2.1.3G(1) states that the matters referred to in FIT 2.1.1G include, but are not limited to, whether a person has been convicted of any criminal offence, noting that particular consideration will be given to offences including dishonesty, fraud and financial crime (amongst other things).

ANNEX B: REPRESENTATIONS

A summary of Mr King's key representations (in italics), and the Authority's conclusions in respect of them, is set out below.

Mr King has been honest and transparent, and is prepared to face the consequences of his actions

1. *Mr King self-reported his offending to South Yorkshire police in September 2017 and made full admissions at the first opportunity in his police interview.*
2. *Mr King entered guilty pleas at court. He has never sought to hide the nature of his offending. Mr King repaid £305,000 to his victims as it was the right thing to do, before he was charged or convicted of his actions.*
3. The Authority acknowledges that Mr King has been open, honest and transparent since his offending came to light, but also notes both that Mr King was not open with his family until confronted with his offending, and his previous acknowledgement that he kept his misconduct hidden until 2017.
4. Mr King's early guilty plea was taken into account by the sentencing judge, and the Authority also notes the sentencing judge's comment that the £305,000 was returned because he was "caught out."
5. The Authority does not consider that Mr King's co-operative conduct since 2017 is sufficient to address its concerns regarding his fitness and propriety.

Mr King's future employment

6. *Mr King voluntarily resigned from his previous employers in September 2017, and has no desire to return to financial services after imprisonment. He was made bankrupt in October 2019 and discharged in October 2020. Due to his offending directly contributing to his financial difficulties, the Insolvency Service imposed additional bankruptcy restrictions for a period of 12 years. These bankruptcy restrictions, together with the need to disclose his criminal conviction and the fact that he continues to owe a sizeable amount under POCA, would mean that he would have difficulty securing any future employment in financial services. His ability to*

become self-employed will also be hampered by the POCA and bankruptcy restrictions. A prohibition order would be an additional barrier to employment.

7. *Mr King is carrying out a postgraduate course in Rural Estate and Land Management whilst in prison. Upon graduation, he would need to complete a two-year training contract with a professional firm, before sitting his professional exams and applying to become a member of either the Royal Institute of Chartered Surveyors (RICS) or the Central Association of Agricultural Surveyors (CAAV). Were Mr King to pass his exams, he would need to sign a declaration in order to join those professional bodies, where he would be duty-bound to declare any criminal convictions as well as any additional barring from a regulatory body such as the Authority. The declaration would cover any findings in the past three years, so the longer the period of time that elapses between his conviction and bankruptcy and the application, the greater the chance of success in his application. The impact of the prohibition order would be two-fold; it would be the most recent barring from a regulatory body, and it would be a further decision that Mr King is not fit and proper.*
8. The Authority considers that a prohibition order has a different objective to the previous criminal and bankruptcy proceedings. A prohibition order is a protective measure and is proportionate to the circumstances of Mr King's case. Without a prohibition order, Mr King presents an unacceptable risk to consumers and to confidence in the financial system.
9. Whilst the Authority recognises that Mr King may have difficulty securing employment in financial services due to his convictions and bankruptcy order, there remains a risk that Mr King could still return to work in financial services, if no prohibition order was imposed.

Low-risk and rehabilitation

10. *Mr King has provided evidence of rehabilitation, including that he has undertaken relevant courses and has taken steps to make amends in his relationships with his family. He has reflected on his offending and considers that the reasons for his conduct included being let down by a previous employer, and having financial issues at the time. Mr King accepts that he ought to have been open in disclosing the financial problems he was having.*

11. *Mr King has provided positive character references from his previous employer and clients.*
12. *Mr King has demonstrated model conduct whilst in prison. His positive prison plan and OAsys reviews assessed that he has a low risk of reoffending due to his completion of rehabilitation work, and that he showed continued commitment to his sentence. Mr King does not present a continued risk to consumers, and it would be impossible for him to provide any retail investments or financial advice in future. The need to complete a Form A, so as to be appointed as an appointed representative, would flag up his convictions and be an additional barrier to him providing retail investments or financial advice.*
13. The Authority has considered FIT 2.1.1G, and the seriousness of, and circumstances surrounding, Mr King's offending, the passage of time since the offending and evidence of his rehabilitation. The Authority recognises Mr King's rehabilitation efforts in re-training and rebuilding his personal relationships. However, having regard to the fact that it is less than two years since Mr King was convicted of his dishonesty offences, the Authority does not consider these are sufficient for it to conclude that Mr King is a fit and proper person.
14. The character references were prepared for the purposes of Mr King's criminal sentencing hearing, and not the Authority's proceedings, and relate to a short four-month period of employment before Mr King was in custody. The Authority does not consider that the character references carry sufficient weight to demonstrate that Mr King is now fit and proper.
15. The Authority has considered the contents of Mr King's prison reports and OAsys assessment, and notes that Mr King's future risk can only properly be tested, once he is released from prison, and that the risk is likely to increase, should Mr King come under financial stress. Mr King has been in custody since 2019 and has not yet had an opportunity to demonstrate that he would act with fitness and propriety outside prison.

Mr King's case is distinct from Neil Bartlett's case

16. *The Authority has referred to Neil Bartlett's case as a precedent. However, Mr King's case ought to be considered by the Authority independently, as Mr Bartlett's case does not reflect the unique nature of Mr King's case.*
17. *Mr King received a much lower sentence of seven years on a consecutive basis for his offences, which if served concurrently, would have amounted to a total sentence of four years in custody. Mr King's offending involved significantly lower sums of money than Mr Bartlett's, and he has repaid nearly half of the monies taken. Mr King also self-reported to the police. Mr King's offending was akin to theft, whereas Mr Bartlett's offending was fraudulent. Mr King made a number of legitimate investments for his family in a professional capacity and did not keep all the money himself, whereas Mr Bartlett's offending involved retail consumers and was carried out for personal gain. Although Mr King accepts the seriousness of his offending and the negative impact on his family members, from a regulatory perspective, his offending did not affect consumers more widely, and so he is a lower risk to the public than Mr Bartlett.*

18. The Authority has reached its decision to impose a prohibition order on Mr King based on the facts and matters set out in this Notice. However, the Authority considers that the case of Mr Bartlett is of relevance as, notwithstanding the differences, it shows that the Authority has previously imposed a prohibition order on an individual for comparative misconduct. The Authority does not consider that Mr King's case has to be exactly the same as Mr Bartlett's, in order for it to consider whether Mr King is a fit and proper person in light of his dishonesty convictions.
19. The Authority has had regard to the sentencing judge's remarks in Mr King's case, compared to the facts of Mr Bartlett's case. Mr King was convicted of both theft and fraud, and in any event, both offences involve dishonesty. Although Mr Bartlett received a higher sentence (eight years) and Mr King received a sentence of six years and four months' imprisonment, Mr King's offending was in a similar offence category when sentenced at Sheffield Crown Court; both Mr Bartlett and Mr King used the proceeds of offending for their own lifestyle, culpability was deemed to be high, there was an abuse of a position of trust, both took advantage of vulnerable victims, and the offending was not a one-off incident. However, the Authority does acknowledge the differences in the amount and number of victims in the offending.

Mr King regrets his conduct, and a prohibition order is not necessary

20. *Mr King is ashamed of his actions and feels that he has betrayed his family. He regrets his offending and had made progress in prison, so that he can revert to the person he was before committing the offences.*
21. *Mr King regrets not admitting his offending to his family earlier, and it was a relief when his family confronted him. Mr King wished that he could repay more money to his family but had spent much of the money already. In any event, the courts will be able to pursue him for any residual balance, were he to come into future assets. Mr King does not intend to put himself in a position where he would be tempted to re-offend again.*
22. *A prohibition order is not necessary as Mr King will struggle to find any future employment due to his criminal conviction, and he is already subject to POCA action. Any prohibition order made by the Authority so long after his conviction would be disproportionate.*

23. The Authority recognises Mr King's sincere regret for his actions, and the efforts he has been making to rebuild the trust of his victims.
24. Whilst the Authority considers that Mr King's remorse may reduce the level of risk, this does not eliminate Mr King's risk to the public, as his honesty and integrity have not been tested since his offending. The Authority also notes that it is less than two years since Mr King was convicted, and that since Mr King's offending continued until September 2017, it is less than four years since his last offence. The Authority has considered FIT 2.1.3G(1) and considers that Mr King's convictions demonstrate a clear and serious lack of honesty and integrity, such that he is not fit and proper to perform regulated activities.
25. Section 56(3)(a) of the Act allows prohibition orders to be made which relate to all regulated activities. The Authority has decided to make such a prohibition order in this case. To do otherwise would undermine the integrity of the financial services industry and public confidence in the financial system. The Authority has decided to make a full prohibition order, to address the risk posed by Mr King's lack of honesty and integrity. It is open to Mr King to apply to revoke the prohibition order in the future.