
FINAL NOTICE

To: **David Carter**
Formerly Of: **104 Middle Lane
Clifton
Rotherham
South Yorkshire
S65 2TE**

FSA Reference Number: **DXC00008**

Dated: **22 February 2011**

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, David Carter, 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 on 20 January 2011 (the “Decision Notice”) which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”).
- 1.2. You have not referred the matter to the Upper Tribunal (Tax and Chancery Division) within 28 days of the date on which the Decision Notice was given to you.

- 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 on by any authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 22 February 2011.

2. REASONS FOR THE ORDER

Introduction

- 2.1. The FSA has concluded, on the basis of the facts and matters and conclusions described in its Warning Notice dated 4 November 2010 (an extract from which is attached to and forms part of this Final Notice), and in the Decision Notice, that you are not a fit and proper person to perform any functions as your conduct demonstrates a lack of honesty and integrity. Specifically, on 10 and 13 March 2009, you were convicted of six counts of conspiracy to defraud. On 22 May 2009 you were sentenced to a total of three years imprisonment.

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, maintaining market confidence and the reduction of financial crime.
- 2.3. 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.

Relevant Guidance

The Enforcement Guide ("EG")

- 2.4. The FSA's policy in relation to exercising its power to issue a prohibition order is set out in EG.
- 2.5. EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.
- 2.6. EG 9.3 to 9.5 sets out the FSA's policy on making prohibition orders. In particular:
- (a) EG 9.3 states that the FSA 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 9.4 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, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally; 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.
- 2.7. EG 9.17 sets out that where the FSA is considering whether to make a prohibition order against someone who is not an approved person, the FSA will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives.
- 2.8. EG 9.18 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors, including those set out in EG 9.9. These factors include: the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons ("FIT") section of the FSA Handbook, the relevance and materiality 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 Approved Persons

- 2.9. The FSA has issued guidance on the fitness and propriety of individuals in FIT.
- 2.10. FIT 1.1.2G 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.
- 2.11. FIT 1.3.1G(1) states that the most important consideration includes a person's honesty, integrity and reputation.
- 2.12. FIT 2.1.3G(1) states that the FSA will have regard to whether a person has been convicted of any criminal offence, and goes on to say that particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to money laundering.

3. DECISION MAKER

- 3.1. The decision that gave rise to the obligation to give this Final Notice was taken by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Final Notice is sent to you 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 you or 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 contact

- 4.4. For more information concerning this matter generally, you should contact Wilma Amarteifio (direct line: 020 7066 7452 / fax: 020 7066 7453) of the Enforcement and Financial Crime Division at the FSA.

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John Kirby
FSA Enforcement and Financial Crime Division

Attachment: Extract from Warning Notice dated 4 November 2010

EXTRACT FROM THE WARNING NOTICE DATED 4 NOVEMBER 2010 ISSUED BY THE FSA TO DAVID CARTER

“2. REASONS FOR THE PROPOSED ACTION

Facts and matters relied on

- 2.14. You were initially granted authorisation and individual approval by the FSA as a sole trader trading as The Network Financial Services on 1 December 2001. You were approved by the FSA to perform the following controlled functions:
- 1) CF7 (Sole trader), from 1 December 2001 until 31 January 2007;
 - 2) CF8 (Apportionment and Oversight), from 18 August 2004 until 1 June 2009;
 - 3) CF10 (Compliance and Oversight), from 1 December 2001 until 1 June 2009;
 - 4) CF11 (Money Laundering Reporting) from 1 December 2001 until 1 June 2009;
 - 5) CF21 (Investment Adviser) from 1 December 2001 until 31 October 2007;
 - 6) CF24 (Pension Transfer Specialist) from 1 December 2001 until 6 July 2005;
 - 7) CF30 (Customer) from 1 November 2007 until 1 June 2009; and
 - 8) Responsible for Insurance Mediation from 17 February 2005 until 1 June 2009.
- 2.15. You, trading as The Network Financial Services, were permitted to conduct designated investment business from 1 December 2001 until 1 June 2009 and regulated mortgage mediation business from 31 October 2004 until 1 June 2009.
- 2.16. On 10 and 13 March 2009, you were convicted upon indictment of six counts of conspiracy to defraud at Sheffield Crown Court.
- 2.17. You committed these offences while you were an approved person. You submitted false mortgage applications which included life assurance policy applications to lenders.
- 2.17. The Court has discretion to impose a custodial sentence for those offences. Section 79(2)(a) of the Powers of Criminal Court (Sentencing) Act 2000 states that the Court shall not pass a custodial sentence unless it is of the opinion that the offence is so serious that only such a sentence can be justified for the offence. On 22 May 2009, you were sentenced to three years imprisonment for each of these offences, to run concurrently.

Conclusions

- 2.18. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, maintaining market confidence and the reduction of financial crime, to the following conclusions:

- (1) you have acted dishonestly and without integrity whilst being an approved person by submitting false mortgage and accompanying life assurance policy applications to lenders;
- (2) you have been convicted of serious criminal offences: six counts of conspiracy to defraud;
- (3) the convictions, and the conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore demonstrate that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;
- (4) you present a risk to consumers, to the financial system, as well as to the FSA's statutory objective of the reduction of financial crime, as you have failed to demonstrate that you conducted your business in compliance with proper standards; and
- (5) the severity of the risk that you pose 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 against you in the terms set out in this notice."

END OF EXTRACT