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## **FINAL NOTICE**

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**To:** **Freddy David**

**Address:** **HMP The Mount, Bovingdon, Hemel Hempstead, Herts HP3 0NZ.**

**Dated:** **15 May 2019**

### **ACTION**

1. For the reasons set out below and pursuant to section 56 of the Act, the Authority hereby makes an order prohibiting Mr David from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. This order takes effect from 15 May 2019.

### **REASONS FOR THE ACTION**

2. As set out in more detail in the facts and matters described below, on 30 July 2018 Mr David was:
  - (a) convicted of one count of obtaining a money transfer by deception and one count of fraud by abuse of position, each count encompassing a course of conduct running from January 2005 to November 2017; and
  - (b) sentenced to four years' imprisonment and six years' imprisonment respectively in relation to the above counts, the sentences to be served concurrently.
3. On the basis of the conduct resulting in these convictions and as set out in the facts and matters below, Mr David 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. The Authority considers that 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 conclusion, the Authority has had regard to all relevant circumstances, including the relevance and materiality of the offences and the

severity of the risk posed by Mr David to consumers and financial institutions and to confidence in the market generally. The Authority considers that the prohibition order set out in paragraph 1 advances its consumer protection and integrity operational objectives (sections 1C and 1D of the Act, respectively).

## **DEFINITIONS**

4. The definitions below are used in this Notice (and in the Annex):

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the Decision Notice" means the decision notice given to Mr David on 10 April 2019;

"DEPP" means the Authority's Decision Procedure and Penalties manual;

"EG" means the Enforcement Guide;

"FIT" means the 'Fit and Proper Test for Employees and Senior Personnel', part of the Handbook;

"the Handbook" means the Authority's Handbook of rules and guidance;

"HBFS" means HBFS Financial Services Limited (now in liquidation);

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

"the Warning Notice" means the warning notice given to Mr David dated 13 March 2019.

## **RELEVANT STATUTORY PROVISIONS**

5. The statutory and regulatory provisions relevant to this Notice are set out in the Annex.

## **FACTS AND MATTERS**

6. HBFS was incorporated on 29 October 2004 and was a firm of seven independent financial advisers operating in Hertfordshire. Mr David held 75% of the shares in HBFS and his wife held the remaining 25% of the shares. From 27 January 2005 to 30 April 2007, HBFS was an appointed representative of another firm and from 2 April 2007 to 15 December 2017 HBFS was directly authorised by the Authority to, inter alia, provide investment advice to clients. Notably, HBFS was never permitted by the terms of its permission to hold client money.

7. Mr David was approved by the Authority throughout the period of conduct that resulted in his conviction. From 2002, Mr David was approved as a CF21 (investment advisor) and, from 7 February 2005, as a CF1 (AR) (director of appointed representative). From 2 April 2007 to 16 August 2018, Mr David was approved by the Authority to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) at HBFS. From 1 November 2007 to 18 August 2018 he was approved to perform the CF30 (Customer) controlled function in relation to HBFS.

8. Between 1 January 2005 and 10 November 2017 Mr David presented an investment opportunity, purportedly in high interest financial products at Bank of Scotland Plc and Barclays Bank Plc, to some of HBFS's clients. In total 55 clients transferred approximately £14.545 million directly to HBFS for investment in those products. The financial products did not, however, exist. Many of the clients to whom Mr David offered this investment opportunity were elderly, vulnerable or suffering from illness and they were relying on the investment for care or security in their old age.
9. Mr David used the majority of the money of the 55 HBFS clients to fund his gambling habit, with a lesser amount used to pay school fees, mortgage payments, personal investments and spending abroad. In the 12 years from January 2005 to October 2017, Mr David spent approximately £15 million on gambling websites which provided returns of approximately £1.5 million.
10. Although Mr David did not make the investments that he had represented to the clients, he did make periodic payments to some of them to lull them into believing there was an investment and that it was performing well. Mr David funded those payments with money fraudulently obtained from later investors or by withholding interest on the legitimate investments of other clients. By making those payments, Mr David was able to maintain the fraudulent scheme for over 12 years and ensure that clients did not become aware of his deception.
11. On 14 June 2018 Mr David was charged with the two offences summarised below:
  - a) Obtaining a money transfer by deception contrary to section 15A of the Theft Act 1968 in that between 1 July 2003 and 14 January 2007 he dishonestly obtained for himself money transfers in the sum of £1,493,477 by deception; and
  - b) Fraud contrary to section 1 of the Fraud Act 2006 in that between 15 January 2007 and 10 November 2017 he committed fraud in that he dishonestly abused his position as Managing Director of HBFS by falsely representing that clients' money totalling £13,052,117.48 was to be invested in specific financial products which did not exist.
12. Mr David pleaded guilty to both charges (with a start date of 1 January 2005 for the charge under the Theft Act) and on 30 July 2018 he was sentenced at Southwark Crown Court to four years' and six years' imprisonment respectively (to be served concurrently) for each of the above offences summarised. The sentences would have been six and nine years respectively, had Mr David not pleaded guilty, as he received the full discount for a guilty plea.
13. In sentencing Mr David, the judge stated that Mr David was guilty of "very serious offences", that he "targeted a group with savings who were, for the most part, elderly and vulnerable" and that Mr David's "criminality [had] caused not only loss financially but despair and misery to many. Lives have been ruined irreparably.... [he] exploited those who trusted [him] with their savings ...[and] took their money and gambled it away at casinos and in paying for [his] own lifestyle... [in] a fraud of the utmost gravity with devastating effects on others."
14. On 30 July 2018 Mr David was also disqualified for ten years from acting as a director under section 2 of the Company Directors Disqualification Act 1986.

15. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr David was given the opportunity to make representations to the Authority about that proposed action.
16. No representations having been received by the Authority from Mr David within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G permit the allegations/matters described in the Warning Notice to be regarded as undisputed.
17. Through the Decision Notice, the Authority gave notice of its decision to take the action described above. Mr David did not refer the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to him.
18. The Authority therefore makes an order prohibiting Mr David from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

## **PROCEDURAL MATTERS**

19. This Notice is given to Mr David under and in accordance with section 390 of the Act.

### **Decision maker**

20. The decision which gave rise to the obligation to give this Notice was made by the Chair of the Regulatory Decisions Committee.

### **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 Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates 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 David, or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

### **Authority Contacts**

22. For more information concerning this matter generally, contact Andrew Baum (direct line 0207 066 8898/ [andrew.baum@fca.org.uk](mailto:andrew.baum@fca.org.uk)) or Nicole Birch (direct line 0207 066 2592/ [nicole.birch@fca.org.uk](mailto:nicole.birch@fca.org.uk)) of the Enforcement and Market Oversight Division of the Authority.

**Bill Sillett**  
**Head of Department, Enforcement and Market Oversight**

## **ANNEX**

### **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 chapter 9 of 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 assessment of 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).