
FINAL NOTICE

To: **James Dean**
Of: **UK Finance House Ltd**
Individual reference: **JFD01042**
Date: **8 April 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 to prohibit you, James Dean, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1. ACTION

1.1. The FSA gave you a Decision Notice on 3 April 2009 which notified you that the FSA had decided to take the following action:

(1) to withdraw the approval granted to you, pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”), to perform controlled functions, in relation to UK Finance House Limited (“UKFH”); and

(2) to make 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”).

1.2. You confirmed on 10 March 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 Accordingly, for the reasons set out below, the FSA has today withdrawn your approval and made a Prohibition Order against you, which has effect from today and shall be without limit of time.

2. REASONS FOR THE ACTION

2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper to carry out any functions in relation to regulated activities carried on by authorised and exempt persons and you should be prohibited from doing so.

2.2. In the opinion of the FSA you are not fit and proper because you have failed to act with honesty and integrity. In particular, you have:

- (1) submitted a personal buy-to-let mortgage application containing false information about your own employment and earnings; and
- (2) declared on mortgage applications that you acted as the mortgage adviser when in fact a third party completed the applications.

2.3. The FSA has further concluded that you are not fit and proper because you have also failed to act with competence and capability. In particular, you have:

- (1) signed off and submitted to lenders mortgage applications prepared by a third party, who was not employed by UKFH, and which you failed to check before submitting;
- (2) signed off and submitted to lenders mortgage applications which contained false applicant incomes;
- (3) signed off and submitted to lenders mortgage applications which contained false documentation in support of applicants' identity verification;
- (4) failed to follow UKFH's procedures to prevent financial crime by failing to properly check client identities and incomes; and

- (5) failed to take adequate remedial action in July 2006 when you became aware that both you and UKFH may have been used to perpetrate financial crime.
- 2.4. You pose a risk both to consumers and lenders and to confidence in the financial system. Also this action should be taken against you in support of the FSA's financial crime objective.
- 2.5. As a result of the nature and seriousness of the breaches, the FSA concluded that you have failed to meet the minimum regulatory standards in terms of competence and capability, honesty and integrity and are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA has withdrawn your approval and made a Prohibition Order against you

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

- 3.1. The FSA's statutory regulatory objectives, set out in Section 2(2) of the Act, include the protection of consumers, the reduction of financial crime, and the maintenance of market confidence.

Withdrawal of approval

- 3.2. Section 59 of the Act provides that a person shall not perform a controlled function unless the FSA approves the performance by that person of the controlled function. The FSA may grant an application for approval if the FSA is satisfied under section 61 of the Act that the person in respect of whom the application is made is a fit and proper person to perform the function to which the application relates.
- 3.3. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

Prohibition

- 3.4. Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on

by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.

3.5. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:

(1) a specified function, any function falling within a specified description, or any function (section 56(2)); and

(2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

3.6. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide (“EG”). EG took effect from 28 August 2007, replacing the FSA's previous policy in relation to the prohibition of individuals (which was contained in Chapter 8 of the Enforcement Manual (“ENF”). Although the references in this notice are to EG, as the conduct described in this Final Notice spans both sets of policy the FSA has also had regard to the relevant sections of ENF.

3.7. The relevant sections of EG are set out in Annex 1 to this Final Notice.

Regulatory Requirements

Fit and Proper Test for Approved Persons (“FIT”)

3.8. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

3.9. The relevant sections of FIT are set out in Annex 2 to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are currently a director of UK Finance House Limited (“UKFH”), a mortgage broker in the Dorset area. UKFH has been a firm authorised by the FSA since 31 October 2004. UKFH operates from two offices - one in Bournemouth and one in Poole. You, along with your co-director, were two of three advisers originally with UKFH. The third adviser left in 2005/2006 and, thereafter, you and your co-director were the only advisers at UKFH.
- 4.2. Between 31 October 2004 and 31 October 2007 you held the controlled function of CF13 (Finance). Since 1 November 2007 you performed the controlled function of CF28 (Systems and controls). You were the manager of UKFH’s Bournemouth office and its sole employed adviser.

Your own mortgage application

- 4.3. The FSA reviewed one buy-to-let mortgage application that you submitted, for your personal account, to a lender on 16 November 2007. This application was submitted through UKFH.
- 4.4. On the mortgage application form you stated that you required borrowing totalling £100,000. You further stated that you were employed by UKFH and declared a gross annual income of £75,000.
- 4.5. The information that you provided to the lender did not correspond with the earnings information that you reported to Her Majesty’s Revenue and Customs (“HMRC”). According to HMRC, for the tax year ending 5 April 2007 you earned £31,502. For the tax year ending 5 April 2008 HMRC records your earnings as £31,399. In both tax years your earnings were made up from employment at UKFH and two additional firms.
- 4.6. The significant discrepancy between the income and employment information you declared on the mortgage application and the information held by HMRC records indicates that you submitted the mortgage application based on information which you knew to be false. At interview, you acknowledged that you provided false information to the lender.

Third party introducers

- 4.7. UKFH used a number of introducers to obtain mortgage clients. These introducers would source and bring clients to UKFH's Bournemouth office. The introducers were not, at any time, employed by UKFH. However, two of these introducers appeared to act as being employed by UKFH and had, amongst other matters, liaised with mortgage clients and issued documents in their own name on UKFH headed paper.
- 4.8. Between 2002 and 2006, Introducer A introduced approximately 80% of UKFH's mortgage clients at the Bournemouth office. Of the clients he introduced, you stated, during an interview with the FSA dated 31 October 2008, that you did not act as the mortgage adviser in around 70-80% of these mortgage applications. Instead, you signed off these mortgage applications, prepared by Introducer A, as applications advised upon by you.
- 4.9. There is no evidence contained on the files to demonstrate that appropriate checks were carried out on the applications prepared by Introducer A prior to you signing them off. These mortgage applications were subsequently signed and submitted to mortgage lenders declaring you as the mortgage adviser.
- 4.10. The FSA has reviewed 21 client files which you submitted to lenders and on which you declared that you had acted as the mortgage adviser. Of these, nine show evidence they were prepared by Introducer A, and all nine of those files contain inconsistencies concerning the verification of client identities and the accuracy of incomes declared by clients on mortgage applications submitted to lenders.
- 4.11. As manager and mortgage adviser at UKFH's Bournemouth office you were responsible for ensuring that UKFH was not used improperly by any third party introducers. The FSA considers that you knowingly submitted mortgage applications on behalf of customers which you had neither prepared nor adequately checked. In doing so you have failed to ensure that UKFH was not improperly used by third party introducers and have exposed it to being used to further financial crime.

Verifying client identities

- 4.12. It was UKFH's procedure that clients would be required to bring original identity documents to the office, copies would be made, and they would be verified from the original. You and a trainee adviser at the Bournemouth office were the only parties permitted to verify documents at this branch.
- 4.13. On three mortgage applications for one client, Client B, the proof of address documents have been altered. Identical utility bills were found on file, but containing two different addresses.
- 4.14. A further copy of the same bill was found on file which had been produced from a faxed copy, with the fax header information having been tippexed so as to obliterate it. This copy was signed as being verified from the original, despite this not being the case.
- 4.15. When questioned about this you said that whilst you had met Client B and signed off each of their applications, the document verification had been carried out by Introducer A.
- 4.16. You have failed to follow UKFH's procedure for verifying client identities and, as a result, you failed to identify that forged identity documents were submitted to lenders and certification from copy, as opposed to original, documents was occurring. You have therefore further exposed UKFH to the risk of being used to further financial crime.

Verifying client incomes

- 4.17. UKFH arranged mortgages for a significant number of self-employed customers. During the fact finding process, such customers would be required to provide details of their accountant. UKFH would subsequently obtain audited accounts or an accountant's certificate to verify the customer's income.
- 4.18. The FSA has found evidence that UKFH requested additional accountant's certificates to verify customer's income despite being in possession of their audited accounts.

- 4.19. In one such case, financial information relating to one of UKFH's self-employed customers was supplied by two separate accountants. An audited set of accounts for the client in question, dated 2 November 2004, were received from Accountant C. However, a further accountant's certificate was requested by UKFH from Accountant D on 19 November 2004.
- 4.20. The certificate by Accountant D showed the client's profits for 2003 were £115,393 higher than those shown on the audited accounts supplied by accountant C. Figures matching those provided by Accountant D were declared in the client's mortgage application.
- 4.21. When questioned by the FSA you were unable to provide a satisfactory explanation as to why an additional accountant's certificate was requested in the above case when audited accounts were already held. It appears to the FSA that the use of the certificate provided by Accountant D, as opposed to the lower figures provided by Accountant C, was deliberate, and was intended to improve the probability that the client would obtain the mortgage.
- 4.22. At interview you said that whilst the application was prepared by Introducer A, you had signed it off and submitted it to the lender. In failing to notice the significant anomaly in this customer's income, the FSA considers that you have failed to adequately check the information which was being provided to lenders and which you had a responsibility to ensure was accurate.

Failure to take sufficient action to prevent financial crime

- 4.23. In July 2006 you became aware of serious alleged irregularities with the work of Introducer A relating to false documentation being used to verify client identities and incomes. At interview, you explained that this raised concerns that both you and UKFH may have been used to commit financial crime. In October 2006 UKFH severed links with Introducer A.
- 4.24. Despite the serious implications of the irregularities, you failed to assess the extent of the problem or take adequate remedial action. You further failed to inform either your co-director or the FSA. Instead, you continued to sign off Introducer A's applications for a period of some three months.

- 4.25. In your role as manager of the Bournemouth office, you have responsibilities to prevent the furthering of financial crime through UKFH. The FSA considers that you have acted recklessly by failing to follow UKFH procedures for income and client verification, and failed to take any immediate action upon having suspicions that UKFH was being used to commit mortgage fraud. This is compounded by the fact that you allowed a third party to prepare applications for UKFH's clients, signed off his work as your own and failed to adequately check the applications prepared by him.
- 4.26. Your disregard of UKFH's procedures to prevent financial crime and your reckless actions which enabled mortgage fraud to be committed through UKFH gives rise to serious concerns about your judgement and competence to act in the mortgage industry.

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTION

- 5.1. The FSA has considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA has considered its finding that you submitted your own mortgage application based on false and misleading information to lenders and had regard to the statutory and regulatory requirements referred to in Section 3 and the Annex to this Notice.
- 5.2. The FSA further found that you lack both honesty and integrity and competence and capability and that therefore you are not fit and proper to carry on functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional person, due to:
- (1) your failure to follow UKFH's procedure for verifying client information;
 - (2) your knowing involvement in the signing off and submitting of mortgage applications to lenders stating you were the mortgage adviser, when in fact the applications were prepared by a third party;
 - (3) your failure to adequately monitor mortgage applications prepared both by you and a third party; and

(4) your failure to take sufficiently robust action upon the discovery that UKFH may have been used to commit financial crime.

5.3. The FSA considers that you pose a serious risk to lenders and consumers, and therefore to the FSA's statutory objectives of maintaining confidence in the financial system and preventing financial crime.

5.4. It is, therefore, necessary and proportionate, in order to achieve its regulatory objectives, for the FSA to exercise its powers to withdraw your approval and make a Prohibition Order against you. In particular, taking this action against you is consistent with the FSA's policy of seeking to prevent individuals lacking integrity and the minimum standard of competence and capability from working in authorised firms.

6. DECISION MAKER

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.

Publicity

7.2. 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.

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

FSA contacts

- 8.1. For more information concerning this matter generally, you should contact Catherine Harris (direct line: 020 7066 4872 /fax: 020 7066 4873) of the Enforcement Division of the FSA.

Signed:

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Georgina Philippou
Head of Department
FSA Enforcement Division

ANNEX 1: RELEVANT GUIDANCE FOR MAKING A PROHIBITION ORDER

- 8.2. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 8.3. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness; and
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 8.4. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:
- (1) severe acts of dishonesty, for example those which may have resulted in financial crime; and
 - (2) serious lack of competence.

ANNEX 2: RELEVANT GUIDANCE IN RELATION TO THE FIT AND PROPER TEST FOR APPROVED PERSONS

- 8.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's honesty, integrity and reputation, and their competence and capability.
- 8.6. In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance includes:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) 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 (FIT 2.1.3G(13)).
- 8.7. In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. The guidance includes:
- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).