
FINAL NOTICE

To: James Ian Shanks

Individual ref: IXS01251

Dated: 18 December 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr James Ian Shanks, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt profession firm.

1. ACTION

- 1.1. The FSA gave you, Mr James Ian Shanks, a Decision Notice on 18 December 2009 (“the Decision Notice”) which notified you that it had decided to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 (“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 because you are not a fit and proper person.

- 1.2. You agreed to settle at an early stage of the FSA's investigation.
- 1.3. Accordingly 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 out by an authorised person, exempt person or exempt professional firm ("the Prohibition Order"). The Prohibition Order takes effect from 18 December 2009.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters described below, and set out in more detail in section 4 below, the FSA concluded 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. Specifically, you failed to act with integrity when advising on regulated mortgage contracts in that you failed to take steps to verify the information provided to you by mortgage applicants, thereby failing to prevent Case Funding Centre ("the Firm"), at which you held controlled functions, from being used to perpetrate financial crime.
- 2.2. As such, the FSA concluded that you have fallen below minimum regulatory standards in terms of integrity and that you are therefore not a fit and proper person. Having regard to its statutory objectives (including market confidence and the reduction of financial crime) it is necessary for the FSA to exercise its power to make a prohibition order against you.

3. RELEVANT STATUTORY PROVISIONS

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Between 31 October 2004 and 4 July 2008, and therefore at the time of the relevant misconduct, you were a partner and an approved person performing significant influence functions at the Firm, which is a mortgage intermediary based in Northern

Ireland. Specifically, you held controlled functions CF4 (Partner), CF8 (Apportionment and Oversight) and CF11 (Money Laundering). You also held CF13 (Finance), CF14 (Risk assessment), CF15 (Internal Audit) and CF19 (Significant Management) from 31 October 2004 to 31 October 2007 when these were converted into CF28 (Systems and controls) and CF29 (Significant management). You resigned all of your controlled functions on 4 July 2008.

- 4.2. In addition to performing controlled functions, you acted as a mortgage adviser until 1 September 2009, when you were dismissed from your role at the Firm.
- 4.3. You also held controlled function CF4 (Partner) at a sister company of the Firm (“the sister company”), which was also a mortgage intermediary.

Mortgage Adviser A’s mortgage application

- 4.4. On 1 October 2007 Mortgage Adviser A, who worked for the sister company, applied for a mortgage through the Firm. You acted as the adviser on the case. On her mortgage application form, Mortgage Adviser A declared an annual income of £45,000. Her application stated that she worked exclusively as a mortgage adviser for the sister company. The FSA reviewed company records for the Firm and the sister company and found that in fact Mortgage Adviser A was paid £9,571 over a four month period. This amounts to £28,713 per annum. The FSA also found that the level of income declared by Mortgage Adviser A to Her Majesty’s Revenue and Customs (“HMRC”) was substantially less than the amount declared on her mortgage application form. These facts taken together indicate that Mortgage Adviser A’s application, submitted by you to a lender, contained false and misleading information in respect of her annual income.
- 4.5. Had you either sought documentary evidence to support Mortgage Adviser A’s declared income or checked her declared income yourself against company records, to which you had access, it would have been clear that Mortgage Adviser A may have been inflating her income for the purposes of obtaining a mortgage.

Other instances of similar misconduct: Mortgage Adviser B

- 4.6. During the course of its investigation, the FSA found a further example of a case where you failed to take steps to verify the income of a mortgage applicant. The applicant, Mortgage Adviser B, was also an adviser at the Firm and you could therefore have personally checked his income against company records. Although in that case the applicant's declared income was genuine, by failing to check his income you nevertheless exposed the Firm to the risk that it could be used as a vehicle for financial crime.

Your explanation

- 4.7. When the FSA put your conduct to you, you admitted that you had not taken steps to verify the income declared by either Mortgage Adviser A or Mortgage Adviser B. You explained that you tended to rely on your working knowledge of the incomes of employees at the firm and the sister company when completing their mortgage application forms instead of seeking verification. You accepted that this was an error of judgment and said that you realise that you should have taken steps to verify the information provided, particularly given that you had access to the relevant information yourself.

5. ANALYSIS OF MISCONDUCT AND SANCTIONS

- 5.1. The FSA concluded that your error of judgement went beyond a lack of competence because you were aware, as the person performing significant influence functions, of the regulatory requirements on you personally as an approved person and on the Firm. Despite knowing that you should have sought verification of income information provided by mortgage applicants and why verification should be sought, and although you had the ability to check the incomes declared by Mortgage Adviser A and Mortgage Adviser B against your own company's records, you nevertheless failed to do so. You therefore knowingly exposed the Firm to the risk of it being used to perpetrate financial crime. As such, the FSA concluded that you acted recklessly and your conduct fell below minimum regulatory standards in terms of integrity.
- 5.2. Consequently, the FSA concluded 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. It was therefore necessary to make the Prohibition Order.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this Notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties Manual.

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

FSA Contact

- 7.4. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894 /fax: 020 7066 5895).

Tom Spender
Head of Department
Financial Services Authority

1. Statutory Provisions

- 1.1. The FSA’s regulatory objectives, which are set out in section 2(2) of FSMA, include the maintenance of market confidence, the protection of consumers and the reduction of financial crime.

Prohibition order

- 1.2. Further, the FSA has the power, by virtue of section 56 of FSMA, to make an order prohibiting you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

2. Fit and Proper Test for Approved Persons

- 2.1. The part of the FSA Handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. 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.
- 2.2. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. Among the most important considerations will be the person’s honesty, integrity and reputation.
- 2.3. In determining a person’s honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This 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)).

3. The FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

- 3.1. The FSA's approach to exercising its powers to make prohibition orders and withdraw its approval is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.2. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of FSMA helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 3.3. EG 9.2 states that, where it considers it appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 3.4. 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 that the individual performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk posed by him to consumers or the market generally.
- 3.5. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that in deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 3.6. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, and/or withdraw its approval, 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) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under FSMA (including the Principles and other rules);
- (3) the relevance and materiality of any matters indicating unfitness;
- (4) the length of time since the occurrence of any matters indicating unfitness;
- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

3.7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors and may take into account the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.

3.8. 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) providing false or misleading information to the FSA;
- (2) severe acts of dishonesty, for example those which may have resulted in financial crime; and

- (3) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.