

---

## **FINAL NOTICE**

---

**To:** **John McCullagh**

**IRN:** **JXM03778**

**Address:** **53 Isleworth Dr  
Chorley  
Lancashire  
PR7 2PU**

**Dated:** **3 October 2018**

### **ACTION**

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Mr McCullagh.
2. The Authority gave Mr McCullagh the Decision Notice, which notified Mr McCullagh that, for the reasons given below and pursuant to section 56 of the Act, the Authority had decided to make an order prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
3. Mr McCullagh 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, for the reasons set out below, the Authority hereby makes an order pursuant to section 56 of the Act prohibiting Mr McCullagh 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 3 October 2018.

### **DEFINITIONS**

5. 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;

"EG" means the Authority's Enforcement Guide;

"Mr McCullagh" means John McCullagh;

"the Decision Notice" means the Decision Notice issued to Mr McCullagh on 2 August 2018;

"FIT" means the Fit and Proper Test for Approved Persons and specified significant-harm functions sourcebook;

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

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

"the Warning Notice" means the Warning Notice issued to Mr McCullagh on 4 July 2018.

## **RELEVANT STATUTORY PROVISIONS**

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

## **SUMMARY OF THE REASONS**

7. The Authority has concluded, on the basis of the facts and matters and conclusions described in the Warning Notice, and in the Decision Notice, that Mr McCullagh is 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, as his conduct demonstrates a clear and serious lack of honesty, integrity and reputation. Specifically, Mr McCullagh:
  - (a) was convicted, upon his own confession, on 12 January 2017, of one count of unlawfully engaging in the activities of a consumer credit business without a licence; one count of unlawfully engaging in the activities of a regulated activity, namely money lending, when not authorised or exempt; and one count of acquiring, using or possession of criminal property;
  - (b) was sentenced on 7 August 2017 to 15 months' imprisonment; and
  - (c) was released on 30 November 2017 from HMP Preston.

## **FACTS AND MATTERS RELIED ON**

8. Mr McCullagh was previously a sole trader, whose limited permission credit firm, 'John McCullagh' authorised by the Authority to carry on the following regulated activities between 30 June 2016 and 18 May 2018:
  - (a) agreeing to carry on a regulated activity;
  - (b) entering into a regulated credit agreement ("RCA") as lender (other); and

(c) exercising lenders rights and duties under an RCA (other).

9. Mr McCullagh is not currently approved to perform any functions in relation to any firm authorised by the Authority, and he has never been approved by the Authority to perform any function.
10. On 12 January 2017, Mr McCullagh was convicted at Preston Crown Court of one count of unlawfully engaging in the activities of a consumer credit business without a licence, contrary to section 39(1) of the Consumer Credit Act 1974; one count of unlawfully engaging in the activities of a regulated activity, namely money lending, when not authorised or exempt contrary to section 23(1) of the Act; and one count of acquiring, using or possessing criminal property contrary to section 329(1) of the Proceeds of Crime Act 2002, namely for conducting an illegal money lending business between July 2008 and June 2016.
11. On 7 August 2017, Mr McCullagh was sentenced at Preston Crown Court to 15 months' imprisonment (to be served concurrently and consecutively) for the offences summarised at paragraph 8 above.
12. In his sentencing remarks (made on 7 August 2017), the judge commented on the aggravating features of Mr McCullagh's case. These features included the fact that Mr McCullagh ran an unlicensed and unregulated money lending business, having lent money - to financially vulnerable individuals; the lengthy period of time over which Mr McCullagh committed the offences (approximately eight years); and the fact that substantial profits were made from the business, the benefits of which Mr McCullagh had through various bank accounts. The judge emphasised that a serious aggravating factor was that Mr McCullagh set up an illegal money lending business, knowing full well it was an illegal business, as he had experience in that sort of business in the past. Mr McCullagh did not take the appropriate steps to turn his business into a legal enterprise.

#### **DECISION MAKER**

13. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

#### **IMPORTANT**

14. This Final Notice is given to Mr McCullagh in accordance with section 388 of the Act.

#### **Publicity**

15. The Authority must publish such information about 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 information would, in the opinion of the Authority, be unfair to Mr McCullagh or prejudicial to the interests of consumers.
16. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority Contact**

17. For more information concerning this matter generally, Mr McCullagh should contact Tania Dratcu at the Authority (direct line: 0207 066 6764).

**Anna Couzens**  
**Enforcement and Market Oversight Division**

## **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 EG.
5. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's statutory 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, amongst 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 Approved Persons**

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 the 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 certain offences including those of dishonesty, fraud and financial crime (amongst other things).