
FINAL NOTICE

To: **Mr Jonathan Mark Smith**

Address: **26 Rectory Road East, Gateshead, Tyne & Wear, NE10 9DN**

Date: **26 February 2009**

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, Mr Jonathan Mark Smith, 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
 - a. The FSA gave you, Jonathan Mark Smith, a Decision Notice dated 23 February 2009 (the “Decision Notice”) which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), to make an order prohibiting you from carrying out any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).
 - b. You agreed on 24 November 2008 that you would not be referring the matter to the Financial Services and Markets Tribunal.

- c. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA imposes 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 takes effect from 23 February 2009.

2. REASONS FOR THE ORDER

- a. The FSA has concluded that you are not fit and proper to carry out any functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm and you should be prohibited from doing so.
- b. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this notice, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory system.
- c. In summary:
 - i. You were knowingly involved in the submission of mortgage applications containing false and misleading information to lenders on behalf of customers of Neale Morton IMS Limited (“IMS”), the firm at which you worked as a mortgage adviser between 2001 and 2008;
 - ii. you were knowingly involved in the production of false compliance documents following the commencement of an FSA investigation into IMS;
 - iii. you believed that other individuals at IMS were knowingly submitting mortgage applications to lenders based on false and misleading income information and supported by false documents, yet you failed to inform any relevant authority of this; and

- iv. you were aware that at least one individual at IMS was working as a mortgage adviser despite not being qualified to do so, yet you failed to inform the FSA of this.
- d. You pose a risk to lenders and therefore to confidence in the financial system. Also this action should be taken against you in support of the FSA's financial crime objective.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

- a. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, the protection of consumers and maintaining confidence in the financial system.
- b. The FSA has the power, by virtue of section 56 of the Act, 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.
- c. Other relevant guidance is set out in an annex to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

- a. From 2001 until July 2008 you worked as a self-employed mortgage adviser at IMS, a mortgage brokerage operating in the Gateshead area. You provided advice to customers on regulated mortgage contracts and insurance products.

During 2007, you also acted as IMS' office manager, which involved you taking some responsibility for compliance.

- b. In February 2008, the FSA commenced an investigation into IMS after concerns were raised that the firm was submitting fraudulent mortgage business.
- c. On 17 July 2008, the FSA commenced a separate investigation into your conduct during the period in which you worked at IMS due to circumstances suggesting that you were knowingly involved in the submission of mortgage applications based on false and misleading information to lenders.

(i) *False and misleading
information*

- d. You were knowingly involved in the submission of mortgage applications containing false and misleading information to lenders on behalf of IMS customers. You estimated that approximately 5% of the mortgage business you submitted whilst an adviser at IMS was "crooked".
- e. You were aware that some of your customers were failing to disclose their full incomes to Her Majesty's Revenue and Customs. You failed to inform the relevant authorities of this and you continued to assist these customers in obtaining mortgages, despite being aware that in doing so you were facilitating fraud.
- f. You were involved in the production of various false documents in an attempt to demonstrate IMS' compliance with FSA rules, following the commencement of the FSA's investigation into the firm. You personally produced a number of false documents, relating to matters such as the training and monitoring of other advisers at IMS, and you signed other false documents, such as documents purporting to show that you were present at training and monitoring sessions.

- g. You also believed that a number of individuals working at IMS were knowingly involved in mortgage fraud and witnessed a range of misconduct including the production of false employers' references and the inflation of customers' income and misrepresentation of customers' income sources to meet lenders' criteria. You failed, however, to take any steps to report this behaviour to the FSA or the police, despite recognising that this was the correct course of action.
- h. Finally, you were aware that an individual working at IMS provided mortgage advice to customers despite not being qualified to do so. You failed, however, to take any steps to inform the FSA prior to being interviewed by the FSA as part of its investigation.

5. ANALYSIS OF BREACHES

- a. The FSA has concluded that the conduct summarised in section 4 above represents a failure by you to meet the minimum regulatory standards in terms of honesty and integrity and that you are not therefore fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons, exempt persons or exempt professional firms.
- b. You were knowingly involved in the submission of mortgage applications based on and containing false and misleading information to lenders on behalf of IMS customers. This reveals a serious lack of honesty and integrity, as does your admission that you were knowingly involved in the production of false documentation in order to deliberately mislead the FSA.
- c. The fact that you failed to take steps to report what you believed to be financial crime at the firm at which you worked, or to take steps to disassociate yourself from dishonest individuals, is, in the FSA's opinion, further evidence of your lack of integrity.
- d. You also failed to inform the FSA that an individual was working as a mortgage adviser at IMS despite not being in possession of the requisite

qualifications. By working as an adviser without the appropriate qualifications that individual put consumers at risk of being recommended unsuitable mortgage contracts. You failed to take steps to prevent this.

6. ANALYSIS OF THE SANCTION

- a. Given the facts and matters set out in this Final Notice, it is necessary, in order to achieve its regulatory objectives, for the FSA to exercise its power to 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 honesty and integrity from working in authorised firms.

7. DECISION MAKERS

- a. The decision which gave rise to the obligation to give this Final Notice was made by Settlement Decision Makers on behalf of the FSA.

8. IMPORTANT

- a. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

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

FSA contacts

Financial Services Authority



- d. For more information concerning this matter generally, you should contact Catherine Harris at the FSA (direct line: 020 7066 4872).

Jonathan Phelan
Head of Department

FSA Enforcement Division

ANNEX

FSA's policy for exercising its power to make a prohibition order

The FSA's approach to exercising its powers to make prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG"). In particular:

- EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives;
- EG 9.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
- EG 9.4 concerns the scope of the FSA's 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 circumstances of a given case, including the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally;
- 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 severe acts of dishonesty, for example those which may have resulted in financial crime; and serious breaches of the Statements of Principle for Approved Persons, such as providing misleading information to clients, consumers or third parties;
- 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;
- EG 9.18 states that, when determining whether to make a prohibition order against someone, the FSA will consider a number of factors including, but not

limited to, the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons (“FIT”);

- FIT 1.3.1 G (1) states that the most important considerations include a person’s honesty, integrity and reputation. In determining a person’s honesty, integrity and reputation, the matters to which the FSA will have regard include:
- FIT 2.1.3 G (4) whether the person is or has been subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or any investigation which might lead to those proceedings;
- FIT 2.1.3 G (5) whether the person has contravened any of the requirements and standards of the regulatory system;
- FIT 2.1.3G (6) whether the person has been the subject of any justified complaint relating to regulated activities;
- FIT 2.1.3G (13) 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.