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## **FINAL NOTICE**

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**To:** **Mark Horsey**

**Individual  
Reference  
Number:** **MXH00075**

**Date:** **3 November 2020**

### **ACTION**

1. For the reasons given in this Notice, the Authority has decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Horsey from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm. The prohibition order takes effect from the date of this Notice.

### **SUMMARY OF REASONS**

2. As set out in more detail in the facts and matters described below, Mr Horsey:
  - a) was convicted by a jury on 13 September 2018, at Guildford Crown Court, of 1 count of voyeurism, contrary to section 67 of the Sexual Offences Act 2003; and
  - b) was sentenced on 5 October 2018 to 9 months imprisonment suspended for 18 months, 100 hours of unpaid work, 25 days of rehabilitative activity, and a requirement to sign the sex offenders register for a period of 10 years.

3. As a result, it appears to the Authority that Mr Horsey 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. Mr Horsey is not fit and proper because he lacks the necessary integrity and reputation required to work in the regulated financial services sector.
  
4. In reaching this decision, the Authority has had regard to all relevant matters, including: the seriousness of the offence and the surrounding circumstances; the relevance of the offence to Mr Horsey's role; Mr Horsey's explanation and the passage of time; any evidence of rehabilitation; and the severity of the risk posed by Mr Horsey to consumers and to confidence in financial system. The Authority considers that it is appropriate to impose the prohibition order set out in paragraph 1 above to advance its consumer protection and market integrity operational objectives, as set out in sections 1C and 1D of the Act, respectively.

## **DEFINITIONS**

5. The definitions set out below are used in this Notice:

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

"the Authority" means the Financial Conduct Authority;

"CF1" means the "*director*" controlled function at an authorised firm;

"CF10" means the "*compliance oversight*" controlled function at an authorised firm;

"CF11" means the "*money laundering reporting*" controlled function at an authorised firm;

"CF30" means the "*customer dealing*" controlled function at an authorised firm;

"the Decision Notice" means the decision notice given to Mr Horsey on 1 October 2020;

"EG" means the Enforcement Guide;

"Firm A" means the formerly authorised firm at which Mr Horsey was previously approved to perform controlled functions;

"FIT" means the Authority's "Fit and Proper Test for Employees and Senior Personnel" sourcebook;

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

"Mr Horsey" means Mr Mark Horsey;

"the RDC" means the Regulatory Decisions Committee of the Authority; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

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

## **FACTS AND MATTERS**

7. Mr Horsey was approved by the Authority to perform the CF1, CF10, CF11 and CF30 functions at Firm A between 3 May 2011 and 30 August 2019. Mr Horsey is not currently approved to perform any controlled or senior manager functions in relation to any firm authorised by the Authority.
8. On 13 September 2018, Mr Horsey was convicted by a jury at Guildford Crown Court of 1 count of recording a person doing a private act (voyeurism), contrary to section 67 of the Sexual Offences Act 2003. The offence was committed in 2014, whilst Mr Horsey was approved by the Authority to perform the aforementioned controlled functions.
9. On 5 October 2018, Mr Horsey was sentenced to 9 months’ imprisonment suspended for 18 months. As part of his suspended sentence, he was required to complete 100 hours of unpaid work and 25 days of rehabilitative activity. He was also required to sign the sex offenders register for 10 years and to forfeit his laptop and other related items seized by the police.
10. Mr Horsey’s offence involved his surreptitiously observing and video-recording a person doing a private act (having a shower) without their consent. The victim was a tenant in a property of which he was a landlord. He did this for his own sexual gratification.
11. In his sentencing remarks, His Honour Judge Black said Mr Horsey had carried out “*substantial and significant planning*” in order to commit this offence, including the careful positioning of mirrors and a ladder. This enabled Mr Horsey to record the tenant from within another room.
12. Through the Decision Notice, the Authority gave notice of its decision to take the action described in paragraph 1 above. Mr Horsey did not refer the matter to the Tribunal within 28 days of the date on which the Decision Notice was issued to him.
13. The Authority therefore makes an order prohibiting Mr Horsey from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, for the reasons described above.

## **PROCEDURAL MATTERS**

14. This Notice is given to Mr Horsey under, and in accordance with, section 390 of the Act. The following paragraphs are important.

### **Decision-maker**

15. The decision which gave rise to the obligation to give this Notice was made by the RDC.

### **Publicity**

16. 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 Horsey, or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

### **Contact**

17. For more information concerning this matter generally, contact Saad Nasarullah (direct line: 020 7066 1940) of the Enforcement and Market Oversight Division of the Authority.

**Anna Couzens**  
**Manager, Threshold Conditions Team**  
**Enforcement and Market Oversight Division**  
**Financial Conduct Authority**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. Section 1B of the Act provides that in discharging its general functions, the Authority must so far as is reasonably possible, act in a way which is compatible with its strategic objectives and advances one or more of its operational objectives.
2. The Authority's strategic objective is to ensure that "*relevant markets function well*" (section 1B(2) of the Act) and its 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).
3. Section 56 of the Act provides:
  - (1) "*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.*"
  - [...]
  - (3) "*A prohibition order may relate to –*
    - (a) *a specified regulated activity, any regulated activity falling within a specified description or all regulated activities*".

### **RELEVANT REGULATORY PROVISIONS**

4. In exercising its power to make a prohibition order, the Authority must have regard to guidance published in the Authority's Handbook and in regulatory guides, such as the EG. The main relevant considerations in relation to the action specified above are set out below.

#### **The Enforcement Guide**

5. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
6. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's regulatory objectives.

7. 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 the 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 the range of regulated activities to which the individual's lack of fitness and propriety is relevant; and
  - (c) EG 9.2.3 states that the scope of a prohibition order will depend on, among other things, 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 he poses to consumers or the market generally.
8. EG 9.3.2 states that, when the Authority decides to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to:
  - (a) 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);
  - (b) the relevance and materiality of any matters indicating unfitness;
  - (c) the length of time since the occurrence of any matters indicating unfitness;
  - (d) 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
  - (e) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
9. EG 9.3.4 states that owing to the "*diverse nature of the activities and functions which*

*the [Authority] regulates, it is not possible to produce a definitive list of matters which the [Authority] might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm".*

10. EG 9.5.1 states that, when the Authority is considering making a prohibition order against an individual that is not an approved person, it will consider the severity of the risk posed by the individual and may prohibit them where it considers this is appropriate to achieve one or more of its statutory objectives.
11. 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.

### **Fit and Proper Test for Employees and Senior Personnel**

12. The Authority has issued guidance on the criteria for the assessment of an individual's fitness and propriety in FIT.
13. FIT 1.3.1BG states that the most important considerations when assessing the fitness and propriety of a person will be the person's: (1) honesty, integrity and reputation; (2) competence and capability; and (3) financial soundness. A person only has to be deemed lacking in one of the three areas in order to be deemed not to be fit and proper.
14. 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. The FCA will consider the circumstances only where relevant to the requirements and standards of the regulatory system. It states (referring specifically to an application for approval, though still applicable in the present context) 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."*

15. FIT 2.1.2G states: *"...the [Authority] will look at whether the person's reputation might have an adverse impact upon the firm for which the controlled function is or is to be*

*performed and at the person's responsibilities."*

16. FIT 2.1.3G(1) states that the Authority will have regard to matters, including but not limited to *"whether the person has been convicted of any criminal offence [...] particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom"*.
17. FIT 2.1.3G(4) states that the Authority will have regard to matters, including but not limited to *"...whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings"*.
18. FIT 2.1.3G(13) states that the Authority will have regard to matters, including but not limited to *"...whether, in the past, the person has been candid and truthful in all their 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."*