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**FINAL NOTICE**

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**To: Mark Gregory Thorogood trading as Property Park Mortgages**

**Of: Townsend House  
Westend  
Beaumaris  
Anglesey  
Gwyndd  
LL58 8BH**

**FRN: 303671**

**Dated: 07 December 2010**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Mr Mark Thorogood, final notice about the imposition of an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or any exempt professional firm, a requirement to pay a financial penalty and the cancellation of your Part IV Permission.**

**1. ACTION**

1.1. On 25 March 2010 the FSA gave you, Mr Mark Thorogood trading as Property Park Mortgages ("Property Park"), a Decision Notice ("the Decision Notice") which notified you that the FSA had decided to:

- (1) to impose a financial penalty of £104,294 on you, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), for failing to comply with Principles 1 and 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") issued under section 64 of the Act;

- (2) to make a prohibition order, pursuant to section 56 of the Act, to prevent you from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (“the Prohibition Order”); and
  - (3) to cancel, pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the permission granted to you, pursuant to Part IV of the Act (“your Part IV permission”).
- 1.2. The financial penalty consists of the following elements:
  - (1) a disgorgement of financial benefit of £4,294 from commission fees charged by you for the submission of residential mortgages for your own benefit and for the benefit of a family member; and
  - (2) an additional penalty element of £100,000.
- 1.3. By the Decision Notice dated 25 March 2010, the FSA gave notice that it decided to take the action described above and you were given the opportunity to make representations to the FSA about that proposed action.
- 1.4. On 23 April 2010 you referred the Decision Notice to the Upper Tribunal (Financial Services) (the “Tribunal”). On 25 November 2010 the Tribunal informed all parties that the reference was no longer extant. Accordingly the FSA gives you this Final Notice.
- 1.5. For the reasons set out below, the FSA has today hereby:
  - (1) imposed a financial penalty of £104,294 on you;
  - (2) made 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. This order takes effect from 07 Decemebr 2010; and
  - (3) cancelled your Part IV permission pursuant to section 45 of the Act.

## **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 function in relation to regulated activities carried on by authorised persons and you should be prohibited from doing so.
- 2.2. The FSA considers that you have breached Statement of Principle 1 of APER, in your capacity as a sole trader performing significant influence controlled function 7 (sole trader) between 31 October 2004 and 31 January 2007, and are not fit and proper, because you have failed to act with honesty and integrity. In particular, you have knowingly submitted fraudulent mortgage applications in your own name and on behalf of another.

- 2.3. The FSA considers that you have breached Statement of Principle 7 of APER, in your capacity as a sole trader performing significant influence controlled function 7 (sole trader), because you failed to take reasonable steps to ensure that the business of Property Park complied with the relevant requirements and standards of the regulatory system. In particular, you failed to:
- (1) ensure that Property Park retained adequate records in order to demonstrate that the recommendation given to a customer was suitable; and
  - (2) implement, or take reasonable steps to implement, adequate systems and controls to ensure:
    - (a) the mortgage advice given to Property Park's customers was suitable;
    - (b) the supervision and monitoring of your staff was adequate; and
    - (c) that Property Park was not used as a vehicle for financial crime.
- 2.4. You pose a serious risk to lenders and consumers. The proposed action supports the FSA's objectives of maintaining confidence in the financial system and reducing financial crime.
- 2.5. As a result of the nature and seriousness of these breaches, the FSA considers you have failed to meet minimum regulatory standards in terms of honesty and integrity and competence and capability, and you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA hereby imposes a financial penalty of £104,294 and makes the Prohibition Order.
- 2.6. The FSA further considers, on the basis and the facts and matters described below, that Property Park fails to satisfy Threshold Conditions 4 and 5 as set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA:
- (1) Property Park no longer satisfies the FSA that it is fit and proper to conduct regulated activities having regard to all the circumstances including its connection with you, the nature of any regulated activity that it seeks to carry on and the need to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5). Specifically, Property Park:
    - (a) has failed to conduct its business in compliance with proper standards;
    - (b) does not have a competent and prudent management in place; and
    - (c) has failed to conduct its affairs with due skill, care and diligence.
  - (2) Property Park has inadequate resources in relation to the regulated activities that it has permission to carry on. Specifically, Property Park has inadequate human resources in that there is no suitable person currently within Property Park capable of acting as a sole trader (Threshold Condition 4).

- 2.7. The FSA therefore concludes that pursuant to Section 45 of FSMA, Property Park's Part IV permission should be cancelled.
- 2.8. The FSA has therefore decided to take the action for the reasons described in the Warning Notice and to give this Final Notice.

### **3. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 3.1. The relevant statutory provisions and regulatory requirements as sent out at Annex A to this Final Notice.

### **4. FACTS AND MATTERS RELIED ON**

#### **Background**

- 4.1. You, trading as Property Park, have been authorised by the FSA to, amongst other activities, advise and make arrangements in connection with the selling of regulated mortgage contracts since 31 October 2004 and regulated insurance policies since 14 January 2005. You held the controlled function CF7 (sole trader) for Property Park from 31 October 2004 until 31 January 2007. You were also responsible for insurance mediation from 14 January 2005 to 31 January 2007. Property Park had two other mortgage advisers between 31 October 2004 and 15 May 2008. However, the conduct of only one adviser ("the Adviser") is significant in relation to the submission of the fraudulent mortgage applications. No evidence was found that the other adviser had submitted fraudulent applications. The Adviser was not an approved person.
- 4.2. Property Park was visited by the FSA on 15 May 2008 as a result of customers' alleged dissatisfaction with its service and allegations of mis-selling.

#### **Systems and Controls**

##### *Monitoring of the Adviser*

- 4.3. Property Park did not have a documented system or process for supervising and monitoring the activities of the Adviser. Property Park informed the FSA that it had a policy that it should conduct monthly one to one meetings with the Adviser which should include file reviews. You have failed to provide any evidence of these meetings or reviews taking place.
- 4.4. You did not document any monitoring of the Adviser that you may have conducted, nor did you document any feedback that you may have given as a result of this monitoring.
- 4.5. The FSA reviewed some of the Adviser's customer files during its visit on 15 May 2008 and later highlighted its findings to you. Some of these files had record keeping failures and did not contain sufficient evidence to support the income which had been declared by the customers in their applications. Other files included evidence of income which did not match the income declared in the respective applications.
- 4.6. You failed to identify these issues prior to them being brought to your attention by the FSA. Had you followed your policy of reviewing files during monthly meetings with

the Adviser, you should have identified these failings and been able to take immediate steps to address them.

*Applications submitted by the Adviser for customers*

- 4.7. The Adviser admitted altering income documentation submitted to lenders on behalf of Property Park's customers. The Adviser also admitted knowingly providing false and misleading income information to lenders on behalf of Property Park's customers. Your systems and controls at Property Park did not prevent the Adviser from proceeding with mortgage applications when a customer had declared a level of income which could not be evidenced by legitimate supporting documentation or which the adviser knew to be false.
- 4.8. Your failure to monitor the Adviser allowed him to submit false and/or misleading information to lenders, through Property Park, on behalf of Property Park's customers.

**Reasonable care to ensure suitability of advice**

*Gathering customer information*

- 4.9. Property Park completed 'fact finds' during telephone conversations or face to face meetings between sales advisers and customers. These documents recorded customer information, including employment and income details.
- 4.10. The FSA has reviewed 26 customer files from Property Park. The following is a summary of information in relation to six of these files.
- 4.11. In these six files, various sections of the fact finds are incomplete or left blank. Information relating to the customers' financial circumstances and the affordability of the product recommended is missing from all of the files. As a result, it is not possible to ascertain whether the product you or the Adviser recommended to the customer in these cases was:
  - (1) suitable to their needs and circumstances; or
  - (2) affordable for them.

*Evidencing suitability of advice*

- 4.12. Property Park sent its 'Mortgage advice/Sales procedure' document to the FSA on 5 August 2008. This document suggested that it was Property Park's standard practice to issue a 'suitability letter' to customers to record why the recommendation made was suitable for them.
- 4.13. This suitability letter was missing from the six files relied on by the FSA. None of the six files contain evidence of product research being undertaken.
- 4.14. You have therefore failed to evidence:
  - (1) the suitability of the advice given by Property Park's advisers; and

- (2) that Property Park's advisers conducted research across the market before recommending a particular product.

### **Mortgage applications submitted in your own name**

#### *Application 1*

- 4.15. You submitted a regulated mortgage application dated 7 February 2007 to Birmingham Midshires. On this application you stated:
- (1) that you were employed; and
  - (2) your income was £120,000 per annum.
- 4.16. You were a sole trader at this time and therefore you were self-employed.
- 4.17. The FSA subsequently obtained information from Her Majesty's Revenue and Customs ("HMRC") which shows that for the tax year ending 5 April 2007, your net income was £29,025.95 from Property Park.
- 4.18. The income and employment status declared in your mortgage application were therefore incorrect.

#### *Application 2*

- 4.19. You submitted a regulated mortgage application on 16 October 2005 to GMAC. This application was on behalf of your wife, Marian Thorogood, and yourself. It completed on 18 January 2006. On this application you stated:
- (1) your income was £120,000 per annum for 2005; and
  - (2) your wife's income was £95,000 per annum for 2004.
- 4.20. The FSA subsequently obtained information from HMRC which shows that for the tax year ending 5 April 2005 your net income was £22,092 and your wife's total income was £8,606. For the tax year ending 5 April 2006, your net business profit for tax purposes was £22,950 and your wife's total income on which tax is due was £8,832.
- 4.21. The incomes declared in this mortgage application were therefore incorrect.

#### *Buy to let mortgage applications*

- 4.22. You submitted seven buy to let mortgage applications in the period between December 2006 and February 2007. These submissions were joint applications submitted on behalf of yourself and your wife.
- 4.23. In three of those applications you misrepresented both your income and your wife's income by a substantial amount. The mortgage applications record your income as £120,000 and your wife's income as £95,000. However, according to HMRC records for the tax year ending 5 April 2007, your net income was £29,025.95 and your wife's net income was minus £31,467.89 (net loss).
- 4.24. The income declared in these seven buy to let mortgage applications was therefore incorrect.

### **Mortgage applications submitted on behalf of another (“the family member”)**

- 4.25. A mortgage enquiry form was completed on 2 August 2006 recording a member of your family’s income information. This mortgage enquiry form recorded the family member’s occupation as a graphic designer and initially stated that the annual income was £30,000 per annum. This annual amount was later altered in manuscript to read £130,000. However, the stated net monthly income figure of £2,000 remained unaltered.
- 4.26. You submitted a regulated mortgage application in August 2006 on behalf of the family member to Lender 1, in which you stated that he had income of £85,000 per annum.
- 4.27. You then submitted a further regulated mortgage application on 6 September 2006 on behalf of the family member to Lender 2, in which you stated that he had a basic income of £130,000 per annum from his occupation as a graphic designer and an investment income of £12,000 per annum.
- 4.28. The FSA subsequently obtained information from HMRC which shows that the family member declared a net income of £27,067.53 (comprising income of £32,998.51 less tax of £5,930.98) for the tax year ending 5 April 2006, £17,610.90 (comprising income of £20,825.82 less tax of £3,214.92) for the tax year ending 5 April 2007 and £16,856.97 (comprising income of £19,793.45 less tax of £2,936.48) for the tax year ending 5 April 2008.
- 4.29. The initial income declared on the fact find document did not match that declared on either of the two applications submitted by you. Nor did the incomes declared on the two applications match each other, despite being submitted only one month apart. The incomes declared to HMRC did not match any salary details recorded on the fact find or submitted to either lender in the two applications.

## **5. ANALYSIS OF BREACHES**

- 5.1. The facts and matters described above lead the FSA to conclude that you lack:
  - (1) honesty and integrity, and have contravened Statement of Principle 1 of APER, because you have misled lenders about information submitted on mortgage applications through Property Park on your own behalf and on behalf of another; and
  - (2) competence and capability, and have contravened Statement of Principle 7 of APER, because you failed to take reasonable care to:
    - (a) ensure all relevant information was obtained from customers and properly assessed prior to giving or allowing the Adviser at Property Park to give advice;
    - (b) ensure any advice given to customers by you or the Adviser at Property Park was suitable, and adequately recorded; and



- (c) organise and control Property Park's affairs responsibly and effectively with adequate risk management systems to counter the risk that Property Park might be used to further financial crime.
- 5.2. These matters go directly to impugn your honesty and integrity, and competence and capability and have prejudiced the interests of your customers. You therefore demonstrate 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.
- 5.3. The FSA considers that you pose a serious risk to lenders and consumers and to the FSA's regulatory statutory objectives of maintaining confidence in the financial system and reducing financial crime.
- 5.4. The FSA therefore considers it appropriate to impose a penalty of £104,294 on you and to impose the Prohibition Order pursuant to section 56 of the Act.
- 5.5. The facts and matters described above have led the FSA to conclude that Property Park is failing, and is likely to continue to fail to satisfy Threshold Condition 5 (Suitability) and Threshold Condition 4 (Adequate resources). The FSA therefore considers that Property Park's Part IV permission should be cancelled.

## **6. ANALYSIS OF SANCTIONS**

### **Determining the level of the financial penalty**

#### **Deterrence**

- 6.1. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

#### **The seriousness of your breaches**

- 6.2. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements and Principles breached, the number and duration of the breaches, and the extent to which the breaches demonstrate a lack of honesty and integrity.
- 6.3. For the reasons set out above and having regard to the impact and potential impact on Property Park's customers, the FSA considers that the breaches are of a serious nature.

#### **The extent to which the breaches were deliberate or reckless**

- 6.4. The FSA considers that you acted in a deliberate manner.

#### **Your personal financial resources and other circumstances**

- 6.5. There is no evidence to suggest that you are unable to pay the proposed penalty or that there are exceptional circumstances to warrant a lower level of penalty.

### **Previous action taken in relation to similar failings**

- 6.6. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons and approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

### **Prohibition from performing any function in relation to any regulated activity**

- 6.7. The FSA considers it necessary to prohibit you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm in order to achieve its statutory objectives of maintaining market confidence, protecting consumers and the reduction of financial crime.
- 6.8. The FSA has taken account of the nature of the regulatory requirements breached, the number and duration of the breaches, the extent to which the breaches demonstrate a lack of honesty and integrity, and the extent to which the breaches demonstrate a lack of competence and capability.
- 6.9. The FSA has also taken account of the extent to which the breaches revealed serious or systemic weakness of the firm's management systems or internal controls, the number of customers who were exposed to a risk of loss, the number of customers likely to suffer financial detriment, and the number of lenders exposed to a risk of loss.

## **7. DECISION MAKER**

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Deputy Chairman of the Regulatory Decisions Committee.

## **8. IMPORTANT**

- 8.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

### **Manner of and time of payment.**

- 8.2. The financial penalty must be paid in full by you to the FSA by no later than 21 December 2010, 14 days after the date of this Final Notice.

### **If the financial penalty is not paid**

- 8.3. If all or any of the financial penalty is outstanding on 24 December 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

### **Publicity**

- 8.4. Sections 391(4), 392(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.

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

**FSA contact**

- 8.6. For more information concerning this matter generally, you should contact Paul Howick of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 7954).

**Tom Spender**  
**Head of Department**  
**FSA Enforcement and Financial Crime Division**

## **1. Statutory Provisions**

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: the maintenance of market confidence; the promotion of public awareness; the protection of consumers; and the reduction of financial crime.

### *Imposition of financial penalty*

- 1.2. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against it. Misconduct includes failure by an approved person to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.
- 1.3. The FSA's Statements of Principle and Code of Practice for Approved Persons are a general statement of the fundamental obligations of approved persons under the regulatory system. They derive their authority from section 64 of the Act and reflect the FSA's regulatory objectives.

### *Prohibition*

- 1.4. The FSA has the power, under 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 or any regulated activity falling within a specified description or all regulated activities.

### *Cancellation*

- 1.5. Section 41 and Schedule 6 of the Act set out the Threshold Conditions. These are the minimum standards for becoming and remaining authorised and which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.6. The FSA is permitted by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that they are failing, or likely to fail, to satisfy the Threshold Conditions.
- 1.7. Paragraph 4 of Schedule 6 to the Act sets out Threshold Condition 4 which provides that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on.
- 1.8. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

## **2. Regulatory guidance and policy**

- 2.1. In determining the level of financial penalty and considering the appropriate sanction, the FSA has had regard to its published guidance. Although the references in this notice are to the Enforcement Guide (“EG”), the FSA has had regard to the appropriate provisions of the Enforcement Manual (“ENF”) which is no longer in force but applied to Property Park during some of the relevant period. The FSA has also had regard to the relevant provisions in its Decision Procedure and Penalties Manual (“DEPP”) which came into effect on 28 August 2007.

### *Imposition of financial penalty*

- 2.2. EG provides at paragraph 9.23 that the FSA may impose a financial penalty on an individual in addition to imposing a prohibition order on them and/or, in the case of an approved person, withdrawing their approval where it is appropriate to do so.

### *Prohibition*

- 2.3. 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 EG.
- 2.4. 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 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.
- 2.5. EG 9.17 to 9.18 provides guidance on the FSA’s exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 2.6. 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 the Fit and Proper test for Approved Persons (“FIT”) 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 a lack of fitness and propriety;
- (3) the length of time since the occurrence of any matters indicating lack of fitness and propriety; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

*The Statements of Principle*

- 2.7. APER sets out the FSA's Statements of Principle in respect of approved persons and examples of conduct which, in the opinion of the FSA, do not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 2.8. APER 3.1.3G states that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.9. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable. Personal culpability arises where the approved person's conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.10. In this case, the FSA considers the most relevant Statements of Principle, set out at APER 2.1.2P, to be:
  - (1) Statement of Principle 1 under which an approved person must act with integrity in carrying out his controlled function; and
  - (2) Statement of Principle 7 under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.

*The requirement to act with integrity*

- 2.11. APER 4.1 sets out examples of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1.

*The requirement to ensure compliance with regulatory standards*

- 2.12. APER 4.7 sets out examples of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7. This includes failing to take reasonable steps to:

- (1) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the firm's regulated activities (APER 4.7.3E);
- (2) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the firm's regulated activities (APER 4.7.4E); and
- (3) adequately inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking into account of the systems and procedures in place) (APER 4.7.5E).

*Fit and Proper Test for Approved Persons*

- 2.13. 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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.14. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its powers to make a prohibition order against you in accordance with the guidance set out in EG 9.8 to 9.14.
- 2.15. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. Two of the most important considerations will be the person's honesty, integrity and reputation, and their competence and capability.
- 2.16. In determining a person's honesty, integrity and reputation, FIT 2.1.1G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. Those matters include:
  - (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)).
- 2.17. 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. Those matters include:
  - (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)).

*Cancellation*

- 2.18. In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

Threshold Condition 4: Adequate resources (Paragraph 4, Schedule 6 to the Act) – COND 2.4

- 2.19. COND 2.4.1UK(1) states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 2.20. COND 2.4.2G(1) provides that Threshold Condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on.
- 2.21. COND 2.4.2G(2) provides that the FSA will interpret the term "adequate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources.
- 2.22. COND 2.4.3G(1) provides that when assessing this Threshold Condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence over the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions and would, therefore, be in a relevant relationship with the firm.

*Threshold Condition 5: Suitability (Paragraph 4, Schedule 6 to the Act) – COND 2.5*

- 2.23. COND 2.5.1UK states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 2.24. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.25. COND 2.5.3G(1) provides that the emphasis of this Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain



circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

- 2.26. COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm.
- 2.27. COND 2.5.4G(2) provides that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; or (b) has or will have a competent and prudent management.
- 2.28. COND 2.5.6G(4) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, relevant matters may include whether the firm is connected with a person who has contravened any provisions of the Act or the regulatory system.
- 2.29. COND 2.5.7G(1) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities.

*The Enforcement Guide ("EG")*

- 2.30. EG 8.13(1) provides that the FSA will consider cancelling a firm's Part IV permission using its own-initiative powers contained in section 45 of the Act where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.
- 2.31. EG 8.14 provides that the grounds on which the FSA may exercise its power to cancel an authorised person's permission under section of the Act include where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the Threshold Conditions.