
FINAL NOTICE

To: Matthew Andrew Creed

**Individual
Reference Number: MAC00106**

Dated: 9 July 2021

1. ACTION

- 1.1 For the reasons given in this Final Notice, the Authority has decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Creed from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 1.2 Mr Creed referred the Decision Notice to the Tribunal on 7 September 2020. By email dated 29 April 2021, he notified the Tribunal that he was withdrawing the reference and the Tribunal consented under Rule 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to the withdrawal.
- 1.3 Accordingly, the Authority hereby makes a prohibition order in respect of Mr Creed. The prohibition order takes effect from the date of this Notice.

2. SUMMARY OF REASONS

2.1 As set out in more detail in the facts and matters described below, Mr Creed committed offences which involved dishonesty and a lack of integrity. Mr Creed:

- (a) was tried and convicted, on 21 June 2018, of 4 counts of executing transactions in fraud of creditors, contrary to Section 207 of the Insolvency Act 1986; and
- (b) was sentenced, on 10 July 2018, to a total term of 12 months' imprisonment, to be suspended for a period of 2 years, and to 80 hours of unpaid work.

2.2 Mr Creed's honesty and integrity is also undermined by his:

- (a) failure to notify the Authority, over a period of more than 3 years, of serious matters capable of affecting his fitness and propriety;
- (b) submission of misleading information to the Authority;
- (c) continuing as a *de facto* director at AAA following his disqualification from serving as a company director on 16 March 2016; and
- (d) failure to ensure that AAA had an approved CF10 and CF11 for the period commencing 31 December 2014, and failure to inform the Authority of the fact that an unapproved individual was fulfilling these roles.

2.3 On the basis of the facts and matters set out below, it appears to the Authority that Mr Creed lacks honesty and integrity, and is therefore 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. His conviction for offences involving fraudulent transactions demonstrates a clear and serious lack of honesty and integrity, and his continued failure to act honestly and with integrity in relation to his regulatory obligations towards the Authority further establishes his lack of fitness and propriety in the years following the commission of the offences.

- 2.4 In reaching this decision, the Authority has had regard to all relevant circumstances, including: the relevance and materiality of the offences; the length of time since the offences were committed; the severity of the risk posed by Mr Creed to consumers and to confidence in the financial system; the particular controlled functions he performed; and the market in which he operated. The Authority considers that it is appropriate to impose the prohibition order in paragraph 1.1 to achieve its consumer protection and integrity objectives (sections 1C and 1D of the Act, respectively).

3. DEFINITIONS

- 3.1 The definitions below are used in this Notice:

“AAA” means AAA Management Limited, which was previously authorised and regulated by the Authority;

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“the Decision Notice” means the Decision Notice given to Mr Creed on 13 August 2020;

“EG” means the Enforcement Guide;

“FIT” means the Fit and Proper Test for Employees and Senior Personnel;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“PEL” means Pembrokehire Estates Limited (now liquidated);

“RDC” means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

“Statement of Principle 4” means Statement of Principle 4, as set out in the Handbook at APER 2.1A.3 in the section entitled “Statements of Principle and Code of Practice for Approved Persons”; and

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

4. FACTS AND MATTERS

- 4.1 Mr Creed was AAA's director from 13 June 2003 to 30 April 2013. He was approved by the Authority to perform the CF1 (Director) function at AAA from 10 January 2005 to 18 April 2018. He was also, from 1 November 2007 to 8 December 2019, approved to perform the CF30 (Customer) function at AAA.
- 4.2 Mr Creed was a director of PEL, a company not regulated by the Authority, from 7 January 2002 until 30 April 2013. From 30 June 2006 onwards, he was the sole director at PEL. Following his resignation, there were no further directors appointed at PEL.
- 4.3 Between 7 February 2012 and 22 August 2012, while Mr Creed held the CF1 and CF30 controlled functions at AAA, he executed 8 transfers which removed £166,000 from PEL's accounts.
- 4.4 On 30 April 2013, Mr Creed ceased to be an appointed director at AAA.
- 4.5 On 17 December 2013, a petition was filed by a creditor of Mr Creed, to declare Mr Creed bankrupt. On 14 April 2014, a bankruptcy order was issued against Mr Creed.
- 4.6 On 24 February 2016, Mr Creed provided a voluntary undertaking which disqualified him, with effect from 16 March 2016, from holding office as a company director for a period of 9 years.
- 4.7 On 13 June 2016, Mr Creed became aware that he was the subject of a criminal investigation for executing fraudulent transactions.
- 4.8 On 31 October 2017, Mr Creed became aware that he was being charged with 4 counts of executing fraudulent transactions.
- 4.9 On 21 June 2018, Mr Creed was tried at Swansea Crown Court. He was convicted of 4 counts of executing transactions in fraud of creditors contrary to Section 207 of the Insolvency Act 1986, in relation to the 8 transfers mentioned in paragraph 4.3 above.

- 4.10 On 10 July 2018, Mr Creed was sentenced at Swansea Crown Court to 12 months' imprisonment for each count of his offence, to run concurrently (to be suspended for a period of 2 years), and to carry out 80 hours of unpaid work.
- 4.11 In his sentencing remarks (made on 10 July 2018), the judge said Mr Creed had caused a loss of £150,000 to creditors. Mr Creed had executed the offending transactions in order to keep his businesses afloat. He had not committed the offences through "personal greed", and had been in a "desperate financial position".
- 4.12 Nevertheless, Mr Creed's offences involved transactions intended to defraud, which indicate dishonesty and a lack of integrity.
- 4.13 Following these fraudulent transactions and subsequent related events, Mr Creed failed to discharge his obligation, as an approved person subject to Statement of Principle 4, to disclose to the Authority any information of which the Authority would reasonably expect notice. From 31 December 2014, Mr Creed was the sole approved person at AAA, with clear responsibility for reporting these matters to the Authority. In particular, Mr Creed failed to notify the Authority, over a period of more than 3 years, of the following serious matters impacting his fitness and propriety: his having been made bankrupt; his being disqualified as a company director; his being the subject of a criminal investigation; and his being charged with criminal offences. Mr Creed's bankruptcy came to light when the Authority sought clarification from him after seeing a published article declaring his bankruptcy. He also submitted misleading information to the Authority in February 2018 in the form of an organisational chart which gave the impression that he continued to be an appointed director at AAA, thereby concealing his disqualification as a company director.
- 4.14 In fact, Mr Creed continued as a *de facto* director at AAA in breach of his disqualification order. He admitted to the Authority that the firm's registered director was not involved in the day-to-day running of AAA's business. Further, Mr Creed responded to most of the Authority's correspondence addressed to AAA, such that AAA was often unable to respond to the Authority when Mr Creed was not available.
- 4.15 Mr Creed also permitted an individual to perform the CF10 and CF11 roles at AAA

from 31 December 2014 without the Authority's approval, and failed to inform the Authority about this.

5. FAILINGS

- 5.1 The statutory and regulatory requirements relevant to this Notice are set out in Annex A.
- 5.2 In light of the facts and matters described above, it appears to the Authority that Mr Creed 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. His conviction and subsequent conduct demonstrate a clear and serious lack of honesty and integrity, such that he is not fit and proper to perform regulated activities.

6. SANCTION

- 6.1 The Authority has had regard to all relevant circumstances, including the relevance and materiality of the offences, the severity of the risk posed by Mr Creed to consumers and to confidence in the financial system, the passage of time since the offences, the particular controlled functions he performed and the market in which he operated.
- 6.2 The Authority considers that it is appropriate and proportionate in all the circumstances to make an order prohibiting Mr Creed from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. This action advances the Authority's consumer protection and integrity operational objectives.
- 6.3 In making the prohibition order, the Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A).

7. REPRESENTATIONS

- 7.1 Annex B contains a brief summary of the key representations made by Mr Creed to the Authority and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken

into account all of the representations made by Mr Creed, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1 This Notice is given to Mr Creed under, and in accordance with, section 390 of the Act.

Decision-maker

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

Publicity

8.3 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 Creed or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

8.4 The Authority intends to publish this Final Notice and such information about the matter to which the Final Notice relates as it considers appropriate.

Contacts

8.5 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 A

RELEVANT STATUTORY AND REGULATORY 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 regulatory 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, among 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 9.3.2 states that the Authority will consider all the relevant circumstances when considering whether to make a prohibition order against an approved person, which may include (among other things):

- (a) whether the individual is fit and proper to perform functions in relation to regulated activities;
- (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.

Fit and Proper Test for Employees and Senior Personnel

- 8. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
- 9. 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.
- 10. 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 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."

11. FIT 2.1.3G states that the matters referred to in FIT 2.1.1G include, but are not limited to:

- (a) whether the person has been convicted of any criminal offence, noting that particular consideration will be given to offences of dishonesty, fraud or an offence under legislation relating to insolvency (amongst other things);
- (b) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by government bodies or agencies;
- (c) 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;
- (d) whether the person has contravened any of the requirements and standards of the regulatory system; and
- (e) 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.

The Statements of Principle for approved persons

12. The Authority has set out Statements of Principle applicable to all approved persons.
13. Statement of Principle 4 states that an approved person must deal with the Authority in an open and cooperative way and must disclose appropriately any information of which the Authority would reasonably expect notice.

ANNEX B

REPRESENTATIONS

1. Mr Creed's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

The sentencing Judge's remarks, and mitigating circumstances

2. *Mr Creed does not deny that he has been convicted or been made bankrupt, but there was a series of unique, mitigating circumstances surrounding his actions.*
3. *The eight transactions that were the subject of his convictions were business decisions taken by Mr Creed against a backdrop of difficulties that Mr Creed had been having with his bank. Mr Creed had been mistreated by his bank due to its lack of engagement and a breakdown in communication. This was a huge contributing factor to Mr Creed's actions; he did not intend to defraud anyone, and was not intentionally dishonest. He wanted to save AAA by preventing the bank from recouping funds through their first legal charge over the business. Despite his asking for guidance on how to return the accounts to normal, the bank did not treat him fairly in that it did not engage with him. He had sought to resolve a poor situation without any support, and accepts that wrong business decisions were made.*
4. *A reversed evidential burden was placed upon Mr Creed at his trial, in that, pursuant to the relevant statutory provision, he was required to prove that he had not acted dishonestly. He found the process challenging. Had he thought that he would have to account for his actions, he would have documented them.*
5. *The sentencing Judge's remarks stated that Mr Creed had not been motivated by personal greed when he committed the offences, and that he had been in a desperate financial position where he had sought to keep companies afloat.*
6. *The sentencing Judge was impressed by Mr Creed's hitherto exemplary record, and the positive character references provided by his clients. This was reflected in the Judge's decision not to imprison Mr Creed but instead to impose a suspended sentence.*
7. *The offences themselves took place over 10 years ago.*

8. The offences demonstrate an absence of honesty and integrity (FIT 1.3.1BG). Executing fraudulent transactions is a serious offence that undermines the integrity of the financial markets. The Authority considers that Mr Creed's dishonesty convictions go directly to his fitness and propriety.
9. The Authority accepts that Mr Creed was under financial pressure, and notes that he referred to difficulties with his bank. However, the Authority does not consider that either that pressure or any of the other difficulties described excuse the fraudulent transactions. The culpability for the offending lay with Mr Creed alone.
10. The sentencing Judge did not say that Mr Creed acted without deliberate dishonesty. An intention to defraud is an ingredient of the offence for which Mr Creed was convicted by a jury. The reversed burden of proof did not affect that.
11. Although the underlying offences took place almost 10 years ago, the Authority does not consider that Mr Creed has demonstrated sufficient rehabilitation in terms of his fitness and propriety.

Mr Creed has always acted in the best interests of his clients

12. *The transactions that were the subject of Mr Creed's convictions did not cause any loss to his clients. He was a good financial adviser to his clients, and never set out to defraud anyone, but instead always sought to give his clients positive customer journeys. Mr Creed thought that he was acting in the best interests of his clients when he conducted the transactions. Mr Creed is not a risk to consumers, and his customers were kept informed of the criminal proceedings.*
13. *Since the offences were committed, Mr Creed has only received one consumer complaint that has gone to the Financial Ombudsman Service, and this was resolved in his favour.*
14. The Authority makes no allegation about Mr Creed's competence in the giving of financial advice and accepts that he did not commit the fraudulent transactions in that capacity.
15. Mr Creed has nonetheless demonstrated that he acted without honesty and integrity by committing offences of this nature over a six-month period, and the Authority considers that this creates a risk to consumers. The Authority also considers that a lack of consumer complaints in his capacity as a financial adviser

does not outweigh the risk to consumers arising from his having acted with dishonesty and a lack of integrity.

16. Mr Creed continued to hold the CF1 (director) controlled function, and to act as a *de facto* director, at AAA despite his disqualification and the Authority considers this posed a clear risk to consumers. Mr Creed also increased the risk to customers of AAA by permitting an unapproved person to hold controlled functions at AAA for three years.

Mr Creed's dealings with the Authority

17. *Mr Creed does not accept that he failed to disclose to the Authority matters that he would have reasonably been expected to disclose. Conversely, Mr Creed found the Authority's engagement to be lacking when he made disclosures. He notified the Authority by email of his conviction on 1 August 2018, and sought advice on whether or not he ought to complete a Form C (cancellation form). Mr Creed did not receive a response from the Authority to this query. Mr Creed is fairly sure that, before the Authority raised his bankruptcy with him, he had previously notified the Authority of his bankruptcy but received no response. He accepts that he does not have any documentary evidence proving that he had personally informed the Authority of his bankruptcy. He can only apologise if he did not. He would have expected AAA's compliance manager to have done so previously in any event.*
18. *Mr Creed was only made aware in early 2018 that he still held controlled functions at AAA after he ceased being its director. Mr Creed is not a compliance expert, and he had assumed that the outgoing compliance manager had updated the Authority on his role. Once Mr Creed was made aware of the position, he did his utmost to remedy the error.*
19. *Mr Creed denies that he continued to act as a director of the firm when he was subject to a disqualification order. The business did not belong to him at the time; he was merely the principal adviser and the business was overseen by a managing director.*
20. The Authority has had sight of the correspondence between Mr Creed and the Authority referred to in paragraph 17 above. The Authority considers that the responses to Mr Creed's query about whether to complete a Form C were appropriate in the circumstances, as the Authority requested additional information

from him the same day for further discussion. In any event, the Authority's responses have no bearing on Mr Creed's own conduct.

21. The Authority has considered the representations made by Mr Creed about his knowledge of compliance in the context of his qualifications and experience, and considers that Mr Creed must have been aware of his obligation to ensure all relevant matters were notified to the Authority.
22. The Authority considers that, when he became the sole approved person of AAA, Mr Creed did not inform the Authority of his 2016 disqualification from holding office as a company director, or that he had previously been made bankrupt.
23. The Authority has no record of Mr Creed informing the Authority of his bankruptcy at the time this occurred. The Authority notes Mr Creed's lack of certainty as to whether he had informed the Authority, and that he does not say he knew the compliance manager had actually done so. The Authority also notes that the matter came to light after it had been prompted to seek clarification from Mr Creed after seeing a published article declaring Mr Creed's bankruptcy. The Authority is not satisfied based on the evidence before it that either Mr Creed or the compliance manager had made that disclosure.
24. Although his disqualification took effect from March 2016, Mr Creed did not formally withdraw his CF1 controlled function at AAA until April 2018.
25. Mr Creed's disqualification prohibited him from being a director of a company or taking part in the management of a company; however (as noted at paragraph 4.13 of this Notice) Mr Creed had sent documents in his ongoing dealings with the Authority purportedly confirming that he was acting as a principal, or in a managing capacity at AAA, when he was not permitted to do so. Mr Creed conceded, when challenged by the Authority on the accuracy of those documents, that they did not reflect the reality of the firm's structure. The Authority considers these documents to have been deliberately misleading in concealing his disqualification, particularly as Mr Creed submitted those documents for clarification purposes when requested by the Authority. Mr Creed's admission to the Authority that AAA's registered director was not involved in the daily running of the business, and that it was Mr Creed who fielded the Authority's queries such that the firm itself was unable to respond to the Authority without Mr Creed's input, is indicative of the extent Mr Creed oversaw and managed AAA. The Authority considers that Mr Creed was acting as the *de facto* director of AAA.

26. Mr Creed had ample opportunity to inform the Authority himself of his disqualification and bankruptcy, following the departure of the previous compliance manager in February 2018.

The prohibition order should be limited

27. *A full prohibition order would be disproportionate, as Mr Creed did not seek to defraud his customers. He made a business mistake 9 years ago in a career spanning over 20 years, for which he has already received a criminal conviction and punitive sentence. Whilst Mr Creed accepts that some form of prohibition is required, it ought to be limited to 3 years and/or limited to senior roles.*
28. The Authority does not agree that Mr Creed's actions were business mistakes; they were serious offences of fraud that were deliberate and demonstrate a lack of fitness and propriety. The Authority notes that there were eight fraudulent transactions conducted over six months, and also notes the matters that ought to have been disclosed to the Authority (see paragraphs 4.13 to 4.15 above). The Authority does not, therefore, consider this to have been an isolated incident, but instead demonstrative of a pattern of behaviour.
29. The Authority does not have the power to issue a time-limited prohibition order. It does not consider it appropriate in the circumstances to issue a prohibition order with an indication that it be revoked after a period of time, nor to limit the prohibition to senior roles. To give such an indication, or limit the scope of the prohibition order in this way, would not adequately address the risk posed by Mr Creed's lack of honesty and integrity. It is open to Mr Creed to apply to revoke the prohibition order in the future, if he considers that he is able to satisfy the Authority of his fitness and propriety at that stage.