
FINAL NOTICE

To: **Nighat Mirza**
Of **K S Financial Services**
65 East Road
Address: **Longsight**
Manchester
M12 5QY
Date **15 December 2009**

TAKE NOTICE: the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to withdraw your approval and to make a prohibition order:

1. THE PENALTY

1.1. The FSA gave you a Decision Notice on 11 December 2009 which notified you that, for the reasons listed below, and having agreed with you the facts and matters set out below, the FSA has decided to take the following action:

- (i) to withdraw the approval granted to you, pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”) to perform controlled functions in relation to KS Financial Services (“KS Financial”); and
- (ii) to make an order, pursuant to section 56 of the Act, prohibiting you 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”).

- 1.2. You confirmed on 14 November 2009 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for reasons set out below, the FSA has today withdrawn your approval and made a prohibition order against you, which has effect from today.
- 1.4. The FSA had sought to impose a financial penalty on you of £10,000, pursuant to section 66 of the Act, in respect of breaches of the Statements of Principle 6 and 7 of the FSA's Statements of Principle for Approved Persons ("the Statements of Principle"), issued under section 64 of the Act.
- 1.5. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA has decided not to impose any financial penalty on you.
- 1.6. You agreed to settle at an early stage of the FSA's investigation.

2. REASONS FOR THE PROPOSED ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that whilst you were an approved person, at KS Financial during the period from 31 October 2004 to 14 September 2008 ("the relevant period") you have:-

- (1) failed to act with due skill care and diligence in managing the business of the firm for which you are responsible in your controlled function.
In particular:-

- (a) when you applied to the FSA to perform the controlled function of CF4 (Partner) at KS Financial you failed to consider whether your personal circumstances would allow you to participate to the level required of a person holding a significant influence function in the operations of KS Financial;
- (b) you failed to take action to inform the FSA that you were not performing the role of CF4 (Partner) adequately; and

(c) you failed to delegate appropriately or to relinquish your responsibilities as a significant influence holder,

in breach of Statement of Principle 6; and

(2) failed to take reasonable steps to ensure that the business of the firm for which you are responsible in your controlled functions complied with the requirements and standards of the regulatory system. In particular, you lacked understanding of the business and regulated activities of KS Financial and failed put in place adequate systems and controls to cover your extended absences from the business, in breach of Statement of Principle 7.

2.2. The FSA proposed to impose a financial penalty on you in connection with the breaches of Statements of Principle 6 and 7. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA has decided not to impose a financial penalty on you.

2.3. As a result of the nature and seriousness of the facts outlined above, the FSA has concluded that you fail to meet the minimum regulatory standards in terms of competence and capability and you are therefore not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional firms. Accordingly, the FSA has decided to withdraw your individual approval to perform controlled functions and to impose the Prohibition Order on you.

2.4. This action supports three of the FSA's statutory objectives: reducing the extent to which firms can be used for purposes connected with financial crime, maintaining market confidence and protecting consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1 to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are one of two partners at KS Financial, a mortgage broker in the Manchester area. KS Financial has been authorised by the FSA since 31 October 2004.
- 4.2. KS Financial operates from an office at your home address.
- 4.3. You were approved by the FSA on 31 October 2004 to perform CF4 (Partner) at KS Financial. You have also been responsible for insurance mediation at KS Financial since 14 January 2005. Your business partner is also an approved person holding CF4 (Partner).

Conduct in issue

- 4.4. You have admitted that from 2003 onwards, you were not fully involved in the business of KS Financial. Notwithstanding this, you applied to the FSA for CF4 status and were granted this status in October 2004.
- 4.5. As a partner and approved person holding a significant influence function, you were responsible for managing KS Financial's business.
- 4.6. However, you held no professional qualifications in relation to mortgages or compliance. Further, you have admitted that you have limited understanding of the business or regulated activities of KS Financial. In particular, you had little knowledge of, or control over and involvement with KS Financial's mortgage sales, its compliance procedures and its finances.
- 4.7. Despite extended absences from KS Financial you did not implement any appropriate procedure for covering the duties for which you should have been responsible at KS Financial whilst you were away. Nor did you effectively or appropriately delegate any of these duties and responsibilities during your absences.
- 4.8. You told the FSA that whilst you left all matters in relation to the running of KS Financial to your business partner, you accepted that you should have been

looking after KS Financial's affairs because you held CF4 (Partner) and had failed to do so adequately.

- 4.9. You have also admitted that you have never played a substantive role at KS Financial and that your role was limited to mainly administrative tasks, for example, typing in details on mortgage applications and producing computerised documents such as key facts illustrations.
- 4.10. However, you did not inform the FSA that you had been unable to perform your significant influence function to the required standard due to illness until January 2009, when interviewed by FSA investigators.
- 4.11. This is despite the fact that you did have contact with the FSA during the relevant period. Specifically, during the period from June 2006 and August 2008 you contacted the FSA by telephone on four occasions to discuss matters concerning the submission of KS Financial's Retail Mediation Activities Return. You also attended a Treating Customers Fairly surgery hosted by the FSA on 14 August 2008. During this meeting, you and your business partner discussed, amongst other things, the structure of personnel at KS Financial with the FSA, but failed to mention that you had little or no involvement with its day to day operations.
- 4.12. Your contact with the FSA during the relevant period, referred to above, demonstrates that you were capable of engaging with the FSA. You were able to take action to inform the FSA that you were not performing the role of CF4 (Partner) adequately, and to delegate or relinquish your responsibilities as a significant influence holder accordingly. This is what you should have done, had you exercised due skill, care and diligence.
- 4.13. In summary, you failed to take reasonable steps to adequately inform yourself about the affairs of the business for which you were responsible, you failed to engage with the running of that business and you failed to inform the FSA of your lack of engagement. You had a duty, the ability and sufficient opportunity to inform the FSA that you were not able to carry out your role as holder of a controlled function, but failed to do so.

5. ANALYSIS OF MISCONDUCT AND SANCTION

- 5.1. The FSA has concluded that you have failed to carry out your role at KS Financial to the standard required of a person holding CF4 (Partner). You failed to demonstrate that you exercised due skill, care and diligence in managing the business of the firm for which you are responsible in your controlled function of CF4 (Partner). You also failed to take reasonable steps to ensure that the business of the firm for which you were responsible was able to comply with the requirements and standards of the regulatory system.
- 5.2. The FSA has also concluded that, given the wide ranging nature of the failures described in this Notice, you have failed to demonstrate that you are competent and capable to perform the controlled function for which you have approval or to perform any function in relation to any regulated activity.
- 5.3. The FSA expects approved persons performing significant influence controlled functions to understand their responsibilities under their controlled functions before deciding whether or not to apply for and accept these responsibilities. The FSA expects those approved persons performing significant influence functions to be able to carry out their duties on an ongoing basis.
- 5.4. The FSA also views your failings as particularly serious because your lack of involvement exposed KS Financial to the risk of being used for the purposes of financial crime, lenders to the risk of making loans in the absence of all relevant facts and customers to the risk of being treated unfairly.
- 5.5. The FSA therefore withdraws your individual approval to perform controlled functions and prohibits you from performing any functions in relation to any regulated activities. The FSA also considered whether to impose a financial penalty on you but, as set out at paragraph 2.2 above decided not to, as to do so would cause you serious financial hardship.
- 5.6. The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to

impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual (“ENF”) in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide (“EG”), in force thereafter.

5.7. The principal purpose of a financial penalty is 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.

5.8. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

The nature, seriousness and impact of the breaches: DEPP 6.5.2 G (2)

5.9. The FSA has considered the nature and seriousness of the breaches, including the nature of the requirements and Principles breached the number and duration of the breaches, the extent to which the breaches illustrated a lack of competence and capability and the extent to which the breaches revealed serious or systemic weaknesses in KS Financial’s management systems and internal controls.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2 G (4)

5.10. The FSA recognises that imposing a financial penalty on you would be likely to have a significant impact on you as an individual.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

- 5.11. The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty for your breaches of the Statements of Principle to be £10,000. However, you provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship and therefore, in this case, the FSA has decided not to impose the financial penalty.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

- 5.12. The FSA recognises that you made no financial gain as a result of your misconduct.

6. DECISION MAKER

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

7. IMPORTANT

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

Publicity

- 7.2. 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.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.4. For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914 /fax: 020 7066 5915) of the Enforcement Division of the FSA.

Signed:

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Tom Spender

FSA Enforcement and Financial Crime Division

Annex 1

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Introduction

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

2. Financial penalty

Statutory provisions

- 2.1. 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 him. Misconduct includes failure by an approved person to comply with a Statement of Principle. 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.

Regulatory requirements

- 2.2. APER sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, does 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.
- 2.3. APER 3.1.3G stipulates 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.4. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their

conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

2.5. In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 6 and 7. Statement of Principle 6 requires that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function. Statement of Principle 7 requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.6. APER 4.6 gives examples of conduct which does not comply with Statement of Principle 6. This includes:

- (1) failing to take reasonable steps adequately to inform himself about the affairs of the business for which he is responsible (APER 4.6.3E); and
- (3) failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) (APER 4.6.6).

2.7. APER 4.7 gives examples of conduct which does 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); and
- (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).

FSA policy

- 2.8. In determining the level of the financial penalty, the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies. The FSA's Decision Procedure and Penalties Manual ("DEPP") and Enforcement Guide ("EG") came into effect on 28 August 2007. Although the references in this Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF"), which preceded DEPP and EG and applied during the majority of the relevant period.
- 2.9. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP. 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 (DEPP 6.1.2G).
- 2.10. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
- (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach;
 - (2) DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person;
 - (3) DEPP 6.2.1G(4): FSA guidance and other published materials; and
 - (4) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.
- 2.11. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

- (1) DEPP 6.5.2G(1): Deterrence;
- (2) DEPP 6.5.2G(2): The nature, seriousness and impact of the breach in question;
- (3) DEPP 6.5.2G(4): Whether the person on whom the penalty is to be imposed is an individual;
- (4) DEPP 6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
- (5) DEPP 6.5.2G(9): Disciplinary record and compliance history;
- (6) DEPP 6.5.2G(10): Other action taken by the FSA;
- (7) DEPP 6.5.2G(12): FSA guidance and other published materials; and
- (8) DEPP 6.5.2G(13): The timing of any agreement as to the amount of the penalty.

3. Withdrawal of approval and prohibition

Statutory provisions

- 3.1. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.
- 3.2. Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.

Regulatory requirements

- 3.3. 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.

- 3.4. FIT 1.3.1 G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's competence and capability.
- 3.5. In determining a person's competence and capability FIT 2.2G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1 G. Those matters include 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 2.2.1 G (1)).

FSA policy

- 3.6. The FSA policy in relation to the decision to withdraw an individual's approval and/or make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG").
- 3.7. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, 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 FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;
 - (3) the relevance and materiality of any matters indicating unfitness;

- (4) the length of time since the occurrence of any matters indicating unfitness; and
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.