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## **FINAL NOTICE**

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To: **Mr Mukhtar Khan trading as United Finance and Insurance Services**

FSA

Reference

Number: **305892**

Date: 17 January 2012

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has taken the following action:**

### **ACTION**

1. For the reasons given in this notice, the FSA has taken the following action against Mr Mukhtar Khan (“Mr Khan”):
  - i. made an order, pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”) prohibiting Mr Khan trading as United Finance and Insurance Services (“UFIS”) from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm; and
  - ii. cancelled, pursuant to section 45 of the Act, the permission granted to Mr Khan trading as UFIS pursuant to Part IV of the Act.

### **SUMMARY OF REASONS**

2. The FSA concluded, on the basis of the facts and matters described below, that Mr Khan is not fit and proper to perform any function in relation to any regulated activity carried on by authorised persons and he should be prohibited from doing so.

3. In the opinion of the FSA Mr Khan is not fit and proper because he has failed to act with competence and capability. In particular, Mr Khan has failed to:
  - (1) hold a relevant qualification when providing advice in relation to regulated mortgage contracts;
  - (2) put in place appropriate systems and controls to ensure that suitable advice is given and regulatory requirements are complied with;
  - (3) record how personal recommendations in respect of regulated mortgage contracts satisfied the FSA's suitability requirements;
  - (4) demonstrate that appropriate research had been conducted prior to advice being given in respect of regulated mortgage contracts and contracts of insurance;
  - (5) provide customers with adequate statements of demands and needs;
  - (6) gather and record sufficient information about customers personal and financial circumstances to ensure the suitability of his advice in fact finds;
  - (7) understand the regulatory requirements relating to appointed representatives;
  - (8) rectify concerns raised by an independent compliance consultant; and
  - (9) demonstrate an adequate understanding of the regulatory regime in which he operates.
4. The FSA concluded, on the basis of this and the facts and matters described below, that Mr Khan has failed to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA:
  - (1) Mr Khan has failed to satisfy Threshold Condition 4 (Adequate Resources) by virtue of the fact that Mr Khan has inadequate resources in relation to the regulated activities Mr Khan has permission to carry on given that Mr Khan is not a suitable person capable of acting as a sole trader; and
  - (2) Mr Khan has failed to satisfy Threshold Condition 5 (Suitability) because Mr Khan is not a fit and proper to conduct regulated activities having regard to the nature of any regulated activity that Mr Khan seeks to carry on and the need to ensure that Mr Khan's affairs are conducted soundly and prudently.
5. The FSA therefore considered that, pursuant to section 45 of the Act, Mr Khan's Part IV permission should be cancelled.

## **DEFINITIONS**

6. The definitions below are used in this Final Notice.

"IDD" means initial disclosure document;

"Mr Khan" means Mr Mukhtar Khan trading as United Finance and Insurance Services;

“TCF” means Treating Customers Fairly;

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

the “FSA” means the Financial Services Authority;

the “Relevant Period” means the period between 31 October 2004 to 1 March 2011;

the “Threshold Conditions” means the Threshold Conditions set out in Part 1 of Schedule 6 to the Act;

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

“UFIS” means United Finance and Insurance Services, the trading name of Mr Khan.

## **FACTS AND MATTERS**

### **Background**

7. Mr Khan is a small insurance and former mortgage broker trading as a sole trader under the name UFIS, based in Blackburn, Lancashire. Mr Khan has no members of staff working for him.
8. On 31 October 2004, Mr Khan was authorised to carry on the following regulated activities in relation to regulated mortgage contracts:
  - (1) advising on regulated mortgage contracts;
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging (bringing about) regulated mortgage contracts; and
  - (4) making arrangements with a view to regulated mortgage contracts.
9. On 14 January 2005, Mr Khan was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:
  - (1) advising on investments (excluding pension transfers and pension opt outs);
  - (2) arranging (bringing about) deals in investments; and
  - (3) making arrangements with a view to transactions in investments.
10. On 21 September 2010, Mr Khan voluntarily varied his permission at the request of the FSA to remove those permissions which relate to regulated mortgage contracts.

## **Training and Competency**

11. Mr Khan does not have any financial services qualifications. Despite this, Mr Khan advised on approximately 23 regulated mortgages during the Relevant Period. Mr Khan did not know that he was required to hold a necessary qualification to advise on mortgages and considered that as he had permission to give advice on mortgages that was sufficient. There is no evidence that Mr Khan took any steps to inform himself about the regulatory requirements relating to training and competency.
12. Mr Khan does not have any procedures in place relating to training and competency. There is no evidence that Mr Khan has attended or undertaken any relevant training in relation to mortgages, insurance or financial services in general. Mr Khan stated in interview that he learnt how to advise “on the job.”

## **Policies and Procedures**

13. Mr Khan did not put in place any written compliance policies or procedures except for an undated TCF Policy. However, this Policy was not followed in practice. For example, the TCF policy:
  - (1) refers to other documents setting out policies and procedures which do not exist (for example a written business plan);
  - (2) refers to records of training which do not exist;
  - (3) sets out how frequently file reviews would be conducted; however, no such file reviews were conducted;
  - (4) states there would be an independent audit each year; however, only one such audit has been conducted in 2008; and
  - (5) sets out the requirement for suitability reports; however, no such reports were prepared.
14. Mr Khan also did not put in place a written complaints policy or procedure.
15. Mr Khan was made aware of many of the above omissions in an audit undertaken by an independent compliance firm in April 2008. The compliance firm’s recommendations were not fully implemented by Mr Khan and therefore not all of the identified failings were rectified.
16. The FSA also wrote to Mr Khan in June 2010, having carried out a TCF assessment, stating that it was not satisfied that adequate action had been taken to ensure all areas of the business were delivering fair outcomes for customers and that Mr Khan lacked knowledge of the TCF principles. There is no evidence that steps have been taken by Mr Khan to address these concerns.

### **Appointed representatives**

17. Mr Khan had two appointed representatives, Mr X and Ms Y. Neither of them conducted any business through Mr Khan. Mr X worked with Mr Khan on a part-time basis for a period of three months in early 2007 because he wanted to learn the mortgage business. Mr X did not know that he had been registered as an appointed representative by Mr Khan and only acted as an introducer to Mr Khan for a few clients. Mr X would pass on basic details of the clients and Mr Khan gave the advice to those clients. Mr Khan appointed Mr X because he had known him for a long time and knew he had a mortgage qualification. Mr Khan did not provide any compliance oversight of Mr X however and Mr X left when he realised that he was not obtaining the experience he wanted. Ms Y never did any work for Mr Khan.
18. The FSA considered that Mr Khan did not understand the regulatory requirements relating to the appointment and supervision of appointed representatives nor did he take any steps to do so.

### **Mortgage Files**

19. The FSA reviewed ten mortgage files during the course of the investigation. The following problems were identified:
  - (1) there were no suitability reports on any of the files (100% of the files reviewed) and neither were the reasons for the recommendation to the customer documented;
  - (2) the fact finds were inadequate on all of the files (100%) and specifically did not record any information to enable Mr Khan to assess affordability;
  - (3) there was no evidence of any research having been conducted on nine of the files reviewed (90%);
  - (4) there was no IDD on eight of the files reviewed (80%); and
  - (5) there was no proof of income documents on six of the files reviewed (60%).

### **Insurance Files**

20. The FSA reviewed ten insurance files during the course of the investigation. The following problems were identified:
  - (1) there was no evidence of any research having been conducted on any of the files reviewed (100%).
  - (2) the statement of demands and needs did not record reasons for recommendations in seven of the files reviewed (70%);
  - (3) there was no fact find on five of the files reviewed (50%); and
  - (4) there were no statements of demands and needs on two of the files reviewed (20%).

21. Mr Khan admitted that he did not issue statements of demands and needs to customers until about 2009/2010. He also said that he sent suitability reports for mortgages from about 2009 but none were found on the three mortgage files reviewed from 2009/2010. Mr Khan also said that he did not use a standard fact find form until about 2008/2009 but would take handwritten notes.
22. The FSA noted that the majority of Mr Khan's customers did not use English as their first language and so a lot of Mr Khan's advice was given verbally.

## **FAILINGS**

23. The relevant statutory provisions, regulatory guidance and policy relevant to this Final Notice are referred to in Annex A. Details of the specific rules that Mr Khan has breached and the dates that they were in force are also set out in Annex A.
24. By reason of the facts and matters set out above the FSA considered that Mr Khan is not a fit and proper person due to his lack of competence and capability and his inability to fully understand and engage with the regulatory regime. The FSA considered that Mr Khan's conduct fell short of the standards required by the FSA's Fit and Proper test for Approved Persons.
25. In assessing Mr Khan's competence and capability, the FSA had regard to his failure to:
  - (1) ensure that the TCF Policy was followed;
  - (2) ensure that he understood the regulatory requirements relating to appointed representatives and that the appointed representatives he appointed knew they were being appointed;
  - (3) put in place systems and controls to ensure that all regulatory requirements are met;
  - (4) ensure that he was competent to advise and maintain adequate training and competency records;
  - (5) fully implement the recommendations of an independent compliance consultant when failings were identified;
  - (6) put in place a complaints policy and procedure;
  - (7) gather and/or record sufficient information about the customers' personal and financial circumstances to demonstrate the affordability, and therefore suitability of mortgage contracts;
  - (8) gather and/or record sufficient information about the customers' needs and preferences to demonstrate the suitability of non-investment insurance contracts;
  - (9) record reasons for personal recommendations in respect of regulated mortgage contracts in breach of MCOBS 4.7.17R; and

- (10) provide customers with adequate statements of demands and needs in breach of ICOBS 5.2.2.R.
- 26. In giving mortgage advice without a necessary qualification Mr Khan was also in breach of the Training and Competency Sourcebook of the FSA Handbook rule TC 2.1.6R.
- 27. The failings listed above exposed customers to the risk of receiving unsuitable advice.
- 28. The FSA concluded that Mr Khan poses a serious risk to lenders and consumers and to the FSA's regulatory objectives of protecting consumers and maintaining confidence in the UK financial system.
- 29. The facts and matters described above led the FSA to conclude that Mr Khan is not a fit and proper person to carry out any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 30. As a result of Mr Khan not being fit and proper he was failing, and was likely to continue to fail, to satisfy Threshold Conditions 4 and 5 and his Part IV Permissions have been cancelled pursuant to section 45 of the Act.

## **SANCTION**

- 31. On the basis of the facts and matters described above, the FSA considered that it was appropriate and proportionate in this case to:
  - (1) make an order pursuant to section 56 of the Act prohibiting Mr Khan from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm; and
  - (2) cancel, pursuant to section 45 of the Act, the permission granted to Mr Khan pursuant to Part IV of the Act.

## **PROCEDURAL MATTERS**

### **Decision maker**

- 32. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 33. This Final Notice is given in accordance with section 390 of the Act.

### **Publicity**

- 34. 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 Mr Khan or prejudicial to the interests of consumers.

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

**FSA contacts**

36. For more information concerning this matter generally, contact Paul Howick at the FSA (direct line: 020 7066 7954 /[paul.howick@fsa.gov.uk](mailto:paul.howick@fsa.gov.uk)).

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Tom Spender  
FSA Enforcement and Financial Crime Division



## **ANNEX A**

### **RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE**

#### **1. Statutory Provisions**

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

#### **Prohibition**

- 1.2 Section 56 of the Act provides:

- “(1) Subsection (2) applies if it appears to the Authority 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.
- (2) The Authority may make an order (“a prohibition order”) prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- (3) A prohibition order may relate to—
- (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
- (b) authorised persons generally or any person within a specified class of authorised person. ...”

#### **Cancellation of Permissions**

- 1.3 Section 54 of the Act provides that:

- “(1) If the Authority proposes to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a warning notice.
- (2) If the Authority decides to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a decision notice.”

## **Threshold Conditions**

1.4 Section 41 of the Act provides that:

- “(1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in Schedule 6.
- (2) In giving or varying permission, or imposing or varying any requirement, under this Part the Authority must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he has or will have permission.
- (3) But the duty imposed by subsection (2) does not prevent the Authority, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to secure its regulatory objective of the protection of consumers.”

1.5 Section 45 of the Act provides that:

- “(1) The Authority may exercise its power under this section in relation to an authorised person if it appears to it that-
  - (a) He is failing, or is likely to fail to satisfy the threshold conditions:....
- (2) The Authority’s power under this section is the power to vary a Part IV permission in any of the ways mentioned in section 44(1) or to cancel it.”

## **2. Relevant regulatory requirements and guidance**

2.1 In 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 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.

### **Prohibition**

- 2.2 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.
- 2.3 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.

- 2.4 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.
- 2.5 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.

### **Fit and Proper Test for Approved Persons**

- 2.6 The section of the FSA handbook entitled "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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person. FIT also applies to firms and applicants for Part IV permissions and therefore is relevant to assessing the fitness and propriety of a sole trader, given that he is responsible for ensuring that a firm meets its regulated requirements.
- 2.7 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety, including the person's competence and capability.
- 2.8 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. The guidance includes:

- (5) 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
- (6) 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**

- 2.9 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**

- 2.10 COND 2.4.1D(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.
- 2.11 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.
- 2.12 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.
- 2.13 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.

### **The Handbook**

- 2.23 The Insurance Conduct of Business Sourcebook ("ICOBS") 5.2.2R, which has been in force since 6 January 2008, provides:
  - “(1) Prior to the conclusion of a contract, a firm must specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on that policy.
  - (2) The details must be modulated according to the complexity of the policy proposed.”

2.24 This rule has been in force in substantially the same form since 1 January 2005 in ICOB 4.4.1R:

“(1) Unless ICOB 4.4.2 R applies, where an insurance intermediary arranges for a customer to enter into a non-investment insurance contract (including at renewal), it must, before the conclusion of that contract, provide the customer with a statement that:

(a) sets out the customer's demands and needs;

(b) confirms whether or not the insurance intermediary has personally recommended that contract; and

(c) where a personal recommendation has been made, explains the reasons for personally recommending that contract.

(2) The statement in (1) must reflect the complexity of the contract of insurance proposed.

(3) Unless (4) applies, the statement in (1) must be provided in a durable medium.”

2.25 The Mortgage Conduct of Business Sourcebook (“MCOBS”) 4.4.1R, which has been in force since 1 November 2007, provides:

“(1) A *firm* must ensure that, on first making contact with a *customer* when it anticipates giving personalised information or *advice* on a *regulated mortgage contract*, it:

(a) establishes with the *customer* whether it will provide *advice* or information;

(b) establishes with the *customer* how much he will pay or, alternatively, the basis on which the *firm* will be remunerated, where appropriate; and

(c) provides the customer with either:

(i) an initial disclosure document; or

(ii) if the firm has reasonable grounds to be satisfied that the services which it is likely to provide to the customer will relate to a combination of different types of home finance transaction, or will relate to home finance transactions and one or more of non-investment insurance contracts or packaged products, a combined initial disclosure document;

in a durable medium.”

2.26 This rule has been in force in substantially the same form since 14 January 2005 in MCOB 4.4.1R:

“(1) A firm must ensure that, on first making contact with a customer when it anticipates giving personalised information or advice on a regulated mortgage contract, it:

(a) establishes with the customer whether it will provide advice or information;

(b) establishes with the customer how much he will pay or, alternatively, the basis on which the firm will be remunerated, where appropriate; and

(c) (unless (2) applies) <sup>1</sup> provides the customer with either:

(i) the initial disclosure document in MCOB 4 Annex 1 R<sup>1 1</sup> ; or

(ii) if the firm has reasonable grounds to be satisfied that the services which it is likely to provide to the customer will, in addition to relating to regulated mortgage contracts or regulated lifetime mortgage contracts<sup>11</sup> relate to <sup>1</sup>one or more of non-investment insurance contracts or packaged products <sup>2 2</sup>, the combined initial disclosure document in MCOB 4 Annex 2 R<sup>1 1</sup> ;

subject to (3) and <sup>1</sup>in a durable medium.”

2.27 MCOB 4.7.17R, which has been in force since 31 October 2004, provides:

(1) A firm must make and retain a record:

(a) of the customer information, including that relating to the customer’s needs and circumstances, that it has obtained for the purposes of MCOB 4.7; and

(b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2 R satisfied the suitability requirement in MCOB 4.7.4 R(1). This explanation must include, where this is the case, the reason why a personal recommendation has been made on a basis other than that described in MCOB 4.7.13 E(1).

(2) The record in (1) must be retained for a minimum of three years from the date on which the personal recommendation was made.”

2.28 The Training and Competency Sourcebook (“TC”) rule 2.1.6R provides:

“A Firm must ensure that an employee does not carry on an activity in TC Appendix 1 (other than an overseeing activity) for which there is an examination requirement without first passing the relevant regulatory module of an appropriate examination.”

2.29 TC Appendix 1 includes the activity of “advising on regulated mortgage contracts for a non-business purpose.”

2.30 This rule has been in force since 1 November 2007. Prior to that (from 31 October 2004 to 31 October 2007) the TC sourcebook had a similar rule contained in TC 2.5.1R:

- (1) A firm must ensure that an employee under supervision passes an appropriate examination within the time specified in [TC 2.5.1AR](#), and, for this purpose, a firm must record the date on which the employee began engaging in or overseeing the relevant activity.
- (2) For the purposes of calculating the time spent by an employee under supervision, a firm must:
  - (a) aggregate periods of time spent engaging in or overseeing the activity during different periods of employment;
  - (b) disregard any period of 60 business days or more during which the employee is continuously absent from engaging in or overseeing the activity.
- (3) A firm must ensure that any employee who does not pass an appropriate examination within the specified time:
  - (a) ceases to engage in or oversee the activity; and
  - (b) does not resume the activity or oversee the activity without first passing an appropriate examination.”

2.31 TC.2.1.4R sets out that advising a customer on a regulated mortgage contract is an activity to which TC 2 applies.