
FINAL NOTICE

To: **Nicholas Andrew McNeil**

IRN: **NAM01097**

Dated: **8 February 2024**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby makes an order, pursuant to section 56 of the Act, prohibiting Mr McNeil from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
2. The Authority gave Mr McNeil the Decision Notice, which notified Mr McNeil of the Authority's decision to take the action specified above.
3. Mr McNeil has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to him.
4. Accordingly, the Authority hereby makes the prohibition order set out in paragraph 1 above against Mr McNeil. The prohibition order takes effect from the date of this Final Notice.

SUMMARY OF REASONS

5. Mr McNeil engaged in criminal activity whilst a director and approved person of an authorised firm.
6. On 7 March 2022, Mr McNeil was convicted at Preston Crown Court, of custody/control of a false instrument, contrary to section 3 of the Forgery and Counterfeiting Act 1981. On the same date, Mr McNeil was sentenced to 18 months imprisonment, suspended for 12 months, and ordered to pay a statutory surcharge of £100. An order for confiscation of £55,000 with payment to be made within three months or in default to serve 18 months' imprisonment was also made.
7. In light of the facts and matters set out below, the Authority considers that Mr McNeil is not a fit and proper person to perform any functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Mr McNeil's conviction demonstrates a clear and serious lack of

honesty and integrity such that he is not a fit and proper person to perform regulated activities. In reaching this decision, the Authority has had regard to all relevant circumstances, including the seriousness and relevance of the offence, and the severity of the risk posed by Mr McNeil to consumers, financial institutions and confidence in the UK financial system. The Authority considers that it is appropriate to impose the prohibition order proposed in paragraph 1 in order to achieve its consumer protection and integrity objectives (sections 1C and 1D of the Act, respectively).

DEFINITIONS

8. The definitions below are used in this Decision Notice (and in the Annex):

“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 McNeil on 5 January 2024;

“EG” means the Enforcement Guide;

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

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

“Mr McNeil” means Nicholas Andrew McNeil;

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

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

“the Warning Notice” means the warning notice given to Mr McNeil dated 7 December 2024.

FACTS AND MATTERS

9. Mr McNeil was approved by the Authority to perform the CF1 (Director) controlled function, and then the SMF3 (Executive Director) senior management function, at an authorised firm, from 14 January 2005 until 18 December 2019 and then between 9 December 2019 and 18 August 2022 respectively.
10. Whilst a director and an approved person working at an authorised firm in a position of trust, Mr McNeil committed the criminal offence of custody/control of a false instrument, contrary to section 3 of the Forgery and Counterfeiting Act 1981. This offence occurred on a day between 3 October 2013 and 26 January 2016.
11. On 7 March 2022, at Preston Crown Court, Mr McNeil pleaded guilty to the above offence and was sentenced to 18 months' imprisonment suspended for 12 months and ordered to pay a statutory surcharge of £100. An order for confiscation of £55,000 was also made with payment to be made within three months or to serve 18 months' imprisonment in default.

12. Mr McNeil committed the offence by using a guarantee bond dated 2 April 2014 which was false, and which he knew or believed to be false, with the intention of inducing others to accept it as genuine. The bond worth £1.7 million was a form of insurance for the post-completion payments to be made following the purchase of a company.
13. At the sentencing hearing the Judge made the following remarks regarding Mr McNeil's conduct: *"What is clear is that the bond that was produced in this case was effectively valueless. The net result I am told is that following difficulties post-completion the vendors have "lost" nigh on a million pounds"*.
14. The judge also remarked: *"...what you accept was your criminality which was namely that bond was used by you to further the sale when in reality you knew it ought not to be"*.
15. When sentencing Mr McNeil, the judge stated: *"dealing with forgery generally and the question of other aggravating features being absent I would have taken and do take as a starting point a 3-year prison sentence to reflect the seriousness of the offending, the value involved and the effect and ongoing effect on the victims which I have read and considered within a victim personal statement"*.
16. The judge also noted Mr McNeil's previous good character, that the offence was of some age, and that, *"significantly in between your involvement in this and today's date there is not one scintilla of a suggestion that you have been behaving in any way fraudulently or in any way dishonestly... I accept that approach is reinforced by you having left alone in your bank the £55,000 which was received from the distribution but which you did not onwardly distribute... All of those features reduce the sentence down to one of 21 months' imprisonment. Albeit late in the day you have pleaded guilty and you will receive credit for that and so the sentence will be reduced further to one of 18 months imprisonment."* The judge then stated that Mr McNeil's sentence was to be suspended because, *"it would seem most unjust with the passage of time and indeed the 3 years during which you have been under investigation for me not to suspend that sentence of imprisonment and so that is what I do."*

Lack of fitness and propriety

16. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.
17. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing an individual's fitness and propriety. FIT 1.3.1BG states that the most important factors include the individual's honesty, integrity and reputation.
18. The nature and circumstances of Mr McNeil offending demonstrates a serious and clear lack of honesty and integrity. As a result, the Authority considers that Mr McNeil is not a fit and proper person to perform regulated activities.

Prohibition

19. EG 9.1.1 provides that the power to prohibit an individual will be exercised by the Authority to achieve its statutory objectives, which include both securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
20. Taking into account the nature of the offence Mr McNeil participated in and the serious conviction arising from his participation, and his lack of fitness and propriety

due to his dishonesty and lack of integrity, the Authority considers it is appropriate to prohibit Mr McNeil from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

PROCEDURAL MATTERS

21. This Final Notice is given to Mr McNeil in accordance with section 390(1) of the Act.

Decision Maker

22. The decision which gave rise to the obligation to give this Final Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

Publicity

23. Section 391(4), 391(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 Authority must publish such information about which this Final Notice relates as the Authority considers appropriate.

24. The information may be published in such manner 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 McNeil or prejudicial to the interest of consumers or detrimental to the stability of the UK financial system.

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

Authority Contact

26. For more information concerning this matter generally, Mr McNeil should contact Danielle Stuart at the Authority (direct line: 020 7066 0185).

Jeremy Parkinson
Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives are set out in section 1B(3) of the Act and 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 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.
8. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against someone who is not an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2, and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

The Fit and Proper test for Employees and Senior Personnel

9. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
10. 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.
11. 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."
12. FIT 2.1.3G(1) states that the matters referred to in FIT 2.1.1G include, but are not limited to, whether a person has been convicted of any criminal offence, noting that particular consideration will be given to offences including dishonesty, fraud and financial crime (amongst other things).