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## FINAL NOTICE

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**To:** Mr Peter King  
**Date of Birth:** 23 October 1968  
**Reference:** PJK00010  
**Dated:** 10 November 2008

**TAKE NOTICE:** The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about an order prohibiting you, Peter King, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

### **1. THE ORDER**

1.1. The FSA gave you a Decision Notice **10 November 2008** (the “Decision Notice”) which notified you that the FSA had decided to withdraw the approval given to you under Section 59 of the Financial Services and Markets Act 2000 (“the Act”) and to make a prohibition order against you to prevent you from carrying out any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”), pursuant to sections 63 and 56 of the Act respectively.

- 1.2. You agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below, the FSA hereby withdraws your approval and makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from **10 November 2008**.

## **2. REASONS FOR THE ORDER**

- 2.1. The FSA has concluded that you, Peter King, should not remain an authorised person and that you are not a fit and proper person to carry out any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 2.2. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this notice, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity.
- 2.3. You pose a risk to consumers and therefore to confidence in the financial system. Also action should be taken against you in support of the FSA's financial crime objective.
- 2.4. In summary, in the period since June 2007 you have knowingly submitted applications for 39 fraudulent life assurance policies, 30 of which were in the names of applicants who either did not exist or who knew nothing about the applications, in order to benefit from commission based payments in excess of £250,000.

## **3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

### **Statutory Provisions**

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime and the protection of consumers.
- 3.2. The FSA has the power, by virtue of Section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a

specified description or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

- 3.3. The FSA may also withdraw the approval given to an individual under Section 59 of the Act by virtue of Section 63 of the Act if the FSA considers that the individual is not a fit and proper person to perform the function to which the approval relates. When considering whether to withdraw its approval, the FSA may take into account any matter which it could take into account if it were considering an application made under Section 60 of the Act in respect of the performance of the function to which the approval relates.

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

- 3.4. The part 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.
- 3.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. Among the most important considerations will be the person’s honesty, integrity and reputation.
- 3.6. In determining a person’s honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5));
  - (2) whether the person has been the subject of any justified complaint relating to regulated activities (FIT 2.1.3G(6)); and
  - (3) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and

willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3 G(13)).

### **The Statements of Principle and Code of Conduct for Approved Persons**

- 3.7. The part of the FSA Handbook entitled the Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the Statements of Principle in respect of approved persons and provides examples of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 3.8. APER 3.1.4G(1) provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 3.9. Statement of Principle 1 provides that an approved person must act with integrity in carrying out his controlled function.
- 3.10. APER 4.1 lists the types of conduct which do not comply with Statement of Principle 1.
- 3.11. In particular, APER 4.1.12E provides that deliberately designing transactions so as to disguise breaches of requirements and standards of the regulatory system is conduct which breaches Statement of Principle 1.
- 3.12. Statement of Principle 4 provides that an approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.
- 3.13. APER 4.4 lists the types of conduct which do not comply with Statement of Principle 4.

- 3.14. In particular, APER 4.4.7E states that failing promptly to inform the FSA of information of which the approved person is aware and which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise is conduct which breaches Statement of Principle 4.

**The FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval**

- 3.15. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.16. EG 9.1 states that the FSA's power to make prohibition orders under Section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 3.17. 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 activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 3.18. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing other disciplinary sanctions.
- 3.19. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an Approved Person and/or to withdraw

that person's approval. Such circumstances may include, but are not limited to, the following factors:

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. (The criteria for assessing the fitness and propriety of an Approved Person in terms of honesty, integrity and reputation are set out in FIT 2.1 (Honesty, integrity and reputation), and include an individual's openness and honesty in dealing with consumers, market participants and regulators and an ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards);
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness;
- (4) 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;
- (5) the severity of the risk posed by the individual to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual.

3.20. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors and may take into account the particular controlled function which an Approved Person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.

3.21. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an Approved Person. The examples include severe acts of dishonesty, for example those which may have resulted in financial crime.

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

##### **Background**

- 4.1. You are the sole director of New Forest Mortgage Company Limited ("the Firm"), a mortgage and insurance broker operating in Bournemouth. You are also the only Approved Person at the Firm. With effect from 31 October 2004, you were approved to perform the controlled function of CF1 (Director) and CF8 (Apportionment and Oversight).
- 4.2. You are responsible for the day-to-day activities and running of the Firm and you are the only person responsible for insurance mediation at the Firm.
- 4.3. The Firm had another director who worked in effect in an administrative capacity and did not have an active role as a director. He had no knowledge of the company accounts, did not provide advice nor did he carry out any insurance mediation activity. He resigned from his directorship and left the Firm in May 2006. However, the FSA did not receive any notification from you as the remaining sole director regarding his resignation and departure from the Firm.

##### **Background to the FSA's investigation**

- 4.4. The FSA received information from an insurance provider ("Provider A") that it was no longer accepting cases from your Firm due to suspected fraud. The FSA also received information that your Firm has been investigated by three other providers as a result of the submission of suspected fraudulent applications.
- 4.5. The FSA received further details from another provider ("Provider B") stating the addresses and client names that your Firm used for the applications submitted to that provider. These were cross referenced with the applications submitted to Provider A which showed that 4 of the addresses and 1 client name had been used with both the providers. Provider B also stated that in several cases they had been unable to verify the residential details of the clients for whom the applications were submitted to them.
- 4.6. Another provider ("Provider C") confirmed that your Firm's debt with them had risen to £68,349.42 and that they were seeking to recover this debt through legal proceedings.

4.7 Thereafter the FSA was notified that the Firm, following a threat to commence legal action against it by all four providers, had made a full repayment of the outstanding commission/debt to the providers.

#### **FSA's findings**

4.8 The FSA's Enforcement Division reviewed the policies submitted by your Firm, the bank accounts used to pay the premiums for those policies and the Land Registry information on the addresses used for the clients.

4.9 The review showed that of the 39 policies submitted to the four providers, 30 of them used the same names, linked to different addresses, with different dates of birth etc. The names used related to real people, such as your family, friends and former clients.

4.10 All the bank accounts referred to in the applications were held either solely by you, or jointly with your wife, with the exception of four accounts, which were used for four applications submitted to another provider ("Provider D"), but no payments were ever made from these accounts. These four accounts belonged to the actual named policy holders but were used to submit these applications without their knowledge.

4.11 The addresses used related to real locations but the Land Registry and electoral role records showed that the named policy holders were not residing at those addresses. Three of the addresses used were under your control with two being plots that you were developing at that time for your other business (which has been dissolved).

4.12 During your interview with the FSA, you admitted to submitting the fraudulent insurance policies and therefore to having committed the fraud. You also admitted to working alone without anyone else's knowledge in the Firm when submitting these policies. In your defence you stated that your plan was to submit the policies, claim the commission and invest the money in properties, and that when you made the money back from these property investments, you would have then cancelled the policies and repaid the commission. However, you admitted that even if your plan had worked your behaviour would have still have been fraudulent.



## **5. ANALYSIS OF SANCTION**

5.1. Having regard to the facts and matters described above, the FSA has considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance referred to in section 3 above.

5.2. The FSA has concluded that the matters set out above demonstrate that you:

- Have acted dishonestly and without integrity in breach of Statement of Principle 1, by knowingly submitting applications for 39 fraudulent life assurance policies, the vast majority of which were in the names of applicants who either did not exist or who knew nothing about the applications, in order to benefit from commission based payments in excess of £250,000; and
- Failed to notify the FSA of the removal of another director of your Firm, in breach of Statement of Principle 4.

5.3. In light of your conduct the FSA has therefore concluded that you lack honesty and integrity and that this is a serious case of lack of fitness and propriety such that the withdrawal of approval and Prohibition Order are necessary and proportionate and that other powers available are not sufficient to meet the FSA's regulatory objectives. Taking this action against you is consistent with the FSA's policy of seeking to prevent individuals lacking honesty and integrity from working in authorised firms in order to secure an appropriate degree of protection for consumers.

5.4. Considering the seriousness of your conduct in this case, the FSA would have imposed a substantial financial penalty upon you in addition to a prohibition order as, notwithstanding the fact that no profits have accrued to you and that you have made a full repayment of the outstanding commission/debt to the providers that you had received as a result of your fraudulent conduct, had you been successful in your plan you could potentially have profited as a result of your wrongdoing. The FSA however has taken into account the fact that you would be unable to meet a financial penalty (and having regard to the evidence that you have provided in relation to your current financial position) without unjustifiable hardship being imposed upon you

and, in light of which, the FSA has decided not to impose any financial penalty upon you in this case.

**6. DECISION MAKERS**

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

**7. PUBLICITY**

7.1 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.

**FSA Contacts**

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

Signed:

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**Jonathan Phelan**  
**Head of Department**  
**FSA Enforcement Division**