
FINAL NOTICE

To: Richard Granville Greenland

Of: 2 Crescent Road,
Beckenham,
Kent
BR3 6NE

Dated: 1 June 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Richard Granville Greenland ("Mr Greenland"), final notice about the imposition of a financial penalty on you, and an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm

1. ACTION

- 1.1. The FSA gave you, Mr Greenland, a Decision Notice on 20 April 2010 ("the Decision Notice"), which notified you that the FSA had decided to, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), impose a financial penalty of £120,000 on you, Mr Greenland and, pursuant to section 56 of the Act, to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or professional firm ("the Prohibition Order").

- 1.2. You did not refer the matter to the Upper Tribunal (Financial Services) within 28 days of the date on which the Decision Notice was given to you. The Prohibition Order takes effect from 1 June 2010
- 1.3. The financial penalty consists of the following elements:
 - (1) a penalty of £100,000 for your knowing involvement in mortgage fraud; and
 - (2) a penalty of £20,000 for your failure as holder of a significant influence function to ensure that the business for which you were responsible complied with relevant standards of the regulatory system.

2. REASONS FOR THE ACTION

- 2.1. FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity and competence and capability. The FSA considers that you pose a risk both to consumers and lenders and to confidence in the financial system. Action should be taken against you in support of both the FSA's financial crime and consumer protection objectives.
- 2.2. In summary, while an approved person at Guardian Mortgages & Property Services Limited ("Guardian") you submitted:
 - (1) at least three regulated mortgage applications to lenders on behalf of others which you knew contained false and misleading information; and
 - (2) three unregulated buy-to-let mortgage applications to lenders on your own behalf which you knew contained false and misleading information.
- 2.3. In carrying out your controlled functions you failed to establish appropriate systems and controls at Guardian to ensure it complied with the relevant requirements and standards of the regulatory system. In particular, you failed to ensure Guardian adequately:
 - (1) maintained customer records;
 - (2) recorded the suitability of advice given to Guardian's customers;
 - (3) recorded the monitoring of its advisers; and

(4) took steps to prevent or mitigate the risk that Guardian would be used for financial crime.

2.4. For these reasons, the FSA has decided that it is necessary and proportionate to impose a financial penalty of £120,000 on you and to make a prohibition order against you.

2.5. The FSA has therefore decided to take the action for the reasons described above and to give this Final Notice.

3. FACTS AND MATTERS RELIED ON

Background

3.1. You were one of two approved persons at Guardian, and have held the following controlled functions:

- (1) CF 1 (Director) from 31 October 2004 to 17 November 2009;
- (2) CF 3 (Chief Executive) from 26 April 2005 to 17 November 2009; and
- (3) CF 8 (Apportionment and Oversight) from 31 October 2004 to 31 March 2009.

3.2. Guardian was a small mortgage broker and was incorporated as a limited company from 23 June 2003 until its dissolution on 17 November 2009. Guardian was granted Part IV permission to conduct regulated business on 31 October 2004 and has been authorised to conduct the following activities since 31 October 2004:

- (1) advising on regulated mortgage contracts in regulated home finance;
- (2) undertaking a regulated activity in regulated home finance;
- (3) arranging regulated mortgage contacts in regulated home finance; and
- (4) making arrangements in regulated home finance.

3.3. Guardian has been authorised to conduct the following activities since 14 January 2005:

- (1) arranging investments in insurance mediation;

- (2) advising (excluding Pension Transfers/Opt Outs) in insurance mediation; and
 - (3) making arrangements in insurance mediation.
- 3.4. Guardian employed one other mortgage adviser. You were responsible for supervising that adviser for approximately two years prior to August 2008.
- 3.5. Guardian was one of 50 mortgage brokers visited by the FSA as part of a thematic project looking into mortgage quality of advice processes.

Submission of regulated mortgage applications for customers containing false and misleading information

Applicant A

- 3.6. You were involved in the submission of a remortgage application, dated 18 May 2007, for Applicant A through Guardian which recorded that Applicant A's income for the trading year 2006 was £89,000 and income for the trading year 2007 was £92,000.
- 3.7. You admitted that even though you:
 - (1) knew that Applicant A's main job was at a department store; and
 - (2) did not know how much Applicant A earned from that employment;

you specified in Applicant A's mortgage application an income for Applicant A which you believed to be inflated at her request. You explained her motivation for this request was "*for her to qualify for the mortgage*".

Applicant B

- 3.8. You submitted an application for a remortgage for Applicant B on 2 November 2007 which recorded Applicant B's:
 - (1) annual basic gross income as £75,000; and
 - (2) other income as £10,000;which yielded an aggregate annual income of £85,000.
- 3.9. You admitted that you did not:

- (1) undertake any checks as to the customer's income;
- (2) see or ask for payslips; and
- (3) question the customer further about the income and employment information that she had provided to you.

3.10. You admitted that you had inflated her income on the application.

Applicant C

3.11. You submitted an application for a remortgage on behalf of Applicant C which recorded Applicant C's:

- (1) basic wage/salary before tax as £45,000;
- (2) regular overtime/allowances as £5,000; and
- (3) other income of £4,500;

which yielded an aggregate of £54,500.

3.12. In contrast, Guardian's factfind records Applicant C's total annual income as £41,500, comprised of:

- (1) annual income of £29,500; and
- (2) a tax credit of £270 per week which would yield £12,000 per year.

3.13. Therefore, the income recorded on the remortgage application form is £13,000 greater than the income recorded for the customer on the factfind.

3.14. Although you could not recall the facts of the case specifically, you stated that you must have put down a higher income to make the application go through. When asked if you had inflated the customer's income on the mortgage application form submitted on behalf of Applicant C, you said that you "must have" done.

Unregulated mortgage applications

3.15. You submitted three buy-to-let unregulated mortgage applications to a lender on your own behalf in October 2007, each of which recorded your share of net profit from Guardian for the year 2007 as £87,000.

3.16. Your personal tax returns for the years ending 2005, 2006 and 2007 disclose:

- (1) gross dividends of £4,000 and payments from P60 as £8,697 for the year ended 5 April 2005 totalling £12,697;
- (2) gross dividends as £21,850 and payments from P60 as £9,600 for the year ended 5 April 2006 totalling £31,450; and
- (3) gross dividends as £17,868.51 and payments from P60 as £9,180 for the year ended 5 April 2007 totalling £27,048.51.

3.17. You therefore inflated your income on each of the subject mortgage application forms and, when questioned, indicated that you had not taken care to specify the income precisely because it was mainly buy-to-let property and your concern was to specify a figure, not to ensure that it was correct.

Failure to ensure Guardian adequately maintained customer records

3.18. When questioned in interview, you admitted that:

- (1) *“factfinds have been my weakness in this because although I know that I should really complete absolutely everything it’s been my weakness where I’ve not...I don’t always get it down on paper...I know that I’ve not been fully documenting everything”*; and
- (2) *“I think they [the factfinds] were poor and I think I gave people advice because I knew what they were looking for but I’ve got no way of demonstrating it in retrospect.”*

3.19. You also admitted that you did not record sufficient customer information, stating that you failed to record information such as retirement dates and national insurance numbers.

Failure to make and retain records of customer information related to the suitability of advice

3.20. When asked in interview whether you were satisfied that your system for recording suitability was adequate, you said that you were not. You went on to explain that because of the time it took to produce accurate suitability records, you put the task off, did not always produce them properly and there are probably some instances when you did not do them at all.

3.21. Of the customer files reviewed by the FSA, eleven did not contain suitability documents.

3.22. You further admitted that:

- (1) no one checked the advice you gave customers;
- (2) there was no evidence that you had monitored the other adviser's activities; and,
- (3) you were "not satisfied really" with Guardian's compliance arrangements.

Failure to prevent Guardian from being used for financial crime

3.23. As noted in paragraphs 4.15 – 4.17 above, you submitted three unregulated buy-to-let mortgage applications to lenders through Guardian which included an inaccurate income figure. Further, as noted in paragraph 4.17 above, you admitted that you did not consider it necessary to record your genuine income as the applications were for buy-to-let properties.

3.24. As noted in paragraphs 4.6 to 4.14, you have submitted at least three regulated mortgage applications on behalf of customers through Guardian in which the applicant's income has been inflated.

3.25. In eight of the 22 cases that the FSA reviewed, there appeared to be discrepancies between the income figures recorded on the factfinds and the income figures declared on the mortgage application forms.

3.26. In six of the cases the FSA has reviewed, there is no evidence of the customer's income.

4. ANALYSIS OF BREACHES

4.1. By reason of the facts and matters referred to in paragraph 4.6 to 4.14 above, the FSA considers that you have failed to act with honesty and integrity by submitting at least three regulated mortgage applications to lenders on behalf of others which you knew contained false and misleading information, in breach of Statement of Principle 1.

4.2. By reason of the facts and matters referred to in paragraphs 4.18 to 4.26 above, the FSA considers that you have failed to establish appropriate systems and controls at Guardian to ensure it complies with the relevant requirements and standards of the

regulatory system, in breach of Statement of Principle 7. In particular you have failed to ensure Guardian adequately:

- (1) maintained customer records;
- (2) recorded the suitability of advice given to Guardian's customers;
- (3) recorded the monitoring of its advisers; and
- (4) took steps to prevent or mitigate the risk that Guardian would be used for financial crime.

4.3. In addition you:

- (1) submitted three unregulated buy-to-let mortgage applications to a lender on your own behalf which you knew contained false and misleading information.

4.4. By reason of the facts and matters set out above, the FSA considers that, contrary to the FSA's Fit and Proper Test for Approved Persons ("FIT"), you lack:

- (1) honesty and integrity (FIT 2.1); and
- (2) competence and capability (FIT 2.2).

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTION

5.1. 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 Chapter 7 of the Enforcement Guide ("EG"). The relevant parts of this guidance are set out at Annex A.

5.2. 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.

- 5.3. The FSA considers the full circumstances in each case when determining whether or not to impose a financial penalty. DEPP 6.5.2G provides guidance on a non-exhaustive list of factors that may be of relevance in determining the level of a 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)

- 5.4. The FSA has considered the nature and seriousness of the breaches, including the nature of the requirements and Statements of Principles breached, the number and duration of the breaches, the extent to which the breaches illustrate a lack of fitness and propriety on your part.

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

- 5.5. 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)

- 5.6. The FSA, having regard to all the circumstances, considers the appropriate level of financial penalty for your breaches of the Statement of Principles to be £120,000. You have failed to provide sufficient information, despite being requested to do so, to enable us to determine your financial position or what impact imposing such a financial penalty would have on you.

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

- 5.7. The FSA considers that you would have received a financial gain as a result of your misconduct by reason of the fees in the sum of £14,274 which Guardian, in which you had an interest until its dissolution, charged for submitting mortgage applications for Applicants A, B and C; and

- 5.8. Accordingly, your conduct warrants the imposition of a financial penalty in the sum of £120,000, pursuant to section 66 of FSMA, for failing to comply with Statements of Principle 1 and 7.

Prohibition

- 5.9. 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, regulatory requirements and relevant guidance referred to in paragraph 6.1 above.
- 5.10. In light of your conduct it appears to the FSA that you have failed to meet the FSA's standards of honesty and integrity as well as competence and capability.
- 5.11. The FSA has concluded from the above that you are not fit and proper to carry on regulated activities, and that, if you performed any functions in relation to regulated activities you would pose a risk to consumers, to lenders (and therefore to confidence in the financial system) and to the fulfilment of the FSA's reduction of financial crime objective. The FSA therefore considers that a prohibition order is necessary and proportionate.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

7. IMPORTANT

- 7.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

Manner of and time of payment

- 7.2. The financial penalty must be paid in full by you to the FSA by no later than 15 June 2010, 14 days after the date of this Final Notice.

If the financial penalty is not paid

- 7.3. If all or any part of the financial penalty is outstanding on 16 June 2010 the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 7.4. Sections 391(4), 392(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 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.
- 7.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.6. For more information concerning this matter generally, you should contact Mario Theodosiou of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 5914).

Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX

1. Statutory Provisions

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

Imposition of financial penalty

- 1.2. Section 66 of FSMA 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 it. Misconduct includes failure by an approved person to comply with the Statements of Principle issued under section 64 of FSMA. 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.
- 1.3. The FSA's Statements of Principle and Code of Practice for Approved Persons are a general statement of the fundamental obligations of approved persons under the regulatory system. They derive their authority from section 64 of FSMA and reflect the FSA's regulatory objectives.

Prohibition

- 1.4. The FSA has the power, under section 56 of FSMA, 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 or any regulated activity falling within a specified description or all regulated activities.

2. Regulatory guidance and policy

- 2.1. In considering the appropriate sanction, the FSA has had regard to its published guidance. The FSA has also had regard to the relevant provisions of the Enforcement Guide ("EG") and its Decision Procedure and Penalties Manual ("DEPP") which came into effect on 28 August 2007.

Penalty

- 2.2. In considering the level of the financial penalty and the other action to be taken, the case team has had regard to its guidance published in the FSA Handbook and its relevant published policies, in particular, DEPP and EG.
- 2.3. EG provides at paragraph 9.23 that the FSA may impose a financial penalty on an individual in addition to imposing a prohibition order on them.
- 2.4. The FSA may 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 appropriate either to prevent an individual from carrying out any function in relation to regulated activities or to restrict the functions which he may perform. The FSA's policy in relation to the exercise of its powers to make a prohibition order is set out in Chapter 9 of EG.
- 2.5. EG 9.4 sets out the general scope of the FSA's powers in this respect, including 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.
- 2.6. EG 9.8 to 9.14 provides guidance on the FSA's exercise of its power to make a prohibition order against an approved person.
- 2.7. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person 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 an individual's fitness and propriety are set out in the section of the FSA's Handbook entitled "FIT". FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness) (EG 9.9(2));

- (2) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (3) 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 (EG 9.9(7)); and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

The Fit and Proper Test for Approved Persons (“FIT”)

- 2.8. 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.
- 2.9. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its power to make a prohibition order against Mr Greenland in accordance with the guidance set out in EG 9.8 to 9.14.
- 2.10. FIT 1.3.1.G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person’s:
 - (1) honesty, integrity and reputation;
 - (2) competence and capability; and
 - (3) financial soundness.
- 2.11. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, 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)); and
 - (2) 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

Statements of Principle and Code of Practice for Approved Persons

- 2.12. The Statements of Principle and Code of Practice for Approved Persons set out the Statements of Principle in respect of approved persons and examples of conduct which, in the opinion of the FSA, do 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.
- 2.13. APER 3.1.3 G provides 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, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.14. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.15. In this case, the case team considers the most relevant Statements of Principle to be:
- (1) Statement of Principle 1: "An approved person must act with integrity in carrying out his controlled function."
 - (2) Statement of Principle 7: "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."