
FINAL NOTICE

To: **Simon Robert Gray**

FSA Reference Number: **SRG01077**

Dated: **25 June 2009**

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, Simon Robert Gray, 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 Simon Robert Gray a Decision Notice on 22 May 2009 (the “Decision Notice”) which notified him that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to make an order prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”).
- 1.2. Mr Gray has not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to him.
- 1.3. Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting Mr Gray from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 25 June 2009.

2. REASONS FOR THE ORDER

Introduction

- 2.1. The FSA has concluded, on the basis of the facts and matters and conclusions described in its Warning Notice dated 3 April 2009 (an extract from which is attached to and forms part of this Final Notice), and in the Decision Notice, that Mr Gray is not a fit and proper person to perform any functions as his conduct demonstrated a lack of honesty and integrity. Specifically, on 27 October 2008, Mr Gray was convicted of nine counts of dishonesty offences involving making false and misleading statements to the FSA and using forged documents.

Relevant Statutory Provisions

- 2.2. The FSA's statutory objectives are set out in section 2(2) of the Act and include maintaining market confidence, the protection of consumers and the reduction of financial crime.
- 2.3. The FSA's power to make a prohibition order is set out in section 56 of the Act and the procedure to be followed is set out in section 58 of the Act.

Relevant Guidance

The Enforcement Guide ("EG")

- 2.4. The FSA's policy in relation to exercising its power to issue a prohibition order is set out in EG.
- 2.5. EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.
- 2.6. EG 9.3 to 9.5 sets out the FSA's policy on making prohibition orders. In particular:
- (a) EG 9.3 states that the FSA 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 9.4 states that the FSA has power to make a range of prohibition orders: they may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally; and
 - (c) EG 9.5 states that the scope of a prohibition order will depend on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
- 2.7. EG 9.17 sets out that where the FSA is considering whether to make a prohibition order against someone who is not an approved person, the FSA will consider the severity of the risk posed by the individual and may prohibit him where it

considers that it is necessary to achieve the FSA's regulatory objectives.

- 2.8. EG 9.18 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors, including those set out in EG 9.9. These factors include: the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons section of the FSA Handbook, the relevance and materiality of any matters indicating unfitness and the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.9. EG 9.12 sets out a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include providing false or misleading information to the FSA, failing to disclose material considerations on application forms, such as dismissal from employment for regulatory or criminal breaches, and serious acts of dishonesty.

Fit and Proper Test for Approved Persons ("FIT")

- 2.10. The FSA has issued guidance on the fitness and propriety of individuals in FIT.
- 2.11. FIT 1.1.2G states that the purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled function. The criteria are also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.12. FIT 1.3.1G(1) states that the most important consideration includes a person's honesty, integrity and reputation.
- 2.13. FIT 2.1 gives specific guidance in determining a person's honesty, integrity and reputation. In particular:
- (a) FIT 2.1.3G(1) states that the FSA will have regard to whether a person has been convicted of any criminal offence, and goes on to say that particular consideration will be given to offences of dishonesty or other offences under legislation relating to financial services and consumer protection;
 - (b) FIT 2.1.3G(11) states that the FSA will have regard to whether a person has been dismissed from employment; and
 - (c) FIT 2.1.3G(13) states the FSA will have regard to whether a 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.

3. DECISION MAKER

- 3.1. The decision that gave rise to the obligation to give this Final Notice was taken by the Regulatory Decisions Committee.

4. IMPORTANT

4.1. This Final Notice is sent to you in accordance with section 390(1) of the Act.

Publicity

4.2. Sections 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 FSA must publish such information about the matter to which this Final 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.

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

FSA contacts

4.4. For more information concerning this matter generally, you should contact Pauline Cheng (direct line: 020 7066 5228 / fax: 020 7066 5229) of the Enforcement Division of the FSA.

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John Kirby
FSA Enforcement Division

**EXTRACT FROM THE WARNING NOTICE DATED 3 APRIL 2009 ISSUED TO
SIMON ROBERT GRAY**

“2. REASONS FOR PROPOSED ACTION

Facts and matters relied on

- 2.15. You were the sole director of Direct Mortgages (Bury St Edmunds) Limited (“Direct Mortgages”). Direct Mortgages was previously an appointed representative of Personal Touch Financial Services Limited (“Personal Touch”) from 6 March 2006 until 20 April 2007.
- 2.16. On 27 October 2008, you were convicted at City of Westminster Magistrates’ Court of five counts of misleading the FSA, contrary to section 398(1) of the Act, and four counts of using a false instrument, contrary to sections 3 and 6 of the Forgery and Counterfeiting Act 1981.
- 2.17. You committed these offences during repeated applications to become an FSA approved person. Specifically, you made false and misleading statements to the FSA about your dismissal from Personal Touch and about a police investigation for which you received a caution for attempting to obtain property by deception. You also used forged documents in support of your false and misleading statements to the FSA.
- 2.18. On 17 November 2008, you were sentenced to 18 weeks imprisonment suspended for 18 months at City of Westminster Magistrates’ Court. The Court has discretion to impose a custodial sentence for this offence. Section 79(2)(a) of the Powers of Criminal Court (Sentencing) Act 2000 states that the Court shall not pass a custodial sentence unless it is of the opinion that the offence was so serious that only such a sentence can be justified for the offence.
- 2.19. Additionally, you were also ordered to pay costs of £750 to the FSA and you will be supervised by the Probation Service for 18 months.

Conclusions

- 2.20. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and the prevention of financial crime, to the following conclusions:
- you have acted without honesty and integrity in your dealings with the FSA;
 - you have been convicted of dishonesty offences, offences of such seriousness as to justify a custodial sentence;
 - the convictions, and the conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore demonstrate that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;

- you present a serious and ongoing risk to consumers, to other financial institutions and to the FSA's statutory objective of prevention of financial crime; and
- the severity of the risk that you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to make a prohibition order against you in the terms proposed."

END OF EXTRACT