

SEE FINAL NOTICE ISSUED ON 26 AUGUST 2016

DECISION NOTICE

To: Mr Amir Khan Sovereign Worldwide Limited
IRN: AXK01532 FRN: 449143
Date: 4 March 2013

ACTION

1. For the reasons set out in this Notice, the FSA has decided to take the following action:
 - (1) impose on Mr Khan a financial penalty of £80,000;
 - (2) withdraw the approval granted to Mr Khan, pursuant to section 63 of the Act, to perform controlled functions; and
 - (3) make an order, pursuant to section 56 of the Act, prohibiting Mr Khan from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.

SUMMARY OF REASONS

2. Whilst an approved person at Sovereign, Mr Khan:
 - (1) failed to act with honesty and integrity in carrying out his controlled functions, in breach of Statement of Principle 1, by knowingly submitting a personal mortgage application to a mortgage lender containing false and misleading information about his income in the form of false payslips; and
 - (2) failed to act with due skill, care and diligence in performing his significant influence function, in breach of Statement of Principle 6, by failing to take adequate steps to counter the risk that Sovereign might be used to further financial crime, despite being aware of such a risk.

3. The Statement of Principle 1 breach is aggravated by Mr Khan's conduct during the course of the investigation, namely his purported explanations for why he provided a false income figure. When he was interviewed in September 2011, the FSA was aware of only one of two personal mortgage applications, both of which contained the same false income figure. In interview, Mr Khan repeatedly sought to divert responsibility to his professional adviser for the misstatement of his income and claimed to be naïve about the level of income he could declare to mortgage lenders.
4. The subsequent discovery of the second application, submitted in 2007 and not made in his capacity as an approved person, seriously undermined the plausibility of those explanations. The FSA therefore considers that Mr Khan deliberately attempted to give a false and misleading explanation to the FSA.
5. The serious nature of these breaches, aggravated by his conduct in interview, leads the FSA to conclude that Mr Khan is not a fit and proper person to perform functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm, and should be prohibited from doing so. Only a full prohibition will prevent Mr Khan from undertaking mortgage activities.
6. The financial penalty on Mr Khan would have been higher but for his personal circumstances as explained later in this notice (see paragraph 99).
7. This action supports the FSA's regulatory objectives of:
 - (1) reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime; and
 - (2) securing the appropriate degree of protection for consumers.

DEFINITIONS

8. The definitions below are used in this Decision Notice.
 - (3) "Act" means the Financial Services and Markets Act 2000;
 - (1) "EG" means the FSA's Enforcement Guide;
 - (2) "FSA" means the Financial Services Authority;
 - (3) "HMRC" means Her Majesty's Revenue and Customs;
 - (4) "Mr Khan" means Amir Khan;
 - (5) "relevant period" means the period from 5 March 2007 to 10 May 2011;
 - (6) "Sovereign" means Sovereign Worldwide Limited;
 - (7) "Statements of Principle" means the FSA's Statements of Principle and Code of Practice for Approved Persons;
 - (8) "SYSC" means the FSA's Senior Management Arrangements, Systems and Controls handbook; and

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

FACTS AND MATTERS

Background

9. Sovereign was incorporated on 9 June 2000. It was authorised by the FSA to carry on mortgage and general insurance activities.
10. Mr Khan is the sole owner, director and employee of Sovereign. He is the only person approved to perform a controlled function at Sovereign and has been solely responsible for managing its business since it became authorised on 5 March 2007.
11. On 5 March 2007, he was approved by the FSA to perform the controlled function of director (CF1) and was approved to perform the controlled function of apportionment and oversight (CF8) between 5 March 2007 and 31 March 2009.
12. Mr Khan arranged regulated mortgage contracts for retail customers on a non-advised basis through Sovereign. Between March 2007 and March 2011, Mr Khan arranged a total of 16 regulated mortgage contracts.

Sovereign’s financial position

13. Mr Khan confirmed that any income he earned via regulated business, unregulated business and personal contract work was paid to Sovereign in the first instance.
14. The following financial information was taken from Sovereign’s annual accounts:

Year ending 30 June	Turnover	Net profit/(loss)	Cash at bank and in hand	Director’s loan owed to Mr Khan
2006	£8,913	£4,071	£9,862	£4,502
2007	£25,033	(£1,016)	£4,547	£884
2008	£18,716	£5,136	£18,649	£8,533
2009	£18,016	£2,506	£28,610	£15,643

15. Mr Khan said that he did not tend to take any salary or dividends from Sovereign because he lived from his rental income. The FSA has also obtained Mr Khan’s HMRC records covering the period from 6 April 2007 to 5 April 2010. The records show that Mr Khan took a minimal salary and no dividends from Sovereign in that period.

Mr Khan’s personal mortgage application in December 2007

16. On 9 December 2007, Mr Khan submitted a personal mortgage application through Sovereign to a lender. The application was to port an existing mortgage on a residential property to a new residential property. In this application, Mr Khan declared a ‘present income’ from self-employment of £60,000 gross and an annual

rental income of £15,000. These amounts far exceeded those declared by Mr Khan to HMRC in his tax return.

Mr Khan's personal mortgage application in October 2009

17. On 13 October 2009, Mr Khan submitted an online mortgage application through Sovereign to a lender in his own name. The application was for a loan of £237,000 to fund the purchase of a new residential property.
18. In the application, Mr Khan stated that he was employed by WP Financial (a trading name of Sovereign) and declared a total annual income of £74,500, comprising a 'basic wage/salary before tax' of £60,000 and 'other secondary income' of £14,500 relating to property rental.
19. His declared income of £60,000 and his income from rent far exceeded the sums he had declared to HMRC.

Income receivable from Sovereign

20. Mr Khan claimed in interview that he could afford to pay himself a £60,000 income annually, in part because of the money he had access to in Sovereign's bank account. The balance of Sovereign's account on the day that Mr Khan submitted the mortgage application was £27,196.
21. In support of his mortgage application, Mr Khan submitted copies of three payslips to the lender, dated July, August and September 2009, which appeared to show that he had been paid a gross monthly income of £5,000 by Sovereign (i.e. the equivalent of £60,000 per annum). The payslips included a '*year to date - gross pay*' figure which gave the impression that Mr Khan had been paid (and had incurred income tax on) a total of £30,000 by Sovereign in the six months between 1 April 2009 and 30 September 2009.
22. The information provided in these payslips was false. Mr Khan's HMRC records showed that he had not been paid £5,000 by Sovereign for any month in 2009. Mr Khan confirmed this to be the case during an interview.

Potential income from contract work

23. Mr Khan generated income by way of intermittent temporary contract work for financial services institutions. He always arranged for the proceeds of the contracts to be paid directly into Sovereign's bank account.
24. Mr Khan said that the £60,000 income figure he had declared to the lender took into account the income he stood to earn from contract work.
25. The FSA obtained records from Mr Khan and Mr Khan's recruitment consultants in relation to the contract work he had carried out in previous years. The approximate income generated by Mr Khan through contract work totalled £7,000 in the year ending 30 June 2007, £7,000 in the year ending 30 June 2008 and £2,000 in the year ending 30 June 2009.

26. On 9 October 2009, Mr Khan completed a six week contract for which he earned approximately £5,000. By 13 October 2009, the day that Mr Khan submitted his mortgage application, Mr Khan had been informed of a potential contract which he had been deemed suitable to perform. The contract was not however formalised until around five weeks after he submitted the application. If this contract had run its course on the agreed terms, Mr Khan could have netted a maximum of £18,000, which would have resulted in a maximum income from contract work in that tax year (April 2009-March 2010) of only £26,850. As it was, Mr Khan earned only £4,200 for that contract which was discontinued in January 2010.

Rental income

27. Mr Khan owns an unencumbered property which he had let out to students each year since 1993. In support of his mortgage application, Mr Khan submitted a rental income form in which he stated that the maximum annual income he could receive from the property's rental was £14,500. He also provided copies of tenancy agreements to the lender which showed that under the present rental agreement he expected to receive £12,000.
28. The FSA found that the rental income figures which Mr Khan declared to HMRC in the tax years ending 5 April 2008, 2009 and 2010 were significantly lower than £12,000, as he often did not receive the full amount of rental income in a year. When asked why he had declared a rental income of £14,500 in his mortgage application, he said "*that's probably just an oversight*".

Mr Khan's substitute application

29. Mr Khan did not take up the mortgage offered by the lender as a result of his application of 13 October 2009 because he was not successful with the purchase of the target property. However, on 6 May 2010, Mr Khan signed and submitted a 'substitute property details application' to the lender in which he applied for a loan of £260,000 to fund the purchase of a different property.
30. Mr Khan signed the substitute application, which included the following declaration:
- "This form is supplemental to my previous mortgage application form dated _____. I confirm that all the information given in both applications is correct and where changes have occurred these have been advised and the revisions inserted in (or attached to) the application form".*
31. In the six months between submitting the original mortgage application and the substitute application, Mr Khan had generated £4,200 in income from one temporary contract which was paid into Sovereign's account. Mr Khan had not paid himself from Sovereign's account during that period.
32. In respect of the substitute application, Mr Khan did not take any steps to correct or revise the income figures he had declared to the lender in the original mortgage application. Mr Khan had no explanation for omitting to do so.

Mr Khan's approach to countering financial crime risk

33. SYSC 3.2.6R states that a firm must take reasonable care to establish and maintain effective systems and controls in compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.
34. As the only person approved to perform significant influence functions at Sovereign, Mr Khan was solely responsible for ensuring that the business for which he was responsible was managed with due care, skill and diligence, an aspect of which was to ensure that Sovereign complied with SYSC 3.2.6R.
35. In the context of a non-advised mortgage sales process, Mr Khan needed to exercise due skill, care and diligence in countering the risks of financial crime by ensuring that customers' mortgage applications did not contain false information.
36. Mr Khan dealt face to face with customers who were local to the Edinburgh area. He also dealt with customers from the South of England over the telephone, who were referred to him by a London-based introducer ("Introducer A"). Between 2009 and 2011, Introducer A referred around 20 customers to Mr Khan by emailing basic details about the customers' personal and financial circumstances to him. Mr Khan then received original identification documents (such as the customers' passports or driving licences) in the post, certified a photocopy of the documents and forwarded them to the relevant lender. This process of itself was not out of the ordinary. However, sometimes Mr Khan would certify that the clients' identification documents were a true likeness of the clients themselves, without even meeting them face to face.
37. Mr Khan was aware of the risk of submitting customer mortgage applications to lenders containing false information since he knew that:
 - (1) customers introduced to him by Introducer A or a second introducer had asked him to create or submit false payslips on their behalf (or both); and
 - (2) some customers had withheld information from him about mortgage arrears, county court judgments or their employment status. Mr Khan found out about this when lenders conducted their own checks and identified discrepancies in the information provided.
38. Despite being aware of these risks, Mr Khan failed to act with due skill care and diligence for the following reasons:
 - (1) Having been put on notice that customers introduced by Introducer A and a second introducer presented an enhanced risk of financial crime, Mr Khan continued to accept customers from those introducers and failed to change his systems and controls to address that enhanced additional risk, for instance by:
 - (a) adopting a greater level of scrutiny when verifying customers' income, instead of relying on the lender to conduct the relevant written checks (i.e. employment referees, bank accounts and credit checks);

- (b) giving greater consideration to alternative ways in which he could ensure that customers' identification documents were genuine in circumstances where he did not deal with them face to face;
 - (c) exercising greater vigilance when submitting customer information provided by Introducer A. For example, Introducer A introduced two customers within a six week period who were both described as self-employed construction workers trading as "[XX] Construction", where "[XX]" was the customer's initials. Mr Khan submitted applications to lenders containing this information and both applications were rejected on the grounds of potentially false identity and employment information.
- (2) In August and October 2010, Mr Khan supplied photocopies of two customers' passport photograph pages to lenders on which he had written "*I certify that this is a true copy of the original and a true likeness of the applicant*" when in fact he had never met or seen the customers. The customers had been introduced to him by Introducer A. The lender rejected the customers' applications after discovering that the passport details provided were false. Mr Khan told the FSA that he had improperly used a standard wording when certifying the documents due to an oversight.
 - (3) Introducer A referred another customer's details to Mr Khan in November 2010, providing him with electronic copies of identification documents. Mr Khan certified these documents and forwarded them to the lender during the application process. There is no evidence that Mr Khan received hard copies of the documents to allow him to certify them properly. The lender subsequently reported to the FSA that it suspected the customer's employment and identity details to be false.
 - (4) Introducer A referred two joint applicants to Mr Khan in March 2011. In submitting an application on their behalf, Mr Khan provided the lender with copies of their passports. In July 2011, the lender identified that the passport information provided was false.

FAILINGS

- 39. The regulatory provisions relevant to this Decision Notice are referred to in the Annex.

Breach of Statement of Principle 1

- 40. In his personal mortgage application submitted in 2009, Mr Khan declared income figures significantly more than those declared to HMRC. Furthermore, those declared income figures were significantly more than the annual income Sovereign had ever generated and therefore significantly more than he could ever have earned personally.
- 41. He therefore knowingly submitted a mortgage application to a lender which contained false and misleading information about his income.

42. Mr Khan's explanations for the declared income figure in the 2009 mortgage application were deliberately misleading.

False payslips

43. When asked by the lender to provide evidence in relation to his income, Mr Khan could have provided existing documents such as accounts, bank statements or HMRC returns. Instead, Mr Khan arranged for three payslips to be created which gave the impression that he had been paid a monthly salary of £5,000 by Sovereign between April and September 2009.
44. Mr Khan knew that the payslips were false and misleading given that:
- (1) most of the material information on the payslips was false, including that he did not take a monthly salary at any point; and
 - (2) he knew that he had not received a wage from Sovereign in the six months preceding the first false payslip.

Rental income

45. Mr Khan also declared an annual rental income of £14,500 when he knew that:
- (1) the maximum rental income he could earn in a year was £12,000; and
 - (2) the actual rental income he had received in the previous three years was substantially less than £12,000.
46. Given that Mr Khan submitted a specific rental income form and tenancy agreements to the lender in support of the mortgage application, Mr Khan's explanation that the £14,500 figure was an 'oversight' is not credible.

Substitute application form

47. Six months after submitting the October 2009 application, Mr Khan signed a substitute application form which included a declaration that the information he had provided to the lender remained accurate. During that period, Mr Khan had not paid himself any salary out of Sovereign's reserves. Mr Khan's suggestion that this was an oversight is not credible.

Summary

48. As the sole owner and controller of Sovereign, and as an individual who arranged mortgages for customers, Mr Khan was aware of the need to submit accurate and candid information to mortgage lenders when applying for a mortgage. He acknowledged that lenders rely on the total income received, not a prediction about what an applicant may be able to earn in the future.
49. Mr Khan knowingly provided false information about his income in his 2009 mortgage application. In support of his application, he submitted payslips which he knew to be false and misleading. Accordingly, Mr Khan breached Statement of Principle 1.

50. This breach is seriously aggravated by Mr Khan's attempts to mislead the FSA about his 2009 mortgage application through the explanations he advanced for his declared income of £60,000. Those explanations, whilst already implausible, were shown to be false on the discovery of the 2007 mortgage application in which he had declared an identical income figure which bore no similarity to his financial position at that time. The 2007 mortgage application demonstrates that he did not naively accept his professional adviser's advice because he had made the same false declaration two years earlier.

Breach of Statement of Principle 6

51. As an approved person performing a significant influence function at Sovereign, Mr Khan was required to exercise due skill, care and diligence in managing Sovereign's business. Mr Khan was responsible for identifying and mitigating risks posed by Sovereign's non-advised mortgage business model, including its relationships with introducers.
52. Mr Khan did not act with due skill, care and diligence in managing Sovereign's business. He told the FSA that he was aware of the risk that Sovereign could be used to facilitate fraud or dishonesty but failed to turn his mind to the steps he should have taken to mitigate that risk. Mr Khan did not consider what controls he could have applied to check the customer information provided to him by Introducer A, even though he knew that customers had withheld information from him or asked him to submit false information in their applications. He also relied on mortgage lenders to identify discrepancies in customer information rather than taking steps to identify them himself.
53. As a result of this approach, Mr Khan exposed Sovereign to an increased risk of being used for the purposes of mortgage fraud. This risk is known to have crystallised in relation to four of the cases introduced by Introducer A, where lenders found that false identification documents had been submitted. Mr Khan demonstrated a lack of due skill, care and diligence.

Not a fit and proper person

54. Mr Khan failed to act with honesty and integrity by knowingly submitting false and misleading information to a mortgage lender in both 2007 and 2009. He also demonstrated serious failings in competence and capability by exposing Sovereign to the risk of being used for mortgage fraud. The seriousness of the facts and matters described above demonstrates that Mr Khan fell short of the standards expected of a person performing functions in relation to a regulated activity carried on by an approved person.

REPRESENTATIONS

55. Mr Khan made written representations on 27 November 2012, 13 December and 8 January 2013. He made oral representations on 10 January 2013 and further written submissions on 16 January. This section contains a brief summary of the key representations. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of the representations, whether or not set out below.

56. Mr Khan said that the prohibition order was not in dispute. There was also no dispute that the 2007 mortgage application had not been made in his capacity as an approved person. He wished to make representations about the alleged breach of Statement of Principle 1 in relation to the 2009 mortgage application and serious financial hardship.

Statement of Principle 1

57. Mr Khan said that he did not act dishonestly and without integrity. The mortgage application was incorrect but it was not unreasonable to assume that he would have had an income of £60,000 although he did not have that income when the form went in. He had substantial moneys in Sovereign and he had a number of contracts which he hoped would come on line in the very near future.
58. His income was inserted into the mortgage applications having been discussed with his professional adviser. He had relied in good faith on the advice concerning his present and prospective earnings and on the documentation, such as the pay slips, which he had received from his adviser. It had been wrong for the adviser to state 'earned income' as opposed to 'projected income' but Mr Khan said that he should not be responsible for that. At the very most, he had been a little reckless not to have pointed it out at the time. The information on the payslips was correct. A drawdown could have been made at any time to substantiate the information. Withdrawing funds would have been futile and of no relevance.
59. There was no intention to deceive any of the mortgage providers. No provider had complained and no arrears had accrued. No-one had been disadvantaged. The test of a successful mortgage application is the ability to meet payments.
60. The FSA should be cautious in taking the view that his conduct was blatant dishonesty as Mr Khan had not been subject to the rigours of the court process.
61. There was no intention to deceive the FSA during the investigation. Mr Khan said that he had co-operated throughout and had accepted voluntarily that Sovereign's Part IV permission should be cancelled. All statements and communications with the FSA had been in good faith and with the intention of trying to assist and resolve matters speedily. No previous disciplinary action had been taken against him by any relevant body.
62. If he was in breach of Statement of Principle 1, it was inadvertent.
63. Mr Khan accepted that his KYC systems and controls were not up to standard. However, he had no intention to mislead any of the mortgage providers about information relating to third parties identification. He made no gain from his inadequate processes.
64. A prohibition order would be sufficient punishment.

Serious financial hardship

65. Mr Khan said that he had no means of paying any financial penalty imposed. He had been open and frank about his assets and liabilities and had had financial information

verified where possible. He also made other submissions relating to his personal circumstances.

FINDINGS AND CONCLUSIONS

66. The written representations were unequivocal: “I maintain the information in the payslips which [my adviser] produced was correct”. To his credit, when questioned in the course of making his oral representations about the information in some detail, Mr Khan acknowledged that the information was not correct. He said that the payslips were not true statements although he still believed they could be substantiated; that they were correct based on a projection; that they were incorrect based on an actual and that should have been made clear. Mr Khan admitted that it was not acceptable for him to have relied on the payslips as evidence of actual payments in support of a mortgage application.
67. Although some credit is to be given to Mr Khan in finally acknowledging the false nature of the payslips, it does not avoid the fact that:
 - (1) he knowingly used the false information in support of his mortgage application;
 - (2) he blamed his adviser for preparing payslips which he knew to be false without acknowledging his responsibility for ensuring that they were accurate;
 - (3) he made the 2009 application in his capacity as an approved person and that, as such, his clients would look to him to be a man of honesty and integrity; and
 - (4) he repeated in 2009 what he had done in 2007.
68. It is self-evident, and a mortgage broker must have been aware, that a prospective lender can only assess realistically whether to lend to someone when it is in possession of the information it asks for. It is not fair to a prospective lender, apart from being dishonest, knowingly to give a version of events, figures or information based on anything else and pass them off as true.
69. It is neither correct nor relevant to say that “*The test of a successful mortgage application is the ability to meet payments*” as Mr Khan claimed (see paragraph 59). The obligation of an applicant is to answer the questions fully and truthfully, putting the lender into the position he expects to be. Referring, later, to matters such as arrears, complaints and disadvantage, cannot help answer the question ‘Has the application form been properly completed?’.
70. The declaration to the mortgage lender that the information was correct (see paragraph 30) was not the case and Mr Khan knew that it was not the case.
71. It should also be self-evident to anyone, and particularly to a mortgage broker acting in the course of his business, that certifying a photograph as having a true likeness to a person without having met the person is dishonest.
72. The FSA has come to the clear conclusion that Mr Khan knew exactly what he was doing when completing his mortgage applications and that his actions were dishonest rather than reckless. It was not inadvertence on his part that led him to make two applications in the manner that he did two years apart.

SANCTION

Financial penalty for breach of Statement of Principle 1

73. 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, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
74. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of a case. The FSA considers that a financial penalty is an appropriate sanction in this case, given the serious nature of the breach and the need to send out a strong message of deterrence to others. For the reasons given below, the FSA believes that the appropriate penalty in this case for the breaches of both Statement of Principle 1 and Statement of Principle 6 is £80,000.
75. In relation to the breach of Statement of Principle 1, the FSA's policy on the imposition of a financial penalty is set out in Chapter 6 of the version of DEPP in force prior to 6 March 2010, which formed part of the FSA Handbook. The relevant sections of DEPP are set out in more detail in the Annex to this Decision Notice.
76. DEPP 6.5.2G sets out 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.

Deterrence (DEPP 6.5.2G(1))

77. The FSA consider that the imposition of the financial penalty is appropriate as it supports the FSA's stance on credible deterrence, both in terms of discouraging Mr Khan and others from acting dishonestly and encouraging compliance with regulatory standards and requirements.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(2))

78. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breach, including the facilitation of financial crime, and the extent to which the breach demonstrated a lack of honesty and integrity on the part of Mr Khan.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

79. The FSA considers that Mr Khan acted in a deliberate manner.

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

80. The FSA recognises that the financial penalty imposed on Mr Khan is likely to have a significant impact on him as an individual but it is considered to be proportionate in relation to the seriousness of the misconduct and to Mr Khan's position as an approved person performing a significant influence function at Sovereign.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

81. The FSA considers that a financial penalty of the level imposed is appropriate having taken account of all relevant factors, including the impact such a penalty might have on Mr Khan's financial resources and the need for credible deterrence.

Conduct following the breach (DEPP 6.5.2G(8))

82. Mr Khan actively sought in the FSA's investigation to divert responsibility to his professional adviser and claimed that he had naively adopted the £60,000 income figure suggested to him. He did so despite knowing that his explanation was implicitly contradicted by the fact that he had made the same false declaration to a lender in December 2007.

Disciplinary record and compliance history (DEPP 6.5.2G(9))

83. There has been no previous disciplinary action against Mr Khan.

Other action taken by the FSA (DEPP 6.5.2G(10))

84. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar misconduct.
85. Having considered all the circumstances set out above, the FSA has determined that £80,000 is an appropriate financial penalty to impose on Mr Khan for the breach of Statement of Principle 1 for deliberate involvement in mortgage fraud.

Financial penalty for breach of Statement of Principle 6

86. In relation to the breach of Statement of Principle 6, which took place predominantly after March 2010, the FSA's policy for imposing a financial penalty is set out in Chapter 6 of the current version of DEPP. Under the current version of DEPP, the FSA applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases. The five-step framework is described but for the reasons given in paragraphs 99 and 100 the resulting figure is reduced to £0.

Step 1 – disgorgement

87. Pursuant to DEPP 6.5B.1G, at Step 1 the FSA seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
88. Since lenders identified and rejected the false customer information supplied by Mr Khan, Mr Khan did not derive any financial benefit as a result of the breach. Therefore the Step 1 figure is zero.

Step 2 – the seriousness of the breach

89. Pursuant to DEPP 6.5B.2G, at Step 2 the FSA determines a figure that reflects the seriousness of the breach.
90. Mr Khan has not provided evidence to demonstrate his relevant income in the period between March 2010 and March 2011. However, in the accounting period between 1 July 2010 and 31 June 2011 Mr Khan's director's loan account with Sovereign increased by £11,132. In the absence of more recent information, the FSA had used use £11,132 as relevant income figure.
91. The FSA considers that the seriousness of Mr Khan's misconduct should be categorised under Level 4 (30%) since financial crime was occasioned as a result of his misconduct.
92. Therefore the step 2 figure is £3,300.

Step 3 – mitigating and aggravating factors

93. Pursuant to DEPP 6.5B.3G, at Step 3 the FSA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
94. Although, in response to the FSA's invitation, Mr Khan has voluntarily varied Sovereign's Part IV permission so as to cease doing regulated business, he has since alleged that he was forced into doing so. Moreover, Mr Khan has failed to reply to information requirements in the set time limit. Therefore the FSA does not think that his limited cooperation in agreeing to vary Sovereign's Part IV permission should have any material effect in reducing the penalty.
95. On balance, the FSA does not consider it necessary to alter the penalty figure at Step 3. Therefore the Step 3 figure is £3,300.

Step 4 – deterrence

96. When added to the penalty imposed for the breach of Statement of Principle 1, the FSA considers that the total penalty of £83,300 would sufficiently deter the individual who committed the breach. However, if the Statement of Principle 6 breach was being considered in isolation the FSA would consider that the figure arrived at after Step 3 would need to be significantly increased to ensure credible deterrence.

Step 5 – settlement discount

97. There is no settlement discount. The penalty figure after Step 5 is therefore £3,300.

Mr Khan's personal circumstances and serious financial hardship

98. Mr Khan made a number of submissions relating to his personal circumstances, including his financial circumstances. In considering his personal circumstances, the FSA has taken into account in particular that Mr Khan is living with his disabled mother who has, or had, an interest in the property in which they are living. The

extent of that interest has never been made fully clear but for these purposes the FSA is prepared to acknowledge that what happens to Mr Khan affects his mother.

99. In some cases of mortgage fraud, the conduct of the applicant is such that no account should be taken of serious financial hardship notwithstanding that it may lead to insolvency. The FSA would have taken the view that this was such a case. However, in view of the particular circumstances of Mr Khan, the FSA has decided to reduce the penalty for breach of Statement of Principle 6 to £0.
100. In doing so, the FSA recognises that any penalty it imposes must be appropriate which requires it to consider all the circumstances of each case. In the case of Mr Khan, the FSA has taken into account all the circumstances of which it is aware including in particular that he shares his home with his mother, the financial penalty for breach of Statement of Principle 1 and the full extent of the financial position of Mr Khan so far as it can be assessed. The FSA does not accept that Mr Khan has “no means” of paying any financial penalty.

Withdrawal of approval and prohibition

101. Mr Khan has failed to act with honesty and integrity by knowingly submitting false and misleading information to two mortgage lenders. He has also failed to act with competence and capability as an approved person performing the director function (CF1) by exposing Sovereign to the risk of being used to facilitate financial crime. As such, Mr Khan is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
102. It is appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Khan to perform controlled functions at Sovereign and to make an order prohibiting Mr Khan from performing any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
103. The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Khan’s approval be withdrawn and that he be prohibited from performing any regulated activity. The relevant provisions of EG are set out in the Annex to this Notice.

PROCEDURAL MATTERS

Decision maker

104. The decision which gave rise to the obligation to give this Notice was made by Regulatory Decisions Committee.
105. This Decision Notice is given to Mr Khan under sections 57 and 67 and in accordance with section 388 of the Act. It is given to Sovereign under section 63 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

106. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the “Tribunal”). The Tax and Chancery Chamber is the part of the

Upper Tribunal, which, among other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Tribunal.

107. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you (or on your behalf) and filed with a copy of this Notice. The Tribunal's contact details are The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email:

financeandtaxappeals@tribunals.gsi.gov.uk).

108. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

109. A copy of Form FTC3 must also be sent to Rachel West at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Access to evidence

110. Section 394 of the Act applies to this Decision Notice. The persons to whom this Decision Notice is given have the right to access:

- (1) the material upon which the FSA has relied on in deciding to give this Notice; and
- (2) any secondary material which, in the opinion of the FSA, might undermine that decision.

111. There is no such secondary material.

Third party rights

112. There are no third party rights.

Confidentiality and publicity

113. You should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither you nor a person to whom this notice is copied may publish it or any details concerning it unless the FSA has published the notice or those details. The FSA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. You should be aware, therefore, that the facts and matters contained in this notice may be made public.

FSA contacts

114. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142; fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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Andrew Long
Acting Chairman, Regulatory Decisions Committee

ANNEX (paragraphs 39, 75 and 103)

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
2. Section 56 of the Act provides that the FSA may make a prohibition order prohibiting an individual from performing a specified function.
3. Section 63 of the Act provides that the FSA may withdraw an individual's approval to carry out a controlled function if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
4. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

Handbook provisions

5. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

Statements of Principle and the Code of Practice for Approved Persons

6. The Statements of Principle and the Code of Practice for Approved Persons ("APER") sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. APER 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.
7. APER 3.1.3G states 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
8. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

9. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
10. The Statements of Principle relevant to this matter are:
 - (1) Statement of Principle 1, which provides that an approved person must act with integrity in carrying out his controlled function; and
 - (2) Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.
11. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
12. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
 - (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
13. APER 4.1.4E(3) states that deliberately misleading (or attempting to mislead) a client, the firm or the FSA by act or omission is conduct that does not comply with Statement of Principle 1. APER 4.1.4E (9) states that such conduct includes, but is not limited to, providing false or inaccurate documentation or information.
14. APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6. These include:
 - (1) failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible; and
 - (2) permitting transactions without a sufficient understanding of the risks involved.

Senior Management Arrangements, Systems and Controls

15. One of the purposes of SYSC is to encourage firms' directors and senior managers to take appropriate practical responsibility for their firms' arrangements on matters likely to be of interest to the FSA because they impinge on the FSA's functions under the Act.
16. SYSC 3.2.6R states that a firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.

DEPP guidance pre 6 March 2010

17. The FSA has had regard to the guidance on the imposition and amount of penalties set out in Chapter 6 of the version of DEPP in place between 28 August 2007 and 5 March 2010. All references to DEPP in this subsection of the Notice refer to the DEPP guidance in place during that period.
18. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
19. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
20. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

21. When determining the appropriate level of financial penalty, the FSA has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market 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.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

22. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach and the loss or risk of loss caused to consumers, investors or other market users.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

23. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

24. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

25. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

Conduct following the breach: DEPP 6.5.2G(8)

26. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

27. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

DEPP guidance since 6 March 2010

28. The FSA has also had regard to the guidance on the imposition and amount of penalties set out in Chapter 6 of the current version of DEPP. All references to DEPP in this subsection of the Notice refer to the current DEPP guidance.
29. DEPP 6.4.1G provides that the FSA will consider all the relevant circumstances of the case when deciding whether to impose a financial penalty.
30. The five steps referred to in DEPP 6.5B (The five steps for penalties imposed on individuals in non-market abuse cases) are set out in more detail below.

Step 1 - disgorgement

31. The FSA will seek to deprive an individual of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this.

Step 2 – the seriousness of the breach

32. The FSA will determine a figure which will be based on a percentage of an individual's "relevant income". "Relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred (the "relevant employment"), and for the period of the breach.
33. This approach reflects the FSA's view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The FSA also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The FSA recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the FSA still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a controlled function.
34. Having determined the relevant income the FSA will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the FSA will consider the seriousness of the breach and choose a percentage between 0% and 40%.
35. In deciding which level is most appropriate to a case against an individual, the FSA will take into account various factors which will usually fall into the following four categories:
 - (1) factors relating to the impact of the breach;
 - (2) factors relating to the nature of the breach;
 - (3) factors tending to show whether the breach was deliberate; and
 - (4) factors tending to show whether the breach was reckless.
36. Factors relating to the impact of a breach committed by an individual include the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the breach, either directly or indirectly.
37. Factors relating to the nature of a breach by an individual include:
 - (1) the nature of the rules, requirements or provisions breached;
 - (2) the frequency of the breach;

- (3) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
- (4) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the breach; and
- (5) whether the individual took any steps to comply with FSA rules, and the adequacy of those steps.

38. Factors tending to show the breach was reckless include:

- (1) the individual appreciated there was a risk that his actions or inaction could result in a breach and failed adequately to mitigate that risk; and
- (2) the individual was aware there was a risk that his actions or inaction could result in a breach but failed to check if he was acting in accordance with internal procedures.

39. In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:

- (1) financial crime was facilitated, occasioned or otherwise attributable to the breach;
- (2) the breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur; and
- (3) the breach was committed deliberately or recklessly.

Step 3 – mitigating and aggravating factors

40. The FSA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

41. The following factors may have the effect of aggravating or mitigating the breach:

- (1) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention (or the attention of other regulatory authorities, where relevant);
- (2) the degree of cooperation the individual showed during the investigation of the breach by the FSA, or any other regulatory authority allowed to share information with the FSA;
- (3) whether the individual took any steps to stop the breach, and when these steps were taken;
- (4) any remedial steps taken since the breach was identified, including whether these were taken on the individual's own initiative or that of the FSA or another regulatory authority;

- (5) the previous disciplinary record and general compliance history of the individual;
- (6) whether FSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (7) whether the FSA publicly called for an improvement in standards in relation to the behaviour constituting the breach or similar behaviour before or during the occurrence of the breach.

Step 4 – adjustment for deterrence

42. If the FSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches then the FSA may increase the penalty. Circumstances where the FSA may do this include:
- (1) where the FSA considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence;
 - (2) where previous FSA action in respect of similar breaches has failed to improve industry standards;
 - (3) where the FSA considers it is likely that similar breaches will be committed by the individual or by other individuals in the future; and
 - (4) where a penalty based on an individual's income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

Step 5 – settlement discount

43. The FSA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the individual concerned reached an agreement.

Enforcement Guide (“EG”)

44. The FSA’s policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007.
45. The FSA’s approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.
46. EG 9.1 states that the FSA’s power under section 56 of FSMA to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order 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.

47. EG 9.2 states that the FSA's effective use of the power under section 63 of FSMA to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
48. EG 9.3 states that in deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the FSA will consider all the relevant circumstances.
49. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has 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.
50. EG 9.5 provides that the scope of the prohibition order will depend on 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.
51. 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. These may include, but are not limited to, the following:
 - (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
 - (2) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) (EG 9.9(3));
 - (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
 - (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
 - (5) 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

- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
52. 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. The examples include severe acts of dishonesty, which may have resulted in financial crime and serious lack of competence (EG 9.12(3)).
53. EG 9.14 states that where the FSA considers it is appropriate to withdraw an individual's approval to perform a controlled function within a particular firm, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.
54. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.
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