

Mr Markou has referred this Decision Notice to the Upper Tribunal to determine, in the case of the decision to impose a disciplinary sanction: what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate; and in relation to the prohibition order and withdrawal of approval: whether to dismiss the reference or remit it to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.



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Accordingly, the proposed action outlined in this Decision Notice will have no effect pending the determination of the case by the Tribunal. The Tribunal's decision will be made public on its website.

DECISION NOTICE

To: **Markos Theodosi Markou**

To: **Financial Solutions (Euro) Limited**

Individual
Reference
Number:

MXM01997

Firm
Reference
Number:

314245

Date: **29 January 2021**

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to:

- (a) impose on Mr Markos Markou, pursuant to section 66 of the Act, a financial penalty of £25,000;
- (b) withdraw, pursuant to section 63 of the Act, Mr Markou's approval given by the Authority under section 59 of the Act to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at Financial Solutions (Euro) Limited; and
- (c) make an order, pursuant to section 56 of the Act, prohibiting Mr Markou from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2. SUMMARY OF REASONS

2.1. Mr Markou is approved by the Authority to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE, a small mortgage and insurance intermediary. As FSE's sole director, Mr Markou is responsible for establishing and

maintaining FSE's systems and controls and the oversight of its mortgage business.

- 2.2. In the period from 24 November 2015 to 14 October 2017, Mr Markou did not have appropriate oversight of FSE's mortgage business. Mr Markou also failed to take sufficient steps to prevent FSE from transacting mortgage business between 10 July 2017 and 14 October 2017, during which period he was aware that FSE did not have professional indemnity insurance. Mr Markou's conduct placed FSE at risk of being used as a vehicle for financial crime and his conduct did not appropriately protect the interests of consumers.
- 2.3. Mr Markou was fully aware of the regulatory standards required in relation to FSE's mortgage business and the risks associated with a failure to comply with those standards. The Authority had previously and repeatedly communicated to Mr Markou on occasions between 2011 and 2015 serious concerns regarding FSE's oversight arrangements and its systems and controls relating to the prevention of financial crime.
- 2.4. While Mr Markou had, following interventions by the Authority between 2011 and 2015, satisfied the Authority for brief periods that he had addressed these concerns, by the time of a visit by the Authority to FSE's offices in May 2017 it was apparent that Mr Markou had permitted FSE to revert to practices in relation to which the Authority had previously expressed serious concerns.
- 2.5. By ignoring the risks that he knew his conduct created, Mr Markou acted recklessly and demonstrated a lack of integrity. As a result, Mr Markou:
 - (a) failed to comply with Statement of Principle 1 (acting with integrity) in the Authority's Statements of Principle and Code of Practice for Approved Persons part of the Handbook;
 - (b) is not a fit and proper person to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE; and
 - (c) is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 2.6. As a result, the Authority has decided to impose a financial penalty on Mr Markou pursuant to section 66 of the Act, to withdraw Mr Markou's approval to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE pursuant to section 63 of the Act and to make an order prohibiting Mr Markou from performing

any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act.

- 2.7. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"CeMAP" means Certificate in Mortgage Advice and Practice;

"CEO" means Chief Executive Officer;

"CPD" means Continuing Professional Development;

"December 2011 Variation of Permission" means the variation by the Authority on 5 December 2011, on the application of FSE, of the permission granted to FSE pursuant to Part IV of the Act;

"DEPP" means the part of the Handbook titled "Decision Procedure and Penalties Manual";

"EG" means the Authority's Enforcement Guide;

"FSE" means Financial Solutions (Euro) Ltd;

"FSE Decision Notice" means the decision notice given by the Authority to FSE dated 23 May 2019;

"FSE Tribunal Costs Decision" means the Tribunal's decision dated 5 August 2020 on costs in relation to the FSE Tribunal Proceedings;

"FSE Tribunal Decision" means the Tribunal's decision dated 22 April 2020 in respect of the FSE Tribunal Proceedings;

"FSE Tribunal Proceedings" means the proceedings in respect of FSE's reference of the FSE Decision Notice to the Tribunal;

the "Handbook" means the Authority's Handbook of rules and guidance;

"the May 2017 Visit" means the visit by the Authority to FSE on 9 May 2017;

"MCOB" means the part of the Handbook titled "Mortgages and Home Finance: Conduct of Business Sourcebook";

"MSP" means FSE's Mortgage Sales Process document that Mr Markou produced to the Authority;

“PII” means professional indemnity insurance;

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

“Relevant Period” means the period from 24 November 2015 to 14 October 2017;

“Statement of Principle” means one of the Statements of Principle for Approved Persons set out in chapter 2 of the Authority’s Statements of Principle and Code of Practice for Approved Persons (known as APER), part of the Handbook;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act; and

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

4. FACTS AND MATTERS

FSE background and structure

- 4.1 FSE was incorporated on 29 November 2001. Mr Markou is its sole director and shareholder. FSE was authorised by the Authority to advise on and arrange regulated mortgage contracts on 9 November 2004. These activities have accounted for the majority of FSE’s business but FSE is also authorised to advise on and arrange retail non-investment insurance contracts.
- 4.2 Mr Markou was approved by the Authority on 9 November 2004 to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at FSE¹. Since then, including throughout the Relevant Period, he has been responsible for establishing and maintaining FSE’s systems and controls and for maintaining proper oversight of FSE’s business, including in relation to the detection and prevention of financial crime.
- 4.3 Mr Markou has undertaken minimal training in financial services and does not hold the CeMAP qualification. He has several other business interests and is presently a director of 14 other companies in the UK, some of which operate from the same premises as FSE. His professional experience is primarily confined to the provision of legal and dispute resolution services.
- 4.4 FSE’s mortgage advisers during the Relevant Period were self-employed and generated mortgage business for FSE primarily through word-of-mouth in their

¹ Mr Markou was approved to perform the CF1 (Director) and CF3 (Chief Executive) controlled functions at FSE until 8 December 2019. Since 9 December 2019, pursuant to the introduction of the Senior Managers and Certification Regime, he has been approved to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE.

local communities. Mr Markou also generated mortgage leads in the same way (and sourced business through clients of his other companies) but to a lesser extent.

- 4.5 In the course of running FSE's business during the Relevant Period, Mr Markou should have:
- (a) established, maintained and enforced effective financial crime systems and controls, particularly in relation to the detection and prevention of mortgage fraud;
 - (b) established and practised an appropriate level of oversight and monitoring of FSE's mortgage business, particularly in relation to the detection and prevention of mortgage fraud;
 - (c) ensured that FSE did not carry on mortgage business without professional indemnity insurance in place; and
 - (d) ensured that FSE's mortgage business did not revert to previous non-compliant practices in relation to which the Authority had previously expressed serious concerns.

FSE's Regulatory History

- 4.6 The Authority's interventions in relation to FSE's mortgage business date back to February 2011. These repeated instances of close supervision of FSE by the Authority demonstrate Mr Markou's knowledge of the risks arising from his conduct during the Relevant Period.

The February 2011 visit

- 4.7 The Authority visited FSE in February 2011 and highlighted concerns about FSE's financial crime systems and controls. In July 2011, the Authority notified Mr Markou that it had opened an investigation into FSE.
- 4.8 On 5 December 2011, on the application of FSE, the Authority varied the permission granted to FSE pursuant to Part IV of the Act by imposing a requirement on FSE which prevented it from carrying on mortgage business unless all mortgage applications that it intended to submit to lenders were reviewed by an independent compliance consultant. The terms of the December 2011 Variation of Permission also required FSE to obtain an independent report on its compliance systems and controls.
- 4.9 In January 2012, the Authority concluded its investigation and expressed its concerns to FSE that it had inadequate systems and controls in place to assess and

monitor the competence of its mortgage advisers, whether permanent employees or self-employed. The Authority also raised concerns that FSE's record keeping was inadequate and prevented it from demonstrating that it was providing suitable advice to its customers.

The September 2012 visit

- 4.10. The Authority visited FSE in September 2012 to assess the progress made in relation to its systems and controls following the December 2011 Variation of Permission. The Authority subsequently notified FSE and Mr Markou of areas for improvement, emphasising its concerns regarding the adequacy of FSE's financial crime systems and controls and the adequacy of FSE's assessment of mortgage adviser competency.
- 4.11. In August 2014, Mr Markou admitted non-compliance with the December 2011 Variation of Permission, stating that complying with it was not commercially viable. He again agreed not to submit any regulated business to lenders until it had first been reviewed by an independent consultant.
- 4.12. In December 2014, the December 2011 Variation of Permission was lifted on the basis that the external compliance consultant found no regulatory failings in relation to FSE's mortgage applications. The Authority informed Mr Markou that it considered it appropriate for it to monitor FSE's progress and that it therefore intended to conduct a further review of FSE's business in 2015.

The September and November 2015 reviews

- 4.13. In September 2015, the Authority carried out a desk based review of FSE's regulated activities and FSE's systems and controls on financial crime, and communicated the outcome to Mr Markou. The Authority informed Mr Markou that it had identified non-compliance with MCOB rules, that it had concerns about the plausibility of client income and employment details declared on some mortgage files, and that it considered that FSE had inadequate financial crime systems and controls which left it at risk of being used for financial crime. Mr Markou subsequently agreed to a similar arrangement to that which was in place between December 2011 and December 2014, such that an external compliance consultant would review FSE's mortgage applications before they were submitted to lenders.
- 4.14. On 24 November 2015, following a further review of FSE's mortgage customer files which demonstrated that FSE's clients had received suitable advice, the Authority lifted its requirement that FSE must not place any regulated mortgage business with lenders without an external compliance check.

Removal of FSE from lenders' panels in October 2016 and February 2017

- 4.15. In October 2016, a mortgage lender notified Mr Markou that it had removed FSE from its panel of mortgage intermediaries. The lender intended to visit FSE's offices but was unable to do so because Mr Markou refused to allow the lender's monitoring team to visit, in breach of the terms and conditions of being on the lender's panel. The Authority understands that the purpose of the proposed visit by the lender was to address its concerns over potentially false documentation and unverified payslips being provided in support of mortgage applications being submitted by FSE.
- 4.16. Mr Markou later stated to the Authority that he intended at the time to appeal the lender's decision. However, Mr Markou did not formally appeal the lender's decision, nor did he notify the Authority of FSE's removal from the lender's panel.
- 4.17. On 20 February 2017, another lender removed FSE from its lending panel. The Authority understands that the removal arose from the lender suspecting mortgage fraud was taking place at FSE. The lender's concerns arose from its identification of at least 48 mortgage applications submitted by FSE between 2014 and 2017, where the income of the applicants either reduced or ceased shortly after the mortgage was completed. Mr Markou did not notify the Authority of FSE's removal from the lender's panel.

The May 2017 Visit

- 4.18. On 9 May 2017, the Authority visited FSE's offices. The visit took place after the Authority received information from the two mortgage lenders referred to above regarding FSE's removal from their panels. In light of the reasons cited for the panel removals, the purpose of the visit was to assess FSE's financial crime systems and controls and to perform a review of FSE's client files.
- 4.19. On 11 May 2017, two days after the May 2017 Visit, FSE's PII cover lapsed and was not subsequently renewed.
- 4.20. In June 2017, the Authority communicated the conclusions of its review to Mr Markou. Among these conclusions were concerns that FSE had inadequate financial crime systems and controls, leaving FSE exposed to being used as a vehicle for financial crime.
- 4.21. On 13 February 2018, in light of the concerns arising from the May 2017 Visit, the Authority appointed investigators to conduct an investigation into Mr Markou's conduct at FSE. The Authority identified the matters set out below in the course of

the investigation.

FSE's financial crime systems and controls

Policies and procedures

- 4.22. Mr Markou provided the Authority with a number of general financial crime policies and procedures such as "Anti-Bribery Policies". The documents were not dated, and the Authority has not seen any evidence that they were ever implemented, monitored or reviewed by Mr Markou. Mr Markou also produced to the Authority a "Business Risk Awareness" checklist, which should have been followed. The Authority has not seen any evidence that this was used either by Mr Markou or FSE's mortgage advisers during the Relevant Period.
- 4.23. Mr Markou also produced FSE policies relating to "Customer Vulnerability" and "PEPs and Enhanced Due Diligence", but neither of these were dated and the Authority has not seen any evidence that they were ever properly implemented, followed, monitored or reviewed by Mr Markou or FSE's mortgage advisers.
- 4.24. Mr Markou also produced a Mortgage Sales Process document, but the actions specified in this document were not followed by the mortgage advisers. For example, the MSP required payslips and bank statements to be collected from customers and checked for inconsistencies. Specifically, four months of payslips and bank statements were required but on several occasions Mr Markou did not ensure that this process was followed. Further, the MSP stated "*robust notes will be required to be placed on file to clarify any inconsistencies*". The Authority conducted a review of 19 client files. The results of that review showed that all 19 client files reviewed contained no notes from the mortgage advisers querying or identifying any unusual transactions, income or documentation even though there were inconsistencies (see paragraph 4.29 below). The MSP also obliged mortgage advisers "*to discuss the recommendation and proposed outcome to the customer with the Firm's CF1 Director (Markos T Markou), before the business is submitted, which is an addition [sic] safeguard*". None of the client files reviewed contained any evidence of such discussions and nor were there any records of meetings between Mr Markou and the mortgage advisers to demonstrate whether such discussions had taken place during the Relevant Period.
- 4.25. The Authority found that a "Mortgage Fraud Checklist" was present in all but two of the 19 client files reviewed. Where the files contained the Mortgage Fraud Checklist it was incomplete. For example, although the names of the mortgage advisers appeared in all client files, the name of the reviewer was left blank. This suggests that the files were not reviewed by Mr Markou. The Authority found no evidence

that Mr Markou conducted meetings to check mortgage applications and approve them as correct, in accordance with the written processes he should have implemented and maintained.

- 4.26. While the written policies and procedures were accessible to FSE's mortgage advisers, Mr Markou failed to implement and maintain them to ensure that they were being followed. This presented a risk of mortgage fraud not being identified.

FSE's approach to the assessment of customer affordability

- 4.27. The initial stages of FSE's mortgage sales process involved FSE providing customers with an initial disclosure document, completing the client fact find and collecting each customer's proof of identification and address and financial documentation e.g. payslips and bank statements to verify income.

- 4.28. The process then involved carrying out the affordability checks set out in the MSP. This was supposed to take into account the customer's income and outgoings. In particular, the check was supposed to *"consider how plausible a customer's income or outgoings are, taking into account the customer's overall circumstances. This will involve cross-referencing the information on the fact find to any documentation received from the customer such as the bank statement"*.

- 4.29. The 19 client files reviewed by the Authority showed no evidence of adequate checks being carried out in accordance with FSE's written procedures. The mortgage applications submitted by FSE contained obvious inconsistencies which were not identified or queried by Mr Markou. There were inconsistencies across the 19 client files, none of which contained any notes querying unusual financial behaviour, income or transactions. There was no record of Mr Markou having appropriate oversight of this process. Further, there were no notes placed on the client files by Mr Markou to clarify any inconsistencies. Examples of inconsistencies included:

- (1) dates of salary payment on a customer's payslips which were materially different to the date the salary actually appeared on the customer's bank statement;
- (2) unexplained fluctuations in salary from one month to the next; and
- (3) a payment being made by the employee to the employer, including a significant and large payment of £9,000.

- 4.30. Mr Markou's failure to ensure that he had appropriate oversight of FSE's mortgage business meant that processes were not followed correctly and obvious

inconsistencies in customers' income and outgoings were not identified or queried. The lack of oversight meant that Mr Markou failed to identify occasions where the plausibility of income and outgoings was not being assessed with an appropriate degree of scrutiny.

Oversight of mortgage applications

- 4.31. Although all of FSE's client files contained mortgage applications and accompanying correspondence, none of the 19 client files seen by the Authority made any reference to Mr Markou or FSE conducting a check of the mortgage applications.

Client file checks and compliance

- 4.32. Mr Markou stated to the Authority that his approach to the identification of mortgage fraud involved file checks against the Mortgage Fraud Checklist, and that the systems and controls in relation to these did not change during the Relevant Period. However, the Authority has seen no evidence that the client files were checked by Mr Markou during the Relevant Period.

Oversight of FSE's mortgage advisers

Reporting lines and accessibility

- 4.33. Mr Markou operated no formal reporting process between himself and FSE's mortgage advisers who predominantly worked remotely away from FSE's offices and recorded business conducted via FSE's electronic New Business Register. Occasionally, FSE's mortgage advisers would also meet clients at FSE's offices. They also attended FSE's offices for meetings when requested by Mr Markou, but there was no formal requirement for them to do so. Mr Markou was not easily accessible to FSE's mortgage advisers, largely because of the amount of time he spent on his other business interests.

Approach to monitoring FSE's mortgage advisers

- 4.34. Mr Markou took no formal steps to monitor FSE's mortgage advisers and instead simply relied on their experience and the absence of complaints from customers. Rather than regularly monitor mortgage files, Mr Markou instead preferred to trust that there were no issues with the work. Mr Markou had the means to oversee FSE's mortgage advisers because, although they worked remotely, client files were uploaded to the FSE server to which Mr Markou had access.
- 4.35. Mr Markou appears to have held occasional one-to-one meetings with FSE's mortgage advisers of a maximum frequency of "once every two months", but

records of these were, according to Mr Markou, *“not kept strictly 100% the way it should have been done”*.

- 4.36. The mortgage advisers uploaded new mortgage applications to the FSE server. Mr Markou could access and review these files but at no stage did he conduct any file reviews or raise any concerns regarding adviser competency. For example, Mr Markou took no proactive steps to understand or acquire any awareness of who approved FSE’s mortgage-related correspondence, including recommendations and suitability letters.

Assessment of mortgage adviser competence and training

- 4.37. Mr Markou did not establish an adequate system to monitor the competence of FSE’s mortgage advisers, either through one-to-one assessments or any form of appraisal system. Although Mr Markou did introduce an internal Adviser Competency Framework, it was not implemented until after the May 2017 Visit.
- 4.38. Adviser competency was developed through ad hoc CPD training undertaken on the mortgage advisers’ own initiative. CPD was not conducted at the instigation of Mr Markou, nor was it monitored, checked or assessed by him. None of the structured training undertaken related to matters pertaining to financial crime generally or mortgage fraud specifically. Mr Markou took no steps to provide financial crime training.
- 4.39. Mr Markou’s approach to assessing competence and training was inadequate. In the Authority’s view, this is in part borne out by FSE’s removal from the lender panels in 2016 and 2017, both of the lenders having had concerns about the quality of the mortgage applications submitted by FSE and specifically the veracity of the income and employment details of customers.

Submission of new mortgage business without PII in place

- 4.40. FSE held valid PII cover from 12 May 2016 until 11 May 2017 when it expired and was not renewed. Mr Markou became aware that FSE’s PII cover would not be renewed no later than 10 July 2017. However, despite this knowledge, Mr Markou did not take action to ensure that FSE ceased to carry on regulated activities. Between 15 July 2017 and 14 October 2017 FSE’s mortgage advisers processed 20 new residential mortgage applications without having PII cover in place.
- 4.41. By failing to prevent FSE’s mortgage advisers from submitting new mortgage business when he was aware that FSE did not have valid PII cover, Mr Markou put the interests of FSE’s mortgage customers at risk; this practice risked causing

consumer detriment.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

Failure to comply with Statement of Principle 1

- 5.2. Contrary to Statement of Principle 1, Mr Markou demonstrated a lack of integrity during the Relevant Period by recklessly failing to:

- (a) establish, maintain and enforce effective financial crime systems and controls, particularly in relation to the detection and prevention of mortgage fraud;
- (b) establish and practise an appropriate level of oversight and monitoring of FSE's mortgage advisers, particularly in relation to the detection and prevention of mortgage fraud; and
- (c) ensure that FSE's mortgage advisers did not carry on regulated mortgage business beyond the date on which he knew FSE's PII had lapsed.

- 5.3. Mr Markou was aware of the regulatory standards required in relation to FSE's mortgage business as the Authority had, prior to the Relevant Period, repeatedly communicated serious concerns relating to FSE's financial crime systems and controls and oversight arrangements. While Mr Markou had satisfied the Authority that he had addressed these concerns on two previous occasions, by the time of the May 2017 Visit, Mr Markou had permitted FSE to revert to practices in relation to which the Authority had previously expressed serious concerns. In doing so, the Authority considers that Mr Markou ignored the obvious risks created by his conduct.

Lack of fitness and propriety

- 5.4. As a result of having demonstrated a lack of integrity, as set out above, the Authority considers that Mr Markou is not a fit and proper person to perform any functions in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

6. SANCTION

Financial penalty

- 6.1. The Authority has decided to impose a financial penalty on Mr Markou pursuant to section 66 of the Act in respect of his failure to comply with Statement of Principle 1. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to that guidance.
- 6.2. In determining the financial penalty to be attributed to Mr Markou's breach, the Authority has had particular regard to the following matters:
- (a) the seriousness of the breach;
 - (b) the aggravating factors relating to the breach; and
 - (c) the need for credible deterrence.
- 6.3. The penalty calculation in relation to Mr Markou's breach of Statement of Principle 1 is set out in Annex B to this Notice. Having regard to all the circumstances, the Authority considers it appropriate to impose a financial penalty of £25,000 on Mr Markou.

Withdrawal of Approval and Prohibition Order

- 6.4. The Authority has the power to withdraw an individual's approval to perform controlled functions under section 63 of the Act and the power to make prohibition orders in respect of individuals under section 56 of the Act. The Authority's approach to exercising these powers is set out at Chapter 9 of its Enforcement Guide.
- 6.5. Given the nature and seriousness of the failings outlined above, the Authority considers that Mr Markou's reckless conduct demonstrates that he lacks integrity. The Authority considers that it is appropriate and proportionate in all the circumstances to withdraw Mr Markou's approval to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE and to prohibit Mr Markou from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

7. REPRESENTATIONS

- 7.1 Annex C contains a brief summary of the key representations made by Mr Markou and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Markou, whether or not set out in Annex C.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to Mr Markou under sections 57, 63 and 67 of the Act and in accordance with section 388 of the Act.
- 8.2. The following statutory rights are important.

Decision maker

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

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

The Tribunal

- 8.4 Mr Markou has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Markou has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 8.5 A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice

should be sent to Shamsheer Singh at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

- 8.6 Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice regarding the implementation of that decision.

Access to evidence

- 8.7 Section 394 of the Act applies to this Notice.

- 8.8 Mr Markou has the right to access:

- (a) the material upon which the Authority has relied in deciding to give this Notice; and
- (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights and interested party rights

- 8.9 A copy of this Notice is being given to FSE, pursuant to section 393(4) of the Act, as a third party identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. As a third party, FSE has similar rights to those mentioned in paragraphs 8.4 and 8.8 above, in relation to the matters which identify it.
- 8.10 This Notice is also being given to FSE as an interested party in the withdrawal of Mr Markou's approval, pursuant to section 63(4) of the Act. As an interested party, FSE has the right to access material, similar to that mentioned in paragraph 8.8 above, and the right to refer to the Tribunal the decision to withdraw Mr Markou's approval, pursuant to section 63(5) of the Act.

Confidentiality and publicity

- 8.11 This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.12 However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and

matters contained in this Notice may be made public.

Authority contacts

- 8.13 For more information concerning this matter generally, contact Shamsheer Singh at the Authority (direct line: 020 7066 5284).

Elizabeth France
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection and integrity objectives.
2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, a function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
3. Section 63 of the Act provides that the Authority may withdraw an approval given by the Authority under section 59 of the Act in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function.
4. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that the person is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him/her. Misconduct includes failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a financial penalty on the approved person of such amount as it considers appropriate.

RELEVANT REGULATORY PROVISIONS

5. In exercising its powers to withdraw approval and to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in Regulatory Guides, such as the Enforcement Guide (EG). The relevant main considerations in relation to the action specified above are set out below.

Statements of Principle and Code of Practice for Approved Persons (APER)

6. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
7. APER 2.1A.3P, which applies from 1 April 2013, sets out Statement of Principle 1 which states that an approved person must act with integrity in carrying out his accountable functions.
8. APER 3.13G 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
9. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
10. APER 4.1.4G sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1 (acting with integrity).

The Fit and Proper Test for Employees and Senior Personnel

11. The part of the Handbook titled "The Fit and Proper Test for Employees and Senior Personnel" (FIT) sets out the criteria that the Authority will consider when 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.
12. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity, and reputation, competence and capability and financial soundness.

The Enforcement Guide

13. The Enforcement Guide sets out the Authority's approach to exercising its main

enforcement powers under the Act.

The Authority's policy for exercising its powers to withdraw approval and to make a prohibition order

14. The Authority's policy in relation to withdrawals of approval and prohibition orders is set out in Chapter 9 of EG.
15. EG 9.1 explains the purpose of withdrawal of approval from an approved person and prohibition orders in relation to the Authority's regulatory objectives. EG 9.1.2 also provides that, where it considers the withdrawal of approval to be appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
16. EG 9.2 sets out the Authority's general policy on making prohibition orders. In particular:
 - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (b) EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case; and
 - (c) EG 9.2.3 states that the scope of a prohibition order will depend on, among other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
17. EG 9.3.1 states that when the Authority has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw their approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the Authority must consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.
18. EG 9.3.2 states that, when the Authority decides to make a prohibition order against an approved person and/or withdraw their approval, the Authority will consider all the relevant circumstances of the case. These may include:

- (1) The matters set out in section 61(2) of the Act.
- (2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT (Honest, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).
- (3) Whether, and to what extent, the approved person has failed to comply with the Statements of Principle.
- (4) The relevance and materiality of any matters indicating unfitness.
- (5) The length of time since the occurrence of any matters indicating unfitness.
- (6) 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.
- (7) The severity of the risk which the individual poses to consumers and to confidence in the financial system.
- (8) The previous disciplinary record and general compliance history of the individual including whether the Authority, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

ANNEX B

PENALTY ANALYSIS

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority 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.

Step 1: disgorgement

2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
3. The Authority has not identified any financial benefit that Mr Markou derived directly from his breach.
4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
6. Mr Markou did not receive any income from FSE during the Relevant Period and so had no relevant income. Step 2 is therefore £0. Nonetheless, the Authority has determined the seriousness of Mr Markou's breach for the purposes of Step 2.
7. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors' (i.e. indicative of a more serious breach). Of these, the Authority considers the following factors to be relevant:

- a. Mr Markou's breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur;
 - b. Mr Markou failed to act with integrity; and
 - c. Mr Markou committed the breach recklessly.
8. DEPP 6.5B.2G(13) lists factors likely to be considered level 1 to 3 factors (i.e. indicative of a less serious breach). Of these, the Authority considers the following factor to be relevant:
- a. little, or no profits were made or losses avoided as a result of the breach, either directly or indirectly.
9. Taking all relevant factors into account, the Authority considers the seriousness of the breach to be level 4.

Step 3: mitigating and aggravating factors

10. Pursuant to DEPP 6.5B.3G, the Authority 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.
11. The Authority considers the following factors aggravate Mr Markou's breach:
- a. The Authority had previously and repeatedly communicated to Mr Markou on occasions prior to the Relevant Period serious concerns regarding FSE's oversight arrangements and its systems and controls relating to the prevention of financial crime; and
 - b. The December 2011 Variation of Permission was imposed on FSE as a result of the Authority's concerns with FSE's financial crime systems and controls, and Mr Markou failed to ensure that FSE complied with the December 2011 Variation of Permission.
12. The Authority considers that there are no factors that mitigate the breaches.

13. The Authority considers that these aggravating factors warrant an increase to the financial penalty of 25%. However, given that the Step 2 figure is £0, the Step 3 figure remains at £0.

Step 4: adjustment for deterrence

14. Pursuant to DEPP 6.5B.4G, if the Authority considers that 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 Authority may increase the penalty.

15. Since the figure after Step 3 would result in a penalty figure of £0, the Authority considers it appropriate to adjust the penalty level upwards to £25,000. The Authority has had regard to the following factors in deciding to increase the penalty level to this amount:

- a. the seriousness of the breach, which the Authority considers to be level 4;
- b. the aggravating factors, which the Authority considers merit a Step 3 uplift of 25%;
- c. the Authority considers that a financial penalty of this level is needed for credible deterrence. Notwithstanding the Authority's previous interventions, Mr Markou's conduct exposed FSE to the risk of being used as a vehicle for mortgage fraud, and the interests of consumers were not appropriately protected;
- d. the Authority considers it likely that, if no action was taken against Mr Markou, similar breaches would be committed by him or other individuals in the future; and
- e. the Authority considers that a penalty based on Mr Markou's relevant income will not act as a deterrent, due to Mr Markou having no relevant income.

16. The penalty figure after Step 4 is therefore £25,000.

Steps 5: settlement discount

17. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to

be imposed agree the amount of the financial penalty and other terms, 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 Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

18. No settlement discount applies.

19. The penalty figure after Step 5 is therefore £25,000.

Penalty

20. The Authority therefore has decided to impose a financial penalty of £25,000 on Mr Markou, for breaching Statement of Principle 1 (acting with integrity).

ANNEX C

REPRESENTATIONS

1. A summary of Mr Markou's key representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Issue Estoppel / Abuse of Process

2. *On 23 May 2019, the Authority issued the FSE Decision Notice, which set out its decision to cancel FSE's Part 4A permission. The Authority decided to take this action because it considered that FSE had not complied with rules requiring it to pay fees and levies to the Authority and because FSE did not have PII in place, which the Authority considered meant that FSE was failing to meet the Threshold Conditions.*
3. *FSE made a reference to the Tribunal in respect of the FSE Decision Notice. Following a hearing, on 22 April 2020 the Tribunal released the FSE Tribunal Decision, which set out its conclusion that the action that the Authority had decided to take was inappropriate and remitted the matter back to the Authority. On 5 August 2020, the Tribunal released the FSE Tribunal Costs Decision, which ordered the Authority to pay FSE's legal costs in respect of the FSE Tribunal Proceedings.*
4. *The FSE Tribunal Decision, which described Mr Markou as "an honest witness who gave consistent and credible answers under cross-examination", included a factual finding that FSE ceased to carry on regulated activities when its PII cover lapsed. In the light of this decision, the Authority is estopped on the basis of res judicata (issue estoppel) and/or the rule in Henderson v Henderson (abuse of process) from alleging that FSE carried out regulated business after the date Mr Markou was informed that FSE's PII provider was declining to renew cover.*

Issue Estoppel

5. *Res judicata (issue estoppel) provides that where a cause of action is not the same in a later action as it was in an earlier one, an issue which is necessarily common to both and which has been decided on the earlier occasion may be binding on the parties. A party may not bring subsequent proceedings regarding an issue that has already been determined.*
6. *It was held in the case of Arnold v National Westminster Bank plc [1991] 2 AC 93 that "Issue estoppel may arise when a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is*

relevant, one of the parties seeks to reopen that issue". Case law provides that one way of identifying precisely what was involved in an earlier decision for the purposes of issue estoppel is to say that any determination is involved in a decision if it is a "necessary step" to the decision or a "matter which it was necessary to decide, and which was actually decided, as the groundwork of the decision".

7. *Although Mr Markou was not a party to the FSE Tribunal Proceedings, issue estoppel also applies in respect of privies. As Mr Markou is a director and the sole shareholder of FSE, and was effectively the ultimate beneficial owner of the revenue of its trading profit, there is a sufficient degree of identity between Mr Markou and FSE such that Mr Markou is a privy of FSE.*
8. *It was central to the case before the Tribunal whether or not FSE carried on regulated activities after its PII cover lapsed. This is because the Authority's case was that FSE should have been able to pay its fees and levies and FSE's case was that it could not afford to do so because it had reasonably and properly chosen to cease trading until it had PII cover in place. The Tribunal therefore had to engage directly with this issue and made a specific finding of fact that FSE stopped carrying on regulated activities after its PII cover lapsed. Accordingly, this was a necessary step in the FSE Tribunal Decision and the Authority is estopped from asserting otherwise in these proceedings.*
9. *Case law indicates that an issue which has been decided in previous litigation can be reopened if there is fresh evidence, but only if that evidence entirely changes that aspect of the case, and could not by reasonable diligence have been discovered previously by the party wishing to put that evidence before the court. The evidence relied on by the Authority of FSE trading after 10 July 2017 is not evidence which it could not by reasonable diligence have discovered previously, not least because the Authority already had part of this evidence at the time of the FSE Tribunal Proceedings. The Authority could have introduced that evidence in the FSE Tribunal Proceedings, and could also have requested prior to the FSE Tribunal Proceedings that the mortgage lenders provide it with the additional evidence that it has since obtained, but did not do so through negligence or inadvertence.*

Abuse of Process

10. *The case of Henderson v Henderson [1843-1860] All ER Rep 378 established a rule of principle preventing litigants from advancing causes of action or arguments that they could have advanced in earlier proceedings, but did not do so due to negligence, inadvertence or accident. The Authority could have introduced evidence in relation to this matter in the FSE Tribunal Proceedings, and so it is an abuse of process for the*

Authority now to make an allegation that is in direct conflict with the finding set out in the FSE Tribunal Decision that FSE was not trading at the material time.

Issue Estoppel/Abuse of Process

11. As the Authority has not taken the decision to issue this Notice following litigation of this matter in court or Tribunal proceedings, in case there is any doubt as to whether issue estoppel and/or abuse of process apply in respect of the issue of this Notice, the Authority has approached Mr Markou's submissions regarding issue estoppel and abuse of process by considering the position should Mr Markou decide to make a reference of this Notice to the Tribunal and the Authority decide to include the relevant allegation in its Statement of Case. In the Authority's view, neither *res judicata* (issue estoppel) nor the rule in *Henderson v Henderson* (abuse of process) prevent it from taking action in respect of Mr Markou's failure to ensure that FSE's mortgage advisers did not carry on regulated mortgage business beyond the date on which he knew that FSE's PII had lapsed.
12. The Authority also notes that, even if issue estoppel or abuse of process did apply (which the Authority considers is not the case), it would only apply in respect of the Authority's conclusion that Mr Markou failed to ensure that FSE did not carry out regulated mortgage business after he became aware that FSE's PII had lapsed. In such circumstances, the Authority would still consider it appropriate to impose a substantial financial penalty on Mr Markou, withdraw his approvals and fully prohibit him, on account of his other serious misconduct, summarised in paragraph 5.2(a) and (b) of this Notice.

Issue Estoppel

13. The Authority agrees that the *Arnold* case is relevant authority as to when issue estoppel may arise. The question of privity is highly fact dependent. The Authority acknowledges that there is a possibility that Mr Markou would be regarded as a privy of FSE, and so has proceeded in its analysis on that basis.
14. The finding in the FSE Tribunal Decision that FSE ceased to carry on regulated activities when its PII cover lapsed was based on Mr Markou's witness statement and on the oral evidence provided by Mr Markou in the FSE Tribunal Proceedings that FSE stopped trading when its PII policy lapsed. The Authority did not file a witness statement and did not challenge Mr Markou's statements. As such, the Authority considers that it is questionable whether this issue would be regarded as having been "litigated and decided" in the FSE Tribunal Proceedings.
15. In any event, the Authority does not agree that this issue was a necessary ingredient in the cause of action in the FSE Tribunal Proceedings. Whether or not FSE carried on

regulated activities between 15 July 2017 and 14 October 2017 was not an issue which the Authority made submissions on in the FSE Tribunal Proceedings, and nor was it fundamental to, or an essential part of the legal foundation of, the decision that the Tribunal had to make as to whether FSE, at the time of the FSE Tribunal Decision, was meeting the Threshold Conditions. The Authority's case did not include the allegation that FSE had continued to carry on regulated activities after 9 May 2017, and the Authority did not dispute Mr Markou's evidence that FSE had ceased trading, and so it was not necessary for the Tribunal to reach a determination on whether or not this actually happened. The Tribunal was instead asked to conclude that it was reasonable for the Authority to cancel FSE's Part 4A permission, on the basis that its PII cover had lapsed and it had not paid outstanding fees and so at that time was not meeting the Threshold Conditions, notwithstanding that Mr Markou believed that it had ceased trading after 9 May 2017. Therefore, whether or not FSE carried on regulated activities between 15 July 2017 and 14 October 2017 was not an issue which made any difference to the Authority's case in the FSE Tribunal Proceedings.

16. The Authority has obtained significant new material from mortgage lenders since the FSE Tribunal Decision regarding new mortgage applications submitted by FSE after its PII cover lapsed. The Authority reasonably believed at the time of the FSE Tribunal Proceedings that it was not necessary to undertake further investigation to obtain this material. The Authority considers that it cannot be right to expect a party to obtain and deploy in evidence material which it reasonably considered at the time was not relevant to the matters forming the underlying cause of action. Accordingly, the Authority considers that it is not estopped from relying on the material now in its possession, which demonstrates that Mr Markou in fact failed to ensure that FSE's mortgage advisers did not carry on regulated mortgage business beyond the date on which he knew FSE's PII had lapsed.

Abuse of Process

17. Although the Authority could have raised this issue in the FSE Tribunal Proceedings, that does not mean it should have done so, and it was also not omitted by negligence, inadvertence or accident. The FSE Tribunal Proceedings were concerned with whether, by failing to have PII cover in place and to pay regulatory fees and levies, FSE was meeting the Threshold Conditions, rather than whether FSE had committed misconduct by carrying out regulated activities after its PII cover had lapsed. As the issue was not fundamental to the FSE Tribunal Decision, the Authority does not consider it an abuse of process for the Authority to allege that Mr Markou failed to ensure that the mortgage advisers stopped carrying on regulated mortgage business after 10 July 2017.

18. Further, the Authority has had regard to the judgment in the case of *Mansing Moorjani v Durban Estates Limited [2019] EWHC 1229 (TCC)*, in which the judge summarised how a court should approach an application that there has been an abuse of process. He noted that: (a) the onus is upon the applicant to establish abuse; (b) the mere fact that the claimant could with reasonable diligence have taken the new point in the first action does not necessarily mean that the second action is abusive; (c) the court is required to undertake a broad, merits-based assessment taking account of the public and private interests involved and all of the facts of the case; (d) the court's focus must be on whether, in all the circumstances, the claimant is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before; and (e) the court will rarely find abuse unless the second action involves unjust harassment of the defendant.
19. The Authority considers that this issue was not considered by the Tribunal in the FSE Tribunal Proceedings, such that it could be reasonably argued that it would waste time and costs for it to be considered again. It is also consistent with the Authority's operational objectives, and it is in the public interest, for the Authority to take action where it has identified serious misconduct and for the full extent of that misconduct to be reflected in the statutory notice. The Authority also does not consider that this action involves unjust harassment of Mr Markou.

The Authority's supervision of FSE prior to the May 2017 Visit

20. *Mr Markou denies that the Authority's interactions with him and FSE in relation to FSE's mortgage business from February 2011 onwards demonstrate that he was aware of the risks which the Authority allege arise from his conduct during the Relevant Period. Whenever the Authority corresponded with FSE, FSE was fully co-operative and received a "clean bill of health". He does not agree that he failed to ensure that FSE's mortgage business did not revert to previous non-compliant practices in relation to which the Authority had previously expressed serious concerns.*
21. *The December 2011 Variation of Permission was imposed with the full consent and cooperation of Mr Markou and FSE. When the various agreed requirements imposed were lifted, the Authority confirmed that FSE was carrying out its regulated business in a proper way, in accordance with FSE's policies and procedures, which had been approved by the Authority.*
22. The Authority considers that its interactions with Mr Markou and FSE from February 2011 onwards demonstrate that Mr Markou was aware of the financial crime risks associated with a lack of proper oversight. The pattern of these interactions was: (i)

the Authority identified a matter of regulatory concern; (ii) the Authority visited FSE to assess the extent of that concern; (iii) the Authority identified regulatory failings at FSE; (iv) the Authority requested or required FSE to take action to rectify the concerns; (v) FSE made improvements and seemingly rectified compliance issues; (vi) the Authority scaled back its close oversight of FSE; and (vii) FSE reverted to its pre-visit approach to oversight. There were three iterations of this cycle from February 2011 onwards.

23. The Authority considers that the evidence does not support Mr Markou's assertion that the Authority gave FSE a "clean bill of health", approved FSE's policies and procedures and informed Mr Markou that FSE was carrying out regulated business in a proper way.

Removal of FSE from lenders' panels in October 2016 and February 2017

24. *FSE was removed from a lender's panel in October 2016 because the lender did not give FSE enough time to arrange a mutually convenient appointment. Mr Markou denies that FSE did not comply with the lender's request for a meeting.*
25. *In respect of FSE's removal from a lender's panel in February 2017, neither the Authority nor the lender have provided details of the mortgage applications from which the lender's concerns apparently arose, even though Mr Markou and FSE requested them. Mr Markou cannot comment on documents that he has not seen and queries why the Authority would not provide this information if it demonstrates a risk that FSE was facilitating fraud, in order that FSE could make any necessary changes to its policies and procedures.*
26. The Authority was informed by the lenders of the reasons for FSE's removal from their respective panels. The removal of FSE from the lenders' panels, and the reasons for the removals, provide the context for the May 2017 Visit. The Authority is not alleging that mortgage fraud took place at FSE, but that Mr Markou knew throughout the Relevant Period the financial crime risks associated with a lack of proper oversight. The Authority has not obtained the mortgage applications referred to as they are not necessary to evidence the failings set out in the Notice.

FSE's policies and procedures

27. *The policies and procedures in place at FSE had been approved by the Authority, and Mr Markou ensured that they were implemented, monitored and reviewed, as necessary. FSE therefore did not have inadequate financial crime systems and controls that left it exposed to being used as a vehicle for financial crime.*

28. *Mr Markou does not accept that the MSP was not followed by FSE's mortgage advisers. Mr Markou would conduct checks of the mortgage sale process in his own way and there were no customer complaints. Any issues would be discussed with compliance officers and the mortgage advisers.*
29. *The Mortgage Fraud Checklist was also followed. Mr Markou's advised target was to review 10% of customer files, rather than every customer file. This is consistent with him reviewing two of the 19 files reviewed by the Authority. The fact that the 19 files did not refer to Mr Markou or FSE conducting a check of the mortgage applications does not mean that no checks were conducted.*
30. *Mr Markou does not accept that FSE's policies and procedures presented a risk of mortgage fraud not being identified. Not only were the policies and procedures approved by the Authority, but the Authority did not identify any fraud, which implies that the policies and procedures were robust.*
31. Whilst the Authority recognises that policies and procedures existed at FSE, it has not seen any evidence that they were implemented and maintained by Mr Markou to ensure that they were followed by FSE's mortgage advisers.
32. The Authority considers that the evidence does not support Mr Markou's assertion that the Authority approved FSE's policies and procedures; conversely their characterisation of being robust came from Mr Markou in correspondence with the Authority.
33. The Authority has not seen any evidence that demonstrates that Mr Markou or FSE's mortgage advisers followed the actions specified in the MSP. In contrast, the 19 client files reviewed by the Authority indicate that Mr Markou and the mortgage advisers deviated from the requirements of the MSP. For example, none of these client files contained any evidence that the mortgage advisers discussed the recommendation or proposed outcome for the customer with Mr Markou before the business was submitted, or notes querying the inconsistencies within the documents provided, both of which actions were required by the MSP.
34. The Authority also considers that the 19 client files it reviewed supports its view that the Mortgage Fraud Checklist was not followed and that Mr Markou did not conduct file reviews during the Relevant Period, as the checklist was incomplete in the files in which it was present. FSE's New Business Register also did not contain any record of Mr Markou or any other person carrying out a review of customer files, despite containing columns allowing for a record of such reviews. This demonstrates that, as regards the files reviewed by the Authority, contrary to Mr Markou's assertion, he

failed to comply with the minimum standard of review that he states was his advised target (two out of 19 files).

35. As mentioned above, the Authority is not alleging that mortgage fraud took place at FSE. However, the Authority does not consider this means that FSE's policies and procedures must have been robust. For the reasons given in this Notice, the Authority considers that Mr Markou failed to implement effective financial crime systems and controls and exercise appropriate oversight of FSE to prevent it from being used as a vehicle for financial crime.

Oversight of FSE's mortgage advisers

36. *Mr Markou does not accept that he failed to ensure that he had appropriate oversight of FSE's mortgage business. The mortgage advisers were competent and dealt with all applications with the appropriate degree of scrutiny. His approach to assessing competence and training was not inadequate.*
37. *Mr Markou denies that there was no formal requirement for the mortgage advisers to meet with him, that he was not easily accessible to them, and that records of meetings with the mortgage advisers were inadequate.*
38. *Although FSE's mortgage advisers predominantly worked remotely away from FSE's offices and recorded business conducted on FSE's electronic New Business Register, that does not mean that there was no formal reporting process between Mr Markou and FSE's mortgage advisers. FSE's working practice was proper, reasonable and adequate for the work carried out, and was consistent with working practices during the Covid-19 pandemic.*
39. The Authority considers that the evidence shows that Mr Markou did not appropriately oversee FSE's mortgage business or its mortgage advisers to ensure that FSE's policies and procedures were followed in practice. At interview, Mr Markou said that he trusted the experience of one of the mortgage advisers and did not regularly monitor the mortgage customer files given the absence of complaints from customers. However, it was not sufficient for Mr Markou simply to trust that the mortgage advisers would act appropriately; Mr Markou should have taken a proactive approach to overseeing FSE and should have established adequate systems to monitor the competence of the mortgage advisers, either through one-to-one assessments or an appraisal system, but did not do so. Although he introduced an internal Adviser Competency Framework, it was not implemented until after the May 2017 Visit.
40. The Authority has also not seen any evidence of Mr Markou taking steps to proactively provide financial crime training to his mortgage advisers, even after FSE was removed

from two lender panels, and despite this being specifically requested by one of the mortgage advisers. Mr Markou did not instigate, monitor, check or assess CPD, and this is supported by the fact that the CPD record sheet for the mortgage adviser was not signed off by him.

41. Although the mortgage advisers occasionally met with Mr Markou, according to one of the mortgage advisers there was no formal requirement for them to do so and Mr Markou has not provided any records of such meetings during the Relevant Period. One of the mortgage advisers informed the Authority in interview that Mr Markou was very busy, had many other business interests, and was not easy to meet, and given the lack of records of meetings, the Authority considers that it is reasonable to conclude that Mr Markou was not easily accessible to the mortgage advisers.
42. The Authority acknowledges that, although FSE's mortgage advisers worked remotely, Mr Markou had the means to oversee them, as client files were uploaded to FSE's server, to which he had access. However, Mr Markou did not conduct any file reviews or raise any issues on the files with the mortgage advisers, and instead, in the absence of any customer complaints, simply trusted that there were no issues, which demonstrates that FSE's working practice was not adequate.

Mortgage business carried out after the May 2017 Visit

43. *FSE did not submit any new mortgage business after 9 May 2017. The purportedly new client files referred to by the Authority in support of its allegation that FSE's mortgage advisers processed new mortgage applications between 15 July 2017 and 14 October 2017 were not new cases, but relate to fees paid to FSE in relation to cases that were commenced prior to 9 May 2017. The files were created for an invoice to be raised, so that FSE's accounting records were properly recorded. Therefore, as no new mortgage business was submitted, Mr Markou did not put the interest of FSE's mortgage customers at risk.*
44. *The material provided by mortgage lenders on which the Authority relies is misleading in respect of the dates that mortgage applications were submitted, and Mr Markou's request for disclosure of the original applications has not been facilitated. No mortgage applications can have been submitted by FSE in October 2017 as the mortgage adviser concerned had left her role at FSE before the end of September 2017.*
45. *When advised by his brokers that no PII cover would be afforded by the insurers due to the Authority's supervisory investigation, Mr Markou specifically advised his mortgage advisers not to make any new applications, and this was adhered to as far as he was aware.*

46. *Mr Markou also relies on the Tribunal's finding of fact that FSE voluntarily ceased carrying on regulated activities when its PII cover lapsed.*
47. The Authority considers that material provided to it by three different mortgage lenders demonstrates that FSE continued to submit new mortgage applications after its PII expired on 11 May 2017 and beyond the date on which Mr Markou knew that the PII cover would not be renewed, which was no later than 10 July 2017. This material shows that FSE submitted at least 45 residential mortgage applications after 11 May 2017, 20 of which were submitted after 10 July 2017 (between 15 July 2017 and 14 October 2017).
48. The fact that FSE's engagement with a customer commenced prior to the lapse of its PII does not mean that it was permitted to continue carrying out mortgage business in respect of that customer once its PII had lapsed. FSE required PII cover throughout its performance of the relevant regulated activity (the activity set out in Article 25A of the Regulated Activities Order of making arrangements for another person to enter into a regulated mortgage contract as borrower), not just at the outset of dealing with a customer. Submitting a mortgage application to a lender forms an integral part of this regulated activity, through which the borrower enters into the mortgage contract.
49. The mortgage lenders supplied the Authority with the underlying documentation in respect of the mortgage applications that took place after FSE's PII cover lapsed, and this was provided to Mr Markou. The Authority acknowledges that the mortgage adviser concerned informed it that she left FSE before the end of September 2017. However, the material provided by one of the mortgage lenders shows that she submitted four residential mortgage applications in the name of FSE in October 2017. The mortgage adviser was self-employed, did not have a written employment contract with FSE and usually met customers away from FSE's offices. The Authority considers it unlikely that the dates in the documentation provided by the mortgage lender are incorrect and, in particular given Mr Markou's failure to oversee and monitor appropriately FSE's mortgage advisers, more likely that the mortgage adviser continued to process mortgage business on behalf of FSE until 14 October 2017.
50. The Authority has not seen any evidence suggesting that Mr Markou knew that FSE was continuing to transact regulated business beyond 10 July 2017. However, the Authority considers that Mr Markou's lack of awareness of the 20 residential mortgage applications submitted by FSE between 15 July 2017 and 14 October 2017 is indicative of his failure to exercise appropriate oversight of FSE's mortgage business.

51. As mentioned above, the majority of the evidence of the mortgage business conducted by FSE after its PII cover lapsed was obtained by the Authority following the FSE Tribunal Decision and the Authority did not adduce the evidence it did have during the FSE Tribunal Proceedings. For the reasons set out at paragraphs 11 to 19 above, the Authority considers that the Tribunal's findings should not prevent it from concluding that FSE did in fact conduct mortgage business beyond the date when its PII cover lapsed.

Recklessness and/or lack of integrity

52. *Mr Markou does not accept that he ignored risks and acted recklessly and/or demonstrated a lack of integrity. He denies that he failed to comply with Statement of Principle 1 and that he is not a fit and proper person to perform the SMF1 (Director) and SMF3 (Chief Executive) controlled functions at FSE or any other function in relation to any regulated activity.*

53. The Authority considers that Mr Markou's knowledge of how risks had arisen in the past, coupled with his lack of oversight and control during the Relevant Period demonstrates a reckless failure to take appropriate steps to run a compliant business. Since February 2011, there have been regular interactions between Mr Markou and the Authority flagging concerns around lack of oversight and control, and so he ought to have been aware of the risks created by his conduct. However, during the Relevant Period he ignored those risks and recklessly failed to:

- a. Establish, maintain and enforce effective financial crime systems and controls;
- b. Establish and practice an appropriate level of oversight and monitoring of FSE's mortgage advisers; and
- c. Ensure that FSE's mortgage advisers did not carry on regulated mortgage business beyond the date on which he knew that FSE's PII had lapsed.

54. As a result, the Authority concludes that Mr Markou acted with a lack of integrity in breach of Statement of Principle 1, and is not a fit and proper person to perform any function in relation to any regulated activity.

Conduct of the Authority

55. *Mr Markou has a number of concerns with the conduct of the Authority since its Supervision Division commenced an investigation into FSE in 2017.*

56. *At the May 2017 Visit, a member of staff of the Authority entered an unauthorised storage area of FSE's offices, looked in a filing cabinet and temporarily removed a file,*

without the knowledge or consent of Mr Markou or FSE. Mr Markou raised this matter with the Authority in an email on 10 May 2017, but no explanation has been received.

57. *Following the May 2017 Visit, there was considerable delay in the progress of the Authority's Supervision Division's investigation, at a time when the Authority was aware that FSE could not obtain PII cover due to the investigation. The Authority failed to give a satisfactory explanation for the delay and also refused Mr Markou's request that the matter be referred to Enforcement or the RDC when he was informed of the Supervision Division's preliminary findings.*
58. *In February 2018, following internal discussions between the Authority's Supervision and Enforcement Divisions which excluded FSE and Mr Markou, the Enforcement Division commenced an investigation into FSE and Mr Markou, despite the fact that the Authority's Supervision Division had not yet concluded its investigation. After Mr Markou provided evidence that FSE's policies and procedures were robust, because they had been approved by the Authority, no action was taken against FSE. As no action has been taken against FSE in respect of its policies and procedures, Mr Markou cannot have acted non-compliantly in respect of those policies and procedures.*
59. *Since the FSE Tribunal Decision, it is apparent that the Authority has a vendetta against Mr Markou and FSE, and has used whatever method it can to prevent FSE from trading and/or Mr Markou from being a director and CEO of FSE. The FSE Decision Notice was an attempt to cancel FSE's Part 4A permission through "the back door", given the evidential failures in respect of the Authority's enforcement action against FSE. This indicates the lengths to which the Authority will go in order to take away FSE's ability to trade. The action against Mr Markou seems to be a continuation of this action, irrespective of the merits.*
60. *The Authority has failed to comply with the Tribunal's directions as set out in the FSE Tribunal Decision. The Authority has only provided a perfunctory reply to FSE's solicitors' written communication on this matter, and has not provided a detailed update. This appears to be a wilful and deliberate attempt to prevent FSE from trading.*
61. *The decision to give Mr Markou this Notice was made by the RDC. As is explained in paragraph 8.3 of this Notice, the RDC is a committee of the Authority which takes certain decisions on behalf of the Authority, and its members are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. The RDC has decided to give this Notice on the basis of the evidence put before it regarding the conduct of Mr Markou; the submissions made by*

Mr Markou regarding the conduct of the Authority are generally not relevant to that decision and the RDC considers that they do not undermine the evidence on which the decision is based. It is not part of the RDC's role to investigate complaints relating to the conduct of the Authority. Should Mr Markou continue to have concerns regarding the conduct of the Authority, he has the option of making a complaint using the Complaints Scheme established under the Financial Services Act 2012.

62. The RDC does not agree with Mr Markou's submission that, because the Authority decided not to proceed with enforcement action against FSE, Mr Markou cannot have acted non-compliantly in respect of FSE's policies and procedures. Mr Markou was responsible for ensuring that FSE's written policies and procedures were properly implemented, followed, monitored and reviewed, but despite being aware that the Authority had previously raised serious concerns relating to FSE's financial crime systems and controls and oversight arrangements, he recklessly failed to ensure that this happened.
63. The RDC also does not agree that the Authority attempted to cancel FSE's Part 4A permission "through the back door". The reason that this cancellation action was taken was because the Authority considered that FSE was failing to satisfy the Threshold Conditions, which are the fundamental requirements for authorisation, as a result of FSE not having PII cover and having outstanding fees and levies. The fact that the Tribunal decided to allow FSE's reference and to remit the matter which was the subject of the FSE Decision Notice back to the Authority does not mean that the action was not brought in good faith by the Authority.
64. The RDC does not accept Mr Markou's submission that this action against Mr Markou is a further attempt by the Authority to stop FSE from trading, having been unsuccessful in respect of its cancellation action against FSE. The RDC has decided to issue this Notice because the evidence it has seen shows that Mr Markou acted recklessly during the Relevant Period and considers that the action is appropriate and supports its operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
65. The RDC notes that a letter has now been sent to Mr Markou informing him of the conclusions the Authority has reached following the Tribunal's decision, set out in the FSE Tribunal Decision, to remit the matter which was the subject of the FSE Decision Notice back to the Authority.