
FINAL NOTICE

To: **BRIDGING LOANS LTD**

Firm ref: **305473**

Of: 65 Bath Street
1st Floor right
Glasgow
Lanarkshire
G2 2BX

Date: **20 October 2010**

TAKE NOTICE: The Financial Services Authority of 25, The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice that it has taken the following action:

1. THE ACTION

- 1.1 The FSA gave Bridging Loans Ltd ("BLL") a Decision Notice on 12 October 2010 which notified BLL that pursuant to section 206 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to impose a financial penalty of £42,000 on BLL in respect of breaches of Principles 3 and 6 of the FSA's Principles for Businesses (the "Principles") during the period between 31 October 2004 and 25 August 2009 (the "relevant period") and also in relation to its failure to cooperate with the FSA in breach of Principle 11.
- 1.2 BLL confirmed on 6 October 2010 that it will not be referring the matter, the subject of this notice, to the Upper Tribunal (Tax and Chancery Chamber).

- 1.3 Accordingly, for the reasons set out below, the FSA imposed a financial penalty on BLL in the amount of £42,000.
- 1.4 BLL agreed to settle at an early stage of the FSA's investigation and has, therefore, qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £60,000 on BLL
- 1.5 BLL has also instructed a skilled person in accordance with section 166 of the Act to carry out a past business review. Part of this review is to calculate any redress which may be due to customers. As part of this settlement BLL will make payment of appropriate redress to customers, as calculated.

2. REASONS FOR THE ACTION

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that it will impose a financial penalty on BLL for failing to comply with Principle 3, 6 and 11 of the Principles and associated rules set out in the Mortgages and Home Finance: Conduct of Business Sourcebook (“MCOB”).
- 2.2 By its Decision Notice dated 12 October 2010, the FSA concluded that BLL failed to:
 - (1) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3 including failing to:
 - (a) monitor its regulated business;
 - (b) ensure compliance with regulatory requirements and standards;
 - (c) ensure fair treatment of customers in arrears;
 - (d) lend responsibly; and
 - (e) handle complaints fairly.
 - (2) pay due regard to the interests of its customers and treat them fairly, in breach of Principle 6, including:

- (a) the imposition of excessive charges;
 - (b) unfair treatment of customer complaints;
 - (c) providing inaccurate or insufficient key facts illustrations and offer documents; and
 - (d) failure to provide customers with adequate information about its fees and charges.
- (3) deal with the FSA in an open and cooperative way during its investigation in breach of Principle 11.

2.3 The FSA views BLL's conduct as particularly serious because its failings impacted on customers who were financing or re-financing their homes; the most significant transaction that many customers make. BLL's business model of providing short term finance to customers to fund the purchase or refinancing for their residential property meant that any failings had the potential to have a significant impact on customers' lives. This should have made BLL acutely aware of the need to treat customers fairly and conscious of the implications of failing to do so. However, BLL failed in all substantive aspects of its dealings with customers. For example, BLL's failure to ensure that it lent to customers responsibly exposed customers to a risk that they would fall into arrears with their mortgage payments. BLL then compounded this failing, for those customers who did fall into arrears, by failing to treat them fairly.

2.4 The FSA has taken into account the following consideration, which is regarded as a mitigating factor, which is that BLL has committed to ensuring that its senior management is replaced and new systems and controls introduced before it conducts any new regulated business. The FSA has also taken into account BLL's co-operation with the FSA in agreeing to ensure that redress is paid to customers in a timely manner as part of this settlement.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1 The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

BACKGROUND

4.1 BLL is a mortgage lender, specialising in bridging loans, incorporated in Scotland. BLL has been authorised by the FSA since 31 October 2004 to carry on the following regulated activities:

- (1) administering a regulated mortgage contract;
- (2) agreeing to carry on a regulated activity;
- (3) dealing in investments as principal; and
- (4) entering into a regulated mortgage contract as lender.

4.2 During the relevant period, BLL operated as a non-bank specialist lender in the entering into and administration of first and second charge secured finance, with initial terms of between three and 18 months. In November 2008, the FSA wrote to the CEOs of all regulated mortgage lenders and/or administrators, including BLL, to emphasise the importance of fair treatment of customers in arrears, particularly during the difficult conditions in the market at that time. BLL was subsequently visited by the FSA in June 2009 as part of its intrusive approach to supervision of firms operating in this sector. During the relevant period approximately 25% of BLL's business was made up of FSA regulated mortgage contracts. The remaining 75% of BLL's business consisted of second charge residential lending, commercial lending or mortgages for the purposes of buy-to-let, and therefore was not regulated by the FSA during the relevant period. Management information produced by BLL showed that approximately 35% of regulated mortgage contracts entered into by BLL went into arrears and similar proportions were extended beyond the initial term.

4.3 On 25 August 2009, BLL voluntarily varied its permission (the "VVOP"). As a result of the variation, the following requirement was imposed on BLL, in relation to the activity of administering regulated mortgage contracts, which restricted it to:

- (1) providing redemption figures upon request from existing customers;
- (2) contacting borrowers who had missed a loan repayment or were in arrears in a format to be approved in advance and reviewed by an independent person to be agreed with the FSA;
- (3) notifying borrowers whose bridging loans were shortly due to be repaid, with a view to determining whether they have an exit route in place;
- (4) extending the term of a loan, subject to the extension being reviewed and approved by an independent person to be agreed with the FSA;
- (5) providing borrowers' brokers and/or representatives with any information requested pursuant to (1), (2) and (3) above; and
- (6) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower. BLL could only take such steps once they had been approved by an independent person to be agreed with the FSA.

4.4 On 13 August 2010, the FSA imposed an Own Initiative Variation of Permission (the "OIVOP") to prevent BLL or its agents from taking any steps, whether by taking proceedings or in preparation thereof, for the purposes of:

- (1) taking possession of any property subject to a regulated mortgage contract between BLL and any of its customers, including evicting any person residing in, or removing any person's belongings from, any such mortgaged property; and / or
- (2) selling any property subject to a regulated mortgage contract between BLL and any of its customers, whether BLL has already taken possession of any such mortgaged property as at 13 August 2010 or at any time subsequently.

4.5 The terms of BLL's VVOP which took effect on 25 August 2009, remain in effect, save to the extent that those terms conflict with any of the terms of this

requirement imposed by the OIVOP. In the event of any such conflict, the terms of the OIVOP are to apply.

CONDUCT IN ISSUE

Lending Responsibly

- 4.6 During the relevant period, BLL failed to ensure that it complied with its regulatory requirement to lend responsibly. BLL had a responsibility to take account of a customer's ability to repay a regulated mortgage contract, prior to entering into that contract. Further, BLL was required to make adequate records of lending decisions and retain these for at least a year.
- 4.7 BLL delegated responsibility for underwriting a mortgage to a third party (the "third party underwriter") without undertaking any formal assessment of his competence or adequate monitoring of his performance. As well as acting as an underwriter on behalf of BLL, the third party underwriter also acted as a customer facing broker in regulated mortgage contracts entered into by BLL, and received 50% of the net interest payments made by a customer over the life of each loan, including loans extended beyond their original term with interest payable at a higher rate. The third party underwriter also provided a personal guarantee for 50% of any capital loss incurred by BLL on any advance that resulted from this arrangement. There was therefore a conflict between the third party underwriter's responsibility to underwrite (including assessing the affordability of the loan from the customers perspective) and the financial benefit the third party underwriter stood to gain from recommending to the customer that they enter the loan.
- 4.8 BLL failed to recognise this potential for a conflict of interest between BLL and its customers, and that there was a risk that the third party underwriter would make unsuitable recommendations to customers in order to ensure that he could benefit from the interest payments subsequently paid by the customer. BLL was reckless in delegating to this third party underwriter without making a proper assessment of his capability.

- 4.9 BLL had a responsible lending policy in place which set out its intentions to ensure that the borrowers were able to comply with their commitments, by having regard to affordability and an exit strategy. However, lending decisions were made without reference to that policy. Instead, BLL made its decisions to lend on the basis of the instinct and experience of one of BLL's directors who, in turn, relied on information provided by the third party underwriter, in response to queries from BLL. BLL took decisions to lend to customers without access to or reference to all relevant customer information. In addition, BLL failed to record the basis for lending decisions. BLL took lending decisions based on information provided by a third party underwriter without considering whether or not the information was correct or complete. Further, BLL failed to retain material customer information regarding income, affordability and exit strategy.
- 4.10 These failings gave rise to the significant risk that BLL would lend irresponsibly to customers, causing customers to enter into mortgage contracts which they could not afford.

Arrears

- 4.11 BLL's failure to lend responsibly created the risk that customers would fall into arrears. BLL failed to deal fairly with customers who did fall into arrears.
- 4.12 Customers went into arrears when they had failed to make an interest payment or repayment of capital for more than one month. BLL did have a written policy on arrears handling, which set out BLL's intended approach to treating customers in arrears fairly, but staff who dealt with customers in arrears were unaware of this policy during the relevant period. BLL did not consider it important to collect information on the numbers of customers in arrears and systems and controls were not in place to accurately monitor and record the number of customers in arrears. BLL only produced management information on arrears in anticipation of an FSA visit. Further, customers in arrears were not treated fairly and consistently in that:

- (1) the director responsible for arrears handling stated that different rules applied to the treatment of customers with payment difficulties depending on his own personal judgement of that customer's character;
- (2) extension fees were applied on a case by case basis, based on the same directors' judgement of the customer; and
- (3) correspondence with customers in arrears was also inadequate. On more than one occasion correspondence with customers in arrears could have been interpreted by those customers as intimidating or threatening. Customers who fell into arrears were not provided with any of the information due to such customers under MCOB 13.4, such as the FSA's current information sheet on mortgage arrears.

4.13 BLL was required to ensure that any charges applied to customers in arrears were a reasonable estimate of the cost of the additional administration required as a result of that customer being in arrears. BLL failed to do so. For example, in addition to monthly administration fees, customers were charged "equitable expenses" in administering the account whilst in default and BLL was unable to explain how these charges were calculated or why they were levied.

4.14 In addition, in some cases BLL continued to add customers' interest to the balance outstanding when in arrears.

Charges and interest

4.15 As an authorised mortgage lender, BLL had a responsibility to ensure that customers were not levied with excessive charges, in particular by considering the amount of BLL's charges in comparison to similar products or services on the market, the degree to which the charges were an abuse of the trust that the customer placed in BLL and the nature and extent of the disclosure of the charges to the customer. Further BLL was required to ensure that charges levied on customers in payment difficulties were based upon the costs incurred by BLL.

4.16 BLL provided customers with a tariff of charges. However, BLL did not have adequate systems and controls in place to ensure that charges and interest were applied to customers' contracts accurately. BLL did not document how these charges and interest were determined. Further, records were not retained of how charges were calculated, for example in the case of charges for telephone calls or directors time, creating a significant risk that charges were applied inaccurately or were excessive. This risk crystallised when:

- (1) charges applied to a customer's account differed from those detailed on the tariff of charges which had been issued to that customer. For example, monthly administration fees for an extended loan were charged at £60 instead of £50, and a redemption statement was charged at £395 instead of £295;
- (2) charges were applied which had not been disclosed to customers on the tariff. For example, charges for directors' time dealing with various issues, for which no hourly charge, or otherwise, was provided on the tariff;
- (3) charges applied to customers were excessive. For example, charges made to customers for extending the term of the bridging loan increased incrementally on a monthly basis. BLL did not base the charges levied to customers in payment difficulties upon the costs incurred by the firm, and did not retain records of how charges were set. This led to the significant risk that customers with payment difficulties received excessive charges; and
- (4) interest calculations were inaccurately applied to customers' accounts. For example, offer illustrations showed fixed monthly interest payments calculated on a simple basis, however customers' interest payments were charged on a compound basis. BLL did not take a proactive approach to resolving this error and redress only appears to have been paid where the inaccurate calculations were drawn to BLL's attention by the customer.

Complaints

4.17 During the relevant period BLL was required to treat its customers fairly, including by establishing, implementing and maintaining effective and transparent procedures for the reasonable and prompt handling of complaints. Further, BLL was required to investigate complaints competently and diligently and make a fair and consistent assessment of the complaint. BLL failed to do so in the following instances:

- (1) of the six complaints on BLL's complaints log, on at least one occasion a customer was charged for the handling of a complaint; and
- (2) on at least one occasion, BLL refused to deal with a customer's complaint without that customer first obtaining legal representation.

Disclosure

4.18 BLL produced key facts documents which purported to set out the features of the mortgage contract, including the price, to enable the customer to assess whether it was affordable, and to confirm the features before entering into it. The pre-offer documents were provided to customers by the mortgage broker, and the offer documents sent to the customer with the offer letter and mortgage deed. However, the key facts documents provided at pre-offer and offer stage, for which BLL was responsible, were not clear, fair and not misleading and breached MCOB rules in content and presentation. In particular, the key facts documents reviewed by the FSA included;

- (1) inaccurate fees;
- (2) specified simple interest instead of compound interest; contained inaccurate APR values; and
- (3) did not accurately reflect the total loan value and the amount repayable.

4.19 These failings created a significant risk that customers would enter into regulated mortgage contracts without the necessary information to make a

fully informed choice or have sufficiently accurate information to compare BLL's products with those of another lender.

Monitoring of Regulated Business

- 4.20 During the relevant period, BLL had inadequate systems and controls properly to identify its regulated business. Management information provided to the FSA was only produced in anticipation of the FSA's visit to BLL. Additionally, BLL did not have systems and controls in place to ensure accurate classification of FSA regulated and non-regulated business, resulting in a number of mortgage contracts being incorrectly recorded as non-regulated. This created a significant risk that BLL would not fulfil its regulatory obligations in connection with those cases mistakenly classified as non-regulated.

Failure to deal with the FSA in an open and cooperative way

- 4.21 During the course of the investigation BLL repeatedly failed to comply with compelled information and document requests. For example BLL:
- (1) repeatedly delayed the process of supplying a client file to the FSA, over the course of a five week period, on the basis that a complaint was outstanding with the FOS, even after this matter had been clarified by the FSA; and
 - (2) repeatedly delayed the appointment of a skilled person specified in the Requirement Notice issued under section 166 of the Act and failed to submit the report by the due date.

5. ANALYSIS OF BREACHES

- 5.1 By reason of the fact and matters referred to at paragraphs 4.1 to 4.21 above, the FSA considers that BLL failed to comply with Principles 3, 6 and 11 in that it failed to:

- (1) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in breach of

Principle 3 with regard to responsible lending and the monitoring of the third party underwriter, arrears handling and monitoring of its regulated business, as set out in paragraphs 4.6 to 4.10, 4.11 to 4.14 and 4.20 respectively;

- (2) pay due regard to the interests of its customers and treat them fairly in breach of Principle 6 by failing to ensure that charges were not excessive, adequately disclose its charges and the cost of its mortgages, to handle complaints fairly and adequately, recognise and mitigate the potential for a conflict of interest to arise between the firm and its customers or to treat customers in arrears fairly, as set out in paragraphs 4.8 and 4.11 to 4.19 respectively; and
- (3) deal with its regulators in an open and cooperative way, by delaying the provision of documents in response to compelled requests or to comply with a requirement notice for a skilled person's report in a timely fashion, as set out in paragraph 4.21.

6. ANALYSIS OF PROPOSED SANCTION

- 6.1 The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") in force prior to 6 March 2010, which forms part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP, in force at the relevant time. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.
- 6.2 The principal purpose of imposing 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 (DEPP 6.1.2G).

- 6.3 In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks which BLL's conduct posed to customers and the need to send out a strong message to firms, that they must comply with regulatory responsibilities.
- 6.4 DEPP 6.5.2 and prior to August 2007, ENF, sets out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

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

- 6.5 The FSA considers BLL's conduct to be particularly serious because:
- (1) its failings persisted over a period of approximately five years;
 - (2) BLL did not promptly take steps to intercede or investigate where there was evidence of customer detriment; and
 - (3) BLL's customers, including those who already had impaired credit histories, were put at risk of entering into regulated mortgage contracts which they were unable to afford, received unfair treatment and may have incurred financial detriment.

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

- 6.6 The FSA considers BLL's conduct to be reckless in that its failings persisted for approximately five years, during which it should have been aware of its regulatory responsibilities and that customers may not be being treated fairly,

however no steps were taken to intercede or investigate matters. The size, financial resources and other circumstances of the person on whom the penalty is to be imposed.

6.7 The FSA has no evidence to suggest that BLL will be unable to pay this penalty.

Conduct following the breach DEPP 6.5.2G (8)

6.8 As detailed above in paragraph 4.21, BLL failed to cooperate with the FSA's investigation or to promptly implement remedial steps.

Disciplinary record and compliance history DEPP 6.5.2G (9)

6.9 The FSA has taken into account the fact that BLL have not been the subject of previous disciplinary action.

Other action taken DEPP 6.5.2G (10)

6.10 In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviours.

7. DECISION MAKER

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

8 IMPORTANT

8.1 This Final Notice is given in accordance with section 390 of the Act.

Manner of and time for payment

8.2 The financial penalty of £42,000 must be paid in full by BLL to the FSA by no later than 3 November 2010, 14 days from the date of this Final Notice.

If the financial penalty is not paid

- 8.3 If all or any of the financial penalty is outstanding on 4 November 2010, the FSA may recover the outstanding amount as a debt owed by BLL and due to the FSA.

Publicity

- 8.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to BLL or prejudicial to the interests of consumers.
- 8.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.6 For more information concerning this matter generally, BLL's should contact Mario Theodosiou at the FSA (direct line: 020 7066 5914 / email: mario.theodosiou@fsa.gov.uk).

Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX A:

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS

AND GUIDANCE

1. Statutory provisions

1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers. The relevant objectives for the purpose of this case are maintaining market confidence and the protection of consumers.

1.2. Section 206 of the Act provides:

(1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

1.3. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.

2. Relevant Handbook provisions

2.1. 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.

3. Principles for Businesses

3.1. Under the FSA’s rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Business (“Principles”) which apply either in whole, or in part, to all authorised persons.

3.2. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA’s regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

3.3. The Principles relevant to this matter are:

- (1) Principle 3 which provides that:

“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems”;

- (2) Principle 6 which provides that:

“A firm must pay due regard to the interests of its customers and to treat them fairly”; and

- (3) Principle 11 which provides that:

“A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.”

- 3.4. The procedures to be followed in relation to the imposition of a financial penalty are set out in section 207 and 208 of FSMA.

4. Mortgages and Home Finance: Conduct of Business sourcebook

- 4.1. The rules and guidance relating to the entering into and administration of regulated mortgage contracts are located in the Mortgages and Home Finance: Conduct of Business sourcebook section of the FSA Handbook (“MCOB”).

- 4.2. The rules and guidance on mortgage illustrations at the pre-application and offer stage are located in MCOB 5 and MCOB 6. MCOB 5.4.2R states that an illustration on a particular regulated mortgage contract issued by, or on behalf of, a mortgage lender must be an accurate reflection of the costs of the regulated mortgage contract.

- 4.3. The rules and guidance on responsible lending are located in MCOB 11. MCOB 11.3.1R states that:

- (1) a firm must be able to show that before deciding to enter into, or making a further advance on, a regulated mortgage contract, or home purchase plan, account was taken of the customer's ability to repay.

- (2) a mortgage lender must make an adequate record to demonstrate that it has taken account of the customer's ability to repay for each regulated mortgage contract that it enters into and each further advance that it provides on a regulated mortgage contract. The record must be retained for a year from the date at which the regulated mortgage contract is entered into or the further advance is provided.

4.4. The rules and guidance on charges are located in MCOB 12. MCOB 12.4 states that:

- (1) A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, a charge for arrears on a customer except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the customer being in arrears.
- (2) Paragraph (1) does not prevent a firm from entering into a regulated mortgage contract with a customer under which the firm may change the rate of interest charged to the customer from a fixed or discounted rate of interest to the firm's standard variable rate if the customer goes into arrears, providing that this standard variable rate is not a rate created especially for customers in arrears.

4.5. The rules and guidance on arrears and repossessions is located in MCOB 13. MCOB 13.3.1 states that a firm must deal fairly with any customer who is in arrears on a regulated mortgage contract.

FSA's policy on financial penalties

4.6. The FSA's policy on the imposition and amount of penalties is set out in Chapter 6 of the Decision Procedure and Penalties manual ("DEPP") in the FSA Handbook. This states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.

- 4.7. The following are the provisions of DEPP which were applicable to misconduct during the relevant period. Revised provisions of DEPP came into force on 6 March 2010 for misconduct after 6 March 2010.
- 4.8. The principal purpose of imposing 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.
- 4.9. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G set out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
- (1) The nature, seriousness and impact of the suspected breach (DEPP 6.2.1G(1)).
 - (2) The conduct of the person after the breach (DEPP 6.2.1G(2)).
 - (3) The previous disciplinary record and compliance history of the person (DEPP 6.2.1G(3)).
 - (4) FSA guidance and other published materials (DEPP 6.2.1G(4)).
 - (5) Action taken by the FSA in previous similar cases (DEPP 6.2.1G(5)).
- 4.10. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.
- 4.11. Factors that may be relevant to determining the appropriate level of financial penalty for misconduct prior to 6 March 2010 include:
- (1) the nature, seriousness and impact of the breach in question, including 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, and the loss or risk of loss caused to consumers (DEPP 6.5.2G(2));

- (2) the extent to which the breach was deliberate or reckless (DEPP 6.5.2(3));
- (3) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2(5)); and
- (4) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2(9)(d)).