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## FINAL NOTICE

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**To:** Steven James Martin

**Address** 1 The Spinney  
121 Main Road  
Danbury  
Chelmsford  
Essex, CM3 4DL

**IRN:** SJM01521

**Date:** 23 October 2015

### **ACTION**

1. For the reasons given in this notice, and pursuant to section 66 of the Act, the Authority hereby publishes a statement of misconduct by Mr Martin, for breaches of Statement of Principle 6.
2. The public censure will be issued on 23 October 2015 and will take the form of this Final Notice, which will be published on the Authority's website.

### **SUMMARY OF REASONS**

3. During the relevant period Mr Martin held the CF1 (Director) and the CF11 (Money Laundering Reporting) controlled functions at Quick Purchase. He was the only controlled function holder during the relevant period.

4. In the relevant period Quick Purchase entered into 14 regulated sale and rent back ("SRB") transactions, with customers. An SRB transaction must be both appropriate and affordable to be suitable for the customer but Quick Purchase permitted its customers to enter into SRB transactions without having reasonable grounds to be satisfied that the transaction was both affordable and appropriate for those customers.
5. Of the 14 SRB transactions, 11 were either inappropriate, unaffordable or both. The Authority regards these inappropriate and/or unaffordable sales as serious because they led to significant consumer detriment causing customers potentially to forgo between 29-38% of the equity in their homes.
6. Mr Martin breached Statement of Principle 6, by failing to exercise due skill, care and diligence in managing the business of Quick Purchase, for which he was responsible in his controlled function, in particular by not setting up appropriate systems and controls at Quick Purchase in order to ensure that:
  - i. appropriate customer information was gathered by its non-approved sales adviser, prior to customers being permitted to enter into an SRB agreement, to ensure its appropriateness;
  - ii. valuations of all properties were carried out independently by a surveyor who owed a duty of care to the customer; and
  - iii. record keeping was adequate to demonstrate compliance with the requirements of MCOB, including why it was appropriate and affordable for customers to enter into the SRB contract.
7. The Authority notes that Quick Purchase took the following actions to address customer detriment and the Authority's concerns in relation to the SRB transactions. Quick Purchase;
  - a. agreed to pay appropriate redress to those customers whose SRB transactions were unsuitable;
  - b. has not increased the rent for its SRB customers throughout the current five-year terms (notwithstanding annual rent rises being permitted under each SRB tenancy agreement); and

- c. agreed to offer all its existing SRB tenants new shorthold tenancies for a three year term, at an affordable market rent fixed for those three years (notwithstanding the fact that there is no requirement that an assured shorthold tenancy should offer a minimum term or be at a rent which includes the element of affordability). These tenancies are to commence on the expiration of their current SRB contracts.
8. The action to publish a statement of Mr Martin's misconduct supports the Authority's consumer protection objective of securing an appropriate degree of protection for consumers.

## **DEFINITIONS**

9. The definitions below are used in this Final 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;

"the customers" means the 14 individuals who commenced and completed their sale and rent back transaction with Quick Purchase during the relevant period (see table at Annex A);

"the 14 customer files" means the customer files relating to the customers' SRB transactions;

"MCOB" means the Mortgages and Home Finance: Conduct of Business sourcebook, part of the Authority's Handbook;

"Part IV Permission" means permission given to Quick Purchase under Part IV of the Act, which was in force until 31 March 2013, and "Part 4A permission" means permission given to Quick Purchase under Part 4A of the Act from 1 April 2013;

"Quick Purchase" means Quick Purchase Limited trading as Rent My House Back;

"the relevant period" means 14 July 2010 to 17 May 2011;

"SRB" means regulated sale and rent back;

“Statement of Principle” means the Statements of Principle and Code of Practice for Approved Persons, part of the Authority’s Handbook; and

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

## **FACTS AND MATTERS**

### **Background and SRB regulatory introduction**

10. Quick Purchase is an authorised SRB provider. It describes itself as a specialist SRB buying company, enabling homeowners to stay in their house and rent it back. It became authorised on 14 July 2010 to carry out SRB activities.
11. Mr Martin is approved to perform the CF1 (Director) function and is also approved to perform the CF11 (Money Laundering Reporting) function. There are no other approved persons at Quick Purchase. Mr Martin is also the sole shareholder. He runs Quick Purchase’s business on a day-to-day basis. Quick Purchase has a non-approved internal compliance officer, who regularly reports to Mr Martin. Mr Martin confirmed that during the relevant period he decided whether to purchase a particular property, by ensuring that the transaction was appropriate and affordable for the relevant customer. Mr Martin further confirmed that he is solely responsible for his business which he manages and operates.
12. Quick Purchase entered into 14 SRB agreements with customers during the relevant period.
13. SRB transactions involve individuals selling their home at a discount in return for the right to remain in their property as a tenant for a set period, typically on an assured shorthold tenancy. The individuals tend to be facing re-possession or other serious financial difficulties. The principal reason for most customers to enter into an SRB scheme is to allow them to remain living in their houses for an agreed period of time, which they would have been unable to do if they were to sell their properties in the open market. Examples of other reasons given by customers wishing to enter into SRB transactions include paying off mortgages and other debts, reducing monthly outgoings, leaving the property ladder, releasing money to spend on holidays and family members, and not having to deal with the expenses and stress (such as the responsibility for repairs) relating to home ownership.

14. SRB became a regulated activity on 30 June 2010. Before this date a transitional regime, which contained less onerous requirements on firms, was in place. All firms were required to apply a single sales standard across all SRB transactions based on the assessment of affordability and appropriateness for each sale. This means it is not permissible for a firm to transact an SRB agreement unless it has reasonable grounds to be satisfied that that an SRB agreement is both affordable and appropriate for the customer.
15. Quick Purchase operated in the transitionally regulated, and before this non-regulated, SRB market before becoming authorised on 14 July 2010.
16. In March 2011 the Authority undertook a thematic review of the SRB market. The review identified widespread poor practice among SRB firms. The main conclusion was that the majority of the SRB sales, from these SRB firms, were either unaffordable or inappropriate, meaning that consumers had a detrimental outcome or were likely to in the future. Common failings from this review included those relating to correctly assessing appropriateness and affordability, disclosure, record keeping and sales processes.
17. On 5 and 6 May 2011, the Authority attended the offices of Quick Purchase and identified areas of concern. Quick Purchase agreed, on 17 May 2011, to vary its Part IV permission (now its Part 4A permission) to remove its permission to enter into sales of any new regulated SRB contracts or agreements. Quick Purchase remained able to assist in the administration and performance of any existing regulated SRB agreement. Quick Purchase disputed the initial assessment in some, but not all, of these cases in respect of both "affordability" and "appropriateness". In some cases Quick Purchase reduced the rent that these customers were paying.
18. On 15 November 2011, the Authority required Quick Purchase to instruct a skilled person to produce a report in relation to its assessment of the "affordability" of the 14 SRB transactions. The skilled person produced its report on 7 February 2013. The skilled person interviewed some of the customers and obtained further information on their financial circumstances. For the customers who did not wish to participate, the skilled person relied upon national statistical data and extrapolated results from the participating customers.

19. The Authority has also undertaken its own review of the customer files in relation to both affordability and appropriateness and, where possible, interviewed the customers.

## **General Concerns**

### ***Customer information***

20. Quick Purchase's procedures in gathering information on the customers' personal and financial circumstances increased the risk that the customers entered into the transactions without their personal circumstances being assessed adequately for the purpose of ensuring that the transactions were both affordable and appropriate.
21. Quick Purchase gathered this information during their initial telephone calls with the customers and generated a fact find document based on this discussion. The customers were subsequently asked to sign the fact find document and verify the information at a face to face meeting with Quick Purchase. In seven cases this meeting took place after Quick Purchase had assessed affordability and appropriateness of the SRB transactions for the customers. This gave rise to an increased risk that Quick Purchase did not have accurate information on the customers' personal and financial circumstances in order to assess the affordability and appropriateness of the transactions.
22. The skilled person found that Quick Purchase failed to gather sufficient information on the customers' financial circumstances to demonstrate affordability. This included Quick Purchase's failure to obtain verifiable evidence on the customers' income, expenses and financial commitments and to ensure that the customers' circumstances were suitably reflected in the calculation of their net monthly expenditure.
23. The fact finding process to assess the appropriateness of the transactions lacked sufficient rigour. The fact find document was completed by a sales adviser not involved in the assessment of the suitability of the transactions. It did not contain adequate information on the customer's needs, objectives and circumstances to determine and demonstrate the appropriateness of the SRB transaction.
24. Quick Purchase's procedure on gathering customer information was a "tick box" task and inadequate. It should have been a genuine assessment of the customers'

personal circumstances to assist with Quick Purchase's determination of the appropriateness of the SRB transaction.

### ***Valuations***

25. MCOB 2.6A.12A R states that a firm must ensure that any valuation for the purposes of an SRB agreement is carried out by a valuer who owes a duty of care to the customer in valuing the property. This provision ensures that the customer has an effective remedy against the valuer if subsequently required. Although Quick Purchase included in its customer files a joint instruction letter in the form set out in MCOB 2 Annex 1G with a view to establishing that the valuer owed a duty of care to the customer, most of these letters were undated and were not countersigned by the customers. In five cases the valuer instructed to value each property, for the purpose of identifying each property's market value, was only acting for Quick Purchase and was not subject to a joint instruction by Quick Purchase and the customer.
26. Quick Purchase's failure to comply with this valuation requirement has meant that 5 of the 14 customers may not have been owed a duty of care by the valuer. The Authority considers this to be serious, as Quick Purchase did not treat its customers fairly in this regard.

### ***Record keeping***

27. MCOB 4.11.8R states that a firm must make and retain a record of the customer information that has been provided to it, and which explains why the firm concluded that the customer could afford, and why it was appropriate for him, to enter into the proposed SRB agreement.
28. The skilled person found that in all cases Quick Purchase had failed to demonstrate the affordability of the transactions for the customers.
29. The record keeping in these fact finds contained insufficient information to demonstrate that Quick Purchase had considered and rejected other options (for example, selling on the open market, re-mortgaging, equity release) that may have been suitable for the customers. Quick Purchase did not demonstrate that it had explored these options sufficiently and provided inadequate explanations as to why Quick Purchase was satisfied that it was appropriate for the customers to enter into the proposed SRB agreement, rather than availing themselves of other options. For

example, in one case (Customer A), obvious alternatives for a customer with her needs, objectives and circumstances were to sell the property or to apply for a mortgage rescue scheme (a government scheme offered to mortgagors in serious difficulties who are unable to make their mortgage repayments and in danger of becoming homeless if the house is repossessed). Quick Purchase's comments in the fact find, consisting of "not an option as she did not want to move out as she has lived there for some time," and "client had looked at this but felt that this was not an option for her" were insufficient to explain why Quick Purchase considered it was more appropriate for this customer to enter into the proposed SRB agreement than avail herself of the other options.

### ***Conclusion***

30. Mr Martin, acting in a position of significant influence and as the person solely responsible for Quick Purchase's procedures, was directly responsible for these breaches.

### ***SRB transactions***

31. At all material times Quick Purchase actively employed the services of external advisers in an effort to meet its regulatory obligations. These steps do not however remove Mr Martin's direct responsibility for the regulatory failings which occurred. The paragraphs below set out the Authority's findings in relation to 3 of the 11 cases where the SRB transactions were not affordable and/or appropriate to the customers' needs, objectives and circumstances. Mr Martin did not ensure that these cases were assessed appropriately by Quick Purchase and the customers were treated fairly.

### ***Mrs A***

#### *Background*

32. Mrs A was a 70 year old widow with no private income. She was in financial difficulties with her mortgage and debt repayments and had incurred arrears amounting to around £6,000. An order for possession was obtained by the lenders, the order being suspended on condition of payment of the arrears. Mrs A, whose home was valued at £187,500, gave up £56,250 of equity in the SRB transaction. After repaying her outstanding mortgage she paid the balance of her sale proceeds (£59,400) as advance rent for the full five year term to Quick Purchase. No

allowance for accelerated receipt was provided by Quick Purchase to Mrs A for this payment.

#### *Affordability*

33. Quick Purchase recorded a maximum affordable monthly rent in the fact find of £344.47 for Mrs A. The tenancy agreement stipulated the SRB rent as £900 per month for this transaction. Quick Purchase's own assessment indicated that the SRB rent was not affordable.
34. Quick Purchase assessed this transaction as affordable for Mrs A by making arrangements for her to pay the rent for the full five year term upfront from her sale proceeds. This amounted to £59,400. This was despite MCOB 4.11.4E(3) which states that, in assessing affordability, a firm must not rely to a material extent on the capital of, or income from, any lump sum the customer receives that represents the net sale proceeds of the property.
35. Mrs A paid £59,400 to Quick Purchase as an advance payment of rent for the full five year term. Notwithstanding MCOB 4.11.4E(3), Quick Purchase should have at least provided Mrs A with a discount to take into account the benefit to it of accelerated receipt. As a result, Mrs A was left with no surplus cash after the sale of her property to Quick Purchase.
36. The skilled person re-assessed the customer's income and expenditure after the customer contact exercise and calculated her net income as being in deficit. Given Mrs A's financial difficulties at that time, and the SRB rent being significantly higher than her original mortgage and debt repayments each month (which were around £500), the skilled person assessed this case to be unaffordable at any level of rent.

#### *Appropriateness*

37. Quick Purchase recorded in the fact find that selling on the open market and vacating the property was not a viable option for Mrs A as she did not want to move out. The fact find referred to other options including equity release and mortgage rescue schemes, which were dismissed.
38. Mrs A's needs and objectives were to be able to repay her debts and avoid re-possession proceedings. She was retired with a pension income of approximately £1,000 per month, all of which was expended on basic living expenses and

mortgage repayments. Quick Purchase should have looked into mortgage rescue schemes as an option for Mrs A. Given her circumstances, she could potentially have qualified for such schemes that would have enabled her to obtain almost 90% of the value of her house (as opposed to the 70% she obtained through Quick Purchase) and at the same time rent her home at a discounted rate. The reason shown for not exploring this scheme as an option in the fact find, i.e. "client had looked at this but felt that this was not an option for her", was inadequate.

39. Mrs A's needs and objectives may also have been better met by selling her house on the open market. Mrs A was widowed with no dependants; her circumstances suggested that it was likely that she would be able to move to less expensive accommodation. Quick Purchase failed to demonstrate that it sufficiently explored this option with Mrs A.
40. There was insufficient analysis by Quick Purchase in assessing whether Mrs A's needs, objectives and circumstances were appropriately met by this transaction. Quick Purchase executed the transaction without adequate regard to whether this was in her best interests and without fully exploring other options.

#### *Conclusion*

41. Quick Purchase did not have reasonable grounds to be satisfied that the proposed SRB agreement was appropriate to the needs, objectives and circumstances of Mrs A. The benefits of the transaction were clearly outweighed by the adverse effects. The transaction was both unaffordable and not appropriate.

#### **Ms B**

#### *Background*

42. Ms B was 35 years of age, a widow, had one dependent child and two children who had left home. She had no arrears on her mortgage. Her aim was to obtain a cash sum to purchase a caravan and to leave the property market. Ms B gave up £25,000 of equity in her home in the SRB transaction. The SRB offer was sufficient to pay her debts and to leave her with a surplus of £18,000 - 20,000. Her monthly rent was £350 for the first year, with the potential to increase to £480 in year five.

### *Affordability*

43. Quick Purchase assessed Ms B's net monthly income and total average monthly expenditure and considered that the transaction was affordable for her. After re-assessing Ms B's income and expenditure the skilled person agreed that the transaction was affordable.

### *Appropriateness*

44. Quick Purchase recorded in the fact find that selling in the open market and vacating possession was not considered as Ms B had lived in the property for a number of years and did not want to sell. But the main reason given on the fact find for entering into the transaction was that Ms B wanted to leave the "property ladder". If this was the primary reason for entering into an SRB transaction, selling on the open market and moving into rented accommodation should have been actively discussed between Quick Purchase and Ms B.
45. Ms B's other objective was to release money to buy a caravan. Quick Purchase failed to demonstrate active discussion on the merits of this proposed course of action for Ms B.
46. Ms B was not facing any financial difficulty and her financial circumstances were manageable. There were three obvious alternative options which should have been actively considered, discussed and evidenced: doing nothing, taking a further loan (secured or unsecured) for her prospective purchase of the caravan, or selling the property and moving into rented accommodation. Ms B had two main objectives (obtaining money for a caravan and coming out of the property market), either or both of which could have been achieved without the loss of £25,000 equity in the property.
47. There was insufficient analysis by Quick Purchase in assessing whether Ms B's needs, objectives and circumstances were appropriately met by this transaction. Quick Purchase executed the transaction without adequate regard to whether this was in her best interests.

### *Conclusion*

48. Although Ms B's transaction was affordable, it was not appropriate to the needs, objectives and circumstances of Ms B, and Quick Purchase did not have reasonable grounds to be satisfied that it was.

### **Mr C**

#### *Background*

49. Mr C was 70 years of age and a widower with no financial dependants. Mr C's property was mortgage free and he was not in financial difficulties. His aim was to obtain £14,000 to give to his daughter for her to invest in her business. Mr C gave up £22,750 of equity in his home. His monthly rent was set at £350 for the first year, with the potential to increase to £420 in year five.

#### *Affordability*

50. Quick Purchase assessed Mr C's net monthly income and total average monthly expenditure and recorded a maximum affordable monthly rent in the fact find for Mr C of £1,248.90. This assessment indicated that the SRB rent was affordable for him. After re-assessing Mr C's income and expenditure the skilled person agreed that the transaction was affordable.

#### *Appropriateness*

51. Quick Purchase failed to explore sufficiently the alternative options for Mr C to assist his daughter financially. The obvious options were whether Mr C could have obtained a loan (something he had previously done) to raise the £14,000 or acted as guarantor to a loan taken out by his daughter. Instead, the fact find recorded that an unsecured loan was discounted as the customer was looking to release money and keep his outgoings down. This suggests that Quick Purchase did little more than mention this option in passing. An SRB transaction should not be considered as a method of raising convenient and immediate finance.
52. There was insufficient analysis by Quick Purchase in assessing whether Mr C's needs, objectives and circumstances were appropriately met by this transaction. Quick Purchase executed the transaction without adequate regard to whether this was in Mr C's best interests and without fully exploring other options.

### *Conclusion*

53. Although Mr C's transaction was affordable, it was not appropriate to the needs, objectives and circumstances of Mr C, and Quick Purchase did not have reasonable grounds to be satisfied that it was.

### **FAILINGS**

54. The regulatory provisions relevant to this Final Notice are referred to in Annex B.
55. By reason of the facts and matters referred to above, Mr Martin has failed to comply with Statement of Principle 6, as an approved person performing a significant influence function, to exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function. In particular, Mr Martin failed to set up appropriate systems and controls at Quick Purchase in order to ensure that:
- i. appropriate customer information was gathered by its non-approved sales adviser, prior to customers being permitted to enter into an SRB agreement, to ensure its appropriateness;
  - ii. valuations of all of the properties were carried out independently by a surveyor who owed a duty of care to the customer; and
  - iii. record keeping was adequate to demonstrate compliance with the requirements of MCOB , including the appropriateness and affordability for the customers of entering into the SRB contract.

### **SANCTION**

56. The Authority is publishing a statement of Mr Martin's misconduct pursuant to section 66(3)(b) of the Act for breaching Statement of Principle 6. As the misconduct took place after 6 March 2010, the Authority's new penalty regime applies. The Authority has also had regard to the provisions of Chapter 7 of the Enforcement Guide.
57. The Authority's policy for imposing a financial penalty or publishing a statement of misconduct is set out in Chapter 6 of DEPP. DEPP 6.4.2G notes that the criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the Authority will consider in

determining the amount set out in DEPP 6.5A to DEPP 6.5D. The Authority considers the following factors to be particularly relevant in this case.

### **Deterrence**

58. When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

### **The extent to which the breach was deliberate or reckless**

59. The Authority does not consider that Mr Martin's failure to discharge his responsibilities as a CF1 director was deliberate or reckless.

### **Other action taken by the Authority**

60. In determining the appropriate sanction, the Authority has taken into account sanctions imposed by the Authority in other cases.

### **Previous disciplinary and compliance history**

61. Mr Martin has not been the subject of previous disciplinary action by the Authority.

## **PROCEDURAL MATTERS**

### **Decision maker**

62. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
63. This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Publicity**

64. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published

in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority Contacts**

66. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954 or email [paul.howick@fca.org.uk](mailto:paul.howick@fca.org.uk)) at the Enforcement and Market Oversight Division of the Authority.

Bill Sillett

Financial Conduct Authority, Enforcement and Market Oversight Division

**ANNEX A**

<b>Customer</b>	<b>Property Valuation and (Purchase Price)</b>	<b>Discount</b>	<b>Appropriateness</b>	<b>Affordability</b>	<b>Suitable</b>
A	£187,500 (£131,250)	£56,250	Not appropriate	Unaffordable	No
B	£70,000 (£45,000)	£25,000	Not appropriate	Affordable	No
C	£65,000 (£42,250)	£22,750	Not appropriate	Affordable	No
D	£175,000 (£110,000)	£65,000	Appropriate	Unaffordable	No
E	£125,000 (£88,000)	£37,000	Appropriate	Affordable	Yes
F	£110,000 (£75,000)	£35,000	Not appropriate	Affordable	No
G	£175,000 (£122,000)	£53,000	Not appropriate	Affordable	No
H	£70,000 (£46,000)	£24,000	Appropriate	Affordable	Yes
I	£103,000 (£66,950)	£36,050	Not appropriate	Affordable	No
J	£105,000 (£65,000)	£40,000	Not appropriate	Affordable	No
K	£110,000 (£72,000)	£38,000	Not appropriate	Unaffordable	No
L	£125,000 (£87,500)	£37,500	Not appropriate	Affordable	No
M	£125,000 (£83,000)	£42,000	Appropriate	Affordable	Yes
N	£80,000 (£56,653.48)	£23,347.52	Appropriate	Unaffordable	No

## **ANNEX B**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory provisions**

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is re-named as the Financial Conduct Authority.
2. The FCA's operational objectives established in section 1B of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers. The consumer protection objective is securing an appropriate degree of protection for consumers.
3. Section 66(1) of the Act provides that the FCA may take action against a person if it appears to the FCA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.
4. Section 66(3)(b) provides that the FCA may publish a statement of a person's misconduct.

#### **Handbook provisions**

5. In exercising its power to impose a financial penalty or issue a public censure, the FCA must have regard to relevant provisions in the FCA Handbook of rules and guidance. The main provisions relevant to the action specified above are set out below.

#### **Statements of Principle and the Code of Practice for Approved Persons**

6. The Statements of Principle and Code of Practice for Approved Persons set out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. They further describe factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
7. The Statement of Principle relevant to this matter is Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

## **MCOB**

8. MCOB 4.11 sets out the advising and selling standards for SRB transactions.
9. MCOB 4.11.3R provides that a firm must not permit a potential SRB seller to become contractually committed to enter into an SRB agreement unless it has reasonable grounds to be satisfied that the customer can afford the payments he will be liable to make under the agreement and that the proposed SRB agreement is appropriate to the needs, objectives and circumstances of the customer.
10. MCOB 4.11.4E refers to information which firms are required to consider when assessing whether or not a transaction is affordable.
11. MCOB 4.11.4E(1)(b) provides that firms should obtain adequate information from the customer to establish his income and expenditure calculated on a monthly basis, and any other resources that he has available, and verify the same using evidence provided by the customer.
12. MCOB 4.11.4E(1)(d) provides that in assessing affordability firms should take into account the customer's entitlement to means-tested benefits and housing benefits.
13. MCOB 4.11.4E(3) provides that in assessing affordability firms must not rely to a material extent on the capital of, or income from, any lump sum the customer receives which represents the net sale proceeds of the property.
14. MCOB 4.11.5E(1) provides that in assessing whether a particular SRB agreement is appropriate to the needs, objectives and circumstances of a potential SRB agreement seller, a firm should have due regard to the following:
  - a) whether the benefits to the customer in entering into the proposed SRB agreement outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits; and
  - b) the feasibility of the customer raising funds by alternative methods other than by a sale of his property.
15. MCOB 4.11.8R (1) provides that a firm must make and retain a record of the customer information that has been provided to it, including that relating to:
  - a) the customer's income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;

- b) the customer's needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and
- c) the customer's entitlement to means-tested benefits and housing benefits, including any evidence provided by the customer, that it has obtained from him for the affordability and appropriateness assessment.

and which explains why the firm concluded that the customer could afford, and why it was appropriate for him, to enter into the proposed regulated sale and rent back agreement.

- 16. MCOB 4.11.10G confirms that an SRB agreement provider is expected to carry out its own assessments of affordability and appropriateness in relation to an SRB agreement unless it is reasonable for it to rely on another firm having done so.
- 17. MCOB 2.6A.12A R provides that a firm must ensure that any valuation for the purposes of an SRB agreement is carried out by a valuer who owes a duty of care to the customer in valuing the property.
- 18. MCOB 5.9.1R(1) states that a firm must, as soon as a customer expresses an interest in becoming an SRB agreement seller, ensure that the disclosures and warnings set out in MCOB 5.9.1R(1A) are made to the customer, both orally and confirmed in writing, and he is given an adequate opportunity to consider them.
- 19. MCOB 5.9.1R(1A) provides that the disclosures and warnings referred to in MCOB 5.9.1R(1) include, amongst others, that the SRB agreement seller should in his own best interests independently seek whatever information he can on the market value of his property, as explained in the FSA consumer factsheet provided to the customer, before proceeding with the proposed transaction and how and from where information on its value may be available.