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**FINAL NOTICE**

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**To:** **Jagjeet Kaur**

**Of:** **12 Aspen Court  
Stoneleigh Road  
Ilford  
IG5 0HY**

**Individual reference number:** **JXK01517**

**Date:** **11 April 2011**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you, Jagjeet Kaur, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm**

**1. THE ACTION**

- 1.1. The FSA gave you a Decision Notice on 23 February 2011 (the “Decision Notice”) which notified you that, pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”).
- 1.2. You have not referred the matter to the Upper Tribunal (Tax and Chancery Division) within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly, for the reasons set out below, the FSA has made an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 11 April 2011.

## **2. REASONS FOR THE ACTION**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper as you lack honesty and integrity and because you have failed to meet the requirements and standards of the regulatory system due to you having knowingly submitted five personal mortgage applications for your own benefit to lenders which contained inaccurate and misleading information. Specifically, you have:
- (1) while working as a mortgage adviser at Gemmini Mortgages Limited (“GML”), obtained two regulated residential mortgages supported by inaccurate and misleading employment and income details, including the use of inflated personal income figures from your employment at GML and three other companies (“Firm One”, “Firm Two” and “Firm Three”);
  - (2) submitted a further three regulated residential mortgage applications through another firm, based on inaccurate and misleading information, including the use of false documentation; and
  - (3) mis-stated the intended use of the properties on the application forms when you applied for residential mortgages for three properties (which you stated would be used as your main residence), and then failed to notify the lenders of the change in use of the properties when they were subsequently let out.
- 2.2. As a result of the seriousness, nature and extent of your misconduct, the FSA has concluded that you are failing to meet the minimum regulatory standards required in terms of honesty and integrity, and are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA has made the Prohibition Order against you.
- 2.3. This action supports the FSA’s regulatory objectives of maintaining confidence in the financial system, the reduction of financial crime and the protection of consumers.

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

- 3.1. Relevant statutory provisions, regulatory guidance and policy are set out in the Annex to this Final Notice.

## **4. FACTS AND MATTERS RELIED ON**

### **Background**

- 4.1. You were a mortgage adviser at GML, a small retail mortgage intermediary based in East London, during the period from June 2006 to September 2008 (the “relevant period”). Although you assisted with compliance and management functions at GML, you were not an approved person at GML.
- 4.2. You previously worked as a trainee mortgage adviser at Firm One. In addition to GML and Firm One, you were also company secretary and a director of a number of

companies during the relevant period, including at Firms Two and Three. GML and Firms One, Two and Three were all owned by the same individual.

### **Your mortgage applications**

- 4.3. The FSA has found that you knowingly submitted five personal mortgage applications to lenders supported by materially different information during the relevant period. The FSA’s findings relate to mortgage applications to:
- (1) Lender A dated 2 June 2006 in respect of Property One (“Application One”);
  - (2) Lender B dated 2 June 2006 in respect of Property Two (“Application Two”);
  - (3) Lender C dated 2 June 2006 in respect of Property Three (Application Three”);
  - (4) Lender D dated 9 November 2006 in respect of Property Four (“Application Four”); and
  - (5) Lender E dated around September 2007 in respect of Property Five (“Application Five”).
- 4.4. Of the five mortgage applications, three applications were submitted through another firm (Applications One, Two and Three) and two applications were submitted through GML (Applications Four and Five). You obtained four regulated residential mortgages as a result of these applications (Applications One, Three, Four and Five). Of these, two were obtained through GML (Applications Four and Five).
- 4.5. The FSA found inconsistent employment and income details between the applications, discrepancies in the supporting pay slips and that you had mis-stated the intended use of your properties on the application forms.

### **Inconsistent employment details**

- 4.6. In response to questions posed by the lenders about your current employment, you disclosed the following information about GML:

<b>Application</b>	<b>Application date</b>	<b>Employment</b>	<b>Start date</b>
Application One	2 June 2006	Employed mortgage adviser at GML	March 2006
Application Two	2 June 2006	Employed mortgage adviser at GML	1 March 2006
Application Three	2 June 2006	Employed mortgage adviser at GML	March 2006
Application Five	September 2007	Employed mortgage adviser at GML	3 years and 1 month i.e. since August 2004

- 4.7. Companies House and FSA records confirmed that GML was incorporated on 11 October 2005 and was granted FSA authorisation on 1 June 2006. In Application Five, you falsely declared a start date of August 2004 for your employment as a mortgage adviser at GML, a date earlier than the date on which GML was incorporated. In Applications One, Two and Three, you falsely declared a start date of March 2006, a date earlier than the date on which GML was granted FSA authorisation.
- 4.8. Your employment start date for GML was also inconsistent with the information disclosed in an individual approval application submitted to the FSA on your behalf dated 8 January 2009. The individual approval application and an employer's reference from GML that accompanied the application stated that you began working for GML from 30 May 2006, and not from March 2006 as indicated in Applications One, Two and Three.
- 4.9. In relation to Application Five, you stated at an interview with the FSA that your employment start date of August 2004 included the period of your apprenticeship with Firm One as continuous employment. However, the application form required you to state how many years you had been employed with GML, not with any other firms. You should therefore not have included the time you were employed at Firm One. Your explanation was not reflected on the application form, even though the form provided space for you to do so in the "Additional Information" section at the end of the form, nor was there any record that you had ever informed Lender E of such information.
- 4.10. The explanation you gave at an interview with the FSA was also inconsistent with the information disclosed in Applications One, Two and Three, in individual approval applications submitted to the FSA on your behalf dated 8 March 2006 and 8 January 2009 and in an employer's reference from Firm One. These documents stated that you were previously employed by Firm One from October/November 2005, and not from August 2004 as indicated in Application Five or stated by you at interview.
- 4.11. Your employment contracts with GML dated 1 January 2006 and 2007 contained no express provisions that allowed you to count the period of your apprenticeship with Firm One as continuous employment. You were aware, or should have known, that the period of your apprenticeship with Firm One could not count as continuous employment given that you wrote your own employment contracts.
- 4.12. In addition, Firm One was not incorporated or permitted to conduct regulated activities in August 2004. Companies House and FSA records confirm that Firm One was incorporated on 25 October 2004 and became registered as an appointed representative firm on 15 December 2004.
- 4.13. You also provided inconsistent information about your self-employment in two mortgage applications (Applications Four and Five):

Application	Application date	Self-employment	Start date
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Application Four	9 November 2006	Director and 25% shareholder at Firm Two	1 year, i.e. since November 2005
Application Five	September 2007	Property consultant and 100% shareholder trading as Jagjeet Kaur	3 years and 1 month, i.e. since August 2004

- 4.14. You indicated in Application Four that you were a self-employed director at Firm Two and owned a 25% share in the business. Companies House records showed that, at the time of this mortgage application you were neither a director of Firm Two nor owned a 25% shareholding.
- 4.15. Your employment contract with Firm Two dated 1 November 2005 described your role as an employee and stated that you were employed as a non-executive director and had been allocated a 25% shareholding to be paid. Application Four gave the misleading impression that you were self-employed and owned a 25% share of Firm Two when in fact you were an employee and were not a shareholder because your 25% allocated shareholding in Firm Two had not been paid up.
- 4.16. In addition, your tax return for the years ending 5 April 2007 and 2008 reported that you had received both employed income from GML and self-employed income from a business that traded as Jagjeet Kaur. Your tax returns did not reflect that you derived income as a director from Firm Two. Also, you did not submit a tax return for the year ending 5 April 2006 which indicates that you did not earn any self-employed income for that period.
- 4.17. Further, you did not disclose accurate information about your employment in Application Four. According to your employment contract with GML dated 1 January 2006, you were employed by GML as a mortgage adviser from that date. At the time of this mortgage application, your employment with Firm Two had also changed. According to your consultancy agreement with Firm Two dated 1 November 2006, you stopped being an employee of Firm Two and became a consultant to the company instead. Your employment with GML and the change in your employment status with Firm Two were not reflected in Application Four. The information disclosed in Application Four gave the misleading impression that you were a self-employed director of Firm Two and owned a 25% share in the business.
- 4.18. In relation to Application Five, you disclosed that you were a self-employed property consultant to Firm Two and had traded as Jagjeet Kaur since August 2004. Your consultancy agreement with Firm Two stated that you were engaged as a consultant to Firm Two on 1 November 2006, and not from August 2004 as indicated on the application form. In addition, Companies House records confirmed that Firm Two was only incorporated on 11 October 2005. Therefore, you could not have provided consultancy services to Firm Two since August 2004.
- 4.19. You stated at an interview with the FSA that the start date of August 2004 was incorrect and that you began providing property consultancy services when you started working for Firm One in October 2005, rather than when you first started working for Firm One in another capacity in 2004. Your explanation was not reflected on the application form, even though the form provided space for you to do so, nor

was there any record that Lender E had been informed of such information. The information disclosed in Application Five gave the misleading impression that you had been a self-employed property consultant to Firm Two since August 2004.

- 4.20. Given the repeated nature of the discrepancies across five different mortgage applications, the FSA concluded that you knowingly provided inaccurate and misleading employment information to create the impression that you had an established employment history and earned income from various sources.

### **Inconsistent income details**

- 4.21. There were inconsistent income details on all five mortgage applications, which also contradicted information contained in your employment contracts:

<b>Application</b>	<b>Application date</b>	<b>Employed income</b>	<b>Self-employed income</b>
Application One	2 June 2006	Mortgage adviser at GML £40,000 salary £10,000 bonus	
Application Two	2 June 2006	Mortgage adviser at GML £40,000 salary £10,000 overtime/bonus £20,000 commission	
Application Three	2 June 2006	Mortgage adviser at GML £40,000 salary £10,000 overtime £20,000 commission/bonus	
Application Four	9 November 2006		Director at Firm Two £60,000 (2006)
Application Five	September 2007	Mortgage adviser at GML £36,000 salary	Jagjeet Kaur £36,000 (2007)

- 4.22. You disclosed in Applications One, Two and Three that you earned a basic annual salary as a mortgage adviser at GML of £40,000 and guaranteed bonus/overtime of £10,000. However, you provided an additional income from regular commission of £20,000 in Applications Two and Three which was not disclosed in Application One, even though all three applications were submitted on the same date and Application One asked specifically for annual commission details.
- 4.23. Application Two was accompanied by an employer's reference. The income details disclosed in the employer's reference was different to the information disclosed on the application form. The employer's reference stated that you earned a basic salary of £40,000 and bonus/commission of £20,000 but did not confirm that you earned an

additional income of £10,000 for overtime, even though the reference form specifically asked for this information.

- 4.24. In addition, the income details disclosed in Applications One, Two and Three were inconsistent with the information contained in your employment contract with GML dated 1 June 2006. Your employment contract stated that you earned a gross salary of £12,000, a guaranteed bonus of £12,000 and that you were entitled to a further bonus of 10% of sales that completed.
- 4.25. By contrast, Application Four disclosed no income earned by you as a mortgage adviser at GML but provided another source of income. You disclosed in this application that you had earned a self-employed income as a director at Firm Two of £60,000 for the year 2006, which was not reflected in Applications One, Two and Three.
- 4.26. You did not disclose accurate income details in Application Four. According to your employment contract with GML dated 1 January 2006, you were employed as a mortgage adviser and earned a gross salary of £12,000, a guaranteed bonus of £12,000 and were entitled to a further bonus of 10% of sales that completed. At the date of this application, your employment with Firm Two had also changed. According to your consultancy agreement with Firm Two dated 1 November 2006, you became a consultant to Firm Two and earned an annual fee of £36,000 for your services. Your income from GML and the change in your role at Firm Two were not reflected on the application form.
- 4.27. In addition, an enquiry form that accompanied Application Four stated that you were employed by GML as a manager/mortgage adviser and that you earned a basic annual income of £60,000. This was different to the information disclosed on the application form which stated that you were a director at Firm Two and earned a self-employed income of £60,000 for the year 2006. It is unclear which form has the correct information.
- 4.28. In relation to Application Five, you provided income from an employed basis, which was not disclosed in Application Four, as well as self-employed income from a different source. According to two letters provided by GML in support of Application Five, you derived other income of £36,000 on a self-employed basis from your work as a property consultant to Firm Two and you also earned a gross annual basic salary as a mortgage adviser at GML of £36,000 and an annual bonus of £3,000 to £12,000, of which £3,000 was guaranteed.
- 4.29. You stated at an interview with the FSA that the discrepancies in income details disclosed in Applications Four and Five may have arisen as a result of confusion relating to your different roles at GML and Firms One, Two and Three.
- 4.30. You indicated that your income was evident from your bank statements. Your bank statements for the period 1 June to 31 October 2006 showed monthly credits from GML of £829, indicating an annual income of approximately £12,000 gross, which was substantially less than the income figures disclosed in the five mortgage applications. The statements also showed deposits into your bank account in the form

of cheque payments but these were on an ad hoc basis and did not demonstrate that such payments were made from Firms One, Two or Three.

- 4.31. Information reported in your tax returns for the years 2007 and 2008 and recorded by Her Majesty's Revenue and Customs ("HMRC") for the years 2006 to 2008 did not support your stated earnings that were disclosed in these applications. Your total gross income for the tax years ending 5 April 2006 to 2008 as reported in your tax returns and recorded by HMRC was substantially less than what you disclosed in your mortgage applications.
- 4.32. The information disclosed in your tax returns and recorded by HMRC suggests that you have provided inaccurate and misleading employment and income details in support of all five mortgage applications.
- 4.33. The FSA has concluded that you knowingly overstated your income on your mortgage applications to meet the lenders' lending criteria in order to obtain mortgages for your properties.

#### **Discrepancies in the supporting payslips**

- 4.34. There were discrepancies in the payslips provided as proof of your income in support of Applications One and Three. According to FSA records, GML was granted authorisation to carry on regulated activities from 1 June 2006. You provided payslips for your employment with GML for the period 31 March to 31 May 2006 when GML had not started trading.
- 4.35. The payslips also contained different income details for the same periods of employment. The payslips in support of Application One stated that your monthly income consisted of salary and bonus payments, whereas the payslips in support of Application Three stated that your monthly income consisted of salary, bonus and commission payments. The income details recorded in the payslips supported the information disclosed on the relevant application forms. Application Three disclosed that your income consisted of additional earnings from commission which was not disclosed in Application One. Similarly, the payslips in support of Application Three reflected that you received earnings from commission but the payslips in support of Application One did not.
- 4.36. The payslips in support of Application One showed that you received a monthly gross income of £4,166.66, amounting to an annual gross income of £49,999.96. The payslips in support of Application Three showed that you received a monthly gross income of £5,833.33, amounting to an annual gross income of £69,999.96. Both figures were inconsistent with the information contained in your employment contract with GML dated 1 June 2006. Your employment contract stated that your income consisted of a gross salary of £12,000, a guaranteed bonus of £12,000 and that you were entitled to a further bonus of 10% of sales that completed.
- 4.37. The total gross pay to date figures shown in the payslips dated 31 March 2006 of £24,999.96 in support of Application One and £34,499.98 in support of Application Three indicated that you had been in receipt of an income from GML for at least six months since October 2005. The employment start date of October 2005 was



inconsistent with the information disclosed on both application forms, which stated that your employment with GML started from March 2006.

- 4.38. In addition, the total gross pay to date figures of £24,999.96 and £34,499.98 shown in the payslips dated 31 March 2006 was inconsistent with information recorded by HMRC for the year ending 5 April 2006.
- 4.39. You also provided payslips in support of Application Five for the period 30 June to 31 August 2007, which indicated that you received a monthly net income of £2,185 from GML. The income details on the payslip dated 31 July 2007 was inconsistent with the information recorded on GML's bank statement for the period 9 July to 8 August 2007. GML's bank statement showed a payment to you of £829.27 on 10 July but did not reflect any payment to you of £2,185 on or around 31 July 2007, or at any other time during that month.
- 4.40. The FSA has concluded that you knowingly provided false payslips to three lenders with the intention of obtaining mortgages that your actual level of income would not service and support. This is evidenced by the fact that, at an interview with the FSA, you stated that three of your four properties had been repossessed.

#### **Mis-statement of intended use of properties**

- 4.41. You failed to be open and honest with Lenders A, B and C when you submitted Applications One, Two and Three in respect of Properties One, Two and Three when giving your intentions about residing in the properties. These applications were submitted on the same date (although Application Two did not proceed) and you disclosed that Properties One, Two and Three were intended to be your main residence. Had you disclosed on the application forms that you had submitted three different mortgage applications simultaneously on a residential basis, Lenders A and C may not have granted the mortgages applied for in respect of Properties One and Three. In addition, a letter provided by GML to Lender E subsequently confirmed that you had never resided at Property One and that it was a buy-to-let property.
- 4.42. You also failed to be open and honest with Lenders D and E in making Applications Four and Five in respect of Properties Four and Five on a residential basis. You informed Lender D that Property Four would be your primary residence and you confirmed in a letter in support of Application Four that Property Three would be let out within three months of the completion of the mortgage for Property Four. However, Property Three was not let out. In relation to Property Five, you stated at an interview with the FSA that you subsequently let out this property after some time because it had been vacant.
- 4.43. In summary, you let out Properties One, Four and Five, while Property Three has remained your main residence. You stated at an interview with the FSA that you had notified Lenders A, D and E when your properties were let out and had corresponded with the lenders about the change in use of your properties. Lender E has confirmed to the FSA that it did not receive any request from you to change the status of your mortgage for Property Five from residential to buy-to-let.

- 4.44. Given that your properties were let out shortly after the mortgages completed, and you have remained resident at Property Three, the FSA has concluded that you knowingly applied for mortgages on a residential basis and then deliberately failed to notify the lenders of the change in use to your properties to benefit from paying lower rates of interest for your mortgages.

#### **Your explanations**

- 4.45. When asked at an interview with the FSA why you had failed to disclose full and accurate income details on Application Four, you stated:

“Because the income there is more than enough to purchase the property without stating all my income streams, because I mean I’d be filling up pages and pages by trying to explain what different roles and different companies and different income derived from all the various companies, and how everything is set up.”

- 4.46. When asked at interview to confirm whether you understood the importance of disclosing accurate information about your employment and income to the lenders, you stated:

“They also carried out their own verification, looked at my bank statements, looked at Companies House. All of this information is public information.”

- 4.47. In your written response to the preliminary FSA findings, you explained that because you were involved with many companies and entitled to various sources of income, your employment details disclosed on the application forms reflected what was necessary to obtain the relevant mortgage product. Despite the errors and omissions, you stated that the issues identified by the FSA were not material or relevant to the mortgage applications.

#### **Summary**

- 4.48. As a mortgage adviser, you were aware of the need to make full and accurate disclosure in making mortgage applications, and therefore should have done so from the outset. You should have provided the lenders with accurate information about your employment, income and personal details so that they could have made informed lending decisions. The information disclosed by you could have affected the type of information sought as proof of your income or the amount of due diligence undertaken into your financial affairs. By failing to do so, you failed to be open and honest with the lenders.
- 4.49. You have submitted five personal mortgage applications supported by inaccurate and misleading information, two of which were submitted through GML (Applications Four and Five), and you mis-stated the intended use of your properties in three applications (Applications One, Four and Five). Your position as a mortgage adviser means that you were aware of the importance of disclosing correct information in your applications but you failed to do so.
- 4.50. The fact that a number of applications were submitted within a short period of time during 2006 and 2007 with different personal and financial details suggests that you were aware that you were submitting inaccurate and misleading information to the

lenders. Further, you submitted Applications One and Three through another firm and these applications were supported by false payslips. The existence of your payslips on the mortgage file of another firm indicates that you must have provided the payslips and would therefore have been aware that they contained inaccurate and misleading information. The five applications demonstrate the extent of your repeated misconduct and highlight the material inconsistencies in the information submitted by you to the lenders.

## **5. ANALYSIS OF THE MISCONDUCT**

5.1. The reasons for the action are summarised in section 2 above. In particular:

- (1) your misconduct in submitting five mortgage applications, and in obtaining four mortgages, for yourself based on false and misleading information was extensive and deliberate;
- (2) you showed a disregard for the interests of the lenders; and
- (3) your misconduct took place while you were working as a mortgage adviser at GML.

### **Extensive and deliberate nature of the misconduct**

5.2. You gave false and misleading information in five mortgage applications over a period of 15 months in connection with the duration and status of your employment and the sources of your income. There were discrepancies between the information disclosed on the application forms and supporting documents, and there were inconsistencies in information provided across the applications.

5.3. You also failed to notify your lenders of the change in use of three of your properties, the mortgages for which had completed on a residential basis with a different lender. The lenders were therefore not in a position to reassess the risk and the terms of the mortgages.

5.4. These were all matters of fundamental significance to your lenders.

### **The interests of the lenders**

5.5. A prospective lender needed to be able to assess the risks of lending to a prospective borrower by taking into account all material factors, including details of employment and income. The false and misleading information in each of your application prevented a lender from making an informed decision based on an accurate assessment of risk. Collectively, such conduct would have an adverse affect on the stability of the mortgage market.

### **Your role as a mortgage adviser**

5.6. You gave no indication that you appreciated the importance of disclosing accurate employment and income details or recognised the extent of the errors and omissions in respect of your own mortgage applications. Instead, you placed the onus on the

lenders to check the accuracy of the information given and to make further enquiries into your financial position.

- 5.7. As a mortgage adviser at GML, a firm in the business of advising on and arranging mortgages for customers, you should have known and understood the importance of disclosing correct information in support of mortgage applications. The lenders you dealt with and the mortgage sector generally would all have expected you to have provided full and accurate information but you failed to do so.

## **6. YOUR REPRESENTATIONS**

- 6.1. You made written representations to the FSA by letters dated 13 September, 2 October and (by email) 5 October 2010. You made oral representations on 21 December 2010 and further written representations on 31 December 2010, 17 January, 31 January and 3 February 2011.

### **Written representations**

- 6.2. In summary, you made the following points in your written representations.

#### *Inconsistent employment details*

- 6.3. You said that you “categorically gave all the contract of employment documents”. You had counted your previous position with another company as part of your employment with GML as essentially you worked with the same person who was a director of both companies.

- 6.4. You said that some of the issues observed were not material and insignificant. They did not in any way significantly influence a mortgage application because lenders relied on the affordability test of income, i.e. the ability to pay monthly instalments. You said:

“Whilst it is generally accepted that employment details will readily provide proof of income but in my circumstances because I was involved with different companies and entitled to varied income streams ie dividends, business consultancies, etc my employment details depending on the particular mortgage application form was appropriately reflected correctly on what were necessary legitimately to match the product.”

- 6.5. You said that, in all sub prime products, emphasis is on the affordability test which only asks the borrower to “self cert” the income. “There are no hard and fast rules on the employment details to use.”

#### *Discrepancies in respect of income details*

- 6.6. You said that your accountant had prepared your income statements based on the advice of each mortgage packager that used appropriate income streams that suited best each mortgage product. Where there were discrepancies in the income stated, it was because each product was different and:

“... the choice of the relevant income stream like self employment status legitimately could best achieve fast and early mortgage completion as determined by the mortgage packager.”

- 6.7. You noted that all the tax returns were prepared by your former accountant.
- 6.8. On the false payslips, you said that proof of your income in support of your mortgage applications was correct. You said that the simple omission or statement which was not deliberate cannot amount to a false statement. You said that:

“...there is not a hard and fast rule that any omission or mistake ... will amount to an intent to make false payslips to obtain a mortgage or necessarily amounts to a deliberate intent to omit an information of material significance and therefore cannot amount [a] false statement to enable me to obtain mortgage as wrongly stated in the report.”

- 6.9. You said that for you to make a false statement you had to be dishonest. You relied on two cases relevant to criminal proceedings.
- 6.10. You said that the income details on the payslips were correct and the tax returns were submitted by your former accountant. At no time was your state of mind dishonest. You relied on cases drawn from the law of tort relating to the duty of care.

*“Residential scheme abuse”*

- 6.11. When submitting the first and third mortgage applications, you were not sure which property to reside in. You then found that the property you resided in did not seem to be in a safe neighbourhood so you let it out.

*Other points*

- 6.12. You never intentionally submitted any misleading mortgage application to any lender.
- 6.13. You bought “the other” properties with the intention of living in them but when you changed your mind you always informed the lenders which they all denied during the investigations because it was convenient for them to do so.
- 6.14. You did your best to uphold the standard set for the financial industry practitioners by implementing the Processes and Systems in GML and the other companies in the Gemmini group that led to the companies being awarded the Certificate in Certified Quality Systems to the Standards and Guidelines BS EM ISO 9001. You were all shocked when the FSA investigators accused “us” of breaching ethical standards. You worked closely with a compliance firm who should have pointed out the issues raised by the FSA.
- 6.15. You felt that “we” had been singled out by the FSA investigation department and used as a scapegoat because they never paid “us” a supervisory visit to point out areas of improvement.
- 6.16. You were proud to be a mortgage broker. You always presented the information to the mortgage lenders as your status was at the time of the application. You never, and

would never, intentionally do anything to bring the financial services industry into disrepute.

### **Oral representations**

- 6.17. In your oral representations on 21 December 2010, you sought to give an overview on how the company conducted its business and ask the question whether the behaviour of such a company was consistent with the behaviour of a company which undertakes fraudulent activities or tries to mislead or misrepresent itself.
- 6.18. Among a number of other things, you said that the most important thing for the lender was that the borrower should demonstrate affordability and that in your case you did this by disclosing your bank statements to them.
- 6.19. You blamed your former accountant for your problems with your tax returns.
- 6.20. In hindsight, you would have kept things simpler and worked for one company only so that the history of what you did was easier to capture. You would also have given all the information to the underwriters rather than speak to them.
- 6.21. At the time the payslips were issued for the same date but with different information on them, you did not realise that there must have been an error. You had the error corrected as soon as you did realise the error.
- 6.22. The reason you had failed to disclose in an application form to the FSA that four properties had been repossessed was that the form had not asked for the information. However, you were not trying to hide the information and had openly disclosed it to the FSA during her interviews and you had told the relevant firm.
- 6.23. At the oral representations meeting, you were given the opportunity of reconciling the inconsistencies in your income in your mortgage applications with your bank statements or your tax returns, or both. You subsequently provided the FSA with your bank statements with one bank from 1 January 2005 to 31 December 2008 to confirm all your income from employed (i.e. salary) and self-employed (i.e. commission) sources from the Gemini group companies. You also provided your last three reconciled tax returns and tax assessments from HMRC. You hoped the bank statements would be sufficient to prove that you actually earned the incomes stated in the mortgage application forms because they were the main documents requested and relied upon by the mortgage lenders as proof of income.

## **7. FINDINGS**

- 7.1. The FSA has found that the inconsistencies in the application forms were not adequately explained and has concluded that your behaviour was both dishonest and showed that you lacked integrity.
- 7.2. In explaining your behaviour, you:
  - (1) gave the FSA the background to the approach to compliance of GML and the other firms in the group as a whole;

- (2) blamed your former accountant;
- (3) relied on the overriding importance of what you called the ‘affordability test’, i.e. the prospective lender was only interested in whether you could afford the repayments and not in the detailed disclosure of all your streams of income;
- (4) relied on the importance of demonstrating to the lender the continuity of your employment in a group generally;
- (5) said that simple omissions or statements that were not deliberate could not amount to false statements;
- (6) said that you had applied for two mortgages on the same date on the basis that you would be living in each of them on the basis that you had not made up your mind which one to live in;
- (7) said that you had never intentionally submitted a misleading mortgage application to any lender; and
- (8) offered to reconcile the statements in mortgage applications with your bank statements and HMRC returns but failed to do so.

7.3. The FSA finds that the explanations for the inconsistencies do not adequately explain or justify your behaviour.

*The affordability test*

7.4. The FSA does not accept that the fundamental test for a prospective lender is whether the applicant can demonstrate that the repayments can be afforded. It is for the applicant to answer the question which is asked rather than to make a judgement on what the lender is looking for. Without underestimating the importance of a judgement on affordability by the lender, it is for the lender to make its decision based on the answers to the questions it poses and not for the borrower to anticipate the decision by making a partial disclosure, whether prompted by a misguided assumption on the need to give full disclosure or expediency or any other reason.

*Continuity of employment*

7.5. Similarly, a question on employment does not permit the applicant to give what he or she believes the lender needs. A full disclosure can always be accompanied by an explanation if appropriate. A partial disclosure, possibly based on expediency at the time, cannot be condoned by a belief that this was what the lender was really asking for anyway.

*False statements*

7.6. The FSA does not accept that a statement has to be dishonestly given in order to be “false”. Neither the state of mind of the person making the statement nor the person’s intent is relevant. It is a matter of fact whether a statement is true or false.

### *An understanding of your actions*

- 7.7. Although you acknowledged that you had overstretched yourself in your work, the FSA found that you displayed little or no regret for the inconsistencies in your applications and therefore the false basis on which the lenders had based their decisions. Although you said that you had informed the lenders orally of other matters which were not disclosed on the forms, there was no evidence of this. And although you went to great lengths to disclose your bank statements and other material to the FSA, these documents, of themselves, were inadequate to explain your sources of income and the information given to the prospective mortgage lenders.
- 7.8. Until you demonstrate an understanding of the nature of what you have done, and a commitment to a different approach in the future, the FSA believes that you will continue to be a risk to consumers.

### *Conclusion*

- 7.9. The FSA has concluded that in the circumstances your conduct demonstrates a lack of honesty and integrity and that you are therefore not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

### *Sanctions*

- 7.10. In the light of the above conclusion, and having regard to the guidance summarised in the Annex to this Final Notice, in order for it to achieve its statutory objectives of maintaining confidence in the financial system, the reduction of financial crime and the protection of consumers, the FSA has therefore made the Prohibition Order against you.

## **8. DECISION MAKER**

- 8.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

## **9. IMPORTANT**

- 9.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

### **Publicity**

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



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

**FSA contact**

- 9.4. For more information concerning this matter generally, you should contact Anna Hynes (direct line: 020 7066 9464 / fax: 020 7066 9465) of the Enforcement and Financial Crime Division at the FSA.

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**Tom Spender**  
**Head of Department**  
**FSA Enforcement and Financial Crime Division**

**STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY****1. STATUTORY PROVISIONS**

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system, the reduction of financial crime and the protection of consumers.
- 1.2. Section 56 of the Act provides that the FSA may make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

**2. REGULATORY PROVISIONS**

- 2.1. In exercising its power to make a prohibition order, the FSA has had regard to relevant regulatory guidance and policy published in the FSA's Handbook.
- 2.2. The FSA's Enforcement Guide ("EG") came into effect on 28 August 2007. Although the references in this Final Notice are to EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded EG and applied during part of the relevant period.
- 2.3. The guidance and policy that the FSA considers relevant to this case is set out below.

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

- 2.4. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be a person's competence and capability.
- 2.6. FIT 1.3.3G provides that it would be impossible to produce a definitive list of all the matters which would be relevant to a determination of a particular person's fitness and propriety.
- 2.7. FIT 1.3.4G provides that if a matter comes to the FSA's attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important it is.

- 2.8. FIT 2.1.1G provides that in determining a person's honesty, integrity and reputation, the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G, including:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G(5)); and
  - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

### **Enforcement Guide ("EG")**

- 2.9. The FSA's approach to exercising its power to make a prohibition order under section 56 of the Act is set out in Chapter 9 of EG.
- 2.10. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
- 2.11. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 2.12. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 2.13. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:
- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
  - (2) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

- (3) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6)); and
  - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
- 2.14. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include severe acts of dishonesty, which may have resulted in financial crime serious lack of competence (EG 9.12(3)).
- 2.15. EG 9.17 to 9.18 provides guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved person or exempt person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include, but are not limited to, the factors sets out in EG 9.9.
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