
FINAL NOTICE

To: Joseph Chinedu Nwosu

Of: 18 Manchester Court
Garvary Road
London
E16 3GZ

Individual reference number: JCN01036

Date: 11 April 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Joseph Chinedu Nwosu, final notice about the imposition of a financial penalty, a decision to withdraw your approval and 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 ACTIONS

1.1. The FSA gave you a Decision Notice on 23 February 2011 (the "Decision Notice") which notified you that the FSA had decided to:

- (1) impose a financial penalty of £200,000 on you, pursuant to section 66 of the Financial Services and Markets Act 2000 (the "Act"), for failing to comply with Statement of Principle 1 of the Statements of Principle and Code of Practice for Approved Persons (the "Statements of Principle");
- (2) withdraw the approval granted to you, pursuant to section 63 of the Act, to perform controlled functions; and
- (3) make an order, pursuant to section 56 of the Act, 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:
 - (1) imposed a financial penalty on you of £200,000;
 - (2) withdrawn your approval to perform controlled functions; and
 - (3) 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 ACTIONS

- 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 14 personal mortgage applications for your own benefit to lenders which contained inaccurate and misleading information. Specifically, you have:

- (1) breached Statement of Principle 1 while performing controlled functions as an approved person at Gemmini Mortgages Limited (“GML”) during the period from June 2006 to September 2008 (the “relevant period”) as you failed to act with integrity because through GML you:
 - (a) obtained three regulated residential mortgages; and
 - (b) submitted a further seven regulated residential re-mortgage applications;

based on inaccurate and misleading employment and income details, including the use of inflated personal income figures from your employment at GML and two other companies (“Company One” and “Company Two”);

- (2) submitted an unregulated buy-to-let re-mortgage application through GML based on inaccurate and misleading information;
- (3) obtained another two regulated residential mortgages and an unregulated buy-to-let mortgage supported by inaccurate and misleading information using other firms, including by submitting an application through your previous appointed representative firm (the “AR Firm”); and
- (4) mis-stated the intended use of the properties on the application forms when you applied for residential mortgages for four 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. The FSA has concluded that your failings while performing controlled functions as an approved person at GML warrant the imposition of a financial penalty. The FSA has therefore imposed a financial penalty of £200,000 on you for breach of Statement of Principle 1.
- 2.3. In addition, the FSA has concluded that, as a result of the seriousness, nature and extent of your misconduct, 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 withdrawn your approval to perform controlled functions and made the Prohibition Order against you.
- 2.4. 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 approved by the FSA on 1 June 2006 to perform the following controlled functions at GML: CF1 (Director) and CF8 (Apportionment and Oversight) and you were responsible for insurance mediation. You were also a mortgage adviser at GML during the relevant period. Apart from you, there are no other persons approved to perform controlled functions in relation to the regulated activities for which GML has permission.
- 4.2. GML is a small retail mortgage intermediary based in East London. GML was authorised by the FSA on 1 June 2006 to conduct regulated mortgage business and to carry on insurance mediation business. With effect from 1 June 2006, GML was granted permission by the FSA to carry out the following regulated activities (those marked with an asterisk are limited to non-investment insurance contracts):
 - (1) advising on investments (except on pension transfers and pension opt outs)*;
 - (2) advising on regulated mortgage contracts;
 - (3) agreeing to carry on a regulated activity;
 - (4) arranging (bringing about) deals in investments*;
 - (5) arranging (bringing about) regulated mortgage contracts;
 - (6) making arrangements with a view to regulated mortgage contracts; and

- (7) making arrangements with a view to transactions in investments*.
- 4.3. With effect from 12 March 2009, GML voluntarily varied its Part IV permission such that it could not carry on any of the regulated activities in its permission.
- 4.4. You previously operated as the director of the AR Firm during the period from 15 December 2004 to 5 June 2006. In addition to the AR Firm and GML, you were also a director of a number of other companies during the relevant period, including Companies One and Two.

Your mortgage applications

- 4.5. Following an investigation, the FSA has found that you knowingly submitted 14 personal mortgage applications to lenders in respect of six properties supported by materially different information between 2005 and 2007. The FSA's findings relate to mortgage applications to:
 - (1) Lender A dated 8 July 2005 in respect of Property One ("Application One");
 - (2) Lender B dated 24 August 2005 in respect of Property Two ("Application Two");
 - (3) Lender A dated 18 October 2005 in respect of Property Three ("Application Three");
 - (4) Lender C dated 12 July 2006 in respect of Property Four ("Application Four");
 - (5) Lender D dated 2 February 2007 in respect of Property Five ("Application Five");
 - (6) Lender E dated 22 February 2007 in respect of Property Six ("Application Six");
 - (7) Lender F dated 16 August 2007 in respect of Property One ("Application Seven");
 - (8) Lender G dated 23 August 2007 in respect of Property One ("Application Eight");
 - (9) Lender H dated around 12 September 2007 in respect of Property Three ("Application Nine");
 - (10) Lender A dated 4 October 2007 in respect of Property One ("Application Ten");
 - (11) Lender I dated 9 October 2007 in respect of Property One ("Application Eleven");
 - (12) Lender J dated around 12 October 2007 in respect of Property One ("Application Twelve");

- (13) Lender K dated 23 October 2007 in respect of Property One (“Application Thirteen”); and
- (14) Lender L dated around 6 November 2007 in respect of Property One (“Application Fourteen”).
- 4.6. Of the 14 mortgage applications, 11 were submitted through GML (Applications Four to Fourteen). Of the mortgage applications submitted through GML, all were for regulated mortgage contracts except for one which was for an unregulated buy-to-let re-mortgage (Application Nine). You also submitted applications for two regulated mortgage contracts through another firm (Applications One and Two) and an unregulated buy-to-let mortgage through the AR Firm (Application Three).
- 4.7. As a result of these applications, you obtained five regulated residential mortgages (Applications One and Two through another firm and Applications Four to Six through GML) and an unregulated buy-to-let mortgage (Application Three through the AR Firm).
- 4.8. The FSA found anomalies in respect of the duration of your residence, inconsistent employment and income details between the applications, inaccurate disclosure of your financial commitments and that you had mis-stated the intended use of your properties on the application forms.

Anomalies in respect of duration of residence

- 4.9. You disclosed inconsistent information in response to questions posed by the lenders about the duration of your residence at your present address. In respect of the address that you resided at when you started living in the UK (the “Address”), you gave six different dates in Applications One to Four, Ten and Twelve, ranging from August 2000 to March 2004:

Application	Application date	Response given	Residence started
Application One	8 July 2005	Four years	July 2001
Application Two	24 August 2005	Five years	August 2000
Application Three	18 October 2005	Three years and four months	June 2002
Application Four	12 July 2006	May 2003	May 2003
Application Ten	4 October 2007	Three years and seven months	March 2004
Application Twelve	c.12 October 2007	Five years and one month	September 2002

- 4.10. Your start dates for residing at the Address were inconsistent with the information disclosed in an individual approval application submitted to the FSA on your behalf dated 8 March 2006. The individual approval application stated that you had resided

at the Address from August 2004 to August 2005, and before this you had been based in Norway from August 1990 to July 2004.

- 4.11. You also misrepresented the date for the start of your residence in the UK. Application Three specifically asked you how long you had been a resident in the UK. You disclosed in this application that you had been a resident in the UK for three years and six months, indicating that your residence in the UK began in April 2002. However, you stated at an interview with the FSA that you started living in the UK from July 2004.
- 4.12. The information disclosed in these six mortgage applications created a misleading impression that you had an established residential history, and your answer in Application Three suggested that you had permanent ties to the UK before July 2004.

Inconsistent employment details

- 4.13. You stated at an interview with the FSA that prior to setting up the AR Firm you were based in Norway until July 2004 and had studied for your financial qualifications between July and October 2004 before applying to become an appointed representative in around October 2004. Companies House and FSA records confirmed that the AR Firm was incorporated on 25 October 2004 and became registered as an appointed representative firm on 15 December 2004.
- 4.14. You falsely declared a start date for your employment at the AR Firm that indicated you had begun working for the AR Firm before its establishment in three applications (Applications One, Two and Four). In response to questions posed by the lenders in these applications about the length of time that the AR Firm had been trading, you gave three different dates, ranging from December 2003 to July 2004:

Application	Application date	Response given	Employment started
Application One	8 July 2005	One year and six months	January 2004
Application Two	24 August 2005	One year and nine months	December 2003
Application Four	12 July 2006	July 2004	July 2004

- 4.15. You also disclosed that your employment began earlier than the incorporation date of GML in six applications (Applications Seven, Eight, Ten, Eleven, Thirteen and Fourteen). Companies House and FSA records confirmed that GML was incorporated on 11 October 2005 and was granted authorisation on 1 June 2006. In response to questions posed by the lenders in these applications about the length of time that GML had been trading or your association with GML, you gave four different answers, ranging from 1 October 2004 to 16 July 2005:

Application	Application date	Response given	Employment started
Application Seven	16 August 2007	16 July 2005	16 July 2005

Application Eight	23 August 2007	23 October 2004	23 October 2004
Application Ten	4 October 2007	Three years	October 2004
Application Eleven	9 October 2007	1 October 2004	1 October 2004
Application Thirteen	23 October 2007	Three years	October 2004
Application Fourteen	c.6 November 2007	Three years	November 2004

- 4.16. You stated at an interview with the FSA that, in relation to your employment with GML, the start date of October/November 2004 included your continuous employment with the AR Firm as you wanted to account for income that you had received from the AR Firm for the year ending 2005. However, your explanation was not reflected on any of the application forms, even when the forms provided additional space for you to do so, nor were there any records that the relevant lenders had been informed of such information.
- 4.17. In addition, accountant certificates were provided in support of two applications as proof of your income from GML (Applications Eight and Eleven). The accountant certificates did not confirm your continuous employment with the AR Firm.
- 4.18. Given the repeated nature of the discrepancies across nine different mortgage applications, the FSA concluded that you knowingly provided inaccurate information about your employment with the AR Firm and GML to create the misleading impression that you had an established trading history.

Inconsistent income details

- 4.19. In three applications (Applications One, Two and Three), you disclosed income figures for your employment with the AR Firm when it had not started trading. Companies House and FSA records confirmed that the AR Firm was incorporated on 25 October 2004 and became registered as an appointed representative firm on 15 December 2004. In response to questions posed by the lenders in these applications about your income from your self-employment at the AR Firm, you disclosed that your share of the net profits for the year 2004 was £75,000 and £75,600.
- 4.20. You stated at an interview with the FSA that the amount disclosed as your net profit for the year 2004 was a projected income figure. Application One specifically asked you for details of your total earned income. By including a projected income figure, you provided inaccurate and misleading information in support of this application.
- 4.21. You submitted 11 mortgage applications during 2006 and 2007 (Applications Four to Fourteen). The applications showed that your income increased significantly over a short period of time but your stated earnings for the years 2005 to 2007 were inconsistent between the applications. In response to questions posed by the lenders in these applications about your income from your self-employment at the AR Firm or GML, you provided four different income figures for the year 2005 (£85,000, £101,500, £60,382 and £35,479), three different income figures for the year 2006

(£108,000, £120,000 and £98,020) and two different income figures for the year 2007 (£150,000 and £151,769).

- 4.22. Information recorded by HMRC for the years 2005 to 2007 did not support your stated earnings that were disclosed in these applications. Your total gross income as recorded by HMRC for the tax years ending 5 April 2005 to 2007 was substantially less than what you disclosed in your mortgage applications.
- 4.23. You explained at an interview with the FSA that the inconsistencies between your stated earnings for the years 2005 to 2007 reflected projected income figures. You stated that at the time you made the relevant applications, the accounting year for your business had not yet ended or the accounts were not finalised so you did not have your final income figures.
- 4.24. The applications specifically asked you for details of your actual income or your share of the net profits from your business for the previous trading years. By including projected income figures in support of your applications, you provided inaccurate and misleading information to the lenders.
- 4.25. In relation to the differences between your stated earnings in the applications and HMRC records, you explained at an interview with the FSA that your income derived from your employment with GML, the AR Firm, and Companies One and Two and consisted of basic salaries (from the AR Firm and Company One) and dividend payments.
- 4.26. Except for three applications (Applications Five, Eight and Eleven), which included supporting documentation purporting to confirm your additional employment, your explanation was not evident on any other application forms. Of the 11 applications submitted during 2006 to 2007, seven applications disclosed no further employment or income details beyond the information provided, even when the forms provided additional space for you to do so, nor were there any records that the relevant lenders had been informed of such information.
- 4.27. At an interview with the FSA you also indicated that the shortfall in your income between what was disclosed in your applications and recorded by HMRC was because dividend payments that had been made to you had not been recorded on your personal tax returns, but in the returns of each of the companies involved.
- 4.28. The FSA has checked the net profit figures recorded by HMRC for GML, the AR Firm and Companies One and Two for the years ending 31 October 2005 to 2007. When your income as recorded by HMRC for the same period was added to the net profit figures of these companies, the resulting income did not match the amounts disclosed in your applications.
- 4.29. In addition, the unaudited financial statements of GML, the AR Firm and Companies One and Two for the year ending 31 October 2007 showed no dividend payments or profit figures matching the amounts disclosed in your applications relating to the years 2006 and 2007.
- 4.30. The FSA concluded that you knowingly overstated your income on your applications to meet the lenders' lending criteria to obtain mortgages for your properties.

Inaccurate disclosure of financial commitments

4.31. You confirmed at an interview with the FSA that you owned six properties. In response to questions posed by the lenders about your existing and other mortgages, you indicated that mortgages in respect of:

- (1) Property One started on 26 July 2005;
- (2) Property Two started on 30 September 2005;
- (3) Property Three started on 28 October 2005; and
- (4) Property Four started on 30 September 2006.

4.32. In addition, the mortgage applications in respect of:

- (1) Property Five completed around February/March 2007; and
- (2) Property Six completed on 8 March 2007.

4.33. You did not disclose accurately the extent of your property ownership in nine applications (Applications Four to Eleven and Fourteen) which sought specific information about your existing mortgage commitments:

Application	Application date	Disclosure	Non-disclosure
Application Four	12 July 2006	Property One Property Two	Property Three
Application Five	2 February 2007	Property One Property Two	Property Three Property Four
Application Six	22 February 2007	Property One Property Two	Property Three Property Four
Application Seven	16 August 2007	Property One Property Two Property Three Property Four	Property Five Property Six
Application Eight	23 August 2007	Property One Property Two Property Three Property Four	Property Five Property Six
Application Nine	c.12 September 2007	Owned three investment properties	Ownership of three other properties
Application Ten	4 October 2007	Property One	Property Two Property Three

			Property Four Property Five Property Six
Application Eleven	9 October 2007	Property One Property Three Property Four	Property Two Property Five Property Six
Application Fourteen	c.6 November 2007	Property One	Property Two Property Three Property Four Property Five Property Six

- 4.34. You stated at an interview with the FSA that you took the view that the onus fell on the lenders to make enquiries of your credit position rather than on you to disclose accurate information about the extent of your financial liabilities on your applications from the outset.
- 4.35. As a mortgage adviser, you were aware of the need to make full disclosure of financial commitments in making mortgage applications. In response to the question whether GML had ever experienced lenders rejecting applications, you stated at an interview with the FSA that a lender had previously rejected an application submitted on behalf of a customer as the customer failed to disclose the extent of her property ownership.
- 4.36. By failing to disclose accurate details of your property ownership, you may have denied the relevant lenders the opportunity to consider the extent of your existing financial commitments when assessing your disposable income and ability to service any loans in making an appropriate lending decision.

Mis-statement of intended use of properties

- 4.37. You stated at an interview with the FSA that you had initially obtained mortgages on a residential basis for Properties Two, Four, Five and Six but these properties were subsequently let out when you could not afford to pay the mortgages. You claimed that you had notified the relevant lenders when the properties were let out.
- 4.38. Lenders C, D and E, the respective lenders of Properties Four, Five and Six, have confirmed to the FSA that these properties completed on a residential basis. They also stated that they did not receive any request from you during the application stage or subsequently to change the purpose of the loans.
- 4.39. You admitted at an interview with the FSA that you did not take any steps to notify the relevant lenders before the change in use to these properties. In fact, you stated that you only informed the lenders that the properties were let out when the lenders contacted you to check on the residential statuses of the properties. You also stated

that you were not aware that you had to notify the lenders before letting your properties. This is implausible given your status as a mortgage adviser.

- 4.40. Whilst you state that you were not aware of the obligation to inform the lenders of the change in use to your properties, following contact from the lender in respect of your first property, you were put on notice that notifications had to be made to the lenders before you let out your other properties. It is therefore implausible that you were not aware of your obligation to inform the lenders following notification from the lender in respect of your first property. In any event, you should have known this given that you were a professional mortgage adviser and therefore would have had the requisite knowledge.
- 4.41. You confirmed at an interview with the FSA that two lenders subsequently changed your mortgage interest rate from residential to buy-to-let after discovering that you had let out your properties.
- 4.42. The FSA 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

Income and employment details

- 4.43. When asked in interview to confirm that your view was that it was the lender's obligation to check your income and your employment history, you said:

“I put the obligation on the lender to find out, if I am to put it that way, but I will not put it that way, that is what I am explaining, because the reason why I am saying is, after you fill all these things, the lender tells you clearly to sign and give them authority to confirm from various sources the information you've given there, and if at any point in time the lender had come back and said that the information you put here is inaccurate, it's not factual ... I know this is a mistake, it's not properly filled in, it should have been done better, but my personal view is why didn't they come back with that.”

Inaccurate disclosure of financial commitments

- 4.44. When asked in interview about your failure to disclose the extent of your existing mortgages and financial commitments, you said:

“If I may then ask, so what? ... what I mean so what is that let's say you're the lender, because ... we are treating it like this, I see the lender is so handicapped, they can't do anything. It is not true ... They see all the information, they see everything, so like I said it's innocent, it is a mistake ...”

Mis-statement of intended use of properties

- 4.45. When asked in interview why you did not inform the lender of the third property that you had bought on a residential basis that you had since let it out you said:

“Yes, I should. Yes, knowing I should, but frankly speaking, up until now, I didn’t really know it mattered as much to the lender. I didn’t. I know it might sound naïve or unbelievable, but I didn’t. I didn’t. ... I never knew maybe it really, really matters that much to them. To be honest, I didn’t. ... Yes, I know that they said that you should have told us. That’s what I’m saying. They say you should have told them. But told them so that what? ... I know it sounds silly, but I didn’t really know what difference it makes to the lender whether I tell them or not.”

- 4.46. When asked to explain your third failure to disclose a change of use (which you characterised as an “innocent mistake”), you said:

“... It was an innocent mistake, not as if I wanted to mislead them, ... I never lie to any of them that it wasn’t rented. I use the word innocent in the sense that I didn’t mean any harm ... The point they contacted me, I told them yes.”

- 4.47. In your written response to the preliminary FSA’s 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. You stated that some details disclosed on the applications forms, particularly relating to inconsistent dates, were mistakes. Despite the errors and omissions, you stated that the issues identified by the FSA were not material or relevant to the mortgage applications and that you did not intend to mislead any lenders. In any event, you felt that it was the lenders’ responsibility to consult with relevant credit agencies to enquire about your financial position.

Summary of the facts and matters relied on

- 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 14 personal mortgage applications, ten of which were for regulated residential mortgages through GML (Applications Four to Fourteen except for Nine), supported by inaccurate and misleading information and you mis-stated the intended use of your properties on four applications (Applications Two, Four, Five and Six). 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. The fact that a number of applications were submitted within a short period of time during 2005 to 2007 with different personal and financial details suggests that you were aware that you were submitting inaccurate and misleading information to the lenders. The 14 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 of submitting 14 mortgage applications, and in obtaining six mortgages, for yourself based on false and misleading information was extensive and deliberate;
- (2) you showed a disregard for the interests of the lenders;
- (3) your misconduct took place while you were approved to perform the function of a director of GML which, among other regulated activities, was permitted to advise on and arrange regulated mortgage contracts;
- (4) you were the founder, sole shareholder and sole director of GML; and
- (5) the explanations for your misconduct were not credible.

Extensive and deliberate nature of the misconduct

5.2. You gave false and misleading information in 14 mortgage applications over a period of 26 months in connection with the period of your residences, the duration and status of your employment, the sources of your income and the extent of your financial commitments. There were discrepancies between information disclosed on the application forms and supporting documents, and there were inconsistencies in information provided within a number of the applications.

5.3. You also failed to notify your lenders of the change in use of four 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 needs to be able to assess the risks of lending to a prospective borrower taking into account all material factors including details of employment, income and financial commitments. The false information in each application was seemingly given on a random basis and without regard to reality. It prevented a lender from making an informed decision based on an accurate assessment of risk. If all borrowers were to adopt the same approach, such conduct would have an adverse affect on the stability of the mortgage market.

Your role as the sole director of a mortgage broker

5.6. As the sole director of GML, a firm in the business of advising on mortgages and arranging them 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.

Your position as founder, sole shareholder and sole director of GML

- 5.7. As the sole shareholder of GML, you stood to benefit from its profits some of which were generated by commission earned from your successful mortgage applications.
- 5.8. As the founder, sole shareholder and sole director of GML, you also set the culture of the firm enabling you to use it as a vehicle for the submission of false and misleading mortgage applications.

The explanations as to your conduct

- 5.9. You gave no indication that you recognised the extent of the errors and omissions in respect of your own applications or appreciated the disadvantage caused to the lenders or prospective lenders. In response to questions in interview about the false and misleading statements in your applications, you described them, for example, as “innocent mistakes”, explaining that you used “innocent in the sense that I didn’t mean any harm”.
- 5.10. However, when asked in interview about the process you followed when submitting mortgage applications for customers through GML, you understood that income information given to the lender needed to be “as accurate as possible”.
- 5.11. In interview, you repeatedly indicated that you felt that the onus was on the lender to check the accuracy of the information given and check other matters as necessary by, for example, downloading key information from credit reference agencies. This was not a credible explanation from someone who had also indicated that they appreciated the need for accurate information from customers to be given to lenders.
- 5.12. In interview, when asked about the difference between your income declared to HMRC and the income declared on the mortgage application forms, you explained that you had treated the incomes of GML, the AR Firm and Companies One and Two as yours for the purposes of the applications. However, you did not adopt this approach when declaring your income for tax purposes. If this was intended to be a justification of the practice, it was not credible.

6. YOUR REPRESENTATIONS

- 6.1. You made written representations to the FSA by a letter dated 13 September 2010 supplemented by an email dated 27 September 2010 and a further letter dated 1 October 2010. You made oral representations on 6 December 2010.
- 6.2. In your letter of 13 September 2010, you addressed a number of topics. The following is a summary of the key representations.

Duration of residence in the United Kingdom

- 6.3. You believed that the factors taken into account when deciding whether a person was “resident” in the UK were: intent to settle in the UK; family members already living in the UK; a rental agreement in the UK; and an employment contract. On that basis, you had been resident in the UK since 2003.

Failure to notify the lenders of the change in use of four of your properties

- 6.4. You said that you did notify the lenders of the change of use by various modes of communication.

Provision of inconsistent employment details and discrepancies of income details to lenders

- 6.5. Employment details were not indicated as a condition and material to obtaining a mortgage because the mortgage product laid emphasis on affordability. Simple omission or statement which was not deliberate cannot amount to a false statement and cannot be considered material or significant to infer it a “false statement”. Your employment details had always reflected your actual involvement with the companies and some of the details particularly on dates were mere mistakes.

Not being a fit and proper person in terms of honesty and integrity

- 6.6. For you to make a false statement to obtain a mortgage, you had to be dishonest. In your case, you had simply used information provided to you by your accountant. You relied on legal authorities drawn from criminal law and tort in support of your views on whether you were dishonest and the duties of your accountant.

The imposition of a financial penalty on you for your misconduct

- 6.7. Having regard to the FSA policy on disgorgement, you said that the FSA had failed to establish how obtaining the mortgages and properties had benefited you. Three of the properties had been repossessed due to your inability to maintain the repayments and there was no evidence of loss on the part of the lenders.

Failure to disclose financial commitments

- 6.8. You had disclosed full details of your property ownership in mortgage applications. The possible reason for the purported non-disclosure of the properties listed in paragraph 4.33 was that the mortgage had not been completed and you did not therefore have ownership of them.
- 6.9. You said that you specifically authorised the mortgage lender to consult any credit reference agency to enquire on your financial circumstances. It is standard practice for all mortgages to be recorded on the register of the Council of Mortgage Lenders and all lenders share this information.

The cancellation of GML's Part IV permission

- 6.10. GML stopped trading in March 2010 and you had applied for the firm to be removed from the register but your application has not been approved in contrast to another case of which you were aware. The consistency of treatment between one candidate and another should be based on fairness.

- 6.11. You said that delay in decision-making may make a decision disproportionate if an applicant can demonstrate that as a result he has been treated inconsistently with other applicants or had an expectation that their case would have been treated differently if considered earlier.
- 6.12. In your email of 27 September 2010, you made representations about your financial circumstances.
- 6.13. In your letter of 1 October 2010, you made further representations about your financial circumstances. You also said that you may have made innocent unintentional mistakes but you never intentionally set out to provide any misleading information to any lender because you relied on your compliance officers. You were shocked at the tactics of the FSA to demonise you and you referred to the “desperate exaggeration and misrepresentation to the RDC that I applied for 14 different new mortgages over the period of 2–3 years, which is a malicious and disappointing lie”. You deeply regretted your careless mistakes for which you were very sorry for any inconvenience you must have caused any mortgage lender and you were proud to be a mortgage broker. The firm was awarded, in your words, the “ISO 900”. You engaged the services of one of the best external compliance companies in the financial industry. You never deliberately or intentionally decided to mislead any mortgage lender because you never profited from any of the properties.
- 6.14. In your oral representations, you said that you believed that the investigation had not been carried out in a free and fair manner. You addressed the points made in your written representations. For example, as a citizen and national of the EEA you had the right of residence and had no reason to lie. If the dates were wrong, it was an innocent mistake. You questioned why you would be stating a date which would be of no benefit to you. The fact that you had nothing to gain from an incorrect answer was a repeated part of your representations in view of the importance you placed on it.

What amounts to a false statement

- 6.15. You said that your mistakes were entirely innocent and not deliberate. Your understanding of guilt in relation to a crime depended on intent and you had nothing to gain in misrepresenting your income. For that reason it was innocent.
- 6.16. You said that the inconsistencies in the application forms could be explained by the fact that they were completed by your PA who was being trained as a junior compliance officer. She was being trained by a colleague.
- 6.17. You stood by your written statement earlier in these proceedings that a simple omission or statement which is not deliberate cannot amount to a false statement and it cannot be considered material or significant to infer it as a false statement. A statement was false depending on the intent and the benefit gained.

What you would have done differently

- 6.18. In hindsight, you would have hired a more effective accountant, not left the forms for the trainees to complete and would not have sought to buy the properties.

The removal of an entry to the CIFAS database

- 6.19. You claimed that the way the results of a county court action had been presented to you was that an entry to the CIFAS database in 2007 had been removed by a building society.

In conclusion

- 6.20. You were very sorry for the inconvenience caused to the regulator and the lenders and accepted responsibility for what had happened.

7. FINDINGS

Innocent mistakes

- 7.1. You accepted that you had made mistakes. You said they were innocent mistakes because you did not intend to make them and you did not benefit from them. The question for the FSA is whether such mistakes can be excused or condoned on these grounds, or at all.
- 7.2. The FSA is in no doubt that such mistakes cannot be excused or condoned. You had an obligation to give accurate information to each prospective lender so that it could decide whether to lend in the full knowledge of the facts. You manifestly failed to discharge that obligation.

The statements were not false

- 7.3. The FSA does not accept your view of what constitutes a false statement. Intention and gain may have relevance to whether proceedings are brought in the first place and, if they are, on penalty. But they have no bearing on the truth of the statement made. If a statement is not true, it is necessarily false and misleading and a lender relying on it in coming to a decision whether or not to lend will be misled.
- 7.4. It is vitally important to each lender that it is in a position to decide on an application based on full and accurate answers to the questions it asks. Cumulatively, it is vitally important to the mortgage market as a whole that lending is based on fact.

You received no gain

- 7.5. The FSA does not accept your view that you received no gain from an application for funds to purchase or re-mortgage a property if the property does not realise a profit. Clearly you received what you applied for, namely the funds. There is no evidence that any lender also gave an undertaking that the value of the property would rise and it would have been surprising if it had. Your view that a mortgage, being a debt, could not amount to a benefit for these purposes is not sustainable.

The false statements were the fault of others

- 7.6. The FSA does not accept your view that mistakes that are the fault of others are also excusable. In your case, you blamed your accountants, your compliance officers and your PA. However, you also said that you accepted responsibility. Faced with these

differing approaches to this important matter, the FSA finds that your natural inclination is to apportion blame elsewhere and not to accept the responsibility that is clearly yours and therefore the consequences of failure to discharge that responsibility.

- 7.7. The apportionments of blame went beyond explanations for why things had gone wrong and for which you took responsibility. It was particularly inexcusable in relation to your PA who by her position and status as a trainee was due more attention not less, whether or not she was being trained directly by yourself.

The recognition of what you had done wrong

- 7.8. The FSA has no credible grounds for believing that you would do anything differently in the future. Indeed you said on several occasions that you were proud to be a mortgage broker without distinguishing your activities as such. Although you accepted that you had made mistakes, you were far from demonstrating to the FSA that you understood the importance of those mistakes to the lenders or that you had regret for your actions. Rather you sought to justify some mistakes by blaming others and other mistakes by saying that it did not matter to the lender what the answer was because, for example, it was an application for a re-mortgage as opposed to a new mortgage, or because you could in fact readily afford the repayments. One way or another, you appeared to justify in your mind wrong, and inconsistently wrong, answers to several lenders in relation to several critical matters. Your approach had every regard to your own circumstances and none to the lenders'.

The removal of an entry to the CIFAS database

- 7.9. At the oral representations meeting, the FSA was presented with clear evidence that the entry to the CIFAS database (referred to at paragraph 6.19 above) had not been removed. In a summary judgement, your action was struck out with costs awarded against you. Faced with this clear evidence contradicting your account of the events, the FSA has doubts as to your credibility.

The assumption that these are criminal proceedings

- 7.10. Several of your statements both oral and written (see, for example, paragraphs 6.6 and 6.16) indicated that you thought that these were criminal proceedings. For the avoidance of doubt, it needs to be made clear that these are not criminal proceedings but regulatory proceedings involving a consideration of your contravention of the regulatory provisions set out in this Final Notice and a consideration of your fitness and propriety to continue to be approved to perform controlled functions.

Honesty and integrity

- 7.11. In these regulatory proceedings, in determining a person's honesty, integrity and reputation, the FSA will have regard to all matters including whether the person has contravened any of the requirements and standards of the regulatory system and whether the person demonstrates a readiness and willingness to comply with those requirements and standards (see the reference to FIT 2.1.1G in the Annex).

- 7.12. The FSA finds that your conduct was dishonest by the ordinary standards of reasonable and honest people and more particularly by the standards of a person approved to perform a controlled function under the Act. A person cannot escape such a finding by setting his own low standards and not regarding as dishonest what that person knows would offend the normally accepted standards of dishonest conduct, namely deliberately giving incorrect information to prospective mortgage lenders. On the basis that a person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards or by the standards of a person approved to perform a controlled function under the Act, it is clear that you also lack integrity.

Conclusions

- 7.13. You misled lenders and obtained three regulated residential mortgages for your own benefit through GML (Applications Four to Six), based on inaccurate and misleading information.
- 7.14. You submitted a further seven regulated residential re-mortgage applications in your own name through GML (Applications Seven, Eight and Ten to Fourteen) supported by inaccurate and misleading employment and income details, including the use of inflated personal income figures.
- 7.15. Your conduct demonstrated a lack of honesty and integrity and 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

- 7.16. In the light of the above conclusions, and having regard to the guidance summarised in the Annex to this Final Notice, the FSA has imposed the sanctions described at the beginning of this Final Notice (a financial penalty of £200,000, withdrawal of approval and the Prohibition Order).

Financial hardship

- 7.17. Although you said the proposed fine would cause you financial hardship and bankruptcy, you did not provide evidence that this would be the case. The FSA has not therefore had to consider whether it would have imposed the financial penalty on you in any event on the grounds that the seriousness of the misconduct meant that the sanctions should be imposed notwithstanding the financial hardship.

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.

Manner of and time for payment

- 9.2. The financial penalty must be paid in full by you to the FSA by no later than 25 March 2011, 14 days from the date of this Final Notice.

If the financial penalty is not paid

- 9.3. If all or any part of the financial penalty is outstanding on 25 March 2011, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 9.4. 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.
- 9.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

- 9.6. 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.
- 1.3. Section 63 of the Act provides that the FSA may withdraw an approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. REGULATORY PROVISIONS

- 2.1. In exercising its power to withdraw approval, make a prohibition order and in determining the level of the financial penalty, the FSA has had regard to relevant regulatory guidance and policy published in the FSA Handbook.
- 2.2. The FSA's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007. Although the references in this Final Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded DEPP and 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.

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

- 2.4. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

- 2.5. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.6. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 2.7. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.8. The Statement of Principle relevant to this matter is Statement of Principle 1. Statement of Principle 1 provides that an approved person must act with integrity in carrying out his controlled function.
- 2.9. APER 4.1.3E(3) states that deliberately misleading (or attempting to mislead) a client, the firm or the FSA by act or omission is conduct that does not comply with Statement of Principle 1. APER 4.1.4E(9) states that such conduct includes, but is not limited to, providing false or inaccurate documentation or information.

Fit and Proper Test for Approved Persons (“FIT”)

- 2.10. 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.
- 2.11. 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 honesty, integrity and reputation.
- 2.12. 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.
- 2.13. 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.
- 2.14. 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)).

Decision Procedure and Penalties Manual (“DEPP”)

- 2.15. The FSA’s policy on the imposition of financial penalties that applied during the relevant period was set out in Chapter 6 of the Decision Procedures and Penalties Manual (“DEPP”), which forms part of the FSA Handbook. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual in force during part of the relevant period.
- 2.16. 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. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.
- 2.17. 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 DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches.
- 2.18. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence

- 2.19. The FSA considers that the imposition of the financial penalty is appropriate as it supports the FSA’s stance on credible deterrence, both in terms of discouraging you and others from acting dishonestly and without integrity and encouraging you and others to observe regulatory standards and requirements.

The nature, seriousness and impact of the breach in question

- 2.20. The FSA has had regard to the seriousness of the breaches, the nature of the requirements on you, the number of the breaches and the period over which they occurred, the extent to which the breaches demonstrate a lack of honesty and integrity and the number of lenders exposed to a risk of loss.

The extent to which the breach was deliberate or reckless

- 2.21. The FSA considers that you acted in a deliberate manner.

Whether the person on whom the penalty is to be imposed is an individual

- 2.22. The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual but it is considered to be proportionate in relation to the seriousness of the misconduct and given your position as an approved person performing significant influence functions at GML.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

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

Conduct following the breach

- 2.24. You have co-operated with the FSA's investigation.

Previous action taken by the FSA

- 2.25. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

Enforcement Guide (“EG”)

- 2.26. The FSA's approach to exercising its power to withdraw approval and to make a prohibition order under sections 56 and 66 of the Act is set out in Chapter 9 of EG.
- 2.27. 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.
- 2.28. EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.

- 2.29. 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.
- 2.30. 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.
- 2.31. 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)).
- 2.32. 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 includes sever acts of dishonesty, which may have resulted in financial crime serious lack of competence (EG 9.12(3)).
- 2.33. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.
-