

---

**FINAL NOTICE**

---

**To:** Gurpreet Singh Chadda

**FRN:** 525693

**Address:** 91 Soho Hill  
Birmingham  
West Midlands  
B19 1AY

**Date:** 19 June 2013

**1. ACTION**

1.1. For the reasons given in this notice, the Authority hereby:

- (1) imposes on Gurpreet Singh Chadda ("Mr Chadda") a financial penalty of £945,277;
- (2) cancels Mr Chadda's Part 4A Permission; and
- (3) makes an order prohibiting Mr Chadda from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. This order takes effect from 19 June 2013

## **2. SUMMARY OF REASONS**

2.1. Mr Chadda is a sole trader based in Birmingham, trading under the names Red2Black and B&L Homes. The Authority investigated Mr Chadda's involvement in seven sale and rent back agreements entered into between June 2009 and January 2010. The Authority found that Mr Chadda:

- (1) misled the sellers of the properties by purporting to be the purchaser. The actual purchasers were third parties unknown to the sellers;
- (2) breached the Authority's rules by failing to notify the sellers that the purchasers of their homes were not authorised or regulated by the Authority, and that the normal regulatory protections therefore did not apply to them;
- (3) knew, when the sale and rent back agreements were entered into, that six of the seven purchasers of the properties were buying the properties with mortgage finance which they had obtained by misrepresenting to their mortgage lenders that they were not buying the properties on a sale and rent back basis;
- (4) misrepresented to six of the sellers that the market value of their homes, a percentage of which was to be paid to the sellers in consideration for selling their homes, had been or would be determined by an independent valuation, and to one seller that the market value would be determined by a surveyor with membership of the Royal Institution of Chartered Surveyors, but there is no evidence that such valuations were carried out. Instead, the Authority considers that Mr Chadda determined the market value of some of the properties by himself, in breach of the Authority's rules;
- (5) assigned to two of the sellers' properties a market value which was significantly less than the properties' actual market value. As a result, in consideration for selling their homes, the sellers received a fixed percentage of an undervaluation of their properties and therefore suffered substantial financial loss. The Authority considers that Mr Chadda retained from the two transactions the difference between the actual market value of the properties, which was paid by the purchasers to purchase the properties, and the fixed percentage of the undervaluations paid to the sellers;

- (6) fabricated, or one of his representatives fabricated on his behalf, a mortgage valuation report to justify his undervaluation of one of the properties;
- (7) imposed on four of the sellers excessive charges for arranging their sale and rent back transactions in breach of the Authority's rules;
- (8) exaggerated the legal disbursements payable by the seller on the sale of one of the properties;
- (9) created misleading and inaccurate transaction documentation; and
- (10) failed to protect the interests of the sellers of the properties, as required by the Authority's rules.

2.2. The Authority considers that Mr Chadda received £695,277 from the transactions as a result of his misconduct.

2.3. Mr Chadda's conduct demonstrates a lack of honesty and integrity and therefore of fitness and propriety, and constitutes a breach of Principle 1 of the Authority's Statements of Principle for Businesses. Mr Chadda aggravated his original misconduct by making false and misleading statements to the Authority, not disclosing relevant documents and information, creating misleading documents and arranging for people to impersonate witnesses in order to mislead the Authority. The Authority considers that Mr Chadda poses a risk to consumers and to the financial system and that the nature and seriousness of the breaches outlined above warrants the imposition of a substantial financial penalty and the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt person or exempt professional firm. The Authority also considers that Mr Chadda has failed to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 of the Financial Services and Markets Act 2000 on the basis that he is not a fit and proper person in terms of honesty and integrity, and that Mr Chadda's Part 4A Permission should therefore be cancelled. These actions support the Authority's regulatory objectives.

### **3. DEFINITIONS**

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

- (1) the "Act" means the Financial Services and Markets Act 2000.

- (2) the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.
- (3) "Mr Chadda" means Mr Chadda trading as Red2Black Homes and/or B&L Homes and/or as an individual.
- (4) "Part 4A Permission" means the permission granted to Mr Chadda by the Authority under Part 4A of the Act to carry on regulated activities.
- (5) the "Prohibition Order" means an order made pursuant to section 56 of the Act, prohibiting Mr Chadda from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- (6) the "Principles" means the Authority's Statements of Principle for Businesses.
- (7) the "Threshold Conditions" means the threshold conditions set out in Part 1 of Schedule 6 of the Act.
- (8) the "Interim Regime" means the Interim Permitted Sale and Rent Back Activities Instrument 2009 and the rules thereunder.
- (9) the "Full Regime" means the Sale and Rent Back Instrument 2010 and the rules thereunder.
- (10) "MCOB" means the Mortgage Conduct of Business Sourcebook.
- (11) "Relevant Period" means 1 June 2009 to 14 January 2010.
- (12) "sale and rent back" means sale and rent back within the meaning of the Interim Regime and the Full Regime.

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. Mr Chadda, a sole trader based in Birmingham, traded as Red2Black Homes and B&L Homes.
- 4.2. A sale and rent back agreement is an arrangement under which a person buys all or part of a piece of land, and the seller of the piece of land, or a related person,

is entitled under the arrangement to occupy at least 40% of the land as or in connection with a dwelling and intends to do so. The Authority has regulated certain types of sale and rent back agreement since 1 July 2009; first, under the Interim Regime, and then, from 30 June 2010, under the Full Regime.

4.3. From 1 July 2009 to 30 June 2010, Mr Chadda was authorised under the Interim Regime to carry on the following regulated activities:

- (1) entering into a regulated sale and rent back agreement;
- (2) administering a regulated sale and rent back agreement;
- (3) arranging (bringing about) a regulated sale and rent back agreement; and
- (4) making arrangements with a view to a regulated sale and rent back agreement.

4.4. On 19 August 2010, Mr Chadda became authorised under the Full Regime to enter into and administer regulated sale and rent back agreements.

4.5. Mr Chadda was never an approved person for the purposes of the Act.

#### **Mr Chadda's business**

4.6. Mr Chadda was involved in seven sale and rent back agreements between June 2009 and January 2010. The sale and rent back agreements therefore fall under the Interim Regime.

4.7. A number of the individuals who sold their homes through Mr Chadda on a sale and rent back basis were vulnerable, as they were in arrears on their mortgages and facing eviction from their homes.

4.8. Mr Chadda purported to the sellers to be the purchaser of their properties. Under the Interim Regime, a purchaser regulated by the Authority was not permitted to enter into a sale and rent back agreement unless he had made a number of disclosures and warnings to the seller, both orally and confirmed in writing. Accordingly, during the course of the transactions, Mr Chadda sent each seller a number of documents setting out the terms by which he would purportedly buy the properties and rent them back to the sellers. The documents usually included:

- (1) an agency agreement, in which Red2Black Homes agreed to arrange for Mr Chadda to purchase the seller's home at a stated discount (typically 25% to 30%) from its market value, as determined by an independent chartered surveyor acting for the seller, and to then rent it back to the seller for a fixed period;
- (2) a second agency agreement, containing a purported valuation figure for the property, and the amount that the seller would receive for selling the property, calculated as a percentage of the valuation;
- (3) a standalone warning document summarising the terms of the transaction;
- (4) on the sale of the home, a tenancy agreement between Mr Chadda and the seller, by which the seller would continue to live in his home as Mr Chadda's tenant.

#### **The conduct in question**

4.9. Between June 2009 and January 2010, Mr Chadda was involved in a scheme by which he profited at the expense of vulnerable individuals who were selling their properties on a sale and rent back basis. Due to the limited material made available to the Authority during its investigation, it has not been possible to establish exactly how the scheme operated. Nonetheless, the Authority considers that Mr Chadda made statements that were not true to all seven customers, in the course of selling their homes on a sale and rent back basis, in order to obtain substantial sums from the sale proceeds and to charge them unfair and excessive fees for arranging the transaction. The Authority considers that Mr Chadda received £695,277 in total from the transactions. Further, he breached the Authority's rules by failing to notify the sellers that the purchasers of their homes were not authorised or regulated by the Authority, and that the normal regulatory protections therefore did not apply to them. His actions resulted in substantial financial loss for some of his customers.

4.10. The Authority considers that in all seven sale and rent back agreements Mr Chadda misled the sellers by purporting to be the purchaser of the properties. In fact, the actual purchasers were third parties known to Mr Chadda, who were not authorised or regulated by the Authority. On the basis of the material which the Authority has reviewed, the Authority considers that some of the sellers would not have realised that Mr Chadda was not their landlord until after the sale of their homes had completed.

- 4.11. The Authority was unable to find any evidence that Mr Chadda warned the sellers, as required under the Interim Regime, that the real purchasers were unauthorised, not regulated by the Authority, and not subject to the jurisdiction of the Financial Ombudsman Service, and that key protections under the regulatory system therefore did not apply to the sellers. Under the Interim Regime, Mr Chadda should have given this warning to the sellers on first making contact with them.
- 4.12. The sellers were due a fixed percentage of the market value of their homes in consideration for selling them. Mr Chadda misrepresented to six sellers that the market value of their homes had been or would be determined by an independent valuation, and to one seller that the market value would be determined by a surveyor with membership of the Royal Institution of Chartered Surveyors. Mr Chadda was required under MCOB 2.6A.12 to ensure that any valuation was carried out by a competent valuer independent of the purchaser. The Authority was unable to find any evidence of such valuations having been carried out. Instead, the Authority considers that Mr Chadda assigned his own market value to some of the properties.
- 4.13. In relation to two transactions, the Authority considers that Mr Chadda deliberately substantially undervalued the properties.
- 4.14. On one of these two transactions, a representative of Mr Chadda informed the seller that his property had been valued by a surveyor at £199,000, with a retention of £10,000 due to a damp and timber issue. The Authority was unable to find any evidence that the property had been valued for this amount, although the property does appear to have been valued. The actual market value of the property appears to have been around £350,000. When the seller queried Mr Chadda's valuation, Mr Chadda or one of his employees on his behalf sent the seller a fabricated valuation report which valued the property at £199,000 less the £10,000 retention. Mr Chadda or one of his employees also sent the seller an itemised breakdown which exaggerated the disbursements payable by the seller on the sale.
- 4.15. On the second of the two transactions, Mr Chadda assigned a market value of £180,000 to the property in the transaction documents, when the actual market value of the property appears to have been around £210,000. Mr Chadda and his representatives do not appear to have informed the seller what rent she was to

pay per month to stay in her home, or have provided her with copies of the transaction documents, including the tenancy agreement.

- 4.16. On both transactions, the Authority considers that Mr Chadda retained the difference between the actual market value of the properties, paid by the purchasers to purchase the two homes, and the fixed percentage of the undervaluation paid to the sellers. The sellers received substantially less than they were contractually entitled to.
- 4.17. Due to the lack of material made available to the Authority during its investigation, the Authority has been unable to determine precisely what the sellers and Mr Chadda received on each transaction. On the basis of the available material, the Authority considers that Mr Chadda received £695,277 in total. This equates to around 49% of the total amount paid by the actual purchasers to buy the seven properties. Two sellers appear to have received only 38%, and one seller not more than 45%, of what the actual purchasers paid to purchase their properties. The Authority considers that the amounts received by Mr Chadda from the transactions were excessive, and therefore that Mr Chadda charged the sellers unfair and excessive fees.
- 4.18. To conceal his misconduct from the sellers, Mr Chadda produced various documents, including the transaction documents, which misrepresented to the sellers the substance of the transaction.

#### **Mr Chadda's role in the purchasers' mortgage applications**

- 4.19. Six of the properties were bought with mortgage finance. Five of the purchasers submitted their mortgage applications through the same mortgage broker, to whom they were referred by Mr Chadda. Although the purchasers were buying the properties on a sale and rent back basis, they told the mortgage broker that they were buying the properties as a buy to let because mortgages were not normally provided to fund the purchase of properties on a sale and rent back basis.
- 4.20. Six purchasers informed the mortgage lenders that they were purchasing the properties on a buy to let basis or for residential purposes. They did not notify the lenders, before receiving their mortgage, that they were purchasing the properties on a sale and rent back basis, nor that the sellers were not receiving the full purchase price for their property. Mr Chadda assisted some of the purchasers in their mortgage applications. He paid the fees for the mortgage

lender valuation on one occasion, and witnessed the purchasers' signatures on their mortgage deeds on four occasions.

- 4.21. One mortgage lender, suspecting that a potential purchaser had not disclosed in their mortgage application that they intended to buy the property on a sale and rent back basis, required them to certify that the property was to be bought for the full purchase price with vacant possession. Mr Chadda drafted a letter for the purchaser to sign. It stated falsely that the property was being bought with vacant possession for the full price. Mr Chadda told the Authority that he did this to ensure that the mortgage lender provided the potential purchaser with a mortgage. The potential purchaser did not go on to buy the property.
- 4.22. The fact that as many as six purchasers failed to disclose to their lenders that they were purchasing the properties on a sale and rent back basis before receiving their mortgages, Mr Chadda's involvement in the mortgage application process and Mr Chadda's personal relationship with some of the purchasers lead the Authority to believe that Mr Chadda knew that the purchasers were not disclosing to the lenders that they were purchasing the properties on a sale and rent back basis.
- 4.23. The total amount of mortgage finance obtained from lenders on the six sale and rent back agreements amounted to £885,500.
- 4.24. Given that:
  - (1) Mr Chadda misled the sellers of the properties by purporting to be the purchaser, when the actual purchasers were third parties unknown to the sellers;
  - (2) Mr Chadda breached the Authority's rules by failing to notify the sellers that the purchasers of their homes were not authorised or regulated by the Authority, and that the normal regulatory protections did not apply to them;
  - (3) six of the seven sale and rent back transactions were funded, as Mr Chadda knew, by mortgages which the purchasers had obtained by misleading their lenders;
  - (4) Mr Chadda misrepresented to six of the sellers that the market value of their homes, a percentage of which was to be paid to the sellers in consideration for selling their homes, had been or would be determined by

an independent valuation, and to one seller that the market value would be determined by a surveyor with membership of the Royal Institution of Chartered Surveyors, but there is no evidence that such valuations were carried out. Instead the Authority considers that Mr Chadda determined the market value of some of the properties by himself, in breach of the Authority's rules;

- (5) Mr Chadda assigned to two of the sellers' properties a market value which was significantly less than the properties' actual market value, as a result of which the sellers received a fixed percentage of an undervaluation of their properties and therefore suffered substantial financial loss. The Authority considers that Mr Chadda retained from the two transactions the difference between the actual market value of the properties, which was paid by the purchasers to purchase the properties, and the fixed percentage of the undervaluations paid to the sellers;
- (6) Mr Chadda fabricated, or one of his representatives fabricated on his behalf, a mortgage valuation report to justify his undervaluation of one of the properties;
- (7) Mr Chadda imposed on four of the sellers excessive charges for arranging their sale and rent back transactions in breach of the Authority's rules;
- (8) Mr Chadda exaggerated the legal disbursements payable by the seller on the sale of one of the properties;
- (9) Mr Chadda created misleading and inaccurate transaction documentation; and
- (10) Mr Chadda failed to protect the interests of the sellers of the properties, as required by the Authority's rules.

4.25. The Authority considers that Mr Chadda was not entitled to any of the profits he made in relation to the transactions, and should therefore disgorge the entire amount that he received on all seven of the sale and rent back transactions.

#### **Misleading the Authority**

4.26. Mr Chadda attempted to mislead the Authority both before and during the investigation, in that he:

- (1) informed his supervisors at the Authority that he had purchased the properties himself using a £1 million credit facility. Mr Chadda later admitted that he had misled the Authority on this point;
- (2) misrepresented to the Authority the sums that he had received on the transactions;
- (3) provided the Authority with limited documents evidencing the transactions, including the price paid by the purchasers for the properties, and the sums received by the sellers and Mr Chadda, despite a compelled request by the Authority for full documentation in this regard;
- (4) provided the Authority with bank statements for a company which he controlled, on which he had marked up the entries which he claimed related to payments made to that company in the course of the sale and rent back transactions. However, the majority of the marked up entries did not, in fact, relate to the sale and rent back transactions, and as the amounts were smaller they gave the impression that Mr Chadda had received less in relation to the transactions than was the case;
- (5) failed to disclose statements for another bank account under his control, into which substantial amounts from the proceeds of the transactions had been paid. The Authority discovered this account through its own enquiries; and
- (6) provided the Authority with incorrect contact details for some of the sellers of the properties. The Authority used these contacts to get in touch with what it thought were sellers of the properties, who described the transactions in terms favourable to Mr Chadda. These people, the Authority subsequently discovered, were, in fact, impersonating the sellers. The sellers, whose identities the Authority was able to confirm, gave very different accounts of their transactions.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters referred to above, the Authority considers that Mr Chadda has contravened Principle 1 as follows:

- (1) Mr Chadda made statements to his customers that were not true in order to obtain substantial sums from the proceeds of sale without their knowledge and to charge them excessive and unfair fees, in breach of MCOB 12.5.2R and MCOB 2.6A.1. He created false and misleading customer documentation to hide his dishonest activities. On the basis of the material available the Authority considers that Mr Chadda received £695,277.12 from the seven transactions as a result of his misconduct;
  - (2) Mr Chadda knew that some of the purchasers were misleading mortgage lenders by not notifying them that they were purchasing the properties on a sale and rent back basis and that the sellers were not receiving a proportion of the full purchase price for their homes. The total amount obtained by the purchasers from lenders was £885,500; and
  - (3) Mr Chadda, in breach of MCOB 5.9.3R under the Interim Regime, failed to provide written warnings to the sellers that the third party purchasers were unauthorised sale and rent back agreement providers.
- 5.3. In addition to the facts and matters referred to in paragraph 5.2 above, the Authority considers that Mr Chadda aggravated his Principle 1 breach by seeking to obstruct the Authority's investigation, deliberately misleading the Authority's supervisors and investigation team, failing to disclose documents and information in response to the Authority's requests, creating misleading documents and arranging for unknown individuals to impersonate witnesses and provide false evidence to the Authority.
- 5.4. The Authority considers on the basis of the facts and matters described above that Mr Chadda lacks honesty and integrity, and that he is therefore not a fit and proper person to perform any functions in relation to any authorised or exempt person or exempt professional firm.

## **6. SANCTIONS**

### **Financial Penalty**

- 6.1. The financial penalty to be imposed on Mr Chadda relates to his breach of Principle 1 which occurred before 6 March 2010, after which a new policy framework came into force for determining financial penalties. Mr Chadda's misconduct is aggravated by the fact that he sought to conceal his misconduct from the Authority after 6 March 2010.

- 6.2. The Authority's policy on the imposition of financial penalties prior to 6 March 2010 was set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the Authority's Handbook. All references to DEPP in this notice are references to the version of DEPP in force at the time of the breach of Principle 1. In addition, the Authority has had regard to Chapter 7 of the Enforcement Guide ("EG").
- 6.3. DEPP 6.1.2G stated that 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.
- 6.4. In determining whether a financial penalty is appropriate under the policy in place before 6 March 2010 the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or public censure), the Authority considers that a financial penalty is an appropriate sanction in this case, given the extremely serious nature of the misconduct, the harm done by Mr Chadda to his customers and the need to send out a strong message to other persons engaged in regulated activities that dishonest conduct will result in severe penalties.
- 6.5. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

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

- 6.6. The Authority considers Mr Chadda's conduct to be extremely serious because he made statements to vulnerable customers which were not true in order to obtain substantial sums from the sales of their properties, and to charge them excessive and unfair fees. He created false and misleading customer documentation to hide his dishonest activities. On the basis of the material available, the Authority considers that Mr Chadda received £695,277.12. He knew that some of the purchasers were misleading mortgage lenders by not notifying them that they were purchasing the properties on a sale and rent back basis and that the sellers were not receiving a proportion of the proper market price for their homes.

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

- 6.7. Mr Chadda misled the sellers and the Authority deliberately and created various misleading documents to conceal his dishonest activities.
- 6.8. Whether the person on whom the penalty is to be imposed is an individual - DEPP 6.5.2G(4)
- 6.9. The Authority recognises that the financial penalty imposed on Mr Chadda is likely to have a significant impact on him as an individual.

**The amount of any benefit gained or loss avoided - DEPP 6.5.2G(6)**

- 6.10. Mr Chadda benefitted directly from his misconduct as he received £695,277 from the proceeds of sale of the properties in the seven sale and rent back transactions.

**Conduct following the breach - DEPP 6.5.2G(8)**

- 6.11. Mr Chadda has not co-operated with the Authority and has sought to prevent the Authority from discovering his misconduct by providing false and misleading evidence. He also arranged for persons to impersonate witnesses in order to mislead the Authority. These are serious aggravating factors.

**Disciplinary history - DEPP 6.5.2G(9)**

- 6.12. Mr Chadda has not been the subject of any previous disciplinary action by the Authority or a previous regulator.

**Penalty**

- 6.13. The Authority has considered the various factors above and has determined that in all the circumstances it is appropriate to impose a financial penalty of £945,277 on Mr Chadda for the contravention of Principle 1.

**Prohibition Order**

- 6.14. The Authority has concluded that Mr Chadda's conduct fell short of the standards required by the Authority's Fit and Proper Test for Approved Persons in terms of honesty and integrity. The Authority therefore concludes that he is not fit and proper to perform any functions in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

- 6.15. It is therefore necessary and proportionate, in order to achieve its regulatory objectives, for the Authority to make the Prohibition Order against him.

### **Cancellation**

- 6.16. Mr Chadda's Part 4A Permission should be cancelled because he is not a fit and proper person and is therefore failing to satisfy the suitability Threshold Condition set out in paragraph 2E of Schedule 6 to the Act.

## **7. DECISION MAKER**

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

## **8. PROCEDURAL MATTERS**

- 8.1. This Final Notice is given under section 390 of the Act.

### **Manner of and Time for Payment**

- 8.2. The financial penalty must be paid in full by Mr Chadda to the Authority by no later than 3 July 2013, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

- 8.3. If all or any of the financial penalty is outstanding on 3 July 2013, the Authority may recover the outstanding amount as a debt owed by Mr Chadda and due to the Authority.

## **9. Publicity**

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

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

## **10. Authority Contacts**

10.1. For more information concerning this matter generally, contact Rebecca Irving at the Authority (direct line: 020 7066 2334 /email Rebecca.Irving@fca.org.uk) of the Enforcement and Financial Crime Division of the Authority.

**Bill Sillett**

**Financial Conduct Authority, Enforcement and Financial Crime Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1. Statutory Provisions**

- 1.1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- 1.2. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
- 1.3. Section 56 of the Act provides that the Authority may make an order (a "prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority 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. Section 56 also sets out the activities and persons to which a prohibition order may relate.
- 1.4. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions or it is desirable to exercise that power in order to advance one or more of its operational objectives.
- 1.5. Under section 206 of the Act, if the Authority considers that an authorised person has contravened a relevant requirement imposed on him, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

#### **2. Enforcement Guide**

- 2.1. In considering the appropriate sanction, the Authority has had regard to its published guidance in the Enforcement Guide ("EG"). The Authority has also had regard to the relevant provisions in its Decision Procedure and Penalties Manual ("DEPP") which came into effect on 28 August 2007.

- 2.2. The Authority will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The Authority may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The Authority's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG.
- 2.3. EG 9.4 sets out the general scope of the Authority's powers in this respect, which include 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. EG 9.5 provides that the scope of a prohibition order will vary according to 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 the risk which he poses to consumers or the market generally.
- 2.4. EG 9.17 and 9.18 provide guidance on the Authority's exercise of its power to make a prohibition order against an individual who is not an approved person. The Authority 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 Authority will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 2.5. EG 9.9 provides that when deciding whether to make a prohibition order the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in the Fit and Proper test for Approved Persons ("FIT") in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
  - (2) the relevance and materiality of any matters indicating a lack of fitness and propriety;

- (3) the length of time since the occurrence of any matters indicating a lack of fitness and propriety; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

### **3. Fit and Proper Test for Approved Persons**

- 3.1. The section of the Authority's Handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. 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 an approved person. FIT also applies to persons with (or applying for) Part 4A permissions and therefore is relevant to assessing the fitness and propriety of a sole trader.
- 3.2. FIT 1.3.1G provides that the Authority 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.
- 3.3. FIT 1.3.4G provides that if a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and how important it is.
- 3.4. FIT 2.1.3G provides that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, whether the person has contravened any of the requirements and standards of the regulatory system.

### **4. The Principles**

- 4.1. The Authority has published Principles which apply either in whole, or in part, to all authorised persons. The Principles are a general statement of the fundamental obligations of authorised persons under the regulatory system and reflect the Authority's statutory objectives. An authorised person may be liable to disciplinary sanction where it is in breach of the Principles.
- 4.2. The Principle relevant to this matter is Principle 1, which states that an authorised person must conduct his business with integrity.

## **5. The Authority's policy on financial penalties**

- 5.1. The Authority's policy on the imposition and amount of penalties prior to 6 March 2010 was set out in Chapter 6 of the Decision Procedure and Penalties manual ("DEPP") in the Authority's Handbook. This stated that the Authority would consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and set out a non-exhaustive list of factors that may be relevant for this purpose.
- 5.2. The provisions of DEPP set out in this notice were applicable to misconduct during the relevant period. Revised provisions of DEPP came into force on 6 March 2010 for misconduct on or after that date.
- 5.3. 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.
- 5.4. The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
  - (1) the nature, seriousness and impact of the suspected breach (DEPP 6.2.1G(1)) including;
  - (2) whether the breach was deliberate or reckless; and
  - (3) the amount of any benefit gained or loss avoided.
  - (4) the conduct of the person after the breach (DEPP 6.2.1G(2));
  - (5) the previous disciplinary record and compliance history of the person (DEPP 6.2.1G(3));
  - (6) the Authority's guidance and other published materials (DEPP 6.2.1G(4)); and
  - (7) action taken by the Authority in previous similar cases (DEPP 6.2.1G(5)).
- 5.5. The Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out a non-exhaustive

list of factors that may be of relevance when determining the amount of a financial penalty. This includes other action taken by the Authority or a previous regulator (DEPP 6.5.2G (10)).

## **6. Regulation of Sale and Rent Back (“SRB”) agreements**

6.1. Under the Mortgage Conduct of Business Rules (“MCOB”) Rule 5.9.3R, a firm must ensure that, on first making contact with a prospective SRB agreement seller, whether or not he is the firm's customer, who is proposing to enter into a regulated SRB agreement with an unauthorised SRB agreement provider, it provides him with a written warning before he enters into any such agreement. The warning is that:

- (1) the SRB agreement provider is not authorised or regulated by [the Authority], and that key protections under the regulatory system will not apply; and
- (2) the provider is not subject to the jurisdiction of the Financial Ombudsman Service, and that the SRB agreement seller will not be entitled to refer complaints against the provider to the Financial Ombudsman Service.

6.2. Under MCOB Rule 12.5.2R, a firm must ensure that its charges to a customer in connection with the firm arranging or advising on an SRB agreement are not excessive.