
FINAL NOTICE

To: **Mark Joseph Laurenti**
1 Fore Street
Budleigh Salterton
Devon
EX9 6NG

To: **Independent Mortgage Advisory Service Limited**

Individual ref : **MXL00073**

Firm Ref: **479446**

Date:

27 January 2012

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has taken the following action:

1. ACTION

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

- (1) imposes on Mark Joseph Laurenti (“Mr Laurenti”) a financial penalty of £14,000 for his failure to comply with Statement of Principle 7 of the FSA’s Statements of Principle and Code of Conduct for Approved Persons (the “Statements of Principle”) pursuant to section 66 of the Financial Services and Markets Act 2000 (the “Act”) in his capacity as an approved person performing the controlled function of director at Independent Mortgage Advisory Service Limited (“IMAS”);

- (2) withdraws the approval given to Mr Laurenti to perform the controlled function of CF1 (Director) at IMAS pursuant to section 63 of the Act; and
 - (3) makes an order, pursuant to section 56 of the Act, prohibiting Mr Laurenti from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (the “Prohibition Order”). This takes effect from 27 January 2012.
- 1.2. Mr Laurenti agreed to settle at an early stage of the FSA’s investigation. Mr Laurenti therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £20,000 on Mr Laurenti.

2. SUMMARY OF REASONS

- 2.1. On the basis of the facts and matters summarised below, the FSA considers that Mr Laurenti failed to take reasonable steps to ensure that the business of IMAS, for which he was responsible between 1 August 2008 and 4 January 2011 (the “relevant period”), complied with the relevant requirements and standards of the regulatory system, in contravention of Statement of Principle 7.
- 2.2. Specifically, Mr Laurenti while performing the controlled function of director (CF1), failed to put in place appropriate systems and controls, in breach of Statement of Principle 7, to ensure that IMAS:
- (1) identified multiple mortgage applications for the same customers that contained incomplete and/or inconsistent information. This failure resulted in IMAS submitting mortgage applications to lenders which contained inaccurate and/or misleading information;
 - (2) made and retained appropriate customer records to demonstrate that customers’ needs and objectives were being adequately assessed or that sufficient product research had been undertaken;
 - (3) carried out adequate affordability assessments, as these were based on incomplete and/or inaccurate financial customer information; and

(4) communicated clearly to customers on its Initial Disclosure Documents (“IDD”) the total amount of fees payable.

2.3. The FSA has also concluded that Mr Laurenti lacks the necessary competence and capability to perform significant influence functions and is therefore not a fit and proper person because, as the sole director and only approved person at IMAS he failed to ensure that it had in place appropriate operating procedures, with the result that he failed to :

(1) check new mortgage applications against existing customer records in order to reconcile inconsistent personal and financial information in circumstances where more than one application for a mortgage had been submitted to the lender for a particular customer within a short time frame. These applications contained anomalies such as inconsistent information regarding customers’ income, employment and or outgoings;

(2) produce adequate affordability assessments. Customers were recommended regulated mortgage contracts in circumstances where it was apparent from existing IMAS records that their financial information was incomplete and/or in some cases inaccurate;

(3) gather adequate know your customer (“KYC”) information; and

(4) ensure that the total fees charged to customers were clearly set out on the IDD in accordance with the FSA’s initial disclosure requirements.

2.4. The FSA considers that the nature and seriousness of Mr Laurenti’s breaches warrant a financial penalty, the withdrawal of his individual approval at IMAS to perform the CF1 (Director) controlled function, and the imposition of the Prohibition Order.

2.5. This action supports the FSA’s statutory objectives of protecting consumers and maintaining market confidence in the UK financial system.

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) “DEPP” means the Decision Procedures and Penalties Manual;
- (3) “EG” means the Enforcement Guide;
- (4) “FIT” means the Fit and Proper Test for Approved Persons
- (5) the “FSA” means the Financial Services Authority;
- (6) “IDD” means Initial Disclosure Document;
- (7) “IMAS” means Independent Mortgage Advisory Service Limited;
- (8) “MCOB” means the Mortgages and Home Finance Conduct of Business sourcebook;
- (9) “KYC” means know your customer;
- (10) The “Prohibition Order” means the order to be made pursuant to section 56 of the Act prohibiting Mr Laurenti from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;
- (11) the “relevant period” means the period between 1 August 2008 and 4 January 2011;
- (12) “Statements of Principle and APER” means the Statements of Principle and the Code of Practice for Approved Persons as contained in the FSA Handbook; and
- (13) the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

IMAS

- 4.1. IMAS is a small mortgage and insurance intermediary based in Devon. It was authorised and regulated by the FSA on 1 August 2008 to conduct mortgage and insurance mediation business.
- 4.2. IMAS is authorised by the FSA to carry on the following regulated activities:
- (1) advising on investments (excluding 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. IMAS submitted an application voluntarily to cancel its Part IV permission on 28 March 2011 and has not arranged any regulated mortgage contracts since 4 January 2011.

Mr Laurenti

- 4.4. Mr Laurenti is the director of and the only approved person performing the controlled function of CF1 (Director) at IMAS. He is also responsible for insurance mediation.

Inadequate systems and controls at IMAS

- 4.5. Mr Laurenti failed to take reasonable steps to ensure that IMAS put in place appropriate systems and controls in relation to the sales process for regulated mortgage contracts.
- 4.6. As a result of Mr Laurenti's failure to ensure that IMAS operated adequate procedures in connection with record keeping, KYC information, affordability assessments and disclosure of fees, he is also responsible for the advice failings that the FSA identified following its review of 22 client mortgage files. In particular, Mr Laurenti failed to:

- (1) check new applications against existing customer records in order to reconcile inconsistent personal and financial information in circumstances where it would have been appropriate to do so. For example, in eight cases reviewed by the FSA there was more than one application that had been submitted to the lender for each customer. These applications contained anomalies such as inconsistent customer information regarding income, employment and/or outgoings in support of their mortgage applications;
- (2) produce adequate affordability assessment. Mortgage advice was provided to customers in 13 cases reviewed by the FSA based on financial information, where it ought to have been reasonably apparent from customer records that the information was incomplete and/or in some cases inaccurate;
- (3) gather adequate KYC information in 12 cases reviewed by the FSA. In cases where Mr Laurenti subsequently provided additional information to the FSA in the form of fact finds, the fact finds contained information that was inconsistent with existing information held on customer files;
- (4) ensure that there was sufficient information on the 22 files reviewed to demonstrate that customers' needs and objectives had been adequately assessed or that sufficient product research had been undertaken; and
- (5) ensure that the total fees charged to customers were clearly set out on the IDD in accordance with the FSA's initial disclosure requirements. There were no IDDs on seven cases reviewed by the FSA; in six cases customers were charged a broker's fee which was recorded in a separate fee agreement but not always reflected in the fees disclosed on the IDD.

Mortgage applications for customer A

- 4.7. The FSA identified eight customers who each had more than one mortgage application submitted to a lender containing inconsistent personal and financial information. The most

serious incidence of this is demonstrated in the three separate mortgage applications that Mr Laurenti submitted via IMAS on behalf of customer 'A' dated October 2008, October 2009 and November 2009 respectively. These applications contained the following inconsistent financial information in support of customer A's mortgage applications:

- (1) October 2008 application – basic annual income declared before tax was £79,000 and additional rental income of £37,236 per annum. Customer A's total income declared to lender A in support of the mortgage application was £116,236;
- (2) October 2009 application - basic annual income declared before tax was shown as £79,000 and additional rental income of £44,832. Customer A's total income declared to lender 'B' was £123,832; and
- (3) November 2009 application – basic annual income declared (customer A was employed at the same company and in the same role as recorded on the two previous applications) before tax was shown as £32,000 plus a regular bonus of £3,000. Additional rental income of £44,832 was also declared on this application. Customer A's total income declared to lender B was £79,832.

4.8. There was no record on customer A's client files to explain the above income inconsistencies which Mr Laurenti had failed to identify at the time the application forms were submitted to the lenders. When asked for an explanation, Mr Laurenti informed the FSA on 17 October 2011 that the basic income of £79,000 declared on customer A's initial mortgage application dated October 2008 had included £32,000 plus a bonus of £3,000 and rental income of £44,832. He explained that the rental income had been double-counted in error and this had not been identified by the lender because no proof of income had been requested.

4.9. Mr Laurenti provided the FSA with a similar explanation in relation to customer A's mortgage application dated October 2009 and stated that the subsequent application in November 2009 recognised the error in the previous application and he had declared the

correct basic income of £32,000 plus a regular bonus of £3,000 for customer A as contained in the customer's payslips on the file.

- 4.10. The FSA considers that Mr Laurenti's failure to ensure that IMAS had in place appropriate systems and controls to ensure compliance with regulatory requirements, and the failures found by the FSA in IMAS' customer files, demonstrates that if Mr Laurenti is allowed to perform significant influence functions at an authorised firm he would pose an ongoing risk to lenders and customers.

Mr Laurenti's failure to obtain a 'consent to let' from the lender for his residential property

- 4.11. In 2008, Mr Laurenti obtained a residential mortgage on a property in Liverpool, but the property was not then used as a personal dwelling place. He failed to submit an application form to obtain the lender's consent to let the property for approximately two years.
- 4.12. Mr Laurenti has stated that the basis upon which he obtained the residential mortgage was correct at the time that he made the application and that he let the property due to a change in his personal circumstances. He explained that he had verbally notified the lender in 2008 and had been informed by the lender that the change in use of the property would not alter the existing mortgage contract terms. Mr Laurenti also stated that the lender had instructed him to confirm the position in writing, which he accepts that he failed to do for approximately two years. There was therefore no contemporaneous record to support Mr Laurenti's assertion that he made an immediate notification to the lender at the time the change of use took place.
- 4.13. The FSA considers Mr Laurenti's failure to submit the appropriate form to the lender seeking consent to let the property at the time his circumstances changed, for approximately two years, to be a significant oversight. The submission of a 'consent to let' application form was a requirement of the lender and part of the formal process Mr Laurenti needed to undertake to confirm the change in use of the property he obtained by way of a residential mortgage. As a professional mortgage intermediary, Mr Laurenti ought to have appreciated the importance taking this step without delay and in writing, as required by the lender.

5. FAILINGS

- 5.1. The relevant statutory provisions, regulatory guidance and policy relevant to this Final Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, the FSA considers that Mr Laurenti contravened Statement of Principle 7 in that he failed to take reasonable steps to ensure that IMAS complied with the relevant requirements and standards of the regulatory system in relation to its regulated mortgage contract business. In particular, Mr Laurenti failed to ensure that:
- (1) IMAS had adequate systems and controls in place to prevent it from being used to submit mortgage applications containing inaccurate and/or misleading information; and
 - (2) he had taken reasonable steps to organise and control the affairs of IMAS effectively, with adequate risk management systems.
- 5.3. The FSA also considers that Mr Laurenti is not a fit and proper person to perform significant influence functions due to his lack of competence and capability. The FSA considers that Mr Laurenti's conduct fell short of the standards required by FIT.
- 5.4. In assessing Mr Laurenti's competence and capability, the FSA has had regard to his failure to implement adequate systems and controls at IMAS relating to record keeping, assessment of affordability and gathering KYC information, which exposed customers to the risk of unsuitable sales of regulated mortgage contracts.
- 5.5. The FSA also considers that Mr Laurenti's failure to submit a 'consent to let' application form to the lender for approximately two years, in relation to a property he obtained by way of residential mortgage application submitted via IMAS, further demonstrates that he lacks the requisite competence required to perform significant influence functions.
- 5.6. The FSA considers that Mr Laurenti poses a serious risk to lenders and consumers and to the FSA's regulatory objectives of protecting consumers and maintaining confidence in the UK financial system and considers that his failings warrant prohibiting him from carrying out any significant influence function at an authorised firm. Due to his inability to establish

appropriate systems and controls, Mr Laurenti poses an unacceptable risk in holding any significant influence functions. However, in a properly supervised position he would be required to operate in a compliant manner as an adviser.

6. SANCTION

6.1. The sanction in this case is to:

- (1) impose a financial penalty of £14,000 on Mr Laurenti pursuant to section 66 of the Act;
- (2) withdraw Mr Laurenti's individual approval to perform the CF1 (Director) controlled function at IMAS pursuant to section 63 of the Act; and
- (3) impose the Prohibition Order on Mr Laurenti pursuant to section 56 of the Act.

Imposition of a financial penalty

- 6.2. The principal purpose of 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.
- 6.3. In determining whether a financial penalty is appropriate, the FSA will consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction in this matter given the serious nature of the breaches and the need to send out a strong message to deter others.
- 6.4. 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 the following factors are particularly relevant in this case.

Deterrence

- 6.5. The proposed financial penalty will reinforce the message that the FSA expects approved persons performing significant influence functions to take reasonable steps to ensure that the business for which they are responsible comply with the relevant requirements and standards of the regulatory system.

The nature, seriousness and impact of the breach in question

- 6.6. Mr Laurenti's failings are considered to be particularly serious because:
- (1) the FSA places a great deal of emphasis on the responsibilities of senior management for the standards and conduct of the businesses they run; and
 - (2) Mr Laurenti failed to ensure that IMAS had in place adequate systems and controls which meant that it submitted mortgage applications to lenders containing incomplete and/or inaccurate customer information.
- 6.7. The FSA has taken into account, as a mitigating factor, that Mr Laurenti arranged for IMAS to cease transacting regulated mortgage contracts sales from 4 January 2011.

The extent to which the breach was deliberate or reckless

- 6.8. The FSA has found no evidence to show that Mr Laurenti acted in a deliberate or reckless manner.

Disciplinary record and compliance history

- 6.9. Mr Laurenti has not been the subject of previous disciplinary action.

Other action taken by the FSA

- 6.10. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour.
- 6.11. Having considered all the circumstances set out above, the FSA has determined that £14,000 is an appropriate financial penalty to impose on Mr Laurenti.

- 6.12. Mr Laurenti agreed to settle this matter under the FSA's executive settlement process and, as a result, he qualified for 30% (stage 1) discount. Were it not for this discount, the FSA would have imposed a financial penalty of £20,000.

Withdrawal of approval and prohibition from significant influence functions

- 6.13. The FSA considers it appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Laurenti to perform the controlled function of CF1 at IMAS because he is not competent or capable of performing this function and to make an order prohibiting Mr Laurenti from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of his competence and capability.
- 6.14. The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Laurenti's approval be withdrawn and that he be prohibited from performing significant influence functions. The relevant provisions of EG are set out in Annex A of this Notice.
- 6.15. Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Laurenti is not fit and proper to perform significant influence functions. In particular Mr Laurenti demonstrated a lack of regard for the standards and requirements of the regulatory system. In the interest of maintaining market confidence the FSA deems it appropriate to make a prohibition order in the terms set out above.

7. PROCEDURAL MATTERS

7.1. Decision Maker

- 7.2. The decision which gave rise to the obligation to give this notice was made by Settlement Decision Makers.

- 7.3. This Final Notice is given under, and in accordance with section 390 of the Act.

Manner of and time for Payment

- 7.4. The financial penalty must be paid in full by Mr Laurenti to the FSA by no later than 10 February 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.5. If all or any of the financial penalty is outstanding on 11 February 2012, the FSA may recover the outstanding amount as a debt owed by Mr Laurenti and due to the FSA.

Publicity

- 7.6. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. 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.
- 7.7. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.8. For more information concerning this matter generally, please contact Rebecca Irving (direct line: 020 7066 2334) of the Enforcement and Financial Crime Division of the FSA.

Tom Spender

Project Sponsor,

FSA Enforcement and Financial Crime Division

Annex A:

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers and the reduction of financial crime.
- 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. The FSA has the power, by virtue of section 66 of the Act, to impose a financial penalty on an individual of such amount as it considers appropriate where it appears to the FSA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or being knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

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

- 1.5. APER sets out the Statements of Principle in respect of approved persons and sets out examples of conduct, which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

- 1.6. APER 3.1.3G stipulates 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, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 1.7. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 1.8. 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.
- 1.9. The Statement of Principle most relevant to this matter is Statement of Principle 7, which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 1.10. APER 3.1.8G states that in applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
- 1.11. APER 3.3 sets out the factors relevant to an assessment of compliance with Statements of Principle 5 to 7.
- 1.12. APER 3.3.1 E provides that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account: (1) whether he exercised reasonable care when considering the information available to him; (2) whether he reached a reasonable conclusion which he acted on; (3) the nature, scale and complexity of the firm's business; (4) his role and responsibility as an approved person

performing a significant influence function; (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

1.13. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7. These include:

1. failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant standards of the regulatory system in respect of its regulated activities (APER 4.7.3E);
2. failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities (4.7.4E);
3. failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (APER 4.7.5E).

1.14. APER 4.7.11 G provides that the FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

2. FSA's policy on financial penalties

2.1. The FSA's policy on the imposition and amount of penalties is set out in Chapter 6 of DEPP, which is part of the FSA's Handbook.

2.2. The Decision Procedure and Penalties Manual (Financial Penalties) Instrument 2010 which came into force on 6 March 2010, made changes to DEPP. As a significant proportion of the misconduct described in the Final Notice occurred prior to 6 March 2010, the FSA has had regard to the provisions of DEPP in force prior to 6 March 2010, which are summarised below.

- 2.3. In determining whether a financial penalty is appropriate under the policy in place before 6 March 2010, the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G and DEPP 6.4.2G (regarding whether or not to take action for a financial penalty or public censure, and if so which sanction).
- 2.4. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market 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. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.
- 2.5. DEPP 6.5.1G says that the FSA will consider the all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
- 2.6. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 2.7. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

- 2.8. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or

part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

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

The FSA will regard as more serious a breach which is deliberately or

- 2.9. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

- 2.10. the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.11. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

- 2.12. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

3. Fit and Proper Test for Approved Persons

- 3.1. The section of the FSA 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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.2. 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 considerations will be the person’s competence and capability.
- 3.3. As set out in FIT 2.2, in determining a person’s competence and capability, the FSA will have regard to matters including but not limited to:
 - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).

4. FSA’s policy for exercising its power to make a prohibition order and withdraw a person’s approval

- 4.1. The FSA’s approach to exercising its powers to withdraw approval under section 63 of the Act and make a Prohibition Order under section 56 of the Act is set out in Chapter 9 of EG.
- 4.2. EG 9.1 states that the FSA’s power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power 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.
- 4.3. 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.

- 4.4. EG 9.4 sets out the general scope of the FSA'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.
- 4.5. 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 risk posed by him to consumers or the market generally.
- 4.6. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 4.7. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
 - (2) whether, and to what extent, the approved persona has failed to comply with the Statements of Principle;
 - (3) the relevance and materiality of any matters indicating unfitness;

- (4) the length of time since the occurrence of any matters indicating unfitness;
- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (7) the previous disciplinary record and general compliance history of the individual.

4.8. 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 or withdraw the approval of an approved person. The examples include serious lack of competence and serious breaches of the Statements of Principle, such as giving clients poor or inaccurate advice.

4.9. 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.

5. MCOB

5.1. MCOB 4.4.1R states that a firm must ensure, on first making contact with a customer when it anticipates giving personalised information or advice on a regulated mortgage contract that it (a) establishes with the customer whether it will provide advice or information; (b) establishes with the customer how much he will pay or, alternatively, the basis on which the firm will be remunerated, where appropriate; and (c) provides the customer with either: (i) an initial disclosure document; or (ii) if the firm has reasonable grounds to be satisfied that the services which it is likely to provide to the customer will relate to a combination of different types of home finance transaction, or will relate to home finance transactions and one or more of non-investment insurance contracts or packaged products, a combined initial disclosure documents.

5.2. MCOB 4.7.2R states that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to

vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer.

- 5.3. MCOB 4.7.4R provides, for the purposes of MCOB 4.7.2R, that a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is, or should reasonably be, aware, the firm has reasonable grounds to conclude that: (a) the customer can afford to enter into the regulated mortgage contract; (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.
- 5.4. MCOB 4.7.17R states that a firm must make and retain a record (1) of the customer information, including the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7; and (2) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2R satisfies the suitability requirements in MCOB 4.7.4R(1).