
FINAL NOTICE

To: **Riaz Ahmad**

Address: **200-202 Deane Road
Bolton
Lancashire
BL3 5DP**

Individual reference number: **RXA01333**

Dated: **20 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) gives you, Riaz Ahmad, final notice about the imposition of a financial penalty, a decision to withdraw your approval and about an order prohibiting you from carrying out any controlled function involving the exercise of significant influence over any person 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 18 January 2010 which notified you that the FSA had decided:
- (1) to impose a financial penalty of £5,000 on you, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), for failing to comply with Statements of Principle 6 and 7 of the Statements of Principle and Code of Practice for Approved Persons (“the APER Principles”);
 - (2) to withdraw the approval granted to you, pursuant to section 63 of the Act, to perform controlled functions; and
 - (3) to make an order, pursuant to section 56 of the Act, prohibiting you from carrying out any controlled function involving the exercise of significant

influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

- 1.2. You agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA has today imposed a financial penalty of £5,000 on you, withdrawn your approval and made an order prohibiting you from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 20 January 2010.
- 1.4. You agreed to settle at an early stage of the FSA’s investigation. You therefore qualified for a 30% (Stage 1) discount under the FSA’s executive settlement procedures. The FSA would otherwise have imposed a financial penalty of £17,000 on you.
- 1.5. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Under these exceptional circumstances, the FSA has decided to reduce the financial penalty to £5,000.

2. REASONS FOR THE ACTIONS

- 2.1. On the basis of the facts and matters described below, the FSA considers that your conduct, while acting in your capacity as the sole director and the only approved person at Finance.com Limited trading as UK Mortgages and Loans (“Finance.com”), fell short of the standards required by the APER Principles.
- 2.2. Specifically, when carrying out controlled functions in connection with Finance.com’s regulated mortgage business in the period from 8 August 2005 to 30 July 2008 (“the relevant period”), you:
 - (1) breached APER Principle 6 as you failed to exercise due skill, care and diligence in managing Finance.com in that you failed to:
 - (a) understand your responsibilities associated with running a regulated mortgage business;
 - (b) put in place adequate supervision arrangements over your mortgage adviser who was left effectively to run the business despite not holding any controlled functions; and
 - (c) take sufficient steps to keep informed about the affairs of the business or engage with Finance.com’s external compliance consultants to ensure that compliance failings were addressed and did not recur;

(2) breached APER Principle 7 as you failed to take reasonable steps to ensure that Finance.com complied with the relevant requirements and standards of the regulatory system in that you failed to:

(a) put in place adequate arrangements for monitoring the suitability of mortgage advice provided by Finance.com. Consequently, deficiencies relating to the content and completion of fact finds and suitability letters were not identified and Finance.com could not demonstrate the suitability of its mortgage recommendations; and

(b) put in place adequate risk management systems to prevent Finance.com being used to further financial crime. Consequently, Finance.com submitted mortgage applications based on inaccurate and misleading information on behalf of its customers to lenders.

2.3. The FSA has concluded that the nature and seriousness of the breaches outlined above warrants the imposition of a financial penalty. The FSA therefore proposes to impose a financial penalty of £5,000 on you.

2.4. The FSA has also concluded that you are failing to meet the minimum regulatory standards required in terms of competence and capability, and are not fit and proper to carry out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA proposes to withdraw your approval and to make a Prohibition Order against you because of the nature of your failings and the potential impact on customers.

2.5. This action supports the FSA's regulatory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

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

4. FACTS AND MATTERS RELIED ON

Background

4.1. You were approved by the FSA on 8 August 2005 to perform the following controlled functions at Finance.com: CF1 (Director), CF8 (Apportionment and Oversight – until 31 March 2009) and you were also responsible for insurance mediation. Apart from you, there are no other persons approved to perform controlled functions in relation to the regulated activities for which Finance.com has permission.

4.2. Finance.com is a small retail mortgage and insurance intermediary, which operates in Bolton. With effect from 8 August 2005, Finance.com became authorised by the FSA to carry on the following regulated activities (those marked with an asterisk were 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 transactions in investments*; and
- (7) making arrangements with a view to regulated mortgage contracts.

4.3. The FSA's Supervision Division carried out a "treating customers fairly" assessment of Finance.com as part of the FSA's assessment programme for small firms in July 2008. As a result of the assessment, the FSA found weaknesses in Finance.com's advice process and compliance arrangements for monitoring and controlling business risks and was concerned that you lacked the competence and capability to manage Finance.com. Accordingly, it was considered that there was a high risk of consumer detriment due to poor practice so Finance.com was referred to the FSA's Enforcement Division for investigation. As part of its investigation, the FSA has reviewed a sample of 18 customer files, which were selected at random from Finance.com's business register, and interviewed key staff at Finance.com.

4.4. The FSA has determined that you breached APER Principles 6 and 7 and that you are not a fit and proper person in terms of your competence and capability, as set out in further detail below.

Failing to exercise due skill, care and diligence

4.5. You are the sole director of Finance.com. As Finance.com's senior manager, you were responsible for its day-to-day management. However, the FSA found that you failed to supervise and control Finance.com adequately during the relevant period.

Lack of regulatory knowledge

4.6. You failed to understand your responsibilities associated with running a regulated mortgage business. You stated at an interview with the FSA that you did not have any relevant qualifications or financial advisory experience. As you did not have the relevant knowledge and expertise, this caused the FSA to question your ability to manage Finance.com. In particular, you held the roles of training and competency supervisor and complaints officer at Finance.com. Without having any relevant financial advisory experience, it was unclear how you could fulfil these roles adequately and effectively.

4.7. Despite your lack of expertise, you failed to take sufficient steps to improve your regulatory knowledge to engage effectively with the business. Instead, you stated at an

interview with the FSA that you relied on employing qualified staff to run Finance.com's regulated mortgage business and retaining the services of an external compliance consultant for compliance support. These steps were not sufficient to overcome your lack of regulatory knowledge as, without having any relevant qualifications or financial advisory experience, you failed to appreciate the context in which your business operated.

Lack of supervision

- 4.8. You failed to supervise Finance.com's mortgage adviser adequately. You effectively left your mortgage adviser to manage the business despite the fact that she did not hold any controlled functions. In fact, you stated at an interview with the FSA that you relied on your mortgage adviser to run Finance.com's regulated mortgage business.
- 4.9. You retained the services of an external compliance consultant to monitor your mortgage adviser and to assess her competence through quarterly compliance visits. You took the view that engaging an external compliance consultant to perform this function was sufficient to discharge your regulatory obligations in respect of the supervision of your mortgage adviser. The compliance visits were not an adequate method for supervising your mortgage adviser as the external compliance consultant only reviewed a random 10% of the business written by your mortgage adviser at each visit. Therefore, the external compliance consultant might not have identified all concerns relating to your mortgage adviser's competence and performance.
- 4.10. In addition, it was unclear how your mortgage adviser was supervised beyond the quarterly compliance visits given that you lacked the relevant knowledge and experience to act as a credible supervisor and there was no evidence that you had taken any steps to supervise her.

Lack of engagement with the business

- 4.11. You failed to take sufficient steps to keep informed about the affairs of the business. You often left your mortgage adviser to liaise directly with the external compliance consultant during the quarterly compliance visits. Consequently, you might not have been aware of all issues discussed or appreciated the context and extent of any failings identified by the external compliance consultant.
- 4.12. In addition, you failed to engage sufficiently with the external compliance consultant by failing to review compliance reports or check the work undertaken by the external compliance consultants to keep informed of issues that needed to be addressed. Consequently the same record keeping deficiencies in Finance.com's customer files were repeated in compliance reports issued by the external compliance consultant from 2006 to 2008, as detailed in paragraph 4.16 below.

Failing to ensure compliance with regulatory requirements and standards

- 4.13. As Finance.com's senior manager you were also responsible for ensuring its compliance with regulatory requirements and standards. However, the FSA found that you failed to establish and implement adequate compliance arrangements and risk management systems over Finance.com's business during the relevant period.

Inadequate advice monitoring systems

- 4.14. You failed to put in place adequate arrangements for monitoring the suitability of mortgage advice provided by Finance.com. You stated at an interview with the FSA that customer file reviews focussed on service turnaround times, whether relevant documents had been issued during the sales process, complaints and customer service satisfaction. As file reviews did not look at the quality of advice given, the following deficiencies relating to the content and completion of fact finds and suitability letters were not identified by Finance.com, namely Finance.com failed to:

- (1) gather and record adequate customer information, including failing to enquire fully about its customers' financial position to assess the affordability of its mortgage recommendations. Specifically, fact finds did not contain accurate and/or sufficient information about customers' income, expenditures and savings. In addition, it was unclear from fact finds why customers could not provide accounts as proof of income for assessing affordability when they had been self employed for many years;
- (2) communicate with its customers in an appropriate manner. Suitability letters contained standard generic phrases, information copied directly from fact finds that were in some instances incomplete sentences and had inadequate risk warnings. The letters failed to explain why products had been chosen or how and why recommendations met the customers' personal and financial circumstances. In addition, the letters failed to clarify the reasons for recommendations that conflicted with the customers' stated needs and preferences. As such, customers were not provided with adequate information for making informed decisions about recommendations; and
- (3) demonstrate the suitability of its mortgage recommendations relating to self certification mortgages, interest only mortgages and mortgages into retirement. Specifically, the files failed to record why customers wanted self certification mortgages or interest only mortgages or confirm that repayment vehicles, affordability into retirement and potential changes to the customers' circumstances had been discussed. As such, it was not evident from the files whether customers could afford to enter into these types of mortgage contracts.

- 4.15. Although you recognised that you lacked the knowledge to review customer files, you failed to put in place alternative advice monitoring arrangements beyond the quarterly compliance visits by the external compliance consultants. In fact, your mortgage adviser appeared to have monitored her own advice.

- 4.16. In any event, despite retaining the services of an external compliance consultant for additional compliance support, you failed to review compliance reports issued by the

external compliance consultant, which highlighted deficiencies relating to Finance.com's mortgage sales process. The external compliance consultant informed Finance.com that it needed to record changes to its customers' circumstances and products recommended during the sales process and to complete fact finds fully with details of the customers' incomes and expenditures for assessing affordability. The external compliance consultant also highlighted that Finance.com needed to pay attention to higher risk areas such as self certification and interest only mortgages. In relation to self certification mortgages, the 2007 report warned Finance.com the importance of assessing income plausibility.

- 4.17. As you failed to implement adequate advice monitoring arrangements, Finance.com did not appear to have the ability to assess whether customers were being advised properly and/or treated fairly. In addition, your failure to ensure the quality of advice provided by Finance.com created a serious risk that Finance.com's customers might have received unsuitable mortgage advice.

Inadequate risk management systems

- 4.18. You failed to put in place adequate risk management systems to prevent Finance.com being used to further financial crime. Specifically, you failed to establish systems to identify irregularities in mortgage applications, such as written procedures to assist your mortgage adviser to recognise and verify discrepancies in customer information to prevent Finance.com's business being used to commit mortgage fraud. Where customers provided inconsistent information about their occupation, Finance.com failed to check the authenticity of the customers' employment details with employers or against public sources, such as Companies House and Yell.com.
- 4.19. In assessing the affordability of recommendations, Finance.com did not always obtain bank statements for every customer to confirm the receipt of salary, which might have highlighted issues relating to the plausibility of declared employment and incomes. On occasion, Finance.com also took at face value claims made by its customers about their incomes when documentary evidence could not be provided, or relied on information provided by customers in support of previous applications without checking whether there had been any changes to that information.
- 4.20. In addition, you did not recognise that Finance.com had any role to play in the prevention of mortgage fraud. You stated at an interview with the FSA that responsibility for checking customer information rested primarily with mortgage lenders. This provides another example of your failure to understand your regulatory obligations or the regulatory context.
- 4.21. As a result of your failure to implement adequate risk management controls over Finance.com's regulated mortgage business, the FSA found that mortgage applications based on inaccurate and misleading income and employment details were submitted on behalf of at least four customers to lenders through Finance.com.

5. ANALYSIS OF THE MISCONDUCT

- 5.1. The FSA has considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has considered its regulatory objectives, the regulatory guidance and policy referred to in the Annex.
- 5.2. In assessing your competence and capability for the purpose of determining whether you are a fit and proper person, the FSA has had regard to the following:
 - (1) by failing to understand your responsibilities associated with running a regulated mortgage business, to supervise your mortgage adviser adequately and take sufficient steps to keep informed about the affairs of the business, your conduct demonstrated a lack of due skill, care and diligence in breach of APER Principle 6; and
 - (2) by failing to put in place adequate arrangements for monitoring the suitability of Finance.com's mortgage advice or to implement adequate risk management systems to prevent Finance.com being used to further financial crime, you failed to take reasonable steps to ensure that Finance.com complied with relevant requirements and standards of the regulatory system in breach of APER Principle 7.
- 5.3. As a result of the breaches of APER Principles, the FSA has concluded that your conduct fell short of the minimum regulatory standards in terms of your competence and capability, and that you are not a fit and proper person to carry out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 5.4. The FSA considers that you pose a serious risk to consumers and to confidence in the financial system if you are involved in the running of, or hold a senior management role with, another authorised firm in the future.

6. ANALYSIS OF THE SANCTIONS

Imposition of a financial penalty

Deterrence

- 6.1. The principal purpose of the imposition of this penalty is to promote high standards of regulatory conduct by deterring approved 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.
- 6.2. In determining the level of the financial penalty, the FSA has had regard to the need to ensure those who are approved persons exercising management functions act with the appropriate levels of competence and capability and manage their businesses in accordance with regulatory requirements and standards. The FSA considers that a

penalty should be imposed to demonstrate to you and others the seriousness with which the FSA regards such behaviour.

The nature, seriousness and impact of the breach in question

- 6.3. The FSA has concluded that you exercised inadequate management and control over the running of Finance.com, which resulted in the business failing to comply with regulatory requirements and standards for a prolonged period of time (approximately 36 months). As you failed to ensure that Finance.com had adequate risk management systems, mortgage applications based on inaccurate and misleading information were submitted on behalf of customers to lenders through Finance.com. In addition, in failing to ensure that mortgage advice provided to customers was suitable, you put Finance.com's customers at risk of receiving unsuitable mortgage advice.

The extent to which the breach was deliberate or reckless

- 6.4. The FSA considers that you did not act in a deliberate or reckless manner.

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

- 6.5. When determining the appropriate level of financial penalty, the FSA will take into account that individuals will not always have the same resources as 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 a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individuals 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.
- 6.6. 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 Finance.com.

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

- 6.7. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors, including your income from Finance.com during the relevant period. The FSA has taken into account the verifiable evidence of serious financial hardship you have provided and that the purpose of a financial penalty is not to render a person insolvent or threaten a person's solvency.

Conduct following the breach

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

Previous action taken by the FSA

- 6.9. 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.

Withdrawal of approval and prohibition

- 6.10. The FSA has concluded that your conduct demonstrated a lack of competence and capability and you are therefore not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons.
- 6.11. It is therefore necessary and proportionate, in order for it to achieve its regulatory objectives, for the FSA to exercise its powers to withdraw your approval and make a Prohibition Order against you.

7. DECISION MAKERS

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

8. IMPORTANT

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time for payment

- 8.2. The financial penalty of £5,000 must be paid in full by you to the FSA.

If the financial penalty is not paid

- 8.3. Each instalment must be paid by the due date. If all or any of the instalments are not paid by the relevant due dates, the FSA may recover the outstanding amount of the financial penalty as a debt owed by you and due to the FSA.

Publicity

- 8.4. 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.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contact

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

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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 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. 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's 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 Decision 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 Statements of Principle relevant to this matter are:
 - (1) Statement of Principle 6 which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function; and
 - (2) 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.
- 2.9. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence 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; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.10. APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6.

- 2.11. APER 4.6.3E states that failing to take reasonable steps adequately to inform himself about the affairs of the business for which he is responsible is conduct that does not comply with Statement of Principle 6.
- 2.12. APER 4.6.6E states that failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) is conduct that does not comply with Statement of Principle 6. APER 4.6.7E(1) states that such conduct includes, but is not limited to, disregarding an issue or part of the business once it has been delegated.
- 2.13. APER 4.6.8E states that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated is conduct that does not comply with Statement of Principle 6. APER 4.6.9E(2) states that such conduct includes, but is not limited to, failing to review the performance of an outside contractor in connection with the delegated issue or business.
- 2.14. APER 4.6.12G(1) provides that it is important for the approved person performing a significant influence function to understand the business for which he is responsible. An approved person performing a significant influence function is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities.
- 2.15. APER 4.6.14G provides that although an approved person performing a significant influence function may delegate the resolution of an issue, or authority for dealing with a part of the business, he cannot delegate responsibility for it. It is his responsibility to ensure that he receives reports on progress and questions those reports where appropriate.
- 2.16. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.
- 2.17. APER 4.7.3E states that 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 requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.
- 2.18. APER 4.7.4E states that 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 regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

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

- 2.19. 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.
- 2.20. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. One of the most important considerations will be a person’s competence and capability.
- 2.21. 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.
- 2.22. 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.
- 2.23. FIT 2.2.1G(2) provides that in determining a person’s competence and capability, the FSA will have regard to all relevant matters including, but not limited to, whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function.

Decision Procedure and Penalties Manual (“DEPP”)

- 2.24. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.
- 2.25. 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.
- 2.26. DEPP 6.5.1G(1) provides that the FSA will consider 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.
- 2.27. DEPP 6.5.2 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)

- 2.28. 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)

- 2.29. 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, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach 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)

- 2.30. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. 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)

- 2.31. 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 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.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

- 2.32. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty. The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.33. 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)

- 2.34. 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.

Enforcement Guide (“EG”)

- 2.35. The FSA’s approach to exercising its power to withdraw approval and to make a prohibition order under sections 56 and 63 of the Act is set out in Chapter 9 of EG.
- 2.36. 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.
- 2.37. 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.
- 2.38. 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.
- 2.39. 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.
- 2.40. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, 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) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons, or been knowingly involved in a contravention by the

relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b));

- (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
- (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 (EG 9.9(7)); and
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

2.41. 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:

- (1) serious lack of competence (EG 9.12(4)); and
- (2) serious breaches of the Statements of Principle for approved persons (EG 9.12(5)).

2.42. 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.