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## FINAL NOTICE

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**To:** **Selvavinayakam Vigneswaran**

**Individual ref:** **SXV01114**

**Date:** **22 August 2011**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Selvavinayakam Vigneswaran (“Mr Vigneswaran”), final notice about the imposition of a financial penalty on you, the withdrawal of your individual approval, and an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm:**

### **1. ACTION**

1.1 The FSA gave, Mr Vigneswaran, a Decision Notice on 4 March 2010 (“the Decision Notice”), which notified him that the FSA had decided:

- (1) to withdraw the approval given in respect of the performance of controlled functions by Mr Vigneswaran, pursuant to section 63 of the Financial Services and Markets Act 2000 (the “Act”);
- (2) to make an order, pursuant to section 56 of the Act, prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”); and
- (3) to impose a financial penalty of £250,000 on him, pursuant to section 66 of the

Act, for failing to comply with the FSA's Statements of Principle for Approved Persons.

1.2 The financial penalty consists of the following elements:

- (1) a penalty of £150,000 for submitting fraudulent applications for regulated mortgage contracts; and
- (2) a penalty in the sum of £100,000 for deliberately misleading the FSA.

1.3 On 14 April 2010, Mr Vigneswaran made a reference to the Upper Tribunal (Tax and Chancery Chamber) disputing the Decision Notice. On 5 August 2011, Mr Vigneswaran withdrew his reference to the Upper Tribunal. The hearing of Mr Vigneswaran's reference was listed for 9 August 2011. The FSA did not object to Mr Vigneswaran's withdrawal of the reference. Accordingly, the FSA has taken the action described in paragraph 1.1 above.

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

2.1. The FSA has concluded that Mr Vigneswaran is not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm and that he should be prohibited from doing so.

2.2. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this notice, the FSA has concluded that Mr Vigneswaran has failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory system and to be candid and truthful in all dealings with the FSA.

2.3. Further, Mr Vigneswaran poses a risk both to consumers and lenders and to confidence in the financial system. Moreover, this action should be taken against him in support of the FSA's financial crime objective.

2.4. The FSA has also concluded that Mr Vigneswaran is guilty of misconduct owing to his failure to comply with the Statements of Principle for Approved Persons issued under section 64 of the Act, namely Statements of Principle 1 and 4. Accordingly, the FSA considers that it is appropriate to impose a financial penalty of £250,000.

2.5. In summary, Mr Vigneswaran admitted to the following misconduct:

- (1) submitting three mortgage applications in his parents' names (two of which were for regulated mortgage contracts) containing false information about their income and employment;
- (2) commissioning and then supplying to lenders false payslips for his parents in support of their mortgage applications;
- (3) setting up as an authorised person, another mortgage brokerage, Cherry Finance Limited ("Cherry Finance"), using his father's identity and arranging

for his father to become an approved person without his knowledge or understanding and then running the business himself; and

- (4) while acting as an approved person for Futtare Finance Limited (“Futtare”), Mr Vigneswaran deliberately misled the FSA by providing the FSA with a false reference wrongly representing that his father was employed by Futtare and was a competent and capable individual.

2.6. The FSA has also concluded that Mr Vigneswaran:

- (1) submitted four mortgage applications in his own name through Futtare for non-regulated mortgage contracts containing false information about his earnings;
- (2) routinely submitted false information and documents to lenders through Futtare on behalf of clients;
- (3) was knowingly concerned in the submission of false and misleading information to lenders on behalf of clients of Cherry Finance.

### **3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

#### **Statutory provisions**

- 3.1 The FSA’s statutory objectives, set out in section 2(2) of the Act, include the protection of consumers, the reduction of financial crime and the maintenance of market confidence.

#### **Prohibition**

- 3.2 The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that he 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 specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

#### **Withdrawal of Approval**

- 3.3 The FSA may also withdraw the approval given to an individual under section 59 of the Act by virtue of section 63 of the Act if the FSA considers that the individual is not a fit and proper person to perform the function to which the approval relates. When considering whether to withdraw its approval, the FSA may take into account any matter which it could take into account if it were considering an application made under section 60 of the Act in respect of the performance of the function to which the approval relates.

#### **Financial Penalty**

- 3.4 Under section 66(1) of the Act, the FSA may impose a financial penalty on an approved person if they are guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against them.
- 3.5 Section 66(2) of the Act states that a person is guilty of misconduct if, while an approved person, they have failed to comply with a statement of principle for approved persons (section 66(2)(a)) or they have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on the authorised person by or under the Act (section 66(2)(b)).

### **Regulatory Requirements and Guidance**

- 3.6 In deciding on the action, the FSA has had regard to relevant guidance published in the FSA Handbook and the FSA's Regulatory Guides, in particular in the Enforcement Guide ("EG"), the Fit and Proper Test for Approved Persons ("FIT"), the Statements of Principle and Code of Practice for Approved Persons ("APER"), Decision Procedure and Penalties manual ("DEPP") and the Enforcement Manual ("ENF").

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

### **Background**

- 4.1. Mr Vigneswaran was the sole director of Futtare, which was a mortgage brokerage based in Kingsbury, North West London and had been authorised by the FSA since 31 October 2004. He was the only approved person at Futtare carrying out the following controlled functions: CF1 (Director) and CF8 (Apportionment and Oversight). He was also responsible for insurance mediation at the firm. Mr Vigneswaran was responsible for the day-to-day activities and running of Futtare and owned 100% of the issued share capital in Futtare.

### **Background to the FSA's investigation**

- 4.2. In October 2007, the FSA received a report from a lender ("Lender A"), informing it of Futtare's removal from Lender A's panel of mortgage intermediaries, as Futtare was suspected of submitting a number of mortgage applications containing false information to another lender ("Lender B"). Lender B was concerned that these applications contained false income and employment information, which included false payslips and P60s.
- 4.3. Lender B provided the FSA with all the mortgage applications about which Lender B had expressed concerns. The FSA reviewed these applications and found that they contained false employment and income information. These applications included applications for Mr Vigneswaran's parents for which he was the mortgage broker.
- 4.4. On 24 April 2008, a search warrant was executed at Futtare's business premises and, following a review of the seized materials, Mr Vigneswaran was interviewed by FSA investigators on 20 August 2008. He acknowledged in interview that the mortgage applications discussed in paragraphs 4.5 - 4.12 below contained false income and employment details.

### **Parents' mortgage applications**

- 4.5. Mr Vigneswaran admitted in interview that he submitted two false mortgage applications for his father, in October and November 2006, for properties that he already owned.
- 4.6. The applications stated that his father was employed by an estate agency from 2 September 2003 as an Investment Consultant, earning £78,000 per annum. Mr Vigneswaran is the sole director and 100% shareholder of that estate agency. In interview, Mr Vigneswaran admitted that this information was false and that his father was actually earning £5,000 per annum and assisted with simple administration at the estate agency. When the FSA informed Mr Vigneswaran that Her Majesty's Revenue and Customs ("HMRC") checks showed no record of income and tax payment for his father for the years ending 2005 and 2006, Mr Vigneswaran failed to give an adequate explanation, stating that he always passed employee information to Mr Vigneswaran's accountant who dealt with these issues.
- 4.7. Mr Vigneswaran's father's October 2006 application was supported by three payslips which gave his father a monthly income of about £4,291 from the estate agency, which equated to £78,000 per annum. Mr Vigneswaran's father's income was given as £78,000 in both the October and November 2006 applications. When asked about the origin of these payslips Mr Vigneswaran admitted that they were false. Mr Vigneswaran explained that he asked a friend whose name and details he could not recall to produce them for him. Mr Vigneswaran admitted that he commissioned these false payslips for the sole purpose of obtaining fraudulent mortgages in his father's name.
- 4.8. Mr Vigneswaran also confirmed that he withdrew one of the mortgage applications made in his father's name after the lenders requested his father's permission to contact the Inland Revenue to verify his income. By way of an explanation Mr Vigneswaran stated that he submitted these fraudulent mortgage applications in his father's name to manage his assets in response to his own divorce.
- 4.9. Mr Vigneswaran admitted in interview that he submitted a false mortgage application for his mother, in November 2006, for a property that he already owned.
- 4.10. The application stated that his mother was employed as a full-time consultant from 6 October 2003 at Futtare, earning £85,000 per annum. In interview, Mr Vigneswaran admitted that this information was false and that she actually earned £5,000 per annum and assisted with very basic administration at Futtare. When the FSA informed Mr Vigneswaran that HMRC checks showed no record of income and tax payment for his mother, Mr Vigneswaran failed to give a clear answer and said that she was on the payroll and that Mr Vigneswaran's accountant dealt with all these issues.
- 4.11. Mr Vigneswaran also admitted that he cancelled the false mortgage application for his mother after the lender requested proof of her income, which Mr Vigneswaran was unable to provide honestly. Mr Vigneswaran explained that the reason he submitted the mortgage application in his mother's name was to transfer the ownership of the property from himself to his mother. Mr Vigneswaran did this to safeguard his assets

from his wife with whom he was in divorce proceedings at that time.

- 4.12. Mr Vigneswaran stated that his parents were aware that he was using their identities to submit false mortgage applications on their behalf as Mr Vigneswaran was in a desperate situation at that time and asked them to help him to save his assets from being claimed by his wife in the divorce proceedings. However, Mr Vigneswaran could not confirm how much of the situation his parents actually understood. The FSA considers that this explanation is unacceptable and that Mr Vigneswaran's conduct in respect of the submission of false mortgage applications in his parents' names through Futtare demonstrates a complete lack of honesty and integrity.

#### **Mr Vigneswaran's mortgage applications**

- 4.13. Between April 2004 and October 2005 Mr Vigneswaran submitted four personal mortgage applications (for non-regulated mortgage contracts) to various lenders through Futtare, which contained false information about Mr Vigneswaran's earnings. The information that Mr Vigneswaran provided to the lenders did not correspond with the earnings information that Mr Vigneswaran reported to HMRC.
- 4.14. Each of Mr Vigneswaran's mortgage applications stated that Mr Vigneswaran was employed as a Senior Consultant at Futtare, earning £78,000 per annum, with an additional £6,000 bonus and £15,600 rental income in 2005. In interview, Mr Vigneswaran denied that he had submitted false mortgage applications in his own name and maintained that he earned the amounts stated in the mortgage applications at the time. When investigators informed Mr Vigneswaran that HMRC checks showed that he earned significantly lower gross sums of money than recorded in these mortgage applications. Mr Vigneswaran stated that his accountant was responsible for these figures.
- 4.15. The FSA believes that this explanation is not credible given the substantial difference between the amounts Mr Vigneswaran declared to HMRC and the income Mr Vigneswaran described in the relevant mortgage applications. In the FSA's opinion Mr Vigneswaran deliberately and significantly inflated his income in documentation to the lenders and obtained mortgages on the basis of these false declarations.

#### **Futtare's client mortgage applications**

- 4.16. From 1 April 2005 to 30 June 2008, Futtare submitted 156 mortgage applications to lenders. The FSA checked the income details of 7 applications highlighted by a lender and a further 19 applications selected at random (including some joint applications) (approximately 17% of Futtare's business) against the records held by HMRC. The FSA has established that all 26 applications contained false and misleading information: specifically the applicants' income had been inflated on the mortgage applications. Of those 26 applications, 23 (approximately 90%) named Mr Vigneswaran or Mr Selva Warren as the sole adviser while one named Mr Vigneswaran and Employee A. In interview, Mr Vigneswaran confirmed that he used the alias, "Selva Warren".
- 4.17. Given that Mr Vigneswaran admitted submitting fraudulent mortgage applications in

his parents' names; the fraudulent mortgage applications made in his own name; the high percentage of fraudulent applications discovered in a random sample of Futtire's files; and the high percentage of fraudulent mortgage applications with Mr Vigneswaran named as the adviser, the FSA considers that Mr Vigneswaran routinely submitted fraudulent mortgage applications through Futtire.

#### **Mr Vigneswaran's involvement in Cherry Finance**

- 4.18. Futtire was removed from a lender's panel on 10 July 2007. The FSA was not informed by Futtire that it had been removed from Lender A's panel. Mr Vigneswaran admitted in interview that he failed to notify the FSA of the removal of Futtire from Lender A's panel of mortgage intermediaries for submitting suspected fraudulent mortgage applications.
- 4.19. However, in 2007, Mr Vigneswaran set up Cherry Finance under his father's name arranging for him to become an approved person. He is registered as the sole director and is listed as carrying out the CF1 (Director) and CF8 (Apportionment and oversight) controlled functions. He is also listed as being responsible for insurance mediation carried out by Cherry Finance.
- 4.20. The compliance consultant engaged to assist preparing the authorisation application for Cherry Finance confirmed to the FSA that Mr Vigneswaran approached his firm on behalf of his father to request assistance in preparing an application to the FSA for Cherry Finance. The compliance consultant stated that Mr Vigneswaran made clear at the outset that his father would be the sole director of Cherry Finance but Mr Vigneswaran would give guidance and assistance as necessary. He stated that the application was completed based on information supplied either by Cherry Finance directly or through Mr Vigneswaran. The only communication he had with Mr Vigneswaran's father was by way of written correspondence. Further, in Cherry Finance's application for authorisation, Futtire was listed as its locum.
- 4.21. Cherry Finance's authorisation application, sent to the FSA under cover of a letter dated 4 July 2007, was supported by Mr Vigneswaran's father's curriculum vitae which stated that from July 2004 to June 2007, he was employed as a Senior Business Development Manager at Futtire.
- 4.22. As part of the authorisation process for Cherry Finance, Mr Vigneswaran, as the purported ex-employer of his father, was asked by the FSA whether Mr Vigneswaran were aware of any specific concerns relating to Cherry Finance's sole director (Mr Vigneswaran's father) with regard to his general level of competence, knowledge of investment business and any other issues relevant to his authorisation application. On 4 September 2007, Mr Vigneswaran wrote to the FSA providing a reference in respect of his father. Mr Vigneswaran's reference explained that his father worked as a Senior Business Development Manager at Futtire from July 2004, dealing in all aspects of mortgage business and non-investment insurance business and that he was a competent and capable individual.
- 4.23. By Mr Vigneswaran's own admission his father is not a senior business development manager. He also does not possess any knowledge of mortgage advice or non-

investment insurance. At interview, contrary to what was stated in support of the authorisation application for Cherry Finance, Mr Vigneswaran stated that his father performed simple administrative tasks at the estate agency.

- 4.24. The FSA also conducted an interview with Mr Vigneswaran's father in relation to his involvement in Cherry Finance. His father cannot speak English; however, he stated, through a translator, that he did not have any involvement with the day to day running of Cherry Finance and that Mr Vigneswaran dealt with all business matters. He demonstrated very limited knowledge of Cherry Finance, stating that he only remembered attending an opening ceremony. He further stated that he had not applied to the FSA for authorisation and was retired; he did not know whether he had made any mortgage applications through FUTURE but said that he signed documents when asked to do so by Mr Vigneswaran. It was clear from the interview with Mr Vigneswaran's father that he had no involvement with either FUTURE or Cherry Finance. However, this was not apparent to the FSA when the application was considered by the FSA's authorisations department.
- 4.25. The FSA considers that, in reality, Mr Vigneswaran was running Cherry Finance. When the search warrant was executed at FUTURE's offices, the FSA discovered a manuscript diagram headed 'Own Business Plan'. It appears to be in Mr Vigneswaran's handwriting. This document lists items that need to be completed for Cherry Finance's authorisation which included completion of FSA registration documents, CV, Company House forms, opening of a bank account and various other items which would facilitate FSA authorisation. This document also listed items relating to FUTURE; properties which Mr Vigneswaran owns; and a note of a question from the compliance consultant in respect of Cherry Finance's authorisation application. A cheque book for Cherry Finance was also found.
- 4.26. Furthermore, on 29 September 2008, the FSA visited the offices of Cherry Finance, which were located in a purpose built business centre. The FSA's Enforcement staff spoke to the centre manager who confirmed that the licence agreement for Cherry Finance was signed by Mr Vigneswaran.
- 4.27. From 1 October 2007 to 30 June 2008, Cherry Finance submitted six mortgage applications (including two joint applications) to lenders which completed. The FSA reviewed these applications and checked the income details of the eight individual applicants against the records held by HMRC. The FSA concluded that all six mortgage applications contained false and misleading information; specifically the applicants' income had been inflated on each of these mortgage applications. The adviser stated in the six mortgage applications is Mr Vigneswaran's father. However, various documents within each of the files (such as the fee agreement, file check list and other correspondence) name Selva Warren as the adviser or are signed by Mr Vigneswaran under that name.
- 4.28. In light of paragraphs 4.19 to 4.27 above, the FSA concludes that Mr Vigneswaran arranged for Cherry Finance to be set up in his father's name and deliberately misled the FSA as to who directed Cherry Finance. In establishing Cherry Finance Mr Vigneswaran misled the FSA by:



- (1) arranging for the submission of the authorisation application for Cherry Finance which contained false and misleading information.
- (2) being knowingly concerned in the submission of forms signed by his father to apply to become an approved person in the knowledge that he would sign any document Mr Vigneswaran put before him;
- (3) being knowingly concerned in the submission of his father's curriculum vitae which contained false and misleading information;

4.29. Mr Vigneswaran also provided the FSA with a false reference in support of his father's application to be an approved person, in Mr Vigneswaran's capacity as an approved person at FUTURE. In doing so, Mr Vigneswaran deliberately misled the FSA, stating that his father had been employed by FUTURE as a Senior Business Development Manager and was a competent and capable individual to be a principal of a mortgage intermediary. Mr Vigneswaran followed this course of conduct despite being fully aware of his responsibilities as an approved person to act with integrity, to be open and cooperative with the FSA and to disclose appropriately any information of which the FSA would reasonably expect notice. In fact Cherry Finance was always controlled and managed by Mr Vigneswaran and his father had no involvement in the day-to-day running of this business.

4.30. Mr Vigneswaran was also acting as a mortgage adviser at Cherry Finance and submitted six fraudulent mortgage applications to the lenders naming his father as the adviser beyond the locum arrangement between Cherry Finance and FUTURE. The FSA considers that Mr Vigneswaran used Cherry Finance as a means of continuing his fraudulent activities without having direct personal accountability for his actions as an approved or authorised person. This further demonstrates his complete lack of honesty and integrity.

## **5. REPRESENTATIONS**

5.1. Oral representations were made on Mr Vigneswaran's behalf on 21 January 2010 and documents were also submitted in support.

5.2. In summary, the representations were as follows:

- (1) Mr Vigneswaran accepted the FSA's findings set out at paragraph 2.5 above in relation to the applications submitted in his parents' names, the commissioning and supply of false payslips, setting up Cherry Finance and the provision of a false reference to the FSA;
- (2) Mr Vigneswaran did not accept the FSA's findings set out at paragraph 2.6 relating to the submission of mortgage applications in his own name and the submission of applications on behalf of clients of FUTURE and Cherry Finance.

5.3. Additional representations were made about matters which are no longer relied on by the FSA.

### **Mr Vigneswaran's mortgage applications**

5.4. The representations made on Mr Vigneswaran's behalf in relation to his own mortgage applications were essentially as follows:

- (1) the FSA's conclusion that Mr Vigneswaran inflated his income in the relevant applications was based on information about his earnings obtained from HMRC. However, there were a number of reasons why there might be a discrepancy between income as stated in his mortgage applications (£78,000 in 2004 and £99,600 in 2005) and income reported to HMRC;
- (2) at interview Mr Vigneswaran had sought to justify the discrepancy on the basis that the figures that were reported to HMRC for the tax year ending April 2004 were not available to him at the time he made the first three applications (one in April 2004 and two in October 2004). This was because Futtare's accounts for the year ended 29 February 2004 (the "2004 Accounts") were not signed off until 3 December 2004. However, Mr Vigneswaran would have had an idea of the volume of business being conducted and could have estimated his likely income. The 2004 Accounts indicate that turnover increased from £41,961 in 2003 to £212,529 in 2004 and that gross profit increased from £36,679 to £89,422. It was submitted that these are the figures that Mr Vigneswaran would have had in mind when making the first three applications; and
- (3) the following year, Futtare's accounts for the year ended 28 February 2005, signed off on 3 December 2005 (the "2005 Accounts"), indicate that turnover had increased to £225,978 and gross profit to £103,175. At the time that the fourth mortgage application was submitted in October 2005, Mr Vigneswaran had the 2004 Accounts, Mr Vigneswaran knew that business had increased and Mr Vigneswaran also had additional rental income from the properties already acquired.

### **Mortgage applications on behalf of the clients of Futtare and Cherry Finance**

5.5. The representations made on Mr Vigneswaran's behalf in relation to the mortgage applications submitted on behalf of the clients of Futtare and Cherry Finance were essentially as follows:

- (1) HMRC records are not a sufficient basis on which to conclude that the income of clients was inflated because, as set out above, there are a number of reasons why a discrepancy might arise, particularly where the relevant applicants were self employed (it being accepted that HMRC records were more relevant in cases of employed applicants); and
- (2) in relation to the Futtare applications, the results of the review carried out by the FSA were not a fair basis on which to conclude that fraudulent applications had been routinely submitted.

### **Penalty**

5.6. It was suggested during the representations that acceptance by the FSA of certain

representations must go some way to reducing the penalty. However, it was also submitted that no representations were made in relation to the penalty and that the proposed financial penalty might be appropriate in terms of the matters that had been admitted.

## **6. ANALYSIS OF MISCONDUCT AND SANCTION**

### **Prohibition and withdrawal of approval**

- 6.1. The FSA has considered whether Mr Vigneswaran is a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has considered its regulatory requirements and relevant guidance.
- 6.2. In assessing Mr Vigneswaran's honesty, integrity and reputation for the purpose of considering whether he is a fit and proper person, the FSA notes that Mr Vigneswaran has admitted to the following:
  - (1) deliberately submitting three false mortgage applications (two of which were for regulated mortgage contracts) through Futtore in the names of his mother and father;
  - (2) commissioning and supplying to lenders false payslips for his parents in support of their mortgage applications;
  - (3) misleading the FSA by providing a false reference which confirmed his father was employed at Futtore and was a competent and capable individual; and
  - (4) setting up a mortgage brokerage using his father's identity and arranging for the submission of an authorisation application and for his father to become an approved person without his knowledge or understanding and then running the business himself.
- 6.3. In relation to Mr Vigneswaran's own mortgage applications, the FSA does not accept Mr Vigneswaran's explanations regarding the income figures that Mr Vigneswaran included in these applications. All four mortgage applications (which were made in 2004 and 2005) include a basic income figure of £78,000. The 2005 mortgage application also included a "bonus" figure of £6,000 as well as rental income of £15,600. However, the 2004 Accounts indicate that directors' emoluments increased from £9,167 in 2003 to £10,000 in 2004 and that dividends increased from £10,000 in 2003 to £25,000 in 2004. The 2005 Accounts indicate that directors' remuneration decreased to £5,000 and dividends decreased to £12,000. Neither these figures, nor any of the representations made or documentation submitted, justify Mr Vigneswaran's submission to lenders of an income figure of £78,000 which is inconsistent with both the HMRC records and Futtore's audited accounts.
- 6.4. In considering Mr Vigneswaran's representations, the FSA has also taken into account his admissions of dishonesty in relation to his parents' mortgage accounts, his conduct in relation to the setting up of Cherry Finance and the false reference which Mr Vigneswaran provided to the FSA.
- 6.5. In relation to the applications made on behalf of the clients of Futtore and Cherry Finance, the FSA notes that all 26 Futtore applications that were reviewed, 19 of which

were selected at random, involved an income discrepancy. Mr Vigneswaran was personally involved in 24 applications and at least 17 applications appear to relate to employed applicants. The applicants reviewed represented 17% of FUTURE's business. The six Cherry Finance applications represent all the applications submitted to lenders through Cherry Finance that completed. All six involved an income discrepancy, and Mr Vigneswaran was personally involved in all six. There is no evidence that any of the applicants were self-employed or to explain the discrepancies.

- 6.6. In these circumstances and given Mr Vigneswaran's involvement in both sets of applications, the high percentage of unexplained discrepancies found in a random sample of files which named Mr Vigneswaran as the adviser and which appear to involve employed applicants and Mr Vigneswaran's admissions of dishonesty, the FSA remains of the view that Mr Vigneswaran routinely submitted false information and documents to lenders on behalf of FUTURE clients and were knowingly concerned in the submission of false and misleading information to lenders on behalf of Cherry Finance clients.
- 6.7. In light of Mr Vigneswaran's conduct as set out above and the admissions Mr Vigneswaran has made, the FSA concludes that Mr Vigneswaran lacks honesty and integrity and is not fit and proper.
- 6.8. The FSA considers that Mr Vigneswaran poses a serious risk to lenders, to consumers, and to confidence in the financial system, and also that action should be taken to prevent Mr Vigneswaran from committing acts of financial crime. Therefore, the FSA considers that this is a serious case of lack of fitness and propriety and as such, it is the view of the FSA that Mr Vigneswaran's approval should be withdrawn and Mr Vigneswaran should be prohibited from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

### **Financial penalty**

- 6.9. Furthermore, the FSA considers it appropriate to impose a financial penalty under section 66(1) of the Act in respect of Mr Vigneswaran's conduct as an approved person in submitting false mortgage applications and deliberately providing a false reference to the FSA in breach of Statement of Principle 1 and Statement of Principle 4. In determining an appropriate financial penalty the FSA has had regard to DEPP and, for his conduct occurring prior to 28 August 2007, ENF which set out the factors that may be of relevance in determining whether, and at what level it is appropriate to impose a financial penalty. The FSA has considered the full circumstances of Mr Vigneswaran's conduct in determining that a financial penalty is appropriate in this case including the following factors which it considers to be particularly relevant to a determination of the level of the penalty.

### *Deterrence*

- 6.10. The principal purpose of the imposition of this penalty is to promote high standards of regulatory conduct by deterring other approved persons from acting in this manner. In seeking to impose this penalty the FSA has also had regard to the need to ensure approved persons act with integrity and do not abuse their positions in the financial services industry by submitting fraudulent mortgage applications, obtaining fraudulent mortgages for themselves and their clients and misleading the FSA in relation to

authorisation and approval applications. In addition, mortgage fraud directly contributes to a lack of confidence in the mortgage market.

- 6.11. The FSA is also mindful of the need to punish Mr Vigneswaran in addition to imposing a penalty which will serve as a credible deterrent to others.

*The nature, seriousness and impact of the breach*

- 6.12. The FSA considers that Mr Vigneswaran's behaviour as an approved person, in deliberately submitting fraudulent mortgage applications using his parents' names without their knowledge; being knowingly concerned in the submission of fraudulent mortgage applications on behalf of clients and deliberately misleading the FSA in respect of a separate mortgage brokerage is particularly serious, and warrants a severe financial penalty. In particular, the large number of mortgage applications to which reference is made in this Notice were submitted over a significant period in which Mr Vigneswaran demonstrated a pattern of deliberate and repeated wrongdoing.
- 6.13. In addition, misleading the FSA by providing a false reference in support of an application for Mr Vigneswaran's father to become an approved person prevented the FSA from making a proper determination of his fitness and propriety and allowed him unmerited access to the advantages of approval. The FSA receives many applications for authorisation and approval and regulates many small firms. To be able to achieve its statutory objectives the FSA needs regulated persons to comply with the standards and requirements of the regulatory system. In particular, the effective regulation of authorised firms and approved persons requires the proactive co-operation of persons dealing with the FSA. Action by an approved person to deliberately mislead the FSA, particularly in the context of the authorisation and approval processes, key regulatory tools by which the FSA seeks to authorise and approve only those applicants who are fit and proper, is viewed particularly seriously.
- 6.14. The FSA has also taken into account the impact of combining mortgage fraud with the provision of a false reference to the FSA. The reference supported the authorisation application for Cherry Finance. The authorisation of Cherry Finance allowed Mr Vigneswaran to continue to submit further false mortgage applications to lenders after the removal of FUTURE from a lender's panel without acquiring direct personal responsibility as an approved or authorised person. The FSA has concluded that Mr Vigneswaran's conduct posed a significant risk to consumers and lenders and to confidence in the financial system.

*The extent to which the breaches were deliberate or reckless*

- 6.15. The FSA considers that Mr Vigneswaran's conduct was deliberate and Mr Vigneswaran acted without concern for the risks they posed to the FSA, customers, lenders and the financial services industry. By Mr Vigneswaran's own admission:
- (1) he deliberately submitted three false mortgage applications (two of which were for regulated mortgage contracts) through FUTURE in the names of his mother and father; and
  - (2) he commissioned, and supplied to lenders, false payslips for his parents in support of their mortgage applications;

- (3) he misled the FSA by providing a false reference which confirmed his father was employed at Future and was a competent and capable individual.

6.16. The FSA's consideration of all the relevant circumstances of this case also includes taking account of the deliberate submission of fraudulent mortgage applications to lenders on behalf of clients.

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

6.17. The FSA recognises that, as an individual, the financial penalty to be imposed upon Mr Vigneswaran is likely to have a significant impact, but also takes into account the need for the financial penalty to be proportionate in relation to the seriousness of the misconduct.

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

6.18. The FSA has considered Mr Vigneswaran's financial resources and other circumstances based on the information available to it. There is no evidence to suggest that he is unable to pay the financial penalty.

*Disciplinary record and compliance history*

6.19. The FSA has not previously taken disciplinary action against Mr Vigneswaran.

*Conclusion*

6.20. The FSA considers that the impact of combining mortgage fraud with the provision of a false reference to the FSA in an authorisation and approval context merits a particularly significant penalty. The FSA has also concluded that Mr Vigneswaran has breached Statements of Principle 1 and 4 by failing act with integrity in carrying out his controlled functions and failing, as an approved person, to deal with the FSA in a co-operative way. In view of the seriousness of Mr Vigneswaran's misconduct and, with particular reference to the factors outlined above and having taken account of all the relevant circumstances of the case, the FSA has decided to impose a financial penalty of £250,000 on Mr Vigneswaran comprising the following elements:

- (1) a penalty of £150,000 for submitting fraudulent applications for regulated mortgage contracts; and
- (2) a penalty in the sum of £100,000 for deliberately misleading the FSA.

## **7. DECISION MAKER**

7.1. The decision that gave rise to the obligation to give this Final Notice was made by the Upper Tribunal.

## **8. IMPORTANT**

8.1. This Final Notice is given to you in accordance with section 390 (2) of the Act.

**8.2. Manner of and time for payment**

8.2 The financial penalty must be paid in full by you to the FSA by no later than 5 September 2011, 14 days after date of this Final Notice.

**If the financial penalty is not paid**

8.3 If all or any of the financial penalty is outstanding on 6 September 2011 the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

**Publicity**

8.4 Sections 391(4), 392(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 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 contacts**

8.6 For more information concerning this matter, you should contact Paul Howick of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 7954) of the FSA.

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

## ANNEX A

### RELEVANT REGULATORY GUIDES AND GUIDANCE

#### 1. The Enforcement Guide (“EG”)

- 1.1. The FSA’s approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide (“EG”).
- 1.2. 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 function in relation to regulated activities or to restrict the functions which he may perform.
- 1.3. 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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 1.4. EG 9.8 to 9.14 provide additional guidance on the FSA’s approach to making prohibition orders against approved persons and/or withdrawing such persons’ approvals. 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.
- 1.5. 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. 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).
  - (2) whether, and to what extent, the approved person has:
    - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
    - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act.
  - (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.
- 1.6. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. The FSA may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
- 1.7. EG 9.12 provides 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) Providing false or misleading information to the FSA; including information relating to identity, ability to work in the United Kingdom, and business arrangements.
  - (2) severe acts of dishonesty, e.g. which may have resulted in financial crime.
  - (2) serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients, consumers or third parties.

## **2. Fit and Proper Test for Approved Persons (“FIT”)**

- 2.1 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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.2 FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. Among the most important considerations will be the person’s honesty, integrity and reputation.
- 2.3 In determining a person’s honesty, integrity and reputation, FIT 2.1.1G states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
  - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

### **3. The Statements of Principle and Code of Practice for Approved Persons**

- 3.1 The part of the FSA Handbook entitled the Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the Statements of Principle in respect of approved persons and provides examples 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.
- 3.2 APER 3.1.3G states that, when establishing compliance with, or 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.
- 3.3 APER 3.1.4G(1) provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 3.4 In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 1, 2, 4 and 7.

#### **Statement of Principle 1**

- 3.5 Statement of Principle 1 provides that an approved person must act with integrity in carrying out his controlled function.
- 3.6 APER 4.1 lists the types of conduct which do not comply with Statement of Principle 1.
- 3.7 APER 4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission a client; or the FSA does not comply with Statement of Principle 1. Specific examples of such conduct are set out in APER 4.1.4E, which includes deliberately falsifying documents; and deliberately providing false or inaccurate information to the FSA.
- 3.8 APER 4.1.12E provides that deliberately designing transactions so as to disguise breaches of requirements and standards of the regulatory system is conduct which breaches Statement of Principle 1.

#### **Statement of Principle 4**

- 3.9 Statement of Principle 4 provides that an approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.

### **4. Decision Procedure and Penalties manual ("DEPP") and Enforcement Manual ("ENF")**

- 4.1 DEPP 6 sets out the FSA's policy in relation to imposing financial penalties. It was previously set out in Chapter 13 of ENF. The FSA has had regard to both DEPP and ENF as they both applied at separate times during the relevant period. DEPP and ENF set out a non-exhaustive list of criteria that may be of particular relevance in

determining the appropriate level of financial penalty and whether to impose a penalty upon an approved person.

- 4.2 DEPP 6.2.1G and ENF 13.3.1G provide that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G also lists the factors which may be relevant when deciding whether to impose a financial penalty. These include the nature, seriousness and impact of the suspected breach.
- 4.3 DEPP 6.2.4G provides that the primary responsibility for ensuring compliance with a firm's regulatory obligations rests with the firm itself. However, the FSA may take disciplinary action against an approved person where there is evidence of personal culpability. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.
- 4.4 DEPP 6.5G and ENF 13.3.3G set out the factors that the FSA will consider when determining the appropriate level of financial penalty. These factors include:
  - (1) Deterrence;
  - (2) The nature, seriousness and impact of the breach in question;
  - (3) The extent to which the breach was deliberate or reckless;
  - (4) Whether the person on whom the penalty is to be imposed is an individual;
  - (5) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
  - (6) Disciplinary record and compliance history.