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## FINAL NOTICE

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To: Ashok Kumar Sharma

Date of Birth: 20 August 1960

Individual reference: AKS01066

Date: 27 April 2010

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS ("the FSA") gives you final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.**

### 1. ACTION

- 1.1. The FSA gave you, Ashok Kumar Sharma, a Decision Notice on 21 April 2010 which notified you that the FSA had decided to make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to prevent you from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity.
- 1.2. You confirmed on 16 April 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery).
- 1.3. Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm (the "Prohibition Order").
- 1.4. The FSA would have imposed a financial penalty of £70,000 on you, pursuant to section 66 of the Act, but you provided evidence that doing so would cause you serious financial hardship.

- 1.5. The FSA would also have withdrawn the individual approval given to you in relation to Ash Commercials (UK) Limited (“Ash”) to perform the controlled function of director (“CF1”) and removed your responsibility for insurance mediation. However, Ash was dissolved on 1 September 2009 and its Part IV permission has been cancelled. Your individual approval was removed automatically as part of this process.

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

- 2.1. The FSA has decided to take this action because:

- (1) you are not a fit and proper person to perform any function in relation to any regulated activity carried on by an approved or exempt person as you lack honesty and integrity and competence and capability; and
- (2) while an approved person performing significant influence functions at Ash from 21 June 2006, you failed to comply with Statements of Principle 1, 4 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“Statements of Principle”), issued under section 64 of the Act.

- 2.2. In summary, while an approved person at Ash, you:

- (1) recklessly failed to prevent mortgage applications being submitted to lenders on behalf of Ash’s customers which contained false and misleading information;
- (2) failed to ensure that Ash complied with an FSA requirement under section 166 of the Act; and
- (3) misled a third party in relation to its appointment as a skilled person.

- 2.3. You also provided mortgage advice to customers despite not being qualified to do so and failed to implement appropriate systems and controls at Ash in relation to the provision of advice to customers. In addition, you failed to ensure that Ash had compliant Professional Indemnity Insurance (“PII”) in place at all relevant times.

- 2.4. The FSA views your conduct as particularly serious because your failings:

- (1) exposed Ash to the risk of being used for purposes connected with financial crime, specifically mortgage fraud, and in fact allowed it to be so used;
- (2) exposed Ash’s customers to a high risk of receiving unsuitable advice; and
- (3) exposed lenders to the risk of offering customers mortgages on the basis of inaccurate information, and in fact allowed this to occur.

The action set out above therefore supports three of the FSA’s statutory objectives: maintaining market confidence; reducing financial crime; and protecting consumers.

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

The relevant statutory provisions, regulatory guidance and policy relied upon are set out at Annex A.

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

#### **Background**

- 4.1. Ash was a small mortgage and general insurance broker based in Middlesex. Ash was incorporated on 18 January 2006 and authorised to conduct regulated business on 21 June 2006. Ash was dissolved on 1 September 2009. The FSA subsequently removed it from the FSA register and removed its Part IV permissions.
- 4.2. You were the sole director and the sole approved person and held the following controlled functions (“CF”) at Ash:
  - (1) CF 1 (director) from 21 June 2006 until Ash’s permission was cancelled; and
  - (2) CF 8 (apportionment and oversight) from 21 June 2006 to 31 March 2009.

You also held responsibility for insurance mediation at Ash from 21 June 2006 until Ash’s permission was cancelled.
- 4.3. You were the sole adviser responsible for giving mortgage advice at Ash and fulfilled this role throughout its period of authorisation.
- 4.4. The FSA was made aware of concerns about you and Ash as part of the FSA’s Information from Lenders project. The Information from Lenders project was launched in 2006 as a result of collaboration between the FSA and the Council of Mortgage Lenders. The project provides a portal for lending institutions to report mortgage intermediaries they suspect of being involved with mortgage fraud to the FSA.

#### **Failure to identify false and misleading information in mortgage applications**

##### *Customer A*

- 4.5. You submitted two mortgage applications on behalf of Customer A, to two different lenders, on 6 March 2008 and 7 March 2008. The first mortgage application was for a buy-to-let mortgage (the “buy-to-let application”). The second mortgage application was for a residential regulated mortgage contract (the “residential application”).
- 4.6. Both applications recorded that Customer A was self-employed. However, the income declared on the two applications was different. The buy-to-let application recorded that Customer A’s ‘share of net profit’ for 2007 was £73,500. However, the residential application, which was submitted the next day, recorded Customer A’s ‘share of profit’ for the last year as £63,500. In addition, the business start dates and the accountant’s details on each of the applications were different. The buy-to-let application gives the start date of employment as 2 February 2005

whereas the residential application gives the date the business was established as 2 January 2005.

- 4.7. Self-employed people are required to file a self-assessment tax return with HMRC in order to determine the tax payable from their earnings. However, HMRC does not have any record of Customer A paying tax in the relevant year.

*Customer B*

- 4.8. You submitted two applications to one lender on 27 November 2007 and 20 December 2007 respectively (“First and Second Applications”) on behalf of Customer B, and a third application on behalf of Customer B to a second lender on 24 January 2008 (“Third Application”). All three applications recorded the same income details for the same tax year for Customer B (£81,500 for the year ending 2007).
- 4.9. However, the First and Second Applications stated that Customer B had been a self-employed sole trader running a named supermarket since January 2005. The Third Application, on the other hand, stated that Customer B had been a self-employed sole trader running a business with a different name for the past three years and nine months (which would give a start date in around April 2004). You failed to notice this discrepancy or to carry out any independent checks of the information that Customer B provided.
- 4.10. As a self-employed person, Customer B would have been required to file a self-assessment tax return with HMRC. However HMRC does not have any record of Customer B registering any income or paying any tax in the relevant years.

*Conclusion*

- 4.11. The FSA considers that you were reckless in your failure to consider whether the applications for Customer A and Customer B contained false and misleading information despite clear indicators that should have alerted you to the significant risk that these customers may have been using Ash to obtain mortgages fraudulently. As an experienced mortgage broker, you should have known that there was a potential risk of the possibility of mortgage fraud and you knew that you should be checking income, yet you closed your mind to this and failed to do so, despite obvious indicators which should have alerted you to the situation.
- 4.12. As a result of your failure to notice the discrepancies in the applications and your failure to undertake sufficient checks on the information provided by Customer A and Customer B, these customers were in fact able to use Ash to make fraudulent mortgage applications.

**Failure to comply with an FSA requirement**

- 4.13. On 1 June 2009 the FSA served a requirement notice on Ash pursuant to section 166 of the Act (“the Notice”). The Notice required Ash to provide the FSA with a report on past business by a skilled person (the “Report”) by 13 July 2009 and to enter into a formal contract with the skilled person for this purpose. In serving the

Notice, the FSA informed you that a copy of the Notice should be provided to the skilled person.

- 4.14. You subsequently confirmed that Ash would be using a compliance consultant (“the Consultant”) to produce the Report. The FSA approved your decision and reminded you to provide the Consultant with a copy of the Notice so that it could take account of the Notice when producing its quote for the cost of producing the Report.
- 4.15. However, when instructing the Consultant, you misled it in that:
- (1) you told it its services were required for the purposes of file checking only; and
  - (2) you did not disclose the Notice or the fact of the FSA requirement or interest in the firm to it until the second day of its visit.
- 4.16. When you did disclose the Notice to the Consultant, it terminated its relationship with you. You made no further attempt to comply with the Notice.
- 4.17. By failing to provide the Report to the FSA, you failed to ensure that Ash cooperated with the FSA in relation to a statutory request. In addition, you dishonestly failed to inform the Consultant that you were engaging it in connection with an FSA requirement. The FSA considers that your failure in this regard was deliberate.

#### **Failure to have an appropriate mortgage qualification**

- 4.18. In accordance with Rules 2.1.6 and 2.1.7 and Appendix 1 of the FSA’s Training and Competence handbook (“TC”), anyone who gives advice on regulated mortgage contracts must pass the relevant regulatory module of a mortgage examination.
- 4.19. You have admitted that you do not have any qualifications relevant to the mortgage industry. Although you started to study for the Certificate in Mortgage Advice and Practice (“CeMAP”), you did not complete the examination.
- 4.20. From 21 June 2006 to the time Ash ceased conducting regulated activities, you did not therefore hold any qualification sufficient to satisfy the FSA’s relevant training and competence requirements for giving advice on regulated mortgage contracts. However, you have admitted that you did give advice on regulated mortgage contracts in that period.
- 4.21. In failing to complete training to ensure that you had the necessary competence and capability to advise on regulated mortgage contracts, and in so advising, you exposed Ash’s customers to a high risk of receiving unsuitable mortgage advice.

#### **Failure to implement appropriate systems and controls to ensure the suitability of advice given by Ash**

- 4.22. You failed to implement appropriate systems and controls to ensure the suitability of advice given by Ash. The file checks carried out by the Consultant before it

ceased working for you highlighted numerous failings in relation to the advice given by Ash. Examples of reasons why the compliance consultant classified files as 'failed' included:

- (1) a lack of clarity as to whether a sale was on an advised or non-advised basis;
- (2) key documents, including fact finds, illustrations, or records of suitability were either not found on file, or were inconsistent with each other;
- (3) there was insufficient evidence on the file to show that the product recommended was suitable (including, for example, inadequate income verification and/or affordability checks);
- (4) inadequate know your customer information was gathered, including in relation to the customer's attitude to risk (in some files, for example, all boxes were ticked in relation to the customer's attitude to risk, making it impossible to assess what the attitude to risk actually was);
- (5) a lack of product research on file;
- (6) products recommended which were inconsistent with the customer's attitude to risk;
- (7) one file where the mortgage term extended into the client's retirement and there was no consideration of this fact recorded on the file; and
- (8) self-certified applications where the customer was employed or where there was no proof of income on file.

4.23. The FSA has not received the relevant original client files from you, despite requiring you to produce them, and has therefore been unable to verify independently the consultant's findings in relation to the file reviews.

#### **Failure to ensure that Ash held compliant PII**

4.24. In accordance with Rules 3.1.1(2) and 3.2.1 of the Prudential Sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries ("MIPRU"), a firm with Part IV permission to advise on regulated mortgage contracts must take out and maintain PII. The FSA requires firms to hold PII cover to ensure that, in the event that a customer suffers any loss or other adverse consequence as a result of a firm's failings, that firm is able to meet any liability which arises.

4.25. The FSA issued document requests to you requiring you to produce certification that Ash held compliant PII since 21 June 2006. The FSA considers that you failed to ensure that Ash held compliant PII throughout the whole of the period from 21 June 2006 to 1 September 2009. Specifically:

- (1) you were unable to provide any evidence that Ash held PII for the period from 21 June 2006 to 8 May 2007; and

- (2) you have admitted that Ash did not hold PII for the period from June or July 2008 to 10 November 2008 (although you claimed that you were unaware of this fact at the time).

## **5. ANALYSIS OF BREACHES AND PROPOSED SANCTIONS**

### **Fitness and propriety**

- 5.1. In light of the facts set out above, the FSA has concluded that you lack honesty and integrity and competence and capability and are therefore not a fit and proper person.
- 5.2. Specifically, you have failed to act with integrity as you:
  - (1) recklessly failed to prevent mortgage applications being submitted to lenders on behalf of Ash's customers which contained false and misleading information despite obvious indicators which should have alerted you to the significant risk that customers might have been attempting to use Ash to obtain mortgages fraudulently; and
  - (2) failed to ensure that Ash complied with an FSA requirement under section 166 of the Act.
- 5.3. You acted dishonestly in misleading the Consultant in relation to its appointment as a skilled person.
- 5.4. You lack competence and capability because you:
  - (1) provided advice on regulated mortgage contracts to Ash's customers without obtaining an appropriate mortgage qualification, in breach of TC 2.1, placing Ash's customers at a high risk of receiving unsuitable advice;
  - (2) failed to implement appropriate systems and controls in relation to advice given by Ash; and
  - (3) failed to ensure that Ash held compliant PII at all relevant times in breach of MIPRU 3.2.1R.
- 5.5. As it appears to the FSA that you are not a fit and proper person and that you therefore pose a risk to consumers and lenders and to the fulfilment of the FSA's reduction of financial crime and confidence in the financial system objectives, you should be prohibited from performing any functions in relation to any regulated activities.

### **Statements of Principle**

- 5.6. You have also failed to comply with Statements of Principle 1, 4 and 7 while an approved person at Ash and the FSA may therefore impose a financial penalty on you pursuant to section 66 of the Act. Specifically:-
  - (1) You breached Statement of Principle 1 by recklessly failing to prevent the submission of false and misleading information to lenders through Ash.

- (2) You breached Statement of Principle 4 by failing to deal with the FSA in an open and cooperative way. In particular, you failed to ensure that Ash complied with a statutory requirement under section 166 of the Act to produce a report by a skilled person.
  - (3) You breached Statement of Principle 7 by failing to take reasonable steps to ensure that Ash complied with relevant requirements and standards of the regulatory system. In particular, you failed to ensure that Ash:
    - (a) held compliant PII at all relevant times in breach of Rule 3.2.1 of MIPRU; and
    - (b) implemented appropriate systems and controls in relation to advice given to customers.
- 5.7. In determining whether to impose a financial penalty on you and the level of any proposed financial penalty, the FSA has considered the specific need to impose a penalty on you as well as deter others from engaging in this type of activity and has had regard to the FSA's policy on the imposition of financial penalties.
- 5.8. The FSA's policy on the imposition of financial penalties as at the date of the breaches referred to in this Notice was set out in the version of Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") dated 5 March 2010, which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. References to DEPP below are references to the version of DEPP that was in place on 5 March 2010.
- 5.9. In addition, the FSA has had regard to Chapter 7 of the Enforcement Guide ("EG") which came into force on 28 August 2007 and, for conduct prior to 28 August 2007, Chapter 8 of the Enforcement Manual ("ENF"). The relevant parts of this guidance are set out at Annex A.
- 5.10. The FSA will consider all relevant circumstances in each case when determining whether or not to take action for a financial penalty and the level of any such penalty. DEPP 6.5.2G provides guidance on a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.
- Deterrence: DEPP 6.5.2G(1)*
- 5.11. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, 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 breaches: DEPP 6.5.2G(2)*



- 5.12. The FSA has considered the nature and seriousness of the breaches, including the duration of the breaches and the nature and extent of the financial crime facilitated by the breaches.

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

- 5.13. The FSA will regard as more serious a breach which is deliberately or recklessly committed. 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.

- 5.14. The FSA considers that you acted deliberately in failing to ensure that Ash complied with a statutory requirement to provide the FSA with a report by a skilled person under section 166 of the Act.

- 5.15. The FSA considers that you acted recklessly in failing to prevent fraudulent mortgage applications to lenders being submitted on behalf of Ash's customers which contained false and misleading information. You did this despite obvious indicators which should have alerted you to the significant risk that customers might have been using Ash to commit mortgage fraud but to which you closed your mind.

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

- 5.16. The FSA recognises that imposing a financial penalty on you would be likely to have a significant impact on you as an individual.

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

- 5.17. 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.

- 5.18. You have provided evidence that you would suffer serious financial hardship were a financial penalty to be imposed on you.

*Conduct following the breach DEPP 6.5.2G(6)*

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

*Conclusion*

- 5.20. The FSA considers that the nature of your conduct, the period of time during which it occurred and its gravity demonstrate that you pose a serious risk to lenders and consumers and to the FSA's statutory objectives of maintaining confidence in the financial system, protecting consumers and the reduction of financial crime.

- 5.21. The combination of your failings makes your conduct particularly serious. Your breaches in relation to systems and controls, the Report and PII put customers at risk of receiving unsuitable advice, then prevented an independent assessment of

whether this had occurred and whether remediation was required, and also put customers who might claim redress at risk of being unable to recover any sums due to them. The fact that you recklessly failed to prevent Ash from being used to perpetrate financial crime is also particularly serious.

- 5.22. The FSA therefore, having regard to all the circumstances, considers the appropriate level of financial penalty for your breaches of the Statements of Principles to be £70,000. However, you provided evidence that imposing a financial penalty on you would cause you serious financial hardship.

## **6. DECISION MAKER**

- 6.1. 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.

## **7. IMPORTANT**

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

### **Publicity**

- 7.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

- 7.4. For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914 /fax: 020 7066 5915) of the Enforcement Division of the FSA.

Signed

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

## **Annex A**

### **1. Statutory Provisions**

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; promoting public awareness; the protection of consumers; and the reduction of financial crime.

#### *Prohibition*

- 1.2. The FSA has the power, under section 56 of FSMA, to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are 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 or any regulated activity falling within a specified description or all regulated activities.

#### *Imposition of financial penalty*

- 1.3. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against it. Misconduct includes failure by an approved person to comply with a statement of Statement of Principle issued under section 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

### **2. Regulatory guidance and policy**

#### *The Fit and Proper Test for Approved Persons ("FIT")*

- 2.1. FIT sets out the 'Fit and Proper' test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person (FIT 1.1.2G).
- 2.2. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its powers to make a prohibition order against Mr Sharma in accordance with the guidance set out in EG 9.8 to 9.14.
- 2.3. FIT 1.3.1.G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:
- (1) honesty, integrity and reputation;
  - (2) competence and capability; and
  - (3) financial soundness.

- 2.4. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, 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)).
- 2.5. FIT 2.2.1G states that, in determining a person's competence and capability, the FSA will have regard to all relevant matters including but not limited to:
- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and
  - (2) 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.

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

- 2.6. APER sets out the Statements of Principle in respect of approved persons and examples of conduct which, in the opinion of the FSA, do not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 2.7. APER 3.1.3 G provides that when establishing compliance with, or a breach of, a Statements 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 expected in that function.
- 2.8. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.9. In this case, the most relevant Statements of Principle are:
- (1) Statement of Principle 1: “An approved 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.”
  - (2) Statement of Principle 4: “An approved 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.”

- (3) Statement of Principle 7: “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.”

### *Sanctions*

- 2.10. In considering the appropriate sanction, the FSA has had regard to its published guidance. The FSA has had regard to the appropriate provisions of the Enforcement Guide (“EG”), the Enforcement Manual (“ENF”) and its Decision Procedure and Penalties Manual (“DEPP”) which came into effect on 28 August 2007. The relevant sections of DEPP are set out in the main body of this Notice.
- 2.11. EG provides at paragraph 9.23 that the FSA may impose a financial penalty on an individual in addition to imposing a prohibition order on them and/or, in the case of an approved person, withdrawing their approval where it is appropriate to do so.
- 2.12. The FSA may consider making a prohibition order and/or, in the case of an approved person, withdrawing their approval where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms (EG 9.8). The FSA’s policy in relation to the exercise of its powers to make a prohibition order and/or, in the case of an approved person, withdraw their approval is set out in Chapter 9 of EG.
- 2.13. EG 9.4 sets out the general scope of the FSA’s powers in this respect, including the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual’s lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 2.14. EG 9.8 to 9.14 provides guidance on the FSA’s exercise of its power to make a prohibition order against an approved person, withdraw their approval or both.
- 2.15. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw their approval the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing an individual’s fitness and propriety are set out in the section of the FSA’s Handbook entitled “FIT”. 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 the approved person has failed to comply with Statements of Principle issued by the FSA with respect to the conduct of approved persons (EG 9.9(3)(a));

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

### **Other relevant handbook provisions**

#### *Training and Competence (TC)*

- 2.16. TC applies to firms which carry out the activity of advising on mortgage contracts for a non-business purpose (TC 1.1.1R and Appendix 1.1).
- 2.17. TC 2.1.6R provides that *“A firm must ensure that an employee does not carry on an activity in TC Appendix 1 (other than an overseeing activity) for which there is an examination requirement without first passing the relevant regulatory module of an appropriate examination.”*
- 2.18. TC2.1.7R states that a firm must ensure that an employee does not carry on any ‘advising and dealing’ activities listed in TC Appendix 1 without first passing each module of an appropriate examination.
- 2.19. TC Appendix 1 provides that there is an appropriate examination requirement for advising on regulated mortgage contracts for a non-business purpose.
- 2.20. The prudential requirements for mortgage and home finance firms and insurance intermediaries are set out in Prudential Sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries (“MIPRU”).
  - (1) MIPRU 3.1.1(2)R states that the relevant MIPRU chapter applies to home finance mediation activity.
  - (2) MIPRU 3.2.1R provides that *“A firm must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section.”*