
FINAL NOTICE

To: **Stuart Mason**
IRN: **SXM02260**
Date of Birth: **28 April 1978**
Dated: **11 November 2011**

1. ACTION

- 1.1. For the reasons given in this notice, the FSA hereby makes an order, pursuant to section 56 of the Act prohibiting Stuart Mason from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. This order takes effect from 11 November 2011.
- 1.2. The FSA would also have sought to impose a financial penalty on Mr Mason of £15,000 before any available discount, pursuant to section 66 of the Act, in respect of breaches of Statement of Principle 7. However, he has provided verifiable evidence that imposing such a financial penalty would cause him serious financial hardship. Consequently, the FSA has decided not to impose any financial penalty.
- 1.3. Mr Mason agreed to settle at an early stage of the FSA's investigation.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, the FSA considers that Mr Mason's conduct while acting in the capacity as chief executive officer and director of Fastmoney (a small mortgage broker firm selling regulated mortgage contracts to retail customers on a non-advised basis) fell short of the standards required by the FSA of persons acting in such a capacity.

2.2. Specifically, when carrying out significant influence functions in connection with Fastmoney's regulated business in the relevant period, Mr Mason breached Statement of Principle 7 as he failed to take reasonable steps to ensure that Fastmoney complied with the relevant requirements and standards of the regulatory system, by failing to:

- (1) take reasonable steps to know or understand adequately the FSA rules set out in MCOB, SYSC, and DISP and thus was unable to monitor Fastmoney's business appropriately;
- (2) understand adequately the FSA rules, which caused him to place unreasonable reliance on:
 - (a) the other director and employees of Fastmoney; and
 - (b) feedback received from mortgage lenders,to ensure that the business for which he was responsible complied with FSA rules;
- (3) ensure that Fastmoney had adequate monitoring arrangements in place in relation to its field representatives;
- (4) take reasonable steps to ensure that Fastmoney was able to demonstrate that its field representatives had not provided customers with advice outside the scope of its permission;
- (5) ensure that the non-advised sales script included questions in relation to bridging loans;
- (6) ensure that Fastmoney was able to demonstrate that any increased fees charged were agreed in advance with customers;
- (7) assess properly whether Fastmoney's business processes treated customers fairly; and
- (8) ensure that the new business register was updated appropriately including in relation to recording cancelled mortgage applications.

2.3. The FSA views Mr Mason's failings as particularly serious because:

- (1) the FSA places a great deal of emphasis on the responsibilities of senior management for the standards and conduct of the businesses they run;

- (2) Mr Mason acknowledged that he took insufficient steps, during the relevant period, to satisfy himself that the business was being conducted in accordance with the FSA's regulatory requirements; and
 - (3) Mr Mason's conduct fell well below the standard which would have been reasonable in all the circumstances.
- 2.4. The FSA has taken into account the fact that Mr Mason has co-operated with the FSA's investigation and accepted the failings set out in this Notice.
 - 2.5. The FSA has also concluded that Mr Mason failed to meet the minimum regulatory standards required in terms of competence and capability and is 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 makes a prohibition order against Mr Mason because of the nature of his failings and the potential impact on customers.
 - 2.6. The proposed action supports the FSA's regulatory objectives of maintaining confidence in the financial system and the protection of consumers.

3. DEFINITIONS

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

the "Act" means the Financial Services and Markets Act 2000;

"APER" means the Statements of Principle and the Code of Practice for Approved Persons as contained in the FSA Handbook;

"DEPP" means the Decision Procedures and Penalty manual;

"DISP" means the Dispute Resolution: Complaints sourcebook;

"EG" means the Enforcement Guide;

"ENF" means the FSA's Enforcement Manual;

"FIT" means the Fit and Proper Test for Approved Persons;

the "FSA" means the Financial Services Authority;

"Fastmoney" means Fastmoney.co.uk Limited;

"MCOB" means the Mortgages and Home Finance: Conduct of Business sourcebook;

the "relevant period" means 2 November 2007 to 26 May 2009;

"Statement of Principle" means one of the FSA's Statements of Principle set out in APER;

“SYSC” means the Senior Management Arrangements, Systems and Controls sourcebook.

4. FACTS AND MATTERS

Background

- 4.1. Mr Mason was approved by the FSA to perform the following controlled functions at Fastmoney during the relevant period:
 - (1) CF1 (Director) from 2 November 2007 to 26 May 2009;
 - (2) CF3 (Chief Executive) from 20 February 2008 to 26 May 2009; and
 - (3) CF8 (Apportionment and Oversight) from 2 November 2007 to 31 March 2009.
- 4.2. He was also responsible for insurance mediation from 2 November 2007 to 26 May 2009.
- 4.3. Fastmoney has been authorised by the FSA since 26 August 2005. During the relevant period, it arranged regulated mortgage contracts and bridging loans for customers nationally on a non-advised basis. It specialises in the adverse credit market and sources its regulated mortgage contracts from a restricted panel of sub-prime lenders. It does not have permission to provide mortgage advice.
- 4.4. Fastmoney employs sales and field representatives whose role is to speak with customers who made contact seeking a mortgage. The sales representatives take these customers through a scripted series of questions to identify their financial position and their requirements (“the non-advised sales script”). They then take steps to identify possible mortgages that might be available from their panel of sub-prime lenders. The field representatives visit customers at home either to explain the options available or to bring copies of mortgage applications for them to sign. Neither the sales representatives nor field representatives are authorised to give advice to the customers in respect of the available mortgages.
- 4.5. Fastmoney also arranges bridging loans for customers in need of short term financing.
- 4.6. An FSA supervision team conducted two visits to Fastmoney and, as a result, identified a number of concerns relating to the adequacy of the controls in place in relation to its non-advised business, particularly in relation to its field representatives. It also identified concerns that a number of customers could have been overcharged for the service provided to them. Due to the seriousness of the concerns, and the potential for consumer detriment, Mr Mason was subsequently referred to the FSA’s Enforcement Division.
- 4.7. Following an investigation, the FSA has determined that Mr Mason’s conduct as chief executive officer and director fell short of the FSA’s prescribed regulatory standards for approved persons and that he has breached Statement of Principle 7. The FSA has also determined that Mr Mason failed to meet the minimum regulatory standards in terms of competence and capability and is not a fit and proper person to perform

functions involving the exercise of significant influence, as set out in more detail below.

Failing to ensure compliance with regulatory requirements and standards

- 4.8. In Mr Mason's role as chief executive officer and director of Fastmoney, he was responsible for its day to day management. However, the FSA found that he failed to monitor and run Fastmoney adequately during the relevant period, as further explained below.
- 4.9. The evidence gathered during the investigation demonstrated, and Mr Mason accepted during interview, that he possessed neither relevant qualifications, nor sufficient experience to undertake significant influence functions at Fastmoney. Moreover, he did not know or understand the FSA rules as set out in the MCOB, SYSC and DISP sourcebooks and thus was unable to monitor Fastmoney's business appropriately.
- 4.10. Although Mr Mason was chief executive, he placed unreasonable reliance on the other director and employees at Fastmoney to ensure that FSA rules were complied with and complaints were appropriately handled. For example, he delegated the handling of complaints and keeping up with FSA guidance to another employee and he did not conduct any checks on the compliance work done by others at Fastmoney to determine whether it was adequate and reasonable for him to rely on it.
- 4.11. Mr Mason also placed unreasonable reliance on mortgage lenders' reviews of mortgage applications submitted by Fastmoney and their associated compliance checks as a way of demonstrating that Fastmoney transacted business in compliance with FSA rules
- 4.12. In his role as chief executive officer and director, he had primary responsibility for Fastmoney's compliance with the FSA's rules. The FSA found that he failed to establish and maintain adequate systems and controls at Fastmoney during the relevant period.

Inadequate monitoring arrangements in relation to field representatives

- 4.13. Mr Mason did not take adequate steps to ensure that Fastmoney had sufficient monitoring arrangements in relation to its representatives. For example, he did not take any steps to ensure that systems were in place to monitor that field representatives were following the non-advised sales script. This meant that Fastmoney was exposed to the risk that its field representatives might inadvertently provide advice to customers outside the scope of its permission.
- 4.14. Mr Mason failed to ensure that the non-advised sales script included adequate questions relating to bridging loans even though Fastmoney arranged bridging loans for its customers during the relevant period. It was therefore unclear how, during the non-advised sales process, a bridging loan had been made available to clients without providing them with advice. As a result, Fastmoney could not demonstrate that it had not acted outside the scope of its permission and advised customers to take out a bridging loan.

Transparent disclosure of fees

- 4.15. Mr Mason did not take any steps to ensure that adequate records were maintained to demonstrate that Fastmoney had always disclosed to customers in advance any additional fees that were to be charged (in excess of the fee stated on the Initial Disclosure Document) and the reasons for the increase.
- 4.16. Consequently, Fastmoney could not demonstrate from its files that customers had agreed to and been aware of these additional fees. This was particularly serious as Fastmoney's customer base comprised individuals in difficult financial circumstances, some of whom were at risk of having their homes repossessed.

Treating customers fairly

- 4.17. Mr Mason did not take adequate steps to assess properly whether Fastmoney's business processes treated customers fairly. He could not demonstrate during interview an awareness of the FSA's 'treating customers fairly' initiative and he failed to review Fastmoney's 'treating customers fairly' policy to ensure that it was up to date. Instead he placed unreasonable reliance on whether or not complaints had been received as a means of assessing whether customers were being treated fairly.

Other

- 4.18. Mr Mason did not ensure prior to the FSA's visit to Fastmoney in November 2008, that Fastmoney's new business register was updated appropriately including in relation to recording cancelled mortgage applications, which meant that Fastmoney did not have accurate management information and thus could not appropriately review its business transactions.

5. FAILINGS

- 5.1. The statutory and regulatory provisions and policy relevant to this Final Notice are referred to in the Annex.
- 5.2. The facts and matters described above lead the FSA, having regard to its regulatory objectives, which include maintaining confidence in the financial system and the protection of consumers, to conclude that Mr Mason has failed to satisfy Statement of Principle 7. Specifically, while acting as a chief executive officer and director at Fastmoney, Mr Mason breached Statement of Principle 7 as he failed to take reasonable steps to ensure that the business of the firm for which he was responsible in his controlled functions complied with the relevant requirements and standards of the regulatory system.
- 5.3. Having regard to the facts and matters, the FSA considers it appropriate and proportionate in all the circumstances to take disciplinary action against Mr Mason for the breaches.
- 5.4. In addition, as a result of the breaches outlined above, the FSA has concluded that Mr Mason's conduct as chief executive officer and director fell short of the minimum regulatory standards in terms of his competence and capability, and that he is 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 out by any authorised person, exempt person or exempt professional firm.

- 5.5. The FSA considers that Mr Mason would pose a serious risk to consumers and to confidence in the financial system if he were involved in the running of, or held a senior management role at, another authorised firm in the future. The FSA therefore considers it necessary to prohibit Mr Mason pursuant to section 56 of the Act.

6. SANCTIONS

Imposition of a financial penalty

- 6.1. The FSA's policy on the imposition of financial penalties as at the date of this Final Notice is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. The relevant sections of DEPP are set out in more detail in the Annex. The criteria are not exhaustive and all relevant circumstances of the case are taken into consideration. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of ENF in force during part of the relevant period until 27 August 2007 and Chapter 7 of EG, in force thereafter.
- 6.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches.
- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5. 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 Mr Mason and others the seriousness with which the FSA regards such behaviour and to deter both Mr Mason and others from committing further or similar breaches.

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

- 6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached and the duration of the breach.

- 6.7. The FSA has concluded that Mr Mason exercised inadequate management and control over the running of Fastmoney over a period of 18 months, which resulted in the business failing to comply with regulatory requirements and standards during the relevant period.

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

- 6.8. The FSA considers that Mr Mason did not act in a deliberate or reckless manner but his conduct fell well below what would have been considered reasonable in all the circumstances.

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

- 6.9. 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.
- 6.10. The FSA considers that Mr Mason's failings are particularly serious as he was the chief executive office and a director at Fastmoney and, as such, was principally responsible for the way in which the business was run.

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

- 6.11. The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty for Mr Mason's breach of the Statements of Principle to be £15,000. However, Mr Mason has provided verifiable evidence that imposing such a financial penalty would cause him serious financial hardship and therefore, in this case, the FSA has decided not to impose the financial penalty.

Conduct following the breach (DEPP 6.5.2(8))

- 6.12. Mr Mason has co-operated with the FSA's investigation.

Prohibition

- 6.13. The FSA has concluded that Mr Mason's conduct demonstrated a lack of competence and capability and he is therefore not fit and proper to carry out significant influence functions in relation to any regulated activities carried on by any authorised persons.

6.14. It is therefore necessary and proportionate to achieve its regulatory objectives, for the FSA to exercise its powers to make the prohibition order against Mr Mason.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given in accordance with section 390 of the Act.

Publicity

7.3. 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 Mr Mason or prejudicial to the interests of consumers.

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

FSA contacts

7.5. For more information concerning this matter generally, Mr Mason should contact Rachel West (direct line: 020 7066 0142; fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender

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 and the protection of consumers.
- 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 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. Handbook provisions

- 2.1. In exercising its power to 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. The main provisions relevant to the action specified above are set out below.

APER

- 2.2. 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.
- 2.3. 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.
- 2.4. 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.

- 2.5. 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.
- 2.6. The Statements of Principle relevant to this matter is Statement of Principle 7 which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 2.7. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.8. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.
- 2.9. 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.
- 2.10. 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.
- 2.11. APER 4.7.5E states that failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.
- 2.12. APER 4.7.5E states that failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the

identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities is conduct that does not comply with Statement of Principle 7..

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

FIT

- 2.14. 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.
- 2.15. 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 includes a person's competence and capability.
- 2.16. 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.
- 2.17. 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.
- 2.18. 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.

DEPP

- 2.19. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period.
- 2.20. 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.
- 2.21. 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.

- 2.22. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 2.23. 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)

- 2.24. 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)

- 2.25. 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)

- 2.26. 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)

- 2.27. 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)

- 2.28. 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)

- 2.29. 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

- 2.30. The FSA's approach to exercising its power to make a prohibition order under section 56 of the Act is set out in Chapter 9 of EG.
- 2.31. 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.
- 2.32. 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.
- 2.33. 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.
- 2.34. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, 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)).
- 2.35. 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. 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)).
- 2.36. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.

MCOB

- 2.37. The FSA's rules and guidance for communications in relation to regulated mortgage contracts are set out in Chapter 2 of MCOB.
- 2.38.
- 2.39. MCOB 2.2.6R states that when a firm communicates information to a customer, it must take reasonable steps to communicate in a way that is clear, fair and not misleading.
- 2.40. The FSA's rules and guidance for firms carrying out non advised sales in relation to regulated mortgage contracts are set out in Chapter 4 of MCOB.
- 2.41. MCOB 4.8.1R states that if a firm arranges a regulated mortgage contract or a variation to an existing mortgage contract without giving a personal recommendation, it must ensure that all the questions it asks the customer about the customers' needs and circumstances are scripted in advance.

2.42. MCOB 4.8.4R states that a firm must take reasonable steps to supervise staff who do not meet the TC requirements for advising on regulated mortgage contracts so that:

(1) they do not give personal recommendations; and

(2) when using scripted questions to comply with MCOB 4.8.1 R, they adhere to the script in all material respects.