
FINAL NOTICE

To: Terence John Harrop

To: Principal Mortgage Services Limited

IRN: TJH01104

FRN: 303168

Date: 18 June 2012

1. ACTION

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

- (1) withdrawing Mr Harrop's approval to perform controlled functions at PMSL pursuant to section 63 of the Act; and
- (2) prohibiting Mr Harrop from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act because he is not currently a fit and proper person in terms of his competence and capability.

1.2. The order takes effect from the date of this Final Notice.

2. SUMMARY OF REASONS

2.1. Mr Harrop was the chief executive and majority shareholder of PMSL during the relevant period. Prior to its liquidation, PMSL was a small mortgage intermediary based in the West Midlands. During the relevant period, it advised approximately 738 customers to take out interest only mortgages together with an unregulated mortgage

accelerator plan it had developed called the Flexible Repayment Plan (FRP). The FRP was operated by PMSL's sister company, FRL. PMSL charged customers an up front fee of £995 for the FRP, in addition to a broking fee of around 1% of the mortgage, and FRL charged an ongoing annual administration fee of £60.

- 2.2. The FRP operated as a means by which customers could make capital repayments on their interest only mortgages. Customers would pay the monthly interest on the mortgage directly to the lender, and pay an additional amount into their FRP. These additional monthly payments would be collected and held in an account operated by FRL, and would be transferred to the customer's lender at annual intervals.
- 2.3. Although the FRP was an unregulated product, the advice PMSL gave customers to take out an interest only mortgage with the FRP was a regulated activity, because the advice given about the FRP was inextricably linked to advice to take out regulated interest only mortgages. The FSA considers that the FRP was the main reason PMSL recommended customers to take interest only mortgages.
- 2.4. PMSL provided marketing material to customers purporting to demonstrate the benefits of taking an interest only mortgage with the FRP, and individual personalised illustrations purporting to show the savings the customer would make by taking out an interest only mortgage with FRP, as compared to their current mortgage arrangement, or a repayment mortgage.

Mr Harrop's lack of fitness and propriety

- 2.5. In summary, Mr Harrop has demonstrated that he is not fit and proper, in terms of his competence and capability, to perform any function, in the following key ways:
 - (1) he failed to ensure that PMSL paid due regard to customers' interests in recommending interest only mortgages with the FRP to customers, regardless of whether that arrangement was the most appropriate or cost effective for the customer;
 - (2) he failed to ensure that presentations and illustrations purporting to compare the recommended package with repayment mortgages were clear, fair and not misleading;
 - (3) he failed to comply with his regulatory responsibilities, by failing to cooperate fully with the FSA and by failing, to date, to repay his director's loan to PMSL ultimately to the detriment of consumers; and
 - (4) he failed to ensure customers' monies were adequately identified and protected, in his capacity as director of FRL.
- 2.6. Mr Harrop was the majority shareholder and chief executive (controlled function 3) of PMSL during the relevant period. In practice, Mr Harrop was heavily involved in the day to day business of PMSL. He was aware of the nature of the FRP illustrations sent to customers and that PMSL recommended interest only mortgages with the FRP to the majority of its customers.

- 2.7. The FSA considers that customers are likely to have suffered loss as a result of taking out interest only mortgages with the FRP, instead of repayment mortgages or interest only mortgages without the FRP. As Mr Harrop failed to ensure that PMSL conducted the review of PMSL's past sales, having agreed to do so in 2010, and as PMSL has since gone into liquidation, there are no figures available as to the extent of the customer detriment caused by PMSL's advice.
- 2.8. Mr Harrop's conduct demonstrates his lack of fitness and propriety in terms of his competence and capability. Through his conduct, Mr Harrop has demonstrated an incapability to perform controlled functions adequately at PMSL.

Conclusion

- 2.9. The FSA has concluded that the nature and seriousness of Mr Harrop's misconduct warrant the withdrawal of Mr Harrop's controlled functions CF3 (Chief executive), CF28 (Systems and Controls) and insurance mediation, and his prohibition from performing any function in relation to any regulated activity on the grounds of his lack of competence and capability and because of the risk he poses.
- 2.10. This action supports the FSA's statutory objective of securing the appropriate degree of protection for 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

"CeMAP" means Certificate of Mortgage Advice and Practice

"DEPP" means the FSA's Decision Procedures and Penalties manual

"EG" means the FSA's Enforcement Guide

"ENF" means the FSA's Enforcement Manual

"FRL" means Flexible Repayment Limited

the "FRP" means the Flexible Repayment Plan

the "FSA" means the Financial Services Authority

"PMSL" means Principal Mortgage Services Limited

the "relevant period" means 31 October 2004 to 19 November 2010

“Statement of Principle” means one of the FSA’s Statements of Principle for Approved Persons as set out in APER

the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

PMSL’s business and sales process

- 4.1. PMSL was a mortgage intermediary which operated from offices in Worcester between the date of its FSA authorisation on 31 October 2004 and the date it went into liquidation on 19 November 2010.
- 4.2. During the relevant period, PMSL recommended a mortgage accelerator plan (the FRP) to its customers. The FRP was marketed as a means by which customers could repay the principal amount of their interest only mortgages. The FRP was administered by an unauthorised firm (FRL), which was also controlled by Mr Harrop and which shared offices with PMSL.
- 4.3. PMSL advised customers to take out an interest only mortgage and the FRP. The FRP involved customers making interest payments directly to their mortgagee and paying an additional monthly amount to FRL. FRL would accumulate the customers’ payments in a low interest current account, then transfer the accumulated funds to the customers’ mortgagees at selected intervals to reduce the capital balance.
- 4.4. PMSL charged customers an initial fee of £995 (regardless of the amount of the mortgage) in addition to the broking fee of around 1% of the mortgage. Customers also paid an ongoing annual fee of £60 to FRL to administer the FRP.
- 4.5. PMSL sourced customers through a network of appointed representatives, who were not authorised to give advice to customers. The appointed representatives met with customers and undertook fact finds. The fact finds were passed to office staff employed by PMSL, one of whom at any relevant time during the relevant period was CeMAP qualified. The office staff generated a recommended regulated mortgage and an illustration purporting to show the benefits of an interest only mortgage with the FRP. The recommendation was then made to the customer by the appointed representative.
- 4.6. PMSL provided a brochure for its appointed representatives to distribute to and discuss with customers at their first meeting, called “Don’t know which way to go for a better mortgage deal?” The brochure lists the purported benefits of the FRP as follows:

“Your mortgage will be repaid faster than with any other product we are aware of.

A threefold savings benefit:

Reduction in monthly outlay.

Reduction in mortgage term.

Interest savings over the mortgage term.”

- 4.7. The brochure suggests that, if customers take out the FRP, they will benefit from each of the “threefold savings” listed. In fact, of 29 customer files reviewed by the FSA where the customer agreed to take out the FRP, only one personalised illustration demonstrated all three savings being achieved by the customer taking out an interest only mortgage with the FRP for the full term of the plan. Only six personalised illustrations demonstrated all three savings being achieved by the customer in year one of the FRP. In addition, the brochure fails to highlight clearly that the stated reduced monthly outlay was for the first year only and that indexation meant the repayments would increase significantly over the term of the mortgage.
- 4.8. The appointed representatives also presented a brochure entitled “Working together to save you money” at their first meeting with customers. The brochure sets out an illustration entitled “How it works”. The illustration shows the customer paying an amount of interest per month to the mortgagee, which decreases year on year, and an amount of capital repayment per month, which increases to the same extent the interest amount has decreased, maintaining the same net monthly payment throughout the term of the mortgage. The illustration suggests that, as more capital is paid off, the interest amount on the remaining capital decreases, and the repayment element can increase to compensate for that.
- 4.9. In practice, however, the FRP did not work like this. In all of the customer files reviewed by the FSA, the amount by which the interest reduced each year was far outweighed by the increase to the capital repayment element needed in order to pay off the mortgage within the term. This resulted in the overall monthly outlay for customers increasing significantly over the term of the mortgage, such that in 20 of 29 customer files reviewed where the customer took the FRP, the monthly outlay more than doubled over the term of the mortgage.
- 4.10. Following the appointed representatives’ first meeting with the customer, PMSL would generate a personalised illustration for the customer purporting to show the benefits of taking an interest only mortgage with the FRP, as compared to the customer’s current situation or, where the customer was not remortgaging, a standard repayment mortgage. The illustrations contained in the 29 FRP files reviewed by the FSA gave a misleading impression of the benefits of taking out an interest only mortgage with the FRP.
- 4.11. The illustrations were misleading as they did not compare like with like. They did not compare the best available repayment mortgage with the best available interest only mortgage plus FRP. The interest rate on the repayment mortgage used as a comparator was generally higher than for the interest only mortgage, accounting for much of the interest saving. Additional savings were also often achieved by consolidating an expensive unsecured loan with the proposed new mortgage. The illustrations stated the purported interest savings generated by the interest only mortgage with FRP in bold, for example: “INTEREST SAVINGS £X”. This suggested that the savings were due to the mortgage arrangement recommended by PMSL but, in fact, the savings were due to other factors and could have been achieved without incurring the cost of the FRP.

- 4.12. The illustrations also stated in bold the monthly savings the customer would make by taking an interest only mortgage with the FRP, for example: “MONTHLY OUTLAY REDUCED BY £X”. PMSL did not clearly highlight that the reduction was only for the first year of the mortgage term and that, over the course of the term, the monthly outlay must increase significantly year on year in order for the mortgage to be paid off in full, meaning that, in fact, the monthly outlay was only reduced for the initial part of the term. The illustrations stated that the monthly repayments were subject to 3.5% indexation, and the increases were shown in a repayment schedule on the second page of the illustration. However, the evidence from customers the FSA spoke to suggests that the impact of this was not clearly explained to customers, many of whom did not appreciate that the reduction presented was only for the first year of the term.
- 4.13. PMSL failed to disclose clearly and fairly the fees being charged to customers for the FRP. There were two costs associated with the FRP: the £995 set up fee and the £60 per annum management fee. These fees were disclosed to customers across a series of separate documents, some of which mentioned one or the other of these fees, and some of which mentioned neither. For example, customers might have expected all the costs associated with the mortgage to be listed in the Key Facts Illustration. Whilst this document listed PMSL’s broking fee, the mortgagee’s fee, the solicitor’s and valuer’s fees, it did not mention the £995 FRP fee or the £60 annual management fee.
- 4.14. PMSL did not disclose to customers before the point of sale that their monies would be collected and held by a firm which was not FSA authorised. PMSL’s initial disclosure document stated that PMSL was FSA authorised, implying rights of recourse to the FOS and the FSCS. The documentation did not clearly state such rights did not apply in respect of services carried out by FRL.
- 4.15. In addition, evidence gathered by the FSA suggests that PMSL told its appointed representatives that the customer monies held at FRL would be ring fenced, and therefore protected, and that appointed representatives passed this information on to customers. However, the customer funds held at FRL were not adequately ring fenced and customers were treated as unsecured creditors on FRL’s liquidation in November 2010. FRL could not repay customers their monies in full on its liquidation as the funds had not been adequately ring fenced: they had been placed into a single client call account. Some customers’ FRP balances were negative, as they had not kept up payments into the FRP but had been charged the £60 annual management fee, and some customers’ balances were in credit. Those customers who had a positive balance on their FRP account effectively made up the shortfall caused by the customers with negative balances on liquidation. In addition, on liquidation PMSL owed approximately £30,000 to FRL, indicating that PMSL’s and FRL’s funds had been mixed during the course of business. FRL should not have mixed customers’ monies held in its account with PMSL’s business funds.

Mr Harrop’s role

- 4.16. During the relevant period, Mr Harrop was the majority shareholder and controlling mind of PMSL. He held the significant influence function CF3 (chief executive) throughout the relevant period of the investigation into PMSL. He also held controlled functions CF8 (apportionment and oversight), CF28 (systems and controls)

and responsibility for insurance mediation for all or most of the relevant period. He was therefore required at all times to take reasonable steps to ensure that PMSL complied with regulatory requirements and standards.

- 4.17. In practice, Mr Harrop was heavily involved in the day to day business of PMSL. Specifically, Mr Harrop knew which mortgage products were being recommended to customers and had a detailed knowledge of all aspects of the business. He was familiar with the brochures and illustrations produced by PMSL to promote the FRP.
- 4.18. The FSA considers that Mr Harrop is responsible for the advice PMSL advisers gave to customers, as a significant influence controlled function holder and someone who had a detailed knowledge of all aspects of the business. Mr Harrop knew how the FRP was presented to customers and knew that PMSL recommended interest only mortgages with the FRP to the majority of its customers.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in the Annex.

Mr Harrop's fitness and propriety

Mr Harrop's competence and capability as chief executive of PMSL

- 5.2. Through his conduct, Mr Harrop has demonstrated a serious incapability to perform significant influence functions adequately at PMSL. Mr Harrop ought to have made sure PMSL had due regard to customers' interests, treated customers fairly and provided information to customers in a way that was clear, fair and not misleading, but he failed to do so.
- 5.3. Mr Harrop has also demonstrated that he lacks competence and capability to perform the customer function or to act as a mortgage broker, as his failings relate to mis-selling mortgages to customers.
- 5.4. Mr Harrop failed to ensure that PMSL had due regard to customers' interests or treated customers fairly, in that PMSL:
 - (1) promoted the FRP to customers at the first meeting with them, before assessing whether taking out an interest only mortgage with the FRP was suitable for their particular circumstances;
 - (2) recommended interest only mortgages with the FRP to customers who could have achieved the benefits purportedly associated with the FRP directly from their lender. Most customers could have made capital repayments directly to the mortgagee without incurring any fees or charges, thus saving the £995 initial fee and £60 annual administration charge for the FRP. There is no evidence that lenders required customers to have the FRP, or a similar repayment scheme, in place as a condition of the mortgage. PMSL did not explain to customers that they could overpay their mortgages directly to the lender, without incurring the costs of the FRP; and

- (3) he failed to ensure customers' monies were adequately identified and protected, in his capacity as director of FRL.
- 5.5. The evidence suggests that PMSL's business model was to sell the FRP regardless of whether the customer would genuinely benefit from taking an interest only mortgage with the FRP. As chief executive of PMSL, Mr Harrop failed to have due regard to the interests of its customers and treat them fairly. Mr Harrop, as a director of FRL, also failed to identify risks to customers' money held by FRL, namely that the funds of customers who had a positive balance on their FRP made up the shortfall for those with negative balances on the liquidation of FRL.
- 5.6. In addition, Mr Harrop failed to ensure that the information and recommendations PMSL gave to customers were clear, fair and not misleading. Specifically:
- (1) The illustrations provided to customers purporting to compare the cost of the customer's current mortgage with PMSL's recommended interest only mortgage and FRP showed the customer would benefit from a reduced monthly payment, overall savings on the interest paid on the loan and/or a reduction to the mortgage term, if they took out the interest only mortgage with FRP. However, the illustrations did not compare like with like. The interest savings were, in fact, due to the lower interest rate on the new mortgage compared to the customer's current mortgage and/or consolidating a high interest loan with the new mortgage. The FRP in itself could not generate any real savings for the customer, but this was not apparent in the illustrations provided to PMSL's customers.
 - (2) The FRP was presented to customers verbally by PMSL as the "best way to repay" a mortgage. PMSL told customers the FRP was "cheaper than a standard repayment mortgage" and would repay their mortgage more quickly. These statements were unfounded.
 - (3) PMSL did not adequately explain to customers why taking an interest only mortgage with the FRP was purportedly more beneficial than a repayment mortgage or an interest only mortgage without the FRP. PMSL could not demonstrate from its records that customers were told that (a) they could overpay their mortgage directly to the mortgagee without the FRP (which would have been an acceptable method of repayment as far as lenders were concerned), or (b) overpaying an interest only mortgage directly to the lender, or taking out a repayment mortgage, may offer better value for money as customers would not have to pay the FRP fee and annual administration charge.
 - (4) The illustrations purported to show reduced monthly repayments for the customer, but did not highlight clearly that the stated reduction was for the first year only and that indexation meant the repayments would need to increase significantly over the term of the mortgage in order to repay the mortgage within the term.

- (5) The fees charged to customers for the FRP were not clearly disclosed, in that they were disclosed in some documents but not in others, and/or there were inconsistencies in the fees and charges quoted to customers.
 - (6) The documents provided to customers stated that PMSL was an FSA authorised firm, implying the attendant rights of recourse to the FOS and FSCS, but did not highlight to customers that an unauthorised firm (FRL) would be holding their monies. The documentation did not clearly state such rights did not apply in respect of services carried out by FRL.
 - (7) PMSL misrepresented to customers that their funds would be ring fenced, but failed to make sure this was the case. As a result, customers lost 45% of their funds held in the FRP when PMSL and FRL went into liquidation in November 2010.
- 5.7. Mr Harrop was the majority shareholder and chief executive of PMSL. He had a hands-on role in the mortgage advice process and had knowledge of PMSL's mortgage recommendations and the nature of the FRP illustrations. As such, Mr Harrop is responsible for the failings at PMSL identified above. Specifically, he failed to ensure that PMSL paid due regard to customers' interests in recommending interest only mortgages with the FRP to all customers. He failed to ensure that presentations and illustrations purporting to compare the recommended package with repayment mortgages were clear, fair and not misleading.
- 5.8. Mr Harrop ought to have known that advising customers to take out an interest only mortgage with the FRP was regulated advice. Accordingly, he ought to have ensured that PMSL complied with the relevant rules and, specifically, paid due regard to customers' interests and that advice given to customers was appropriate and presented in a clear, fair and not misleading way. He failed to do so.
- 5.9. Mr Harrop did not exercise reasonable care assessing the risks of PMSL's sales process, which was to promote interest only mortgages with the FRP to all customers at the first meeting and to restrict product research to interest only mortgages. He did not take reasonable steps to ensure the mortgage illustrations provided by PMSL to customers were clear, fair and not misleading. As such, his conduct was below that which would be reasonable in all the circumstances.

Pressure selling

- 5.10. In June 2010, the FSA received a complaint from a customer stating that PMSL had told him that lenders would not look kindly on his mortgage application unless the FRP was in place. When the customer subsequently sought to cancel the FRP application, PMSL, through its appointed representative, told the customer that the lender had confirmed that the mortgage offer would be withdrawn if the FRP was cancelled. This was not true.
- 5.11. On being given this information by PMSL's appointed representative, the customer asked to speak with Mr Harrop. The customer stated in his complaint that Mr Harrop subsequently telephoned and told him that, if the FRP were to be cancelled, Mr Harrop would have to tell the lender's underwriters and there was a "distinct

possibility” that they would cancel the customer’s mortgage. The customer had contacted the lender directly and found this not to be the case.

- 5.12. The FSA has found no evidence to suggest that such pressure selling was widespread at PMSL during the relevant period. It appears Mr Harrop believed, albeit wrongly, that lenders required a repayment vehicle such as the FRP to be in place before they would agree to provide interest only mortgages to customers.

Mr Harrop’s outstanding director’s loan

- 5.13. A further concern is that Mr Harrop has failed to repay an outstanding director’s loan to PMSL. He has thus deprived PMSL’s creditors of funds which should rightfully form part of the liquidation. One of PMSL’s creditors is FRL, whose creditors, in turn, are customers of PMSL who deposited funds with FRL as part of the FRP. Mr Harrop’s failure to repay his director’s loan has, therefore, caused detriment to customers.

Past business review

- 5.14. Mr Harrop agreed to PMSL conducting a past business review following the FSA’s supervisory visit on 24 August 2010. During the period in which the review of past business should have been undertaken, it appears that PMSL began experiencing financial difficulties, which led to its liquidation on 19 November 2010. Mr Harrop then terminated all contact with FSA Supervision and did not review PMSL’s past business to identify customers who may have suffered loss.

Interaction with the FSA

- 5.15. Mr Harrop’s interaction with the FSA has, at times, demonstrated a failure to comply with his regulatory responsibilities. Specifically:
- (1) The FSA would have reasonably expected notice of PMSL’s financial difficulties and subsequent liquidation in November 2010 as it is a matter having serious regulatory impact, in accordance with SUP 15.3.1R. However, Mr Harrop failed to notify the FSA of these circumstances. Mr Harrop states that he had received advice that he should have no further involvement with PMSL, which he took to include any contact with the FSA about PMSL’s affairs.
 - (2) Mr Harrop has, at times, failed to cooperate fully with the FSA enforcement investigation. He failed to comply with requirements to provide certain information within his knowledge and to attend a compelled interview. Mr Harrop has suffered from ill health, but the FSA does not believe this should have prevented him from providing some of the information required, for example, his current address.

Conclusion about Mr Harrop’s fitness and propriety

- 5.16. Mr Harrop has demonstrated by his conduct that he is not fit and proper, in terms of his competence and capability, to carry out any functions in relation to any regulated

activity. He failed, as an approved person at PMSL, to ensure that PMSL complied with relevant regulatory standards and treated its customers fairly.

6. SANCTION

Withdrawal of approval and prohibition

- 6.1. The FSA considers it appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Harrop to perform the controlled functions CF3, CF28 and insurance mediation at PMSL because he is not competent or capable of performing these functions. The FSA also considers Mr Harrop should be prohibited from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.
- 6.2. The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Harrop's approval be withdrawn and that he be prohibited from performing any function in relation to any regulated activity. The relevant provisions of EG are set out in the Annex of this Notice.
- 6.3. Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Harrop's conduct demonstrated a lack of competence and capability such that he is not fit and proper to perform any function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm. In particular, Mr Harrop demonstrated a lack of regard for the standards and requirements of the regulatory system. In the interests of consumer protection, the FSA deems it appropriate and proportionate in all the circumstances to withdraw Mr Harrop's approval and to impose a prohibition order on Mr Harrop in the terms set out above.

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 under, and 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 Harrop or prejudicial to the interests of consumers.

FSA contacts

- 7.4. For more information concerning this matter generally, contact Rachel West at the FSA (direct line: 020 7066 0142 /fax: 020 7066 0143).

Tom Spender
Project Sponsor
FSA Enforcement and Financial Crime Division

Annex

Relevant regulatory provisions

1. The Act

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers.
- 1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3. 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.
- 1.4. Section 63 of the Act provides that the FSA may withdraw its approval to carry out a controlled function if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

2. FIT

- 2.1. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 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. One of the considerations will be the person's competence and capability.
- 2.3. As set out in FIT 2.2, in determining a person's competence and capability, the FSA will have regard to matters including but not limited to:
 - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

3. SUP

- 3.1. SUP 15.3.1R provides that a firm must notify the FSA immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

- (1) the firm failing to satisfy one or more of the threshold conditions; or
- (2) any matter which could have a significant adverse impact on the firm's reputation; or
- (3) any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or
- (4) any matter in respect of the firm which could result in serious financial consequences to the UK financial system or to other firms.

4. Enforcement Guide

- 4.1. The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. Although the references in the Final Notice are to the EG, the FSA has also had regard to the appropriate provisions in ENF, which preceded the EG and applied during part of the relevant period.
- 4.2. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.
- 4.3. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 4.4. EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 4.5. 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 functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.
- 4.6. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

- 4.7. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (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;
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
 - (6) the previous disciplinary record and general compliance history of the individual.
- 4.8. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.
- 4.9. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.