
FINAL NOTICE

To: **Waqarul Hassan Shah**
Of: **KS Financial Services**
Date of Birth: **27 November 1957**
Date: **1 October 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to make a prohibition order.

1. THE PENALTY

1.1. The FSA gave you, Mr Waqarul Hassan Shah, a Decision Notice dated 30 September 2010 which notified you that, for the reasons stated below, the FSA has decided to take the following action:

- (1) to publish a public censure against you pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”) for failing to comply with Statements of Principles 1 and 7 of the FSA’s Statements of Principle for Approved Persons (“the Statements of Principle”), issued under section 64 of the Act; and
- (2) to make a prohibition order against you, pursuant to section 56 of 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 (“the Prohibition Order”).

- 1.2. You confirmed on 27 September 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber). In addition, you have agreed to settle the matter.
- 1.3. Accordingly, for reasons set out below, the FSA has made a prohibition order against you, which has effect from today.
- 1.4. The FSA had sought to impose a financial penalty on you of £40,000, pursuant to section 66 of the Act, in respect of the breaches of the Statements of Principle 1 and 7. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA has decided not to impose any financial penalty on you.

2. REASONS FOR THE ACTION

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

- (1) while an approved person performing significant influence functions at KS Financial Services (“KS Financial”) in the period from 31 October 2004 to 14 September 2008 (“the relevant period”), you failed to comply with Statements of Principle 1 and 7; and
- (2) you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

- 2.2. In summary, while an approved person at KS Financial, you failed to act with integrity, in that you:

- (1) recklessly submitted to a lender, on behalf of a customer, a regulated mortgage application which contained false and misleading information; and
- (2) knowingly submitted to a lender, on your own behalf, an unregulated buy-to-let mortgage application which you knew contained false and misleading information.

2.3. In addition, in carrying out your controlled functions, you failed to take reasonable steps to ensure that the business of the firm for which you were responsible complied with the relevant requirements and standards of the regulatory system. In particular, you failed to:

- (1) put in place adequate systems and controls at KS Financial to prevent false and misleading mortgage applications being submitted to lenders;
- (2) create and maintain accurate business and customer records; and
- (3) put in place appropriate procedures to ensure that adequate file checking and supervision occurred.

2.4. The FSA considers that your failings were serious because they:

- (1) exposed KS Financial's customers to a risk of being treated unfairly;
- (2) exposed lenders to the risk of offering mortgages on the basis of false and misleading information passed through KS Financial and in fact allowed this to occur; and
- (3) exposed KS Financial to the risk of being used to facilitate financial crime, specifically mortgage fraud, and in fact allowed it so to be used.

2.5. The FSA considers that you pose a risk to consumers and lenders and to confidence in the financial system. The action supports three of the FSA's statutory objectives: maintaining market confidence; reducing financial crime; and protecting consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. 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. You were one of two partners at KS Financial, a mortgage broker in the Manchester area. KS Financial was authorised by the FSA from 31 October 2004 to 11 December 2009 to conduct regulated activities in respect of mortgages and insurance.
- 4.2. You were approved by the FSA to perform the following controlled functions (“CFs”) at KS Financial:
- (1) CF4 (Partner) from 31 October 2004 to 22 January 2010; and
 - (2) CF8 (Apportionment and Oversight) from 31 October 2004 to 31 March 2009.

Reckless involvement in mortgage fraud in relation to a regulated mortgage application

- 4.3. You submitted a regulated remortgage application for Customer A on 29 November 2007. You claimed in interview that your partner at KS Financial had completed the application but that you had reviewed the application form before it was submitted.
- 4.4. The application form was signed by you. You thereby confirmed that you were acting on behalf of Customer A and declared that everything in the application was true to the best of your knowledge. In addition, your details are recorded as the introducer on the application form.
- 4.5. In the application, Customer A declared the following income:
- (1) basic annual income from employment of £16,106.88 per annum;
 - (2) other guaranteed income of £11,120;

- (3) previous year's net profit for self cert/total personal annual income from self-employment of £27,226.88;
 - (4) share of the previous 2 years' net profit figures (year 1 being the most recent) for self-employment of £11,120 for year 1 and £9,768 for year 2; and
 - (5) total annual income from self-employment of £27,226.88.
- 4.6. Customer A therefore declared a total annual income of £27,226.88, comprised of income from employment of £16,106.88 and income from self-employment of £11,120.
- 4.7. The KS Financial customer file for Customer A contained a 'Statement of Particulars of Employment' (the "statement"), which had been signed by Customer A's employer on 7 August 2007. The statement recorded that Customer A's gross salary per annum was £6,106.88 and that her hours of work were 16 hours per week. You admitted that you checked the application before it was sent off and that the statement was available at the time that you checked the application.
- 4.8. You claimed that the figure of £16,106.88 had accidentally been recorded on the application rather than the true figure of £6,106.88. The FSA does not accept this explanation because, among other things, the figure of £16,106.88 is recorded twice, in two different places in the application form. In addition, the inflated income figure of £16,106.88 was used in computing Customer A's total annual income of £27,226.88.
- 4.9. HMRC records in respect of Customer A for the tax years ended 5 April 2005 to 5 April 2008 show that she declared income of:
- (1) £12,098.43 for the year ending 2005;
 - (2) £11,283.02 for the year ending 2006;
 - (3) £12,922.34 for the year ending 2007; and

(4) £8,029.28 for the year ending 2008.

Knowing involvement in mortgage fraud in relation to your own unregulated mortgage application

4.10. In October 2007 you submitted a buy-to-let mortgage application to a lender on your own behalf (“the Application”). In the Application, which you signed and dated 12 October 2007, you declared that your net profits received as a self-employed mortgage broker were:

(1) £25,950 for the year ending 2006; and

(2) £27,800 for the year ending 2007.

4.11. You also declared ‘other income’ from rental properties of £37,200.

4.12. You declared that your total personal income for 2007 was £65,000.

4.13. The amounts declared on the Application were significantly different to the amount of income you declared to HMRC for the same periods. You declared to HMRC total net profits before tax of:

(1) £10,835 for the tax year ending 2006; and

(2) £11,766 for the tax year ending 2007.

4.14. You claimed at an interview with the FSA that the discrepancy between the figures you provided in the Application and those you provided to HMRC arose because, in the Application, you declared a sum of money that had been owed to you since 2005 but that you had not received. You did not declare these same amounts to HMRC for the relevant years and therefore must have known that these amounts could not be counted as income.

4.15. You also stated at interview with the FSA that, for the year ending 2007 at least, two sets of accounts for two separate income streams had been submitted by two different accountants to HMRC on your behalf and that the income recorded by

HMRC for 2007 only represented one of those income streams. However, HMRC only has records of one tax return having been submitted for 2007. This comprises both income streams which you identified in interview and accords with accounts that you provided to the FSA in respect of each income stream.

Failure to have an appropriate mortgage qualification and failure to comply with regulatory requirements in respect of non-advised/advised mortgage sales

- 4.16. You confirmed in interview with the FSA that you knew that mortgage advisers had to hold particular qualifications and that you did not have any such qualification. Despite knowing that you were not qualified to do so, you admitted in interview that you had advised one or two customers on their regulated mortgage applications whilst not qualified to do so. You subsequently claimed that your admission in this regard was false.
- 4.17. You were the mortgage adviser for Customer C's residential regulated mortgage application in February 2007. You admitted in interview that you had provided mortgage advice to Customer C in a suitability letter dated 20 February 2007. You accepted that you should not have been advising on and recommending this product because you were not properly qualified to do so.
- 4.18. You also admitted in interview that you do not have distinct processes for advised and non-advised mortgage sales at KS Financial and that you did not follow a script, as required by the FSA's rules, when carrying out non-advised sales.

Other systems and controls failings at KS Financial

- 4.19. In interview, you stated that you were responsible for compliance at KS Financial. Although you subsequently claimed that KS Financial's systems and controls were being carried out to the required standard, you previously acknowledged in interview that there were a number of aspects of KS Financial's systems and controls that were inadequate.

Record keeping

- 4.20. You supplied KS Financial's new business register ("NBR") to the FSA. You admitted in interview that the NBR was incomplete, in that it did not record all the mortgage business KS Financial placed with lenders.

Compliance function – establishing and maintaining appropriate systems and controls

- 4.21. You admitted that there were no systems or controls in place to ensure that KS Financial's customer files were checked. In addition, although you stated that you reviewed some mortgage applications completed by your partner at KS Financial, you admitted that you had not recorded this and could not therefore identify which files had been subject to review in this way.
- 4.22. In addition, you failed to give sufficient consideration to whether you had sufficient expertise to manage the business or whether you should have sought additional assistance, for example by engaging an expert compliance consultant, although you were aware that such assistance was available.

5. ANALYSIS OF BREACHES

- 5.1. The FSA has concluded that you have failed to comply with the requirements and standards of the regulatory system in the following respects.

Statement of Principle 1

- 5.2. The FSA considers that, as an approved person, you have failed to act with integrity, contrary to Statement of Principle 1, by recklessly submitting to a lender a regulated mortgage application which contained false and misleading information on behalf of Customer A.
- 5.3. You checked the regulated mortgage application for Customer A and submitted it despite it showing her basic income being £10,000 more than that confirmed by her employer. You confirmed this information was available to you at the time you checked the application. Therefore, you failed to check the income details on the application form properly or at all in circumstances when you had clear

information in your possession which provided accurate details about Customer A's income. The FSA also considers that by disregarding the importance of this information and failing to consider the risk that the application was fraudulent your conduct was reckless.

Statement of Principle 7

5.4. The FSA considers that you, as an approved person performing a significant influence function, did not take reasonable steps to ensure that KS Financial complied with the relevant requirements and standards of the regulatory system contrary to Statement of Principle 7. Specifically, you have failed to take reasonable steps to:

- (1) establish systems and controls (including the use of scripts) to prevent KS Financial's staff, including yourself, from providing mortgage advice, when they lacked the relevant qualifications required to do so;
- (2) ensure that KS Financial created and maintained adequate business and customer records; and
- (3) ensure that adequate file checking and supervision of compliance occurred.

Fitness and propriety

5.5. In light of the facts and matters set out above, the FSA considers that you are not fit and proper to hold any function in relation to any regulated activity carried on by any person as you lack honesty and integrity and competence and capability.

5.6. Specifically, you lack honesty and integrity as you:

- (1) recklessly submitted to a lender, on behalf of a customer, a regulated mortgage application which contained false and misleading information; and

- (2) knowingly submitted to a lender, on your own behalf, an unregulated mortgage application which you knew contained false and misleading information.
- 5.7. You lack competence and capability as you advised on a regulated mortgage contract without obtaining the appropriate qualification as required by the Training and Competence (TC) provisions of the FSA's Handbook and failed to take reasonable steps to ensure that KS Financial complied with the relevant requirements and standards of the regulatory system.
- 5.8. These failings have exposed customers to the risk of receiving unsuitable advice and lenders to the risk of making decisions based on false and misleading information. Your failings have also allowed KS Financial to be used as a vehicle for the commission of financial crime, specifically mortgage fraud. 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 reducing the risk of authorised persons being used for the purposes of financial crime.

6. ANALYSIS OF SANCTIONS

Financial penalty or public censure

- 6.1. The FSA's policy on the imposition of financial penalties for conduct for part of the relevant period from 28 August 2007 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. References to DEPP below are references to the version of DEPP that was in place on 5 March 2010. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter. The relevant parts of this guidance are set out at Annex A.
- 6.2. In determining whether a financial penalty or public censure is appropriate the FSA will consider all the relevant circumstances of a case. Applying the criteria

set out in the 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 public censure is an appropriate sanction in this case, given the serious nature of the breaches and the risks they created for customers of KS Financial and the need to send out a strong message of deterrence to other approved persons of the consequences of failing to engage with the business for which they are responsible.

- 6.3. DEPP 6.5.2 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 G (1)

- 6.4. In determining the appropriate level of penalty the FSA has had regard to the need 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.

The nature, seriousness and impact of the breaches: DEPP 6.5.2 G (2)

- 6.5. The FSA has considered the nature and seriousness of the breaches, including the number and duration of the breaches, the extent to which the breaches illustrated a lack of honesty and integrity, and competence and capability, the extent to which the breaches revealed serious or systemic weaknesses in KS Financial's management systems or internal controls, the nature and extent of any financial crime attributable to the breach and the number of lenders exposed to a risk of loss.

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

- 6.6. 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. The FSA

considers that you acted recklessly in relation to the submission of a fraudulent mortgage application for Customer A in that you disregarded the importance of Customer A's income details and failed to consider the risk that the application was fraudulent but submitted it nevertheless.

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

- 6.7. The FSA recognises that the imposition of a financial penalty on you is likely to have a significant impact on you as an individual.

Previous action taken in relation to similar failings: DEPP 6.5.2 G (10)

- 6.8. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour.

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

- 6.9. You have provided evidence of your financial situation which indicates that your liabilities exceed your assets. The FSA is satisfied that there is sufficient evidence for it to conclude that the imposition of a financial penalty would cause you severe financial hardship.

Conclusion

- 6.10. The FSA would have sought to impose the Financial Penalty on you had it not been for the fact that imposing the Financial Penalty would cause you serious financial hardship.
- 6.11. In publishing a public censure the FSA has considered the need specifically to deter others from engaging in this type of activity.

Prohibition

- 6.12. Having regard to the facts and matters described above, the FSA has considered whether you are a fit and proper person to continue to perform some or any

functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, regulatory requirements and relevant guidance set out in Annex A.

- 6.13. As you lack honesty and integrity, as well as competence and capability, the FSA has concluded that you are not fit and proper to carry on regulated activities, and that, if you performed any functions in relation to regulated activities you would pose a risk to consumers, to lenders (and therefore to confidence in the financial system) and to the fulfilment of the FSA's reduction of financial crime objective.
- 6.14. The FSA therefore considers that you should be prohibited 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.

7. DECISION MAKER

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

8. IMPORTANT

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

Publicity

- 8.2. 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.

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

FSA contacts

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

Signed:

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Tom Spender

FSA Enforcement and Financial Crime Division

Annex A

1. Statutory Provisions

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.

Public Censure

- 1.1. 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 principle issued under section 64 of the Act. The action that may be taken by the FSA includes the publication of a statement of the person's misconduct.
- 1.2. The FSA's Statements of Principle and Code of Practice for Approved Persons are a general statement of the fundamental obligations of approved persons under the regulatory system. They derive their authority from section 64 of the Act and reflect the FSA's regulatory objectives. The Statements of Principle relevant to your conduct and related guidance are set out in more detail at paragraphs 2.6 to 2.9 below.

Prohibition

- 1.3. The FSA may, under section 56 of the Act, make an order prohibiting a person from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that he is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity or any regulated activity falling within a specified description or all regulated activities.

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 Shah 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 Statement 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 Statement 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 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 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 person must act with integrity in carrying out his controlled function”; and

- (2) 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 determining the level of the financial penalty and deciding to take the other action described in paragraph 1.1 above, the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies. The FSA's Decision Procedure and Penalties Manual (“DEPP”) and Enforcement Guide (“EG”) came into effect on 28 August 2007. Although the references in this Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA’s Enforcement Manual (“ENF”), which preceded DEPP and EG and applied during the majority of the Relevant Period.
- 2.11. The FSA’s policy on the issue of public censures and the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual (“DEPP”), which forms part of the FSA Handbook and came into force on 28 August 2007. It was previously set out in Chapter 13 of the Enforcement Manual (“ENF”). The FSA has had regard to both DEPP and ENF as both manuals applied at separate points during the Relevant Period. Both manuals set out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. The principle purpose of a public censure is to promote high standards of regulatory conduct by deterring firms or individuals who have committed breaches from committing further breaches and by helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of a compliant business.
- 2.12. 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.
- 2.13. 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. 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.

- 2.14. 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.
- 2.15. EG 9.8 to 9.14 provide guidance on the FSA's exercise of its power to make a prohibition order against an approved person, withdraw their approval or both.
- 2.16. 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" (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 (EG 9.9(3));
 - (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)).

2.17. DEPP provides at 6.5.2 that the following relevant factors may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act:

- (1) Deterrence: when determining the appropriate level of 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.
- (2) The nature, seriousness and impact of the breach in question: the FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The following considerations are among those that may be relevant:
 - (a) the duration and frequency of the breach;
 - (b) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach
- (3) The extent to which the breach was deliberate or reckless: the FSA will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:
 - (a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions;

- (b) where the person has taken decisions beyond its or his field of competence, the reasons for the decisions and for them being taken by that person; and
- (c) 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.

- (4) Whether the person on whom the penalty is to be imposed is an individual.
- (5) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed:-
 - (a) 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.
 - (b) The purpose of a penalty is not to render a person insolvent or to threaten the 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. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the FSA will take account of those assets when determining the amount of a penalty.
- (6) Other action taken by the FSA: action that the FSA (or a previous regulator) has taken in relation to similar breaches by other persons may be

taken into account. This includes previous actions in which the FSA (whether acting by the RDC or the settlement decision makers) and a person on whom a penalty is to be imposed have reached agreement as to the amount of the penalty. As stated at DEPP 6.5.1 G (2), the FSA does not operate a tariff system. However, the FSA will seek to apply a consistent approach to determining the appropriate level of penalty.

Other relevant Handbook provisions

- 2.18. The commitments and requirements concerning staff competence are set out in TC.
- 2.19. TC 2.1.1R states that *“A firm must not assess an employee as competent to carry on an activity in TC Appendix 1 until the employee has demonstrated the necessary competence to do so and has (if required by TC Appendix 1) passed each module of an appropriate examination. This assessment need not take place before the employee starts to carry on the activity”*.
- 2.20. TC 2.1.6R states 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. TC 2.1.7R 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. TC Appendix 1 shows that there is an appropriate examination requirement for advising on regulated mortgage contracts for a non-business purpose.
- 2.21. Rule 4.8.1R of the FSA’s Mortgages and Home Finance: Conduct of Business Sourcebook (“MCOB”) states that if a firm arranges a regulated mortgage contract or a variation to an existing regulated mortgage contract without giving a personal recommendation, it must ensure that all the questions it asks the customer about the customer's needs and circumstances are scripted in advance.
- 2.22. MCOB 4.8.3R states that where MCOB 4.8.1 R applies, the firm must ensure that staff using the scripted questions are:

- (1) trained in the use of the script;
- (2) trained in the difference between what constitutes a personal recommendation and what does not; and
- (3) instructed not to give a personal recommendation unless they meet the TC requirements for advising on regulated mortgage contracts.