

UPDATE: On 20 October 2022, this matter was referred to the Upper Tribunal.

SECOND SUPERVISORY NOTICE

To: Samweb (UK) Ltd

Reference Numbers: 829762 and 961754

Address: Unit 15
Olympic Court
Whitehills Business Park
Blackpool
Lancashire
FY4 5GU

Date: 21 September 2022

1 ACTION

- 1.1 For the reasons given in this Notice, the Authority has decided not to rescind the following Directions and Requirements set out below in paragraph 1.2 which were imposed on the Firm and notified to it in the First Supervisory Notice dated 21 June 2022.
- 1.2 The FSN notified the Firm that the Authority had decided to impose the following Directions pursuant to section 137S of the Act and the Requirements pursuant to sections 55L(3)(a) of the Act with immediate effect.

The Directions

- 1) The Firm is directed to withdraw approval for all financial promotions relating to mortgage securitisation claims which have previously been approved or made by the Firm including but not limited to www.camelluslaw.co.uk, www.yourmsc.co.uk; www.resoldmortgageclaims.com; <https://securitisationclaims.co.uk> ;
- 2) The Firm is directed to use best endeavours to effect the removal of all financial promotions approved or made by the Firm from websites including but not limited to www.camelluslaw.co.uk, www.yourmsc.co.uk; www.resoldmortgageclaims.com; <https://securitisationclaims.co.uk> or other forms of advertisement including, but not limited to, the radio and the press, that relate to mortgage securitisation claims;
- 3) The Firm is directed to report to the Authority the steps taken in relation to Direction 2 and what the result of those steps has been.
- 4) The Firm is directed to provide a list to the Authority of all mortgage securitisation financial promotions approved by the Firm and the names of the firms offering these financial promotions within 3 business days (24 June 2022);

- 5) The Firm must communicate the imposition and effect of these Directions in writing to all firms using mortgage securitisation financial promotions made or approved by the Firm not before 3 business days (13 July 2022) of the period lapsing to make representations to the Authority, in a form and by a date to be agreed with the Authority in advance;
- 6) The Firm must use best endeavours to communicate the imposition and effect of these Directions in writing to customers of the firms using mortgage securitisation financial promotions made or approved by the Firm within 3 business days (24 June 2022) of the period lapsing to make representations to the Authority; and
- 7) The Firm must provide written confirmation to the Authority that it has complied with these Directions within 10 business days (5 July 2022) unless otherwise specified in the Direction.

The Requirements

- 1) The Firm must cease all regulated activity, without the prior written consent of the Authority;
- 2) The Firm must cease approving or making any financial promotions including pipeline activity;
- 3) The Firm must conduct a review of its systems and controls in relation to its financial promotion approval process and provide to the Authority a proposed timetable for its review within 5 working days (28 June 2022);
- 4) The Firm must remove all trading names registered with the Authority that are associated with separate legal entities including but not limited to Mortgage Claims for Landlords, Camellus Law, Legal Quest, Legal Shield Protect, Mortgage Securitisation Claims and MSC Media & Marketing;
- 5) The Firm must not use any new trading names without the prior written consent of the Authority;
- 6) The Firm must provide the Authority in writing with details of all controllers of the Firm, and any changes in the control of the Firm, since 31 December 2019;
- 7) The Firm must provide to the Authority an updated business plan within 10 working days (5 July 2022);
- 8) The Firm must cease acting as an Appointed Representative and confirm to the Authority the steps that it has taken to do so;
- 9) The Firm must secure all books and records, including but not limited to emails, minutes, records of verbal conversations between parties, that relate to regulated activities carried on by it and must retain these in a form and at a location (to be notified to the Authority in writing) such that they can be provided to the Authority promptly upon request, with immediate effect; and
- 10) The Firm must provide written confirmation to the Authority that it has complied with these Requirements within 10 business days (5 July 2022)

unless otherwise specified in the Requirement.

- 1.3 The Directions and the Requirements shall take immediate effect and shall remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The FSN notified the Firm that the Authority had concluded, on the basis of the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under section 137S of the Act to give the Directions to the Firm because the Authority considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the financial promotions for mortgage securitisation claims approved by the Firm.
- 2.2 The FSN also notified the Firm that the Authority had further concluded, on the basis of the facts and matters described below that, in respect of the Firm, it was necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm because it is failing, or is likely to fail, to satisfy the Threshold Conditions and/or it is desirable in order to advance one or more of the Authority's operational objectives, which includes securing an appropriate degree of protection for consumers.
- 2.3 The FSN identified that the Authority had serious concerns relating to the Firm's business. The Firm appears to have breached financial promotion rules in CMCOB of the Authority's Handbook by:
 - 1) approving financial promotions for communication by the Firm or other entities, which do not substantiate the basis of a mortgage securitisation claim in a way that is credible and which exaggerate the likelihood of a mortgage securitisation claim succeeding and the amount of compensation prospective claimants may be entitled to, in breach of 3.2.1R of CMCOB;
 - 2) approving financial promotions for communication by the Firm or other entities, which contain misleading statements regarding the regulatory status of entities referenced in the promotions through association with the Firm, creating a halo effect, raising unrealistic expectations of consumer protection and making the promoted activities a more attractive proposition than they otherwise would have been, in breach of 3.2.1R of CMCOB and 3.2.4(4)R of CMCOB;
 - 3) approving financial promotions for communication by the Firm or other entities concerning regulated claims management activities which these entities appear to carry on, for which they do not have the requisite authorisation by the Authority, in breach of 3.2.1R of CMCOB; and
 - 4) approving financial promotions for communication by the Firm or other entities, which appear to offer a discounted fee as an inducement for entering into a claims management agreement, in breach of 3.2.1R of CMCOB and 3.2.4(2)R of CMCOB
- 2.4 The FSN identified that the Firm appears to be failing to meet three of its threshold conditions as set out in the Handbook: the Firm does not appear to be capable of being effectively supervised by the Authority pursuant to threshold condition COND 2.3 (Effective supervision) of the Handbook having regard to all the circumstances

including the way in which the business is organised; the Firm does not appear to be meeting threshold condition COND 2.5 (Suitability) which requires that a Firm must be a fit and proper person having regard to all the circumstances including whether the Firm's business is being managed in such a way as to ensure that its affairs can be conducted in a sound and prudent manner; and the Firm does not appear to be meeting threshold condition COND 2.7 (Business model) which requires that the Firm's business model (that is, strategy for doing business) must be suitable for regulated activities that the Firm carries on, taking into account whether the business model is compatible with the Firm's affairs being conducted in a sound and prudent manner and in the interests of consumers.

- 1) The Firm appears to be approving financial promotions that contain descriptions of entities being registered with the SRA under registration numbers that do not exist. These financial promotions mislead consumers to believe that they are afforded the protections of a regulated entity.
- 2) The Firm appears to have purported to appoint unauthorised firms as ARs to carry on regulated claims management activities. ARs are not permitted to conduct regulated claims management activities.
- 3) As it has not been able to register the unauthorised firms as ARs, the Firm appears to have registered their names (or names that are substantively identical) as trading names of the Firm, thereby making it appear that they are authorised to carry on activities for which they have no authorisation.
- 4) The Firm appears to have failed to obtain the approval of the Authority of its change in the control of the Firm.
- 5) The Firm is registered on the Financial Services Register as an AR of a separate principal firm, which it is not entitled to do as an authorised firm.
- 6) The Firm approves financial promotions which do not substantiate the basis of a mortgage securitisation claim in a way that is credible. The promotions exaggerate the likelihood of a mortgage securitisation claim succeeding and the outcome that prospective claimants may be entitled to. The approval of mortgage securitisation financial promotions appears to be a material component of the Firm's business strategy.

2.5 The FSN notified the Firm that the Requirements and the Directions advance the Authority's operational objective of securing an appropriate degree of protection for consumers by protecting the interests of consumers who may otherwise consider the assertions made in the financial promotions approved by the Firm to be credible and the claims management activities they promote to be provided by an authorised entity.

2.6 The FSN notified the Firm that the Authority considered that the imposition of the Requirements and the Directions should take immediate effect because the Firm is putting consumers at risk of receiving unsuitable advice about initiating claims against their lenders in relation to mortgage securitisation without the benefit of protections provided by dealing with an authorised entity.

2.7 On the basis of the facts and matters described in this SSN, having considered the Representations made by the Firm in respect of the FSN, the Authority considers

that the imposition of the Requirements continues to be necessary and appropriate. The Firm's Representations, and the Authority's response to them, are set out in Annex 2 to this SSN.

3 DEFINITIONS

3.1 The definitions below are used in this First Supervisory Notice:

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

"AR" means an appointed representative as defined by section 39(2) of the Act;

"the Authority" means the Financial Conduct Authority;

"CMCOB" means the Claims Management: Conduct of Business sourcebook, part of the Handbook;

"the Directions" mean the directions the Authority give the Firm by this First Supervisory Notice as outlined in section 1 above;

"the Firm" means Samweb (UK) Ltd;

"FSN" means the First Supervisory Notice, issued to the Firm on 21 June 2022;

"the Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"Introducer AR" means an introducer appointed representative as defined in the Handbook;

"the Requirements" mean the requirements imposed by the Authority on the Firm by this First Supervisory Notice as outlined in section 1 above;

"the Representations" mean the representations received from the Firm in response to the FSN;

"SRA" means Solicitors Regulation Authority;

"SSN" means Second Supervisory Notice; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4 FACTS AND MATTERS

Background

4.1 The Firm was incorporated on 1 October 2013. Stephen Swain was appointed on 1 September 2020 and resigned on 10 April 2021 as director of the Firm. Between 10 April 2021 and 16 November 2021 the Firm had no director until Stephen Swain was re-appointed on 16 November 2021 although the reason for the gap has not been provided by the Firm.

4.2 The Firm was served a notice under section 790D of the Companies Act 2006 by Companies House to identify its controller, which has not been complied with to date.

4.3 Stephen Swain informed the Authority on 2 December 2021 that he acquired the

Firm in October 2020 however the Authority has not been provided with notice of any proposed change in the control of the Firm, as required by section 178(1) of the Act.

- 4.4 The Firm appears on the Financial Services Register to be an AR of another authorised firm for the regulated activity of insurance distribution. As an authorised person, the Firm is not permitted to act as an AR under s39(1) of the Act.
- 4.5 The Firm was authorised by the Authority on 31 December 2019 with permission to seek out, refer and identify claims or potential claims including personal injury claims, financial services or financial product claims, housing disrepair claims, claims for a specified benefit, criminal injury claims and employment related claims.
- 4.6 The Firm also approves financial promotions issued by entities for communication under s21 of the Act. The Firm confirmed in an email dated 3 December 2021, in response to a question from the Authority concerning whether a claim in a newspaper advert that a limited company was authorised via the Firm was correct: *"As is outlined in detail above, we were fully under the impression that any/all advertising by one or more of the trading styles [of the Firm], with ALL of the content fully vetted and approved PRIOR to publication or printing by the Compliance Officer of Samweb (UK) Ltd., formed part of the agreed permissions to source, seek out and refer any potential claimants to the dedicated secure portal controlled by [an unauthorised limited company], which is still an SRA Industry & Commerce body, but for the sake of being fully compliant, places ALL of the marketing aspects through the oversight of Samweb (UK) Ltd."*

Failings and risks identified

Halo effect of trading names

- 4.7 The Firm's registered trading names (apart from two) are similar to the names of separate, unauthorised entities registered with Companies House.
- 4.8 Apart from one, the Firm is connected to these entities through its directors or controllers.
- 4.9 The Firm added these trading names in February 2021, after having been frustrated in its efforts to add ARs online through the Authority's Connect system which would have blocked their efforts because the Firm does not have the requisite permissions to add firms as ARs. The FCA policy statement PS18/23 in paragraph 9.15 reiterates that claims management companies cannot use ARs: *"There will not be an AR regime for CMC firms..."*
- 4.10 In an email dated 3 December 2021, the Firm informed the Authority that it had attempted to register additional trading names of unauthorised entities as ARs or Introducer ARs of the Firm but it had not been able to using the Authority's Connect system so in the alternative the Firm intended to register 7 of the names as trading names. The majority of these firms were incorporated within the last twelve months.
- 4.11 Although the recent list of proposed trading names was not subsequently registered, the Authority infers from the 3 December 2021 email from the Firm that the Firm's existing trading names are in practice ARs of the Firm that lack the legitimacy of a relationship with a principal firm that is authorised by the Authority (which the Firm cannot in any event provide as a principal with its existing

permissions).

- 4.12 The Firm, appears instead to be approving financial promotions that refer to trading names that are very similar to the names of separate legal entities, resulting in a halo effect, where the customer may be under the impression that they are dealing with a regulated firm and the protections that its regulated status affords.

Financial promotions

- 4.13 The financial promotions approved by the Firm promote mortgage securitisation claims management for borrowers against their mortgage lender whose mortgages were securitised *"to reclaim substantial refunds from many of the UK mortgage lenders"* on the basis that the original lender does not have a legal charge and there may be *"errors and omissions which should be rectified, regarding the proprietor of the legal charge"* which render all of the mortgage repayments unenforceable by the original lender.
- 4.14 The legal basis for mortgage securitisation claims is not credible. In the case of *Paragon Finance Plc v Pender* ([2005] EWCA Civ 760), the Court of Appeal held that if a mortgage is transferred to a special purpose vehicle as part of a securitisation process and the special purpose vehicle is not registered as the legal owner of the mortgage, then the special purpose vehicle acquires an equitable title to the mortgage. The transferor of the mortgage retains the legal title as trustee for the special purpose vehicle, and the right to possession conferred by the legal charge remains exercisable by the transferor on behalf of the special purpose vehicle. In other words the mortgage lender retains legal title and the contractual obligation for the borrower to pay the mortgage remains unchanged in the scenario where a mortgage is securitised.
- 4.15 The Firm approved the use of precedents in the financial promotions that are misleading and create a risk that a consumer who is not familiar with the application of case law may be misled by relying on these case precedents.
- 1) The promotions refer to *Santander (UK) plc v Carlin and Hughes* ([2013] NICH14). This case was decided in the High Court of Justice in Northern Ireland, not the Court of Appeal as stated in one of the financial promotions. The financial promotion quotes from the Judgment that *"it is essential that the court is making an order in favour of the correct party who has the right to enforce the legal charge"* and claims that this *"supports our position that there appear to be errors and omissions which should be rectified, regarding the proprietor of the legal charge"*. This gives the misleading impression that this case is a legal precedent for claims against lenders for securitising mortgages when it is not. The Judge stated, concerning the issue of whether a lender may have transferred away their right to enforce a mortgage: *"[i]t is clear in law, as has been recently reaffirmed by the Court of Appeal in England in Paragon Finance v Pender and Another [2005] 1 W.L.R. 3412 that a legal owner of a charge can part with the equitable interest in it without losing their right to enforce the charge"*. In other words, if a borrower establishes that a lender has transferred their right to enforce the mortgage to a third party, it is unlikely to benefit the borrower because the third party can enforce the mortgage against the borrower instead. The Judge wrote: *"Therefore, this point in many cases is likely to prove a short-term gain for any borrower because it is simply a matter of the right person establishing that they are entitled to assert what had been*

agreed by the parties under the mortgage would happen in default of the payments agreed. Nevertheless, it is essential that the court is making an order in favour of the correct party who has the right to enforce a legal charge, as much as any other contract between parties.

- 2) The financial promotions also refer to *Alexander v West Bromwich Mortgage Company Ltd* [2016] EWCA Civ 498. According to MSCL, the Court of Appeal held in the case that a lender “unlawfully increased” the interest rate charged on mortgages held by a group of buy to let landlords, “contrary to the original mortgage T&C’s and, as a result of securitisation”. The financial promotion claims that “this again supports our position that the contract may materially change if the mortgage is securitised and this may adversely affect the borrower and be unenforceable”. This gives the misleading impression that this case is a legal precedent for compensation claims against lenders for securitising mortgages when it is not. The Court of Appeal does not refer in its judgment to the fact that the mortgage contracts were securitised. The judgment also considers the incorporation of a term allowing the lender to increase the interest rate and concluded that the term was unenforceable and should be removed from the remainder of the contract, resulting in the borrowers being awarded a refund of the difference in the payments between the higher and lower interest rates, rather than the entire mortgage being cancelled.

- 4.16 The financial promotions approved by the Firm exaggerate the likelihood of a mortgage securitisation claim succeeding and the amount of compensation a successful claimant may receive without reference to the rule of law, to precedents of successful mortgage securitisation claims or to legal advice on the likelihood of a successful outcome. For example one promotion promises that the public “may be entitled to recover between 55%-70%” of their “current mortgage debt” from their “lender” without any basis.
- 4.17 The financial promotions approved by the Firm that appear on websites of unauthorised entities contain statements that seek out persons who may have a mortgage securitisation claim against their mortgage lender. For example, one of the financial promotions appears to position the unauthorised company as a referrer, seeking out, referring and identifying claims, and the advising, investigating and representing is being done by entities that are not authorised to do this: ““If [firm] find that you have a case with the following lenders you will be eligible to submit a Mortgage Securitisation Claim (MSC)”... “If [the firm] is successful you may receive a substantial benefit which could allow you to be able to clear your existing Mortgage balance.” The Firm is therefore approving promotions concerning regulated claims management activities for unauthorised firms which do not have the requisite authorisation to carry on.
- 4.18 The financial promotions contain statements that an unauthorised firm will advise, investigate or represent in relation to a claim. The Firm is therefore approving promotions describing regulated claims management activities carried on by entities which do not have the requisite authorisation to carry on.
- 4.19 The financial promotions contain statements that their standard application fee to assess a mortgage securitisation claim is £260, which they will reduce to £1 if their customers use a waiver code when making the application. The offer of any benefit in money as an inducement for entering into an agreement is not permitted under CMC0B.

- 4.20 The financial promotions contain statements which refer to entities as authorised by the SRA as an "Industry & Commercial body under SRA [x]" where the SRA registration number does not appear on the SRA register.

5 CONCLUSION

- 5.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex 1.

Analysis of failings and risks

CMCOB

- 5.2 CMCOB states that financial promotions and communications that relate to claims management activity must be "fair, clear and not misleading. This rule applies in relation to all communications with customers, including communications intended to generate leads for a firm or for another firm. It also applies to pre-contract disclosures to a customer. (CMCOB 3.2.1R). CMCOB also states that a firm must ensure that each of its financial promotions and communications with a customer identifies the firm and that it is a claims management company, does not offer a cash payment or any benefit in money or money's worth (for example, a 'free' gift) as an inducement for entering into an agreement with the firm or making a claim, does not promote the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the claim, and does not falsely imply that the business is approved by the Government or is connected with any government agency or regulator, pursuant to CMCOB 3.2.4R.
- 1) The Firm appears to have breached CMCOB financial promotion rules by approving financial promotions for communication by firms which contain misleading statements regarding the regulatory status of entities referenced in the promotions which suggest they are authorised by the Authority or by the SRA, creating a halo effect and raising unrealistic expectations of consumer protection and making the promoted activities a more attractive proposition than they otherwise would have been, in breach of 3.2.1R of CMCOB and 3.2.4R of CMCOB.
 - 2) The Firm appears to have breached 3.2.1R of CMCOB by approving financial promotions for communication by unauthorised firms which do not substantiate the basis of a mortgage securitisation claim in a way that is credible, and exaggerate the likelihood of a mortgage securitisation claim succeeding and the amount of compensation prospective claimants may be entitled to.
 - 3) The Firm is approving financial promotions for communication by unauthorised firms concerning regulated claims management activities, when the parties described as carrying them on in the promotions do not have the requisite authorisation from the Authority to do so, in apparent breach of 3.2.1R of CMCOB.
 - 4) The Firm is approving financial promotions for communication by unauthorised firms, which offer a discount fee as an inducement for entering into a claims management agreement, in what appears to be a breach of 3.2.4R of CMCOB.

Threshold Conditions

- 5.3 The Firm's correspondence suggests that the Firm has ARs when it does not have permission to do so. The Firm's correspondence further suggests that the Firm registered its ARs as trading names that are nearly identical to the names of unauthorised firms, which may cause consumers to mistakenly believe that they are dealing with a regulated entity and the protections afforded to them through a halo effect. The Firm does not appear to be meeting threshold condition COND 2.3 (Effective supervision) which requires that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances including the way in which the business is organised.
- 5.4 The Firm's unauthorised use of ARs and registration of the ARs as trading names to legitimise the status of the unauthorised firms give rise to concerns about the Firm's suitability. Furthermore, the Firm's approval of financial promotions for unsubstantiated mortgage securitisation claims, for unauthorised firms which appear to be carrying on regulated claims management activities, suggests that the Firm does not appear to be meeting threshold condition COND 2.5 (Suitability) which requires that a Firm must be a fit and proper person having regard to all the circumstances including whether the Firm's business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
- 5.5 The Firm's unauthorised use of ARs and registration of the ARs as trading names to legitimise the status of the unauthorised firms give rise to concerns about the Firm's business model. Furthermore, the approval of unsubstantiated mortgage securitisation financial promotions, through the unauthorised use of ARs, is a material component of the Firm's business strategy. The Firm does not appear to be meeting threshold condition COND 2.7 (Business model) which requires that the Firm's business model (that is, strategy for doing business) must be suitable for regulated activities that the Firm carries on, taking into account whether the business model is compatible with the Firm's affairs being conducted in a sound and prudent manner and in the interests of consumers.
- 5.6 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements and under section 137S of the Act to give Directions in order to protect the interests of consumers.
- 5.7 The Authority considers that the Requirements and Directions are a proportionate and appropriate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

- 5.8 It is necessary to impose the Directions and Requirements on an urgent basis to take immediate effect given the seriousness of the risks and the need to protect consumers.
- 5.9 The Authority considers that it is necessary for the Directions and Requirements to remain in place until such time as the Authority is satisfied that they can be lifted.

6 PROCEDURAL MATTERS

- 6.1 This SSN is given under section 55Y(7)(b) and sections 137S(8)(a) and 137S(9), and in accordance with section 55Y(9) of the Act and is being served on the Firm at its principal place of business as last notified by the Authority.

Decision-maker

- 6.2 The decision which gave rise to the obligation to give this Second Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 4.1.7G and DEPP 2 Annex 2.
- 6.3 The following statutory rights are important.

Representations

- 6.4 Annex 2 contains a brief summary of the key representations made by the Firm and how they have been dealt with. In making the decision which gave rise to the obligation to give this SSN, the Authority has taken account of all Representations made by the Firm.

The Tribunal

- 6.5 The Firm, and any other persons who are given notice pursuant to s137S(8) of the Act, has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the Requirements to the Tribunal.
- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 The Firm, and any other persons who are given notice pursuant to s137S(5) of the Act, should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to Greg Williams (greg.williams@fca.org.uk) and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 The Firm, and any other persons who are given notice pursuant to s137S(8)(a) of the Act, should note that this Second Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 A requirement contained in a direction for the Firm to publish details of the Directions has effect from the time that the Authority notifies the Firm that it has considered representations from the Firm, and any other persons who are given notice pursuant to s137S(5) of the Act, and has decided not to revoke the direction pursuant to section 137S(4)(a) of the Act.
- 6.11 Pursuant to section 137S(11) of the Act the Authority may publish such information

about the Directions as it considers appropriate after the period for making representations in relation to the Directions has ended, even if the Directions are revoked.

Authority contacts

- 6.12 For more information concerning this matter generally, contact Greg Williams (greg.williams@fca.org.uk).
- 6.13 Any questions regarding the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat by email: (SPCDecisionMakingSecretariat@fca.org.uk).

Rob Gruppetta
Head of Department, Wholesale Intermediaries Department
(Former Head of Department, Claims Management Department)

Annex 1

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 39(1) of the Act provides that persons, other than authorised persons, who are a party to a contract with an authorised person ("his principal") which permits or requires him to carry on a business of a prescribed description and which complies with such requirements as may be prescribed and where his principal has accepted responsibility in writing for these activities, are exempt from the general prohibition.
3. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
4. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
5. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
6. Section 55Y(7)(b) of the Act provides that, if, having considered any representations made by A, the Authority decides if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement, it must give A written notice.
7. Section 55Y(9) of the Act provides that a notice under subsection (7) must inform A of A's right to refer the matter to Tribunal.
8. Section 55Y(11) of the Act provides that if a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
9. Section 137S(1) of the Act allows the Authority to give a direction if an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person's communication and the Authority considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.
10. Section 137S(2) of the Act allows the Authority to require under a direction an authorised person to withdraw the communication or approval; to refrain from making the communication or giving the approval (whether or not it has previously been made or given); to publish details of the direction; and to do anything else specified in the direction in relation to the communication or approval.

11. Section 137S(3) of the Act defines a requirement in a direction under this section to refrain from making or approving a communication to include a requirement to refrain from making or approving another communication where the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.
12. Section 137S(4) of the Act provides that the requirement contained in a direction under this section to publish details of the direction has effect at such time (if any) as the Authority gives a notice under section 137S(8)(a) of the Act; and that any other requirement takes effect immediately.
13. Section 137S(5) of the Act provides that if the Authority gives a direction under this section to an authorised person (a) it must give written notice to the authorised person, and (b) if the direction relate to the approval by the authorised person of another person's communication, it must also give written notice to that other person.
14. Section 137S(8)(a) of the Act provides that if, having considered any such representations, the Authority decides not to revoke a direction, the Authority must give separate written notice to the persons mentioned in subsection (5)(a) or (b) and any such person may refer the matter to the Tribunal.
15. Section 137S(9) of the Act provides that a notice under subsection (8)(a) must (a) give details of the direction and of any amendment of it, (b) state the Authority's reasons for deciding not to revoke the direction and, if relevant, for amending it, (c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal and (d) give an indication of the procedure on such a reference.
16. Section 137S(11) of the Act provides that after the period for making representations in relation to a direction given under this section has ended, the Authority may publish such information about the direction as it considers appropriate (even if the direction is revoked).
17. Section 178(1) of the Act provides that a person who decides to acquire or increase control over a UK authorised person must give the Authority notice in writing before making the acquisition. The Authority may object to an acquisition if there are reasonable grounds for doing so under section 185(3)(a) which include for example the reputation of the s178 notice-giver; the reputation, knowledge, skills and experience of any person who will direct the business as a result of the proposed acquisition; the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing; and whether the UK authorised person will be able to comply with its prudential requirements (included the threshold conditions in relation to all the regulated activities for which it has or will have permission (sections 186(a),(b), (c) and (d)). Sections 191F(1) and (8) of the Act provide that a person who fails to comply with an obligation to notify the Authority under section 178(1) is guilty of an offence and liable to a fine.
18. Section 391 of the Act provides that:

“[...]

- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
 - (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”
19. The Threshold Conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a Part 4A permission. They are set out in Part 1 B of Schedule 6 to the Act.

RELEVANT REGULATORY PROVISIONS

The Threshold Conditions

- 20. The section of the Handbook entitled ‘Threshold Conditions’ (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under either section 55J or section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
- 21. COND 2.3.1A states that A must be capable of being effectively supervised by the FCA having regard to all the circumstances including the way in which A’s business is organised.
- 22. COND 2.5.1A states that A must be a fit and proper person having regard to all the circumstances including (f) whether A’s business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent matter.
- 23. COND 2.7.1A (1) states that A’s business model (that is, A’s strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on. The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include (a) whether the business model is compatible with A’s affairs being conducted and continuing to be conducted in a sound and prudent manner and (b) the interests of consumers.

The Enforcement Guide

- 24. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
- 25. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
- 26. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory

tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).

27. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
28. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
29. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
30. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
31. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include the extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the Authority's exercise of own-initiative powers will be appropriate, to protect the consumers' interest. The Authority may also consider the nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the Authority's exercise of its own-initiative powers will depend on matters such as for example (a) the impact of the information on the Authority's view of the firm's compliance with the regulatory requirements to which it is subject or the firm's suitability to conduct regulated activities (b) whether the information appears to have been provided in an attempt knowingly to mislead the Authority, rather than through inadvertence.
32. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be

satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Claims Management: Conduct of Business sourcebook (CMCOB)

33. The section of the Handbook entitled 'Claims Management: Conduct of Business sourcebook' (CMCOB) set out rules and guidance relating to regulated claims management activities.
34. A firm must ensure that each of its communications and financial promotions is fair, clear and not misleading (the fair, clear and not misleading rule) (CMCOB 3.2.1R). This rule applies in relation to all communications with customers including for example communications intended to generate leads either for the firm or for another person.
35. This rule applies when a firm approves a financial promotion in the same way as when a firm communicates a financial promotion itself. Before a firm approves a financial promotion it must confirm that it complies with the rules in this chapter and if, at any time after the firm approves a financial promotion, it becomes aware that the financial promotion no longer complies with the rules in this chapter, it must withdraw its approval and notify any person it knows to be relying on its approval as soon as practicable (CMCOB 3.2.1R(3)).
36. The fair, clear and not misleading rule means that firms should communicate with their customers in a way that is appropriate, taking into account the means of communication, the information the communication is intended to convey and the nature of the customer and of the claim (CMCOB 3.2.2G).
37. A firm must ensure that each of its financial promotions and communications with a customer:
 - identifies the firm and that it is a claims management company;
 - does not offer a cash payment or any benefit in money or money's worth (for example, a 'free' gift) as an inducement for entering into an agreement with the firm or making a claim;
 - does not promote the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the claim;
 - does not falsely imply that the business is approved by the Government or is connected with any government agency or any regulator (CMCOB 3.2.4R).

Annex 2

REPRESENTATIONS

1. The Firm's Representations (in italics) and the Authority's conclusions in respect of them are set out below.

The Firm's approval of financial promotions in breach of CMCOB, the Suitability Threshold Condition 2.5 and the Business Model Threshold Condition 2.7

2. *The Firm has invited the Authority to treat the financial promotions as educational information instead of treating them as financial promotions, in order to allow the financial promotions to remain on the websites and to allow the Firm to continue to approve financial promotions for mortgage securitisation claims.*

3. The Firm's proposal to treat its financial promotions as educational material in an effort to circumvent its regulatory obligations has failed to satisfy the Authority that the Firm understands its obligations as an authorised firm in relation to CMCOB and its Threshold Conditions.
4. *The Firm argued that its use of the SRA reference is correct following recent updates by the Firm to the financial promotions. For example www.legalquest.co.uk now states "All direct regulated reserved legal and claim management activities are carried out by independent panel law firms who are regulated by the Solicitors Regulation Authority (SRA) with Mortgage [sic] Securitisation Claims Ltd., being considered a Commercial & Industry body, under SRA No. 670355."*
5. *The Firm relied on supporting evidence that confirms the SRA's view that the term "Commerce and Industry Body" was an historical term that refers to firms that are not regulated by the SRA, where those firms employ solicitors for in-house roles. The term is no longer in use and is not a regulatory term. The SRA reminded the Firm that "If a business is not authorised by us, we would remind you not to hold it out in any way as being regulated by us..."*
6. In-house lawyers provide internal legal advice to employees at the firm where the solicitor is employed. These roles are distinct from those of solicitors at SRA-regulated law firms that provide legal advice directly to UK consumers. The Authority remains of the view that the amended financial promotions approved by the Firm are misleading in its reference to being an SRA Commerce and Industry Body for the reasons set out in the FSN because they suggest that Mortgage Securitisation Claims Ltd is approved by reference to an obsolete term and SRA number in order to lend it an air of legitimacy that does not exist for UK customers of MSCL.
7. *The Firm argued that it does not generate any revenue from the financial promotions. The Firm confirmed it "has not had ANY income from any source since we took over the firm in October 2020." The Firm further argued that "All future revenue matters are therefore based on purely commercial business arrangements, between MSCL and the PLFs, at no time will there ever be any direct contractual agreement or liability with or from any of the UK consumer(s), as such there is no regulatory oversight requirement."*
8. The Firm does not appear to intend to use its authorised status to conduct any regulated activity. The Authority is concerned that the Firm is using its FCA-authorized status to create a halo effect, where UK consumers may be under the impression that they are dealing with a regulated firm and the protections afforded that status, as a result of the Firm's approval of financial promotions with connected, unauthorised firms.
9. *The Firm provided material including legal opinions to argue that UK consumers can claim against their mortgage provider if their mortgage was securitised and receive a refund on a significant portion of their past mortgage payments or cancel the outstanding balance.*
 - a. *The Firm produced a legal opinion dated 1 March 2019 that sets out for a securitised mortgage how an original lender may remain on the Land Registry's Charges Register where a mortgage is securitised and how a borrower may apply to have the original lender replaced with the new charge holder. The Authority notes that legal opinion does not substantiate the legal basis for a mortgage securitisation claim, that such claims may result in compensation being paid, or the prospects of a successful claim. The Authority further notes that paragraph 9 of the legal opinion confirms that*

a successful application by a borrower to replace the registered mortgage charge holder on the Charges Register does not remove the borrower's payment obligations under the mortgage: *"It is unlikely that such application would remove the charge altogether, as the monies would still be charged to the property albeit in another's hands"*.

- b. *The Firm produced a joint legal opinion dated 30 June 2020 (co-authored in part by the same counsel as the previous opinion) that considers a scenario where a mortgage is securitised and the original lender is replaced by a third party, that is not FCA-authorized, in the regulated mortgage contract. It also states that the third party must register as a charge holder on the Land Registry's Charges Register which would render the mortgage contract unenforceable because the charge holder must be authorised.* The Authority notes that the legal opinion does not take into account that the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not describe acquiring regulated mortgage contracts, i.e. mortgage securitisation, as a regulated activity. As PERG 4.16 of the Handbook further explains, a special purpose vehicle does not carry on the regulated activity of entering into a regulated mortgage contract merely by acquiring the legal or beneficial interest in the contract from the original lender. Furthermore, in order for an assignment to take effect in law, rather than equity, s.136 of the Law of Property Act 1925 (the LPA) provides that the assignment must be: (i) in writing and signed by the assignor; (ii) of the whole of the debt; and (iii) absolute and unconditional and not by way of charge. Where the sale of a receivable does not meet all of these requirements, it will take effect as an equitable assignment only. Most residential mortgage securitisations are structured as an equitable assignment of mortgage loans and their related mortgages to avoid the burden of giving notice to the mortgagors and registering the transfer.

The removal of the financial promotions from the Firm's websites and websites of third parties

10. *The Firm submits that "We have ceased to approve all external 'financial promotions' and all pipeline activity has been suspended, including instructions given to all external parties to remove or block any external mortgage securitisation financial promotions, including but not limited to www.resoldmortgageclaims.com ; and <https://securitisationclaims.co.uk> , as well advised any and all external parties (as are identified in 3.4 of the s.137S and OIREQ application) and instructed them to suspend any financial promotions and/or related websites until further notice. With respect to the Firm making any further 'financial promotions', we have ceased any/all media & marketing aspects and will continue to do so, subject to the definition of 'financial promotions' being discussed and if the former 'unregulated activities' as formerly determined by the FCA in 2019 is subsequently determined to have changed or is mutually agreed to no longer be exempt from FCA oversight, we will immediately action any further changes to our business operations."*
11. *The Firm further submits that its old group company website, www.legalquest.org, which is still maintained for historical reference, continuity and regulatory review and compliance, is not published or promoted by the Firm. The Firm also indicated that it had created a new website, www.legalquest.co.uk but would not cease financial promotions on this new website or on www.yourmsc.co.uk until a final determination on these proceedings is reached. The Firm argued that the websites www.yourmsc.co.uk and www.legalquest.co.uk do not promote mortgage securitisation claims but then stated "it is hoped we can otherwise agree a suitable solution, based on our over 8 year continued self-imposed requirement to be fully*

compliant with any/all regulations and legislation, we are fully committed to being so."

12. The Authority has not seen the Firm's communications with external parties withdrawing its approval of the financial promotions or seeking the removal of the financial promotions from their websites. The Authority observes that several websites either owned by the Firm or containing financial promotions approved by the Firm, for example but not limited to www.legalquest.org, www.legalquest.co.uk and www.camelluslaw.co.uk continue to advertise the financial promotions which gave rise to the Authority's FSN.

The approval of financial promotions for unauthorised firms conducting regulated activity.

13. *The Firm confirmed that the Firm and members of its group are not conducting any regulated activity as required in the FSN but argues that submitting DSARs on behalf of UK consumers in relation to mortgage securitisation claims is an unregulated activity that it continues to conduct through the Firm and its connected entities.*
14. The Firm failed to provide evidence to support its argument that mortgage securitisation claims management is an unauthorised activity. The Authority remains concerned that the Firm has purported to appoint unauthorised firms as ARs to carry on regulated claims management activities, by categorising mortgage securitisation claims management by these unauthorised firms as unregulated, before and after the issuance of the FSN. The Authority is of the view that the ARs are not permitted to conduct regulated claims management activities and that the mortgage securitisation claims are regulated claims management activities.

The Firm's treatment of ARs in breach of the Effective Supervision Threshold Condition COND 2.3, the Suitability Threshold Condition COND 2.5 and the Business Model Threshold Condition COND 2.7.

15. *The Firm argues that "We have completed the SUP 15 Annex 3 R – Notifications under SUP 16.10 form (see attached) and if advised will send it by Royal Mail, however, as the form indicated submission via facsimile, as is detailed we removed the three external 'pipeline' parties Advertising Excellence; Landlord Mortgage Claims; Mortgage Claims for Landlords all effective 21/06/2022 and Camellus Law effective 14/06/2022 when we had this entity struck off, we have assumed the attachment will be acceptable for service. We have not at this time submitted the Notification to amend the firm details in respect of Legal Quest which was transferred in October 2020 and remains now purely a genuine trading style of the Firm and such trading style is no longer attached or related to the former entity C19 plc (name changed from Legal Quest plc); we have also, for the time being kept all the other former 'group' company names as 'trading styles' pending the outcome of our submissions and further determinations by the FCA, none of these trading names are actively involved in any 'financial promotions', other than the stated activities which were previously deemed by the FCA to be 'unregulated activities' as is fully detailed herein as part of our submissions."*
16. Following the Firm's SUP15 notification, the Authority has removed three (Landlord Mortgage Claims, Mortgage Claims for Landlords and Camellus Law) with a fourth due to be removed on 21 September 2022 (Advertising Excellence). The Firm refused to remove Legal Quest because it did not consider that it was separate from the Firm. The Authority's concern remains that the Firm's remaining trading styles that are associated with separate legal entities including Legal Quest, Legal Shield Protect, Mortgage Securitisation Claims and MSC Media & Marketing are misleading and must be removed.