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DECISION NOTICE

To: **Martin Russell Lafrance**

Individual reference number: **MRL01102**

Dated: **4 October 2011**

TAKE NOTICE: the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has decided to take the following action

1. THE ACTION

- 1.1. For the reasons set out below, the FSA has decided to make an order, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), prohibiting Martin Russell Lafrance, from performing any controlled function involving the exercise of significant influence in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

2. REASONS FOR THE ACTION

- 2.1. The FSA has decided to take this action because it has concluded that Mr Lafrance is not fit and proper to carry out any controlled function involving the exercise of significant influence in relation to any regulated activity at any authorised person,

exempt person, or exempt professional firm and he should be prohibited from doing so.

2.2. While an approved person performing controlled functions involving the exercise of significant influence at General Finance Centre Limited (“GFC”) in the period from 31 October 2004 to 19 December 2008 (“the relevant period”), Mr Lafrance failed to meet the minimum regulatory standards in terms of competence and capability. In particular, he failed to:

- (1) establish and maintain adequate systems and controls to prevent financial crime by failing to ensure that:
 - (a) reasonable checks were undertaken to verify the accuracy of the information provided by customers and identify irregularities in mortgage applications, which indicated transactions of an inaccurate or misleading nature, and ensure that information included on mortgage applications was supported by the information on the customer files;
 - (b) where multiple mortgage applications were submitted for customers over short periods of time, steps were taken to check whether changes in employment details had been made and, if so, whether they were genuine and accurate;
 - (c) documents provided in support of mortgage applications were not fabricated or distorted to misrepresent relevant material facts, income details were not inflated in mortgage applications and all relevant customer information was sent to lenders; and
- (2) adequately supervise and monitor the GFC staff who worked in the Operations Department adequately and ensure that GFC staff performed their roles with skill, care and diligence. Significantly he was directly and closely involved in a number of customer files, but failed to:
 - (a) ensure that the customer files that he had direct involvement with were managed with skill, care and diligence;
 - (b) ensure that GFC staff were making necessary and adequate checks to identify and prevent financial crime and resolve any discrepancies in the information provided by customers in support of their mortgage applications before submitting the applications to lenders; and
- (3) understand (and take adequate steps to find out about) his responsibilities associated with regulated mortgage business and as an approved person, in particular his responsibilities as a director holding a controlled function.

2.3. As an approved person holding controlled function CF1 (Director) at GFC in the relevant period, Mr Lafrance was under a duty to ensure that adequate systems and controls were in place at GFC and that staff were supervised effectively. He also had a responsibility to understand his regulatory responsibilities and ensure that he complied with these obligations.

- 2.4. In deciding to take this action the FSA recognises that there is no evidence to demonstrate that he was knowingly involved in the submission of false and misleading information to lenders in order to obtain mortgages and that he sought to establish systems and controls to prevent financial crime.
- 2.5. Notwithstanding this recognition, the FSA considers that Mr Lafrance's conduct was not sufficient to discharge his regulatory obligations. However, the FSA has taken account of these matters as mitigating factors when considering the regulatory outcome.
- 2.6. In reaching this conclusion, the FSA has taken into account whether Mr Lafrance exercised reasonable care in his role and in discharging his responsibilities as an approved person performing a significant influence function. The FSA considers that he did not exercise reasonable care in his role and in discharging his responsibilities and considers the following aggravating factors to be particularly relevant in assessing Mr Lafrance's conduct:
- (1) his failings allowed financial crime to occur, creating a risk to consumers and lenders and to confidence in the financial system;
 - (2) he failed to address adequately the FSA's concerns when they were identified and brought to GFC's attention by the FSA in 2006; and
 - (3) he was responsible, as a director of the Operations Department, for ensuring that appropriate systems and controls were established and maintained in that Department, and therefore the FSA considers that his failures are particularly serious.
- 2.7. As a result of the nature and seriousness of the conduct outlined at paragraph 2.2 above, the FSA has concluded that it is necessary and proportionate to prohibit Mr Lafrance from performing any controlled function involving the exercise of significant influence in relation to any regulated activity because he has failed to meet the minimum regulatory standards required in terms of his competence and capability and because the FSA has concluded that he will continue to fail to meet these minimum regulatory standards.
- 2.8. The proposed action is being taken against him in support of the FSA's objective of reducing financial crime and the protection of consumers.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

- 3.1. The relevant statutory provisions, regulatory requirements and guidance are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. GFC was a mortgage broker in the Dorset area which arranged regulated mortgage contracts on a non-advised basis. The majority of GFC's business related to unregulated commercial mortgages and loans.
- 4.2. GFC was authorised and regulated by the FSA from 31 October 2004 to 19 December 2008 to carry out the following regulated activities:
 - (1) advising on regulated mortgage contracts;
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging (bringing about) regulated mortgage contracts; and
 - (4) making arrangements with a view to regulated mortgage contracts.
- 4.3. In 2006, the FSA visited GFC and identified a number of concerns including a lack of systems and controls, an inadequate sales process and possible fraudulent mortgage applications. Following the provision and analysis of further information, the FSA acknowledged that GFC had taken some remedial action and implemented revised processes, systems and controls, but highlighted further areas that needed to be addressed. The FSA also stated that it would schedule a further visit to assess the effectiveness of the changes and review the revised processes, systems and controls.
- 4.4. In May 2008, the FSA conducted a desk based review of GFC's sales process and six customer files, which resulted in the referral of the matter to Enforcement. As a result the FSA conducted an investigation into GFC and identified a number of concerns relating to its regulated mortgage business. As part of this investigation, the FSA reviewed 20 customer files relating to regulated mortgage business completed by GFC during the relevant period.
- 4.5. Mr Lafrance was one of three approved persons holding CF1 at GFC and he was jointly responsible for the day-to-day running of the firm with the other two directors from 31 October 2004, until the third director left in April 2007. He was the Operations Director responsible for the administrative team of seven staff, which processed the regulated mortgage contracts.

Failure to establish and maintain adequate systems and controls to identify and prevent financial crime

- 4.6. As a holder of a significant influence function, Mr Lafrance had a responsibility to take reasonable steps to ensure that the business of the firm for which he was responsible complied with the relevant requirements and standards of the regulatory system. In particular, SYSC 3.2.6R states that a firm must take reasonable care to establish and maintain effective systems and controls for countering the risk that the firm might be used to further financial crime. He, therefore, had a responsibility to ensure that the firm established and maintained adequate systems and controls in order to identify and prevent financial crime.

- 4.7. The FSA's review of 20 customer files identified discrepancies in a significant proportion of these files between the information provided in the customers' mortgage applications and the information contained in the customers' files. In particular, the customer files showed the following discrepancies:
- (1) in two customer files, the salaries that the customers declared on their mortgage applications were double those declared in initial documentation that was in the customer files;
 - (2) in four customer files, the salaries that the customers declared on their mortgage applications were not supported by other financial information held on the customer files, such as correspondence from accountants, the customers themselves, or bank statements; and
 - (3) in two customer files, GFC received information showing that customers' income was lower than the amount declared on their mortgage applications, which it failed to disclose to lenders.
- 4.8. These discrepancies indicate that there was a risk that customers were using GFC as a vehicle for financial crime. There is no evidence that staff at GFC identified or investigated these discrepancies.
- 4.9. Mr Lafrance failed to ensure that GFC organised and operated its business in accordance with proper standards, he failed to establish systems and procedures to ensure that GFC's regulated mortgage business was controlled effectively, and he failed to prevent GFC being used to commit financial crime. In particular, he failed to ensure that:
- (1) reasonable checks were undertaken to verify the information provided by customers and identify irregularities in mortgage applications which would help disclose transactions of an inaccurate and/or misleading nature. Where documentation was obtained from customers evidencing their income, GFC staff did not perform basic checks to ensure that this supported the income declared on the mortgage applications or that it was consistent with other information on file;
 - (2) where multiple mortgage applications were submitted for customers over short periods of time, steps were taken to check whether changes in employment details had been made and, if so, whether they were genuine and accurate. GFC staff did not review information recorded on previous application forms to ensure consistency in the information provided or to check for discrepancies; and
 - (3) documents in support of mortgage applications were not fabricated or distorted to misrepresent relevant material facts, income details were not inflated in mortgage applications and all relevant customer information was sent to lenders.
- 4.10. Whilst there is no evidence to suggest that Mr Lafrance was knowingly involved in the submission of false and misleading information to lenders, he was jointly responsible, as a director of GFC, for ensuring that appropriate systems and controls

were in place to prevent the firm being used as a vehicle for financial crime. The evidence from the customer files demonstrates that there were systemic failures in GFC's systems and controls to identify and prevent financial crime. The failures described above are aggravated by the fact that he was aware that the FSA had drawn these issues to GFC's attention in 2006 and yet he failed to resolve the problems identified by the FSA.

Failure to ensure adequate supervision of the Operations Department

4.11. Mr Lafrance was the Operations Director responsible for the administrative team of seven staff in the Operations Department, which processed the regulated mortgage contracts, and he had a specific responsibility to ensure that systems and controls to prevent financial crime were being followed in his department. Therefore, the FSA expected that he would not only conduct the customer cases that he was closely involved with skill, care and diligence, but also ensure that the employees that he supervised were complying with systems and controls put in place to prevent financial crime. In particular, Mr Lafrance failed to ensure that:

- (1) customer cases were managed with skill, care and diligence and discrepancies were identified between the information provided by customers in their mortgage applications and the information available on the customer file;
- (2) GFC staff reviewed information recorded on customers' previous mortgage applications to ensure consistency in the information provided;
- (3) GFC staff checked documents provided in support of mortgage applications to ensure that they were not fabricated or distorted to misrepresent relevant material facts and income details were not inflated in mortgage applications; and
- (4) all relevant customer information was sent to lenders.

4.12. The failings identified by the FSA are demonstrated in the cases detailed below.

Mr and Mrs A

4.13. GFC submitted mortgage applications to two lenders on behalf of Mr and Mrs A, in January 2007 ("the First Application") and February 2007 ("the Second Application") respectively. Overall, emails, letters and handwritten compliment slips located in the customer file all indicate that Mr Lafrance was closely involved in this case.

4.14. The customer file for Mr and Mrs A contained the original First Application and two photocopies of this form, all of which stated that Mrs A ran a business from which she earned between £25,000 and £30,000 per annum. Both the original First Application and one photocopy of this form were amended by GFC staff to include inaccurate and misleading information about Mr A's annual income, which was increased from £7,500 to £47,500. The source of income was also altered to indicate that Mr A was in business with his wife.

4.15. Mr Lafrance exchanged a number of letters and emails with the lender during January and February 2007 regarding the First Application, in which the lender highlighted

discrepancies between the information that had been provided in support of Mr A's income in the mortgage application and the documentation from Mrs A's accountant and requested further information to clarify the situation on 7 February 2007. This should have put him and any other GFC staff processing the application on notice that the information received from Mr and Mrs A was not consistent.

- 4.16. GFC received correspondence from Mr and Mrs A's accountant and a letter from Mrs A dated 12 February 2007, confirming that Mrs A was, in fact, in business with her son and that Mr A had retired and had no involvement with the business. A member of GFC staff attached a note to the front of Mrs A's letter dated 12 February 2007 stating that the letter should not be sent to the lender.
- 4.17. A member of GFC staff then amended Mrs A's letter dated 12 February 2007 to remove the sentence that stated that Mr A was retired and had no involvement with the business, creating the false impression that Mr A was in business with his wife. This amended letter was subsequently forwarded by GFC staff to the lender in support of the amended First Application and as confirmation of Mr A's income.
- 4.18. The income declared for Mr A in the First Application was substantially more than the income declared to HMRC. The First Application was subsequently cancelled by the lender.
- 4.19. On 23 February 2007, GFC submitted a Second Application for Mr and Mrs A to a different lender. This Second Application stated that Mrs A ran a business from which she earned £62,000 per annum, which meant that Mrs A's income had more than doubled in the month since the completion of the first application. Mr Lafrance exchanged a number of letters and emails with the second lender during the period from 21 February 2007 to 13 March 2008 regarding the processing of this application, which shows that he was closely involved with this file.
- 4.20. Despite being put on notice by the first lender that there were discrepancies in the customer application, neither Mr Lafrance, nor the other GFC staff who were also involved with the file, investigated those discrepancies further. This demonstrates that customer applications were not being managed with due skill, care and diligence; and that such systems and controls as were in place to identify and prevent financial crime were not effective.

Mr and Mrs B

- 4.21. Mr B operated a motorcycle breaking business and on his mortgage application, dated 5 January 2008, declared his income to be £450,000 per annum. A letter from Mr B's accountant on the customer file advised that Mr B's business made a pre-tax profit of £24,000, which was inconsistent with the income declared by Mr B in his mortgage application. However, GFC processed the mortgage application on the basis of an annual income of £450,000 and Mr and Mrs B obtained a £600,000 mortgage. The income declared by Mr B in his mortgage application was substantially higher than the income declared to HMRC, which indicates that Mr B had significantly inflated his income in the mortgage application. Despite being closely involved with the file, Mr Lafrance failed to identify the discrepancy between the accountant's letter and the customer's self-certified income. The fact that no other member of GFC staff

identified and sought to clarify this discrepancy before sending the application to the lender demonstrates that GFC staff were not conducting appropriate checks on the customer files.

Mr and Mrs C

- 4.22. Mr and Mrs C completed a GFC commercial mortgage application, which recorded Mr C's income as £33,000 per annum. This application form was a GFC document, which was used internally to record the personal and financial circumstances of the customer. GFC then submitted a mortgage application for Mr and Mrs C to a lender a month later and Mr C's income was recorded on that application as £73,000 per annum, over double the amount of income that Mr C initially declared. The bank statements for Mr C held on GFC's customer file were inconsistent with a salary of £73,000 per annum. The income declared by Mr C in his mortgage application was substantially higher than the income declared to HMRC and indicates that the income declaration that he made on the mortgage application form was significantly inflated.
- 4.23. Mr Lafrance's close involvement with this file is indicated by correspondence, compliment slips signed by him and the fact that his name appears on the top of the emails that are printed on file. Despite being closely involved with the file, he failed to identify this difference in Mr C's salary. The fact that no other member of GFC staff identified and sought to clarify this discrepancy before sending the application to the lender demonstrates that GFC staff were not conducting appropriate checks on the customer files.

Mrs D

- 4.24. GFC submitted a mortgage application on 4 April 2008 for Mrs D, in which she declared that she earned £3,166 per month (equating to £37,992 per annum) as a self-employed consultant. GFC sent a letter to Mrs D requesting further information including proof of her self-employment. The copy of this letter on the customer file included a handwritten note, which indicated that Mrs D was retired. However, the documentation on the customer file stated that she was self-employed, that her income was £3,166 per month and that she intended to continue working into her 70s. The customer file included copies of bank statements for Mrs D, which did not verify Mrs D's level of income declared in her mortgage application.
- 4.25. Mr Lafrance's close involvement with this file is indicated by his participation in correspondence and the fact that he was listed as main contact for the customer file. Most significantly he exchanged a number of letters and emails with the lender in response to its request for further information as to Mrs D's retirement plans. Mr Lafrance advised the lender by email that "*the client has confirmed in a letter that she intends to continue working into her 70's and that on her retirement she will sell the property to repay the loan. This has been confirmed on the application in section 7a.*" The income declared by Mrs D in her mortgage application was substantially higher than the income declared to HMRC.
- 4.26. Given Mr Lafrance's close involvement with this file, he should have identified this discrepancy, by checking the bank statements provided, by conducting further reasonable enquiries and if necessary, by requesting further information from the

customer, before continuing to proceed with the application. He should also have ensured that the GFC staff who were also involved in processing the application were doing appropriate checks on the customer file.

Mr and Mrs E

- 4.27. GFC submitted a mortgage application for Mr and Mrs E on 31 March 2008 which stated that Mrs E was self-employed with an annual income of £40,000. However, a letter from Mrs E on GFC's customer file stated that "*I have enclosed three months payslips for both myself and my husband. As you will see by the end of the financial year we will have a gross income of £32,000. I feel that we may be able to acquire a better rate by wages rather than self certification, this may not be possible of course*". The level of income declared on the mortgage applications was inconsistent with the letter received from Mrs E. The income declared by Mrs E in her mortgage application was substantially higher than the income declared to HMRC.
- 4.28. Mr Lafrance's involvement in the customer file is demonstrated by his correspondence to third parties by letter and email. Despite being closely involved with the file, he failed to identify this discrepancy. The fact that no other member of GFC staff identified and sought to clarify this discrepancy before sending the mortgage application to the lender demonstrates that GFC staff were not conducting appropriate checks on the customer files.
- 4.29. The discrepancies in the customer files described above indicate that certain customers were using GFC as a vehicle for mortgage fraud. Mr Lafrance was involved with all of the above mortgage applications and he was responsible for supervising the GFC staff processing the mortgage applications and ensuring that they collated relevant information in support of the applications. He failed to identify the discrepancies described above, despite working on the customer files himself (which had given him direct access to the files).
- 4.30. Mr Lafrance also failed to ensure that the staff in the Operations Department were conducting appropriate checks on the customer files to establish whether any discrepancies existed which would have indicated that GFC was being used as a vehicle for financial crime.

Failure to understand his regulatory responsibilities

- 4.31. The FSA expects approved persons, in particular those holding significant influence functions, to understand their regulatory responsibilities and the standards required of them in respect of those responsibilities.
- 4.32. However, Mr Lafrance failed to understand his responsibilities associated with regulated mortgage business and he was not aware of (and did not take adequate steps to find out about) his responsibilities as an approved person, and specifically his responsibilities as a director holding CF1. He was not aware when interviewed by the FSA what controlled functions he held and confirmed that he did not know the terminology for controlled functions used by the FSA. Mr Lafrance also did not demonstrate when interviewed that he understood the nature of his responsibilities as an approved person and a significant influence function holder at GFC. As a result of his failure to recognise and understand his regulatory responsibilities, the FSA

considers that he has failed to meet the minimum standards expected of an approved person in an authorised firm.

- 4.33. In addition to having demonstrated his inadequate understanding of his regulatory responsibilities when asked about them, Mr Lafrance has also shown how his knowledge of his obligations is deficient in three other ways. Specifically Mr Lafrance: failed to recognise and address indicators of potential mortgage fraud, despite being closely involved in the submission of a number of mortgage applications that contained false or misleading information; failed to establish and maintain adequate and effective systems and controls in order to identify and prevent financial crime; and failed to ensure adequate supervision of the Operations Department.
- 4.34. The FSA considers that Mr Lafrance has failed to meet the minimum regulatory standards required in terms of competence and capability.

5. REPRESENTATIONS, FINDINGS AND CONCLUSION

Representations

- 5.1. Mr Lafrance made written representations which, amongst other issues, set out why he objected to the action proposed in the Warning Notice which had previously been issued to him. The principal thrust of his representations was the submission that in all of the circumstances of this case it would be inappropriate and unfair to make a prohibition order in the terms set out in paragraph 1.1. He asserted that rather than a prohibition order that would prevent him from undertaking significant influence functions the FSA should consider giving him a private warning.

The FSA's supervision of the firm

- 5.2. Mr Lafrance submitted that the alleged failures of the firm's systems and controls were not as apparent as the FSA now sought to suggest. In support of this assertion he highlighted the fact that there had been an FSA supervision visit to GFC in January 2006. Mr Lafrance stated that after this visit the FSA had not expressed any concerns about the systems and controls that the firm had in place to prevent mortgage fraud. He commented that it was only after the FSA, on 22 May 2008, had requested further documentation that it had identified the concerns which gave rise to these regulatory proceedings.
- 5.3. Mr Lafrance submitted that as a consequence of the foregoing even if the Regulatory Decisions Committee ('RDC') found that there were failings at the firm it could not be said that these failings merited the imposition of a prohibition order preventing him from undertaking significant influence functions. He submitted that he should not be criticised for failing to identify an alleged weakness that the FSA itself had failed to identify either because it was very minor or because in fact this deficiency was more imagined than real.

The adequacy of the systems and controls at GFC

- 5.4. Mr Lafrance submitted that he had not been responsible for the systems and controls at GFC. Instead he stated that the strategy of the firm was in place when he joined the firm and that he had simply carried out the tasks which he had been asked to undertake. Nonetheless Mr Lafrance also contended that the systems and controls at GFC had been more than adequate.
- 5.5. Mr Lafrance explained how the firm had conducted only a limited amount of regulated mortgage business. To the extent that the firm undertook this business he stated that it had focussed upon self-certification mortgage applications. He submitted that the firm had put in place adequate procedures, relevant to the market in which they were operating, to guard against mortgage fraud. In particular he noted that the firm insisted on seeing payslips from employed individuals or proof of income such as accountant's certificates from the self employed. Mr Lafrance also noted that GFC had introduced a compliance manual and appropriate training to ensure that staff at the firm were able to protect the firm from being used for financial crime.
- 5.6. Mr Lafrance contended that the adequacy of these procedures was demonstrated by the fact that these information verification procedures were in line with what was required by the relevant lenders. For example Mr Lafrance explained that in the case of both Mr and Mrs A and also Mr and Mrs B the firm had obtained accountant's certificates as was required by the relevant lender.
- 5.7. Mr Lafrance submitted that the adequacy of the systems and controls at GFC was further demonstrated by the fact that the firm had engaged an experienced compliance officer and external compliance consultants. Mr Lafrance went on to submit that the compliance officer who had been employed by GFC had in fact been involved in reviewing the cases of Mr and Mrs A, Mr and Mrs B, Mr and Mrs C, Mrs D and Mr & Mrs E. Mr Lafrance therefore contended that he should not be held accountable for a few errors made by the compliance officer. Similarly Mr Lafrance submitted that it would not be fair to hold him accountable for a failure to recognise deficiencies in the firm's systems and controls when neither the external compliance consultants nor the compliance officer had raised any concerns with him about the systems and controls which were aimed at preventing mortgage fraud.
- 5.8. Mr Lafrance submitted that the foregoing provided ample evidence both of how seriously GFC had taken its regulatory obligations and how the systems and controls at GFC were adequate. He further submitted that had they been anything but fit for purpose then the FSA would have identified them as being inadequate when it had visited the firm. Mr Lafrance concluded that this therefore demonstrated that the small number of cases which the FSA had identified were a result of human error.

What else could have been done to bolster the systems and controls at GFC?

- 5.9. In addition to outlining why he contended that the systems and controls at GFC were adequate for the business that was being undertaken, Mr Lafrance also criticised the FSA for failing to identify what other systems and controls should have been in place. He contended that it was not sufficient for the FSA to complain of failings by the senior management at GFC without then going on to identify what actually should have been done at the firm. He sought to suggest that the FSA's failure to pinpoint any

identifiable failings demonstrated that there were in fact no other obvious systems and controls which the FSA could reasonably have expected the firm to have put in place. This failure by the FSA demonstrated that in reality the FSA had simply determined that there must have been failures at the firm once the FSA uncovered evidence tending to disclose the existence of a few potential cases of mortgage fraud. Mr Lafrance submitted that the existence of a small number of cases of mortgage fraud did not mean that there had been a failure to ensure that there had been appropriate systems and controls. He also contended that this did not mean that he had personally failed to properly supervise and monitor the staff in the Operations Department.

- 5.10. Mr Lafrance submitted that in fact the systems and controls at the firm were adequate and that he had appropriately supervised and monitored the staff in the Operations Department. He argued that as a consequence it was not appropriate for the FSA to take such harsh action against him. The FSA were relying on a small number of discrepancies that had come to light when they had examined the relevant files though in fact there there was no actual evidence of any lack of competence on his behalf.

Mr Lafrance's personal responsibility for any failings

- 5.11. Mr Lafrance maintained that the systems at the firm and the supervision of the staff had been adequate. Additionally Mr Lafrance also maintained that he had not had any significant control or responsibility for the strategy of the firm or any decisions that had been taken there. He also suggested that to the extent that he was responsible for the supervision and monitoring of the staff who worked in the Operations department he had done this task to the requisite standard and as he had been asked.
- 5.12. However, and notwithstanding the foregoing, Mr Lafrance also accepted that he may have made some mistakes. When addressing the discrepancies that had been identified on files he had been involved with, he conceded that he may have personally made some errors. However he stressed that he could not be and should not be expected to have been infallible. Therefore he submitted that some allowance should be made for the minor oversights he had made and that the FSA should adopt a more lenient approach in this case.

Mr Lafrance's role as a 'director'

- 5.13. As is apparent from the foregoing Mr Lafrance maintained that he had not been responsible for much of that which the FSA was now alleging he had failed to do. He argued that it was therefore neither fair nor justified for him to be the subject of these disciplinary proceedings when he had only been an employee of the firm. He argued that he was only given the title of Director "for the benefit of customers". Mr Lafrance asserted that regardless of the title given to him, or the fact that he held a significant influence function, he did not have any influence over the firm's procedures or decision making process. Mr Lafrance therefore submitted that he should not be held to be culpable for the various failings alleged within the Warning Notice notwithstanding the fact that he was a CF1 at the firm.
- 5.14. It was implicit within the foregoing representations that Mr Lafrance was also seeking to submit that he had understood and discharged his regulatory responsibilities at GFC. He submitted that he had known what his role entailed and in undertaking this

role he had met the specific obligations that arose from it. He contended that he had not actually had many of the responsibilities ascribed to him by the FSA. The corollary of this representation was that he effectively sought to argue that in reality it was the FSA which had failed to comprehend what his role had involved rather than that he did not understand the responsibilities arising from his position as a Director at GFC.

Sanction

- 5.15. Mr Lafrance submitted that his conduct, when properly analysed, did not justify so severe a sanction as a prohibition order preventing him from undertaking significant influence functions. Furthermore he submitted that the imposition of a prohibition order was not consistent with the relevant guidance. Mr Lafrance accepted that he had unwittingly been involved in the submission of a number of fraudulent mortgage applications, however he characterised these as having only been a ‘handful’ of cases which had slipped through the net. He submitted that it would be disproportionate to prohibit him on the basis of this small number of cases particularly when the last one was nearly 3 years old. Mr Lafrance submitted that a proper analysis of the facts in this case demonstrated that there were no grounds for the imposition of a prohibition order preventing him from undertaking significant influence functions. Indeed he contended that the FSA had erred by having considered that a prohibition order might be appropriate in this case. He submitted that the issues which had been identified by the FSA were not of sufficient seriousness to amount to the “serious lack of competence” which he submitted was the trigger for the consideration of a prohibition order required by ENF 9.12(4). He asserted that a prohibition order would only be merited if the systems, controls and supervision at the firm were so inadequate or inadequately operated that he could be said to have been recklessly indifferent to that state of affairs.
- 5.16. Mr Lafrance also stressed that it would be unfair to prohibit him as he had only been an employee of GFC notwithstanding the fact that he had held the title of Director. He emphasised that he did not have a share of the firm’s ownership and nor did he have an influence on the protocols or strategy at the firm. Mr Lafrance added that he had not been paid a “huge six figure salary” and that therefore it was incomprehensible why the FSA had decided to pursue him.
- 5.17. Mr Lafrance added that a prohibition order, preventing him from undertaking significant influence functions, would leave a “black mark” against his name and that this would restrict his ability to earn a living in the future. He therefore submitted that the FSA should not prohibit him particularly at a time when he had been suffering from poor health which was a direct result of these proceedings.
- 5.18. Mr Lafrance submitted that instead of seeking to impose a prohibition order, which would be unjustified and disproportionate, the FSA should instead consider giving him a private warning. He urged the FSA to bear in mind his blameless record in the industry when weighing up whether or not it would be more appropriate to give him a private warning. He also submitted that a private warning was not a meaningless sanction as his approval with GFC had ended and therefore this matter could be taken into account by the FSA when considering any future application he might make for approval.

Findings

- 5.19. The FSA finds that Mr Lafrance; failed to establish and maintain adequate systems and controls at GFC; he had not adequately supervised and monitored GFC staff; and he did not (and still does not) understand his regulatory responsibilities. Therefore the FSA finds that Mr Lafrance is not a fit and proper person to carry out any controlled functions involving the exercise of significant influence and consequently the FSA considers that it is appropriate to impose a prohibition order in the terms set out in paragraph 1.1 because he lacks and will continue to lack the requisite competence and capability to perform significant influence functions.

The FSA's supervision of the firm

- 5.20. The FSA does not accept that it can be inferred that the problems at the firm, identified by the FSA, were either so minor as to not merit a prohibition order, in the terms in paragraph 1.1, or that they were more imagined than real. The FSA considers that the issues, which form part of the subject matter of this notice, were highlighted to the firm after the visit in January 2006. Furthermore the FSA considers that regardless of the findings made during the supervision visit in January 2006 these are failings which can not be dismissed as having been exaggerated. The FSA considers that responsibility rests with firms, and those holding significant influence functions within them. As such neither firms nor those holding significant influence functions at those firms can seek to abrogate their responsibilities by highlighting what they perceive to have been failings by the regulator to pick up on problems at the relevant firms.

The adequacy of the systems and controls at GFC

- 5.21. The FSA accepts that some steps were taken to establish and maintain systems and controls at the firm to prevent it from being used for the purposes of financial crime. However the FSA considers that Mr Lafrance failed to put in place adequate systems and controls and that he failed to maintain those systems and controls which were in place. The FSA makes this finding notwithstanding the fact that he had not been involved in designing or implementing the systems and controls which were in place at the time he joined the firm. The FSA considers that Mr Lafrance, having been a CF1 at the firm, was responsible for the failures at the firm which are identified in this notice.
- 5.22. The FSA rejects the suggestion that the systems and controls, which the firm did have, were sufficient to counter the risk of financial crime in the self certification mortgage market. In particular the FSA rejects the suggestion that the firm had in place sufficient systems and controls to guard against mortgage fraud because the firm had information verification procedures which were similar to those of the relevant lenders. The FSA finds that the firm inconsistently applied these income verification procedures. Furthermore the FSA finds that the firm on occasion applied these procedures only after being asked to do so by the relevant lender. The FSA thus considers that the utilisation of these purported income verification procedures demonstrates that the systems and controls at the firm were not adequate.

- 5.23. The FSA also rejects the suggestion that by employing a compliance officer and by engaging the services of an external compliance consultancy the firm had thereby guaranteed the adequacy of its systems and controls. The FSA considers that the responsibility for ensuring that the firm discharged its regulatory obligations ultimately rested with the directors of the firm including Mr Lafrance. Moreover the FSA considers that had adequate systems and controls been in place, through a combination of properly maintaining those systems and controls which were in place and by bolstering these with further systems and control, then this, when combined with adequate supervision and monitoring of staff, would not have resulted in the number of problems which were actually found during the examination of the 20 files. The FSA considers that the discrepancies which were identified on the relevant files would have been weeded out had there been any thing more than the rudimentary and poorly applied processes which were in place at the firm. The FSA finds that Mr Lafrance can not avoid culpability for these failings because others, including the compliance officer and the external compliance consultants, may not have spotted that there were serious problems at the firm. The FSA finds that Mr Lafrance's submissions concerning this matter are also undermined because of his close involvement with a number of the relevant files. The FSA notes that Mr Lafrance was better placed than the external compliance consultant or the compliance officer at GFC, to resolve the problems that had arisen on individual files, because he was involved with files before any application had been made to the relevant lender. The FSA therefore finds that this further demonstrates that Mr Lafrance failed in the exercise of his significant influence function.
- 5.24. The FSA finds that the problems on these files demonstrate that there had been a failure of the systems and controls at the firm and that there had been a failure by Mr Lafrance to supervise the staff in the operations department. Furthermore the FSA finds that Mr Lafrance's failings in the exercise of his significant influence function are also demonstrated by his failure to spot the discrepancies on the files with which he was involved. The FSA considers that by these failings Mr Lafrance has demonstrated his lack of understanding of his regulatory obligations. Therefore, in the light of the foregoing, the FSA finds that Mr Lafrance is culpable for the clear failings in the processes at the firm which were meant to prevent the firm from being used for financial crime. Whilst the FSA accepts that errors can occur even where adequate systems and controls have been put in place, the FSA considers that in this case the failures at the firm were not as a result of individual errors which could not have been prevented. Instead the FSA considers that these failures resulted from the poor application of the systems and controls, which were in place at the firm at the time, the failure to bolster these systems and controls with further processes and the inadequacy of the supervision and oversight of staff. The FSA finds that these failings at the firm were, in part, attributable to Mr Lafrance's lack of competence and capability.

What else could have been done to bolster the systems and controls at GFC?

- 5.25. The FSA considers that it is the responsibility of firms and those holding significant influence functions at those firms to ensure that the firms discharge their regulatory obligations. Therefore the FSA rejects the submission that before it takes action against an individual or a firm it is obliged to identify what else the subject of

regulatory action, such as Mr Lafrance, could have done to supervise their staff or put in place adequate systems and controls.

- 5.26. Notwithstanding the foregoing, the FSA does not accept that in this case it has failed to specify what more could have been done to prevent the firm from being used for financial crime. The FSA considers that the minimum acceptable in the firm's circumstances would have been sufficient to have disclosed the problems which were identified during the examination of the 20 files. The FSA considers that these difficulties with the files would have been identified by the better application of those systems and controls which were in place and by the utilisation of further more robust processes. The FSA has made clear that it considers that Mr Lafrance should have ensured that reasonable checks were undertaken to verify income information and to identify irregularities, whilst the FSA also considers that when working on individual files Mr Lafrance should have been assiduous in verifying the relevant information. The FSA considers that a more thorough process of information verification, including the checking of the veracity of supporting documentation, if carried out with sufficient rigour, would have disclosed the fraudulent mortgage applications. The FSA considers that had Mr Lafrance established and maintained adequate systems and controls and had he adequately supervised and monitored the staff these problems would not have arisen.
- 5.27. The FSA considers that the serious failings at GFC provide strong evidence of Mr Lafrance's limited understanding of his regulatory responsibilities. Furthermore the FSA finds that Mr Lafrance still does not understand the regulatory responsibilities associated with the holder of a significant influence function such as CF1. The FSA considers that Mr Lafrance's lack of understanding of his regulatory responsibilities, which was clearly shown by responses he gave in interview with the FSA, has also been demonstrated by his assertion that notwithstanding his role as a CF1 at GFC it would not be fair to take action against him as he was only "an employee". The FSA considers that this demonstrates why problems arose in areas with which Mr Lafrance was closely involved and that it also indicates that he still lacks the necessary insight to be able to appreciate where things may have gone wrong at GFC or how they could be addressed in the future were he to hold another significant influence function. Therefore the FSA finds that not only did Mr Lafrance fail in his management of the firm but that he still lacks the understanding of his regulatory responsibilities such that he would fail to put in place adequate systems and controls and that he would not properly supervise his staff were he to hold a significant influence function in the future.

Mr Lafrance's personal responsibility for any failings

- 5.28. For the reasons set out above, the FSA considers that Mr Lafrance is personally culpable for the failings at GFC. The FSA does not accept that he had adequately discharged his regulatory responsibilities. Instead the FSA considers that he is personally culpable for failing to establish and maintain adequate systems and controls and for failing to adequately supervise and monitor the GFC staff working in the Operations Department. Moreover the FSA rejects the suggestion that Mr Lafrance's failure to notice the serious discrepancies on the files can be disregarded as being the result of an excusable aberration. Instead the FSA considers that his personal responsibility for the failings at the firm is compounded by the fact that he

was involved in the files upon which were identified the various significant discrepancies.

Mr Lafrance's role as a 'director'

- 5.29. The FSA notes that the Upper Tribunal, when endorsing the FSA's approach to the responsibilities of approved persons, commented in the case of *Michiel Visser and Oluwole Fagbulu v The FSA* at paragraph 107, that;

"There is a considerable public interest in its being clearly and widely understood that those who apply for approval to carry on controlled activities take on a serious responsibility, and cannot shelter behind claims of ignorance or inexperience when they fail to meet the obligations and standards which approval carries with it."

- 5.30. The FSA therefore considers that regardless of the fact that he was an employee at GFC with no shareholding, he was, and remains, responsible for his conduct when he held a significant influence function at the firm. The FSA considers that Mr Lafrance can not evade responsibilities by arguing that he did not exercise a significant influence function. Instead the FSA considers that this provides further evidence of his failure to discharge the regulatory responsibilities that came with having been a director at the firm.

Sanction

- 5.31. The FSA finds that it is proportionate and appropriate to impose the prohibition order as set out in paragraph 1.1 regardless of the fact that Mr Lafrance is currently not an approved person. As such the FSA rejects the notion that it should consider privately warning Mr Lafrance about his conduct. Instead the FSA considers that Mr Lafrance's conduct was seriously deficient and that he continues to lack the requisite competence and capability and that therefore it is necessary to impose a prohibition order preventing him from undertaking such functions.
- 5.32. The FSA rejects the suggestion that a prohibition order could only be imposed in this case if Mr Lafrance's conduct demonstrated that he had been recklessly indifferent to the problems at the firm. Instead the FSA considers that Mr Lafrance's lack of competence and capability, as demonstrated by his various failings, mean that the FSA should impose a prohibition order preventing him from undertaking significant influence functions. The FSA considers that the imposition of the prohibition order set out in paragraph 1.1 is justified in this case as it is both consistent with the relevant guidance and with precedent examples of prohibition orders imposed by the FSA.
- 5.33. The FSA does not accept that it should dilute its finding that a prohibition order should be imposed in this case because of the length of time that has elapsed since the conduct in question. The FSA also does not accept that it should find that the examples of irregularities on files were examples of a small number of cases that had 'slipped through the net'. Furthermore the FSA does not accept the submission that it should not impose a prohibition order because Lafrance had a previously unblemished record or because of his ill health. The FSA also rejects the submission that it should not impose a prohibition order because of the limited rewards that Mr Lafrance had

earned when at GFC or because this sanction would impede his ability to earn a living in the future. Instead the FSA finds that it should impose a prohibition order, preventing him from undertaking significant influence functions, because of Mr Lafrance's failure to meet the minimum regulatory standards expected of an individual exercising the CF1 function at a firm such as GFC. The FSA also considers that it is appropriate to impose a prohibition order in the terms set out in paragraph 1.1 because Mr Lafrance has demonstrated an ongoing inability to understand the responsibilities that he had as a result of this significant influence function. The FSA considers that Mr Lafrance's lack of insight into his regulatory obligations and his failures when employed at the firm give rise to the concern that he will fail to meet the minimum standards of someone holding a significant influence function. Therefore the FSA considers that it is necessary to impose the prohibition order to support the objectives of reducing financial crime and the protection of consumers.

Conclusion

- 5.34. Having regard to the matters outlined above, the FSA considers that Mr Lafrance failed to ensure that GFC had adequate systems, controls and processes, in place to prevent financial crime. While he sought to establish and maintain systems, controls and processes by employing compliance personnel, the FSA's findings demonstrate that these were inadequate and resulted in mortgage applications containing inaccurate and/or misleading information being submitted to lenders. As a result, GFC was used as a vehicle for financial crime.
- 5.35. Mr Lafrance also failed in his responsibility as Operations Director by failing to identify indicators of potential mortgage fraud in cases with which he was closely involved and he failed to ensure that GFC staff in his department were carrying out appropriate checks to identify and resolve discrepancies in the information provided by customers.
- 5.36. Additionally, and as noted above, the FSA finds that Mr Lafrance has (and continues to have) an inadequate understanding of, and ability to comply with, regulatory requirements and standards. He failed to understand his responsibilities associated with regulated mortgage business and he was not aware of his responsibilities as an approved person, and in particular he did not understand his responsibilities as a director holding a controlled function.
- 5.37. The FSA thus concludes that it is necessary and proportionate to impose a prohibition order in the terms set out in paragraph 1.1.

6. ANALYSIS OF SANCTION

- 6.1. Having regard to the facts and matters described above, the FSA has considered whether Mr Lafrance is a fit and proper person to continue to conduct regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance referred to in Annex A.

- 6.2. The FSA considers that the nature and gravity of the breaches described above, go directly to impugn Mr Lafrance’s competence and capability. The FSA also considers that Mr Lafrance has demonstrated a continuing failure to understand the minimum regulatory requirements for someone holding a significant influence function. Consequently the FSA considers that he currently poses a risk to lenders and to the FSA’s statutory objectives of maintaining confidence in the financial system and reducing financial crime were he to hold a significant influence function in the future.
- 6.3. For all of the foregoing reasons the FSA considers that Mr Lafrance is not a fit and proper person to perform any controlled function involving the exercise of significant influence in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, due to his lack of competence and capability. The FSA therefore has decided to exercise its powers to make a Prohibition Order against him in the terms set out in paragraph 1.1.

7. DECISION MAKER

- 6.1. The decision that gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

- 8.1. This Decision Notice is given to Mr Lafrance under section 57 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Upper Tribunal

- 8.2. Mr Lafrance has the right to refer the matter, to which this Decision Notice relates, to the Upper Tribunal (the “Tribunal”). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Lafrance has 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed on by him or on his behalf and filed with a copy of this Notice. The Tribunal’s address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 8.3. Mr Lafrance should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Rachel West at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

- 8.4. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Mr Lafrance is entitled to have access to:
- (1) the material upon which the FSA has relied in deciding to give Mr Lafrance this Decision Notice; and
 - (2) any material other than material falling within paragraph (a) which was considered by the FSA in reaching the decision that gave rise to the obligation to give this notice or was obtained by the FSA in connection with the matter to which this notice relates but which was not considered by it in reaching that decision (“secondary material”), which, in the opinion of the FSA, might undermine that decision.
- 8.5. A schedule of the material upon which the FSA has relied in deciding to give Mr Lafrance this Decision Notice was sent to him with the Warning Notice. There is no secondary material to which the FSA must grant Mr Lafrance access.

Confidentiality and publicity

- 8.6. Mr Lafrance should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of Section 391 of the Act is that neither Mr Lafrance nor any other person to whom a Decision Notice is given or copied may publish the notice or any details concerning it unless the FSA has published the notice or those details.
- 8.7. Mr Lafrance should also be aware that, in addition to publishing a Decision Notice or any details concerning it, the FSA must publish such information about the matter to which a Final Notice relates as it considers appropriate. He should therefore note that any Final Notice may contain reference to the facts and matters contained in this Notice.

FSA contacts

- 8.8. For more information concerning this matter generally, Mr Lafrance should contact Rachel West of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 0142).

Andrew Long
Deputy Chairman, Regulatory Decisions Committee

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers and the reduction of financial crime.
- 1.2. Section 6(2) of FSMA, set out the factors which the FSA itself is required to consider in pursuit of its statutory objective of the reduction of financial crime, those being whether a regulated person:
 - (1) is aware of the risk of their business being used in connection with the commission of financial crime;
 - (2) takes appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence; and
 - (3) devotes adequate resources to the matters mentioned in (2) above.
- 1.3. The FSA has power under section 56 of the Act to make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- 1.4. By virtue of section 56 of the Act, the FSA has the power to make an order prohibiting Mr Lafrance 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, any regulated activity falling within a specified description or all regulated activities.

2. Relevant Handbook provisions

- 2.1. In exercising its power to make a Prohibition Order, the FSA must have regard to relevant provisions in the Handbook. The main provisions relevant to the action specified above are set out below.

Fit and Proper Test for Approved Persons ("FIT")

- 2.2. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.3. FIT identifies three criteria as being the most important considerations, namely:
 - (1) FIT 2.1 (honesty, integrity and reputation): This includes an individual's openness and honesty in dealing with customers, market participants and regulators and willingness to comply with requirements placed on him by or

under the Act as well as other legal and professional obligations and ethical standards;

- (2) FIT 2.2 (competence and capability): This includes an assessment of the individual's skills in carrying out the controlled function that he is performing; and
- (3) FIT 2.3 (financial soundness): This includes an assessment of the individual's financial soundness.

- 2.4. FIT 2.2.1G(2) provides that in determining a person's competence and capability, the FSA will have regard to all relevant matters including, but not limited to, whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

Senior Management Arrangement, Systems and Controls

- 2.5. The relevant rule requiring firms to have adequate and appropriate systems and controls for compliance, financial crime and money laundering can be found in the Senior Management Arrangements, Systems and Controls manual ("SYSC") of the Handbook.
- 2.6. SYSC 3.2.6R requires that a firm take reasonable care to establish and maintain effective systems and controls for countering the risk that the firm might be used to further financial crime.

3. Other relevant regulatory provisions

- 3.1. In exercising its power to make a prohibition order, the FSA must also have regard to relevant regulatory provisions and guidance. The guidance that the FSA considers relevant to this case is set out below.

Enforcement Guide

- 3.2. The FSA's policy on exercising its enforcement powers is set out in the Enforcement Guide ("EG"), which came into effect on 28 August 2007. Although the references in the Warning Notice are to EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded EG and applied during part of the relevant period.

Exercising the power to make a prohibition order under section 56 of the Act – EG 9

- 3.3. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

- 3.4. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, it may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities.
- 3.5. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 3.6. EG 9.9 provides that when deciding whether to make a prohibition order, the FSA will consider all the relevant circumstances of the case. This may include, but are not limited to, the following:
- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness);
 - (2) the relevance and materiality of any matters including unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness; and
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 3.7. EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any firm. However, EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order, and one such example is a serious lack of competence.