

SEE FINAL NOTICE ISSUED ON 15 JANUARY 2013

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## DECISION NOTICE

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**To:** Michael Lee Thommes

**Address:** Unit 2, Axis,  
19-25 Nuffield Road  
Nuffield Industrial Estate  
Poole  
Dorset  
BH17 0RU

**Individual reference number:** MLT01038

**Dated:** 19 July 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. 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 Michael Lee Thommes, 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 Michael Thommes is not a fit and proper person to carry out 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 and that 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 Thommes 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 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; and
    - (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.
  - (2) adequately supervise and oversee the general conduct of the firm by failing to:
    - (a) supervise and monitor GFC staff and compliance personnel adequately;
    - (b) ensure that GFC had robust compliance procedures in place to ensure that it met its regulatory responsibilities; and
    - (c) ensure that adequate systems were put in place to ensure that customers were treated fairly in respect of the payment of non-refundable upfront fees.
  - (3) understand (and take adequate steps to find out about) his responsibilities associated with regulated mortgage business and as an approved person especially his responsibilities as a director holding a controlled function.
- 2.3. As the Managing Director of GFC holding controlled function (“CF”) CF1 (Director) and CF8 (Apportionment and Oversight) during the relevant period, Mr Thommes was under a duty to ensure that adequate systems, controls and compliance procedures were in place 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 Mr Thommes was not directly involved in processing the customer mortgage applications that the FSA identified as

containing discrepancies and that he sought to establish systems and controls by employing compliance personnel at GFC.

- 2.5. Notwithstanding this recognition, the FSA considers that Mr Thommes' conduct was insufficient to discharge his regulatory obligations. However, the FSA has taken account of these matters as mitigating factors when considering the regulatory outcome.
- 2.6. The FSA considers that Mr Thommes did not exercise reasonable care in his role and in discharging his responsibilities as an approved person performing a significant influence function. The FSA considers the following aggravating factors to be particularly relevant in assessing Mr Thommes' 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 his attention by the FSA in 2006; and
  - (3) he was particularly responsible, as the Managing Director of GFC, for ensuring that appropriate systems and controls were in place and therefore the FSA considers that his failure to establish and maintain these is 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 proportionate to prohibit Mr Thommes 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.
- 2.8. The proposed action is being taken against Mr Thommes in support of the FSA's objectives 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 set out 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 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 its investigation, the FSA reviewed 20 customer files relating to regulated mortgage business completed by GFC during the relevant period.
- 4.5. Mr Thommes was one of three approved persons holding CF1 at GFC, and 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. Mr Thommes also held CF8. He established GFC and was the Managing Director and a major shareholder in the business. He was responsible for the overall control of the firm and the compliance function. On a day-to-day basis, he oversaw the sales department which dealt with the collection of upfront fees and the sending of initial documentation such as the Initial Disclosure Document ("IDD") to customers.

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

- 4.6. As a holder of significant influence functions, Mr Thommes 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 over one third of these files between the information provided in the customers' mortgage applications and the information contained in the files. In particular:
- (1) in two customer files, the salaries that the customers declared on their mortgage applications were double those declared in initial documentation in the files;

- (2) in five customer files, the salaries that the customers declared on their mortgage applications were not supported by other financial information held on the files, such as correspondence from accountants, the customers themselves, or bank statements; and
  - (3) in two customer files, GFC received information showing that the relevant 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 serious risk that customers were using GFC as a vehicle for mortgage fraud. There is no evidence that staff at GFC identified or investigated these discrepancies.
- 4.9. Mr Thommes failed to ensure that GFC organised and operated its business in accordance with proper standards, failed to establish systems and procedures to ensure that GFC's regulated mortgage business was controlled effectively and failed to prevent GFC being used to commit financial crime. In interview, he was unable to describe the measures in place to prevent GFC being used to perpetrate 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 indicated 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; and
  - (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. While it appears that Mr Thommes did not have any direct involvement 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. These failures are aggravated by the fact that Mr Thommes 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 supervise GFC effectively**

- 4.11. As CF1, CF8 and Managing Director of GFC, Mr Thommes was responsible for the general oversight of the firm. Specifically, he had a responsibility to ensure that his employees were supervised adequately and effectively, GFC was compliant with its regulatory responsibilities and fees were charged fairly and consistently.

### ***Compliance***

- 4.12. Mr Thommes was responsible for the compliance function and for ensuring that GFC's business was compliant with regulatory requirements. Therefore, he should have ensured that there were robust procedures in place to identify discrepancies in the information provided by customers and indicators of potential mortgage fraud. While he delegated the responsibility for conducting checks to other compliance personnel, he should have reviewed the adequacy of the compliance arrangements at GFC and monitored adherence to procedures, the implementation of compliance recommendations and the quality of the work completed by the compliance personnel. Instead, he failed to:

- (1) ensure that GFC staff and compliance personnel were checking customer files thoroughly to identify any discrepancies between the information provided by customers on their mortgage applications and the information that GFC had available to it on the customer files;
- (2) ensure that GFC staff and compliance personnel identified mortgage applications containing inflated income details and documents provided in support of mortgage applications which had been fabricated or distorted to misrepresent relevant material facts; and
- (3) maintain an appropriate understanding of compliance issues at GFC.

- 4.13. He also failed to ensure that GFC took remedial action to address failings in the systems and controls in relation to the prevention of financial crime and the charging of non-refundable fees, which were identified by the compliance personnel.

### ***Non-refundable fees***

- 4.14. GFC charged each customer a fee at the start of the mortgage application process. This fee was not refundable even if the mortgage application did not proceed, or a valuation of the underlying property did not take place.
- 4.15. Mr Thommes oversaw the sales department at GFC, which was responsible for charging and processing the non-refundable fees. Principle 6 of the FSA's Principles for Business, states that a firm "...must pay due regard to the interests of its customers and treat them fairly". Given his responsibility for the oversight of the Sales Department, the FSA expected him to verify that robust procedures were in place to ensure that customers were treated fairly at GFC in relation to the charging of fees.

4.16. Mr Thommes failed to ensure that customers were treated fairly in relation to the payment of non-refundable upfront fees. In particular, the FSA's findings show that:

- (1) GFC frequently charged customers fees without giving them clear explanations as to the nature of the fees charged. Although documentation sent to customers stated that the upfront fee was not refundable, on a number of occasions this documentation was sent after the fee was paid, or the fee was paid over the telephone before any documentation was sent; and
- (2) GFC failed to explain clearly and transparently its fees to customers. It is clear that GFC staff, when dealing with customers, often referred to the fee simply as a 'valuation fee' and that the breakdown of the fee was not fully disclosed to customers. GFC also sent letters to surveyors asking them not to discuss the actual fee charged for the valuation with customers "*under any circumstances*". As a result, customers were not always clear what they were being charged for or that the monies would be non-refundable in the event that the mortgage did not proceed.

4.17. The following cases demonstrate the inconsistent and misleading nature of fee-charging at GFC:

(1) *Mr and Mrs A*

On 11 January 2007, Mr Thommes sent a letter to Mr and Mrs A, confirming receipt of the initial fee of £495. The letter also stated that a fee agreement was enclosed for signing by Mr and Mrs A. The letter dated 11 January 2007 indicates that GFC accepted payment of the initial fee of £495 from Mr and Mrs A before the fee agreement had been signed.

(2) *Mr D*

On 26 November 2007, Mr Thommes sent a letter to Mr D, confirming receipt of the initial fee of £295. The letter stated that a fee agreement was enclosed for signing by Mr D, in addition to a copy of the IDD. The documentation on the customer file, therefore, indicates that the initial fee was collected from Mr D before he signed the fee agreement or received the IDD.

(3) *Mr and Mrs G*

On 19 July 2007, Mr Thommes sent a letter to Mr and Mrs G, confirming receipt of the sum of £495, which it referred to as "*the initial fee*". The letter also stated that a fee agreement was enclosed for signing by Mr and Mrs G, in addition to a copy of the IDD, which explained that the initial application fee of £495 was not refundable if the mortgage did not go ahead. The documentation on the customer file, therefore, indicated that the non-refundable fee was collected from Mr and Mrs G before they signed the fee agreement or received the IDD.

(4) *Mr and Mrs H*

The customer file for Mr and Mrs H included notes of a meeting on 19 October 2007, which stated “*deal done on the phone...paid £285 val fee.*” On 23 October 2007, Mr Thommes sent a letter to Mr and Mrs H, confirming receipt of the non-refundable fee of £285. The letter also stated that a fee agreement was enclosed for signing by Mr and Mrs H, in addition to a copy of the IDD. The documentation on the customer file, therefore, indicates that the non-refundable fee was collected from Mr and Mrs H before they signed the fee agreement or received the IDD.

Mr Thommes oversaw the activities of the Sales Department and therefore he should have identified that the fee system was not open, transparent or fairly explained to customers. He should have put systems and controls in place to ensure that fee agreements were sent to and signed by customers prior to the payment of fees and ensured that fees were described accurately and consistently to customers. The above cases demonstrate that he failed to put such systems in place and as a result, customers were not treated fairly.

**Mr Thommes’ failure to understand his regulatory responsibilities**

- 4.18. 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.
- 4.19. However, Mr Thommes failed to understand his responsibilities associated with regulated mortgage business and was not aware of (and did not take adequate steps to find out about) his responsibilities as an approved person, in particular his responsibilities as a director holding CF1 and CF8. 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. He also did not demonstrate when interviewed that he understood the nature of his responsibilities as an approved person and 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.
- 4.20. Mr Thommes’ inadequate knowledge of his regulatory responsibilities was also demonstrated by his failure to establish and maintain adequate and effective systems and controls at GFC in order to identify and prevent financial crime, treat customers fairly and by his failure to oversee the GFC staff and compliance personnel adequately.
- 4.21. The FSA considers that he had failed to meet the minimum regulatory standards required in terms of competence and capability.



## 5. REPRESENTATIONS, FINDINGS AND CONCLUSION

### Representations

- 5.1. Mr Thommes submitted that he was fit and proper and that therefore no prohibition order should be made against him either in the terms set out in paragraph 1.1 or otherwise. He contended that the evidence demonstrated that he had put in place adequate systems and controls whilst the failure to communicate accurately the position regarding fees was not sufficiently serious as to justify a prohibition order.
- 5.2. In the light of the foregoing he submitted that the FSA, having accepted that he was neither dishonest nor lacking in integrity, should not seek to prohibit him for lacking competence and capability when the evidence demonstrated the opposite. Notwithstanding that he submitted that even if the FSA's allegations were made out this was not a case meriting a prohibition order in the terms set out in paragraph 1.1. He asserted that rather than a prohibition order the FSA should consider giving him a private warning.

#### *The FSA's supervision of the firm*

- 5.3. Mr Thommes submitted that the alleged failures of the firm's systems and controls were not so clear cut as the FSA now sought to assert. In particular he highlighted the fact that there had been an FSA supervision visit to GFC in January 2006. Whilst this had identified some teething problems, no concerns had been expressed by the FSA about the systems and controls that the firm used to prevent mortgage fraud or about the firm's arrangements for fee collection. He also noted that in response to that visit the firm prepared a training-needs analysis which was seen by supervisors. Those supervisors did not suggest that this analysis was in any way deficient either in helping to ensure that the firm was not used as a vehicle for mortgage fraud or in relation to the communication of the firm's system of fees.
- 5.4. Mr Thommes commented that it was only after the FSA, on 22 May 2008, had requested further documentation that it identified the concerns which are now the subject of these regulatory proceedings. Mr Thommes submitted that 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. He submitted that it was disproportionate to prohibit him for failing to identify and address weaknesses at the firm which, it could be inferred, were so minor that the FSA had also overlooked them. Additionally he submitted that the FSA's failure to identify any failures during the visit in January 2006 demonstrated that the alleged failures which were central to these proceedings were more imagined than real.

#### *The steps taken by Mr Thommes to put in place adequate systems and controls*

- 5.5. Mr Thommes explained how the firm conducted only a limited amount of regulated mortgage business. To the extent that the firm undertook this business he asserted 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. Moreover he emphasised that the firm had stressed to its staff the importance of the application of common sense. He submitted that it was reasonable for him to have relied on these processes as one of the firm's bulwarks against mortgage fraud. Moreover he submitted that it was unfair for the FSA to criticise him for having relied on these information gathering procedures when this approach was in line with what was required by the relevant lenders. He also noted that the FSA had approved the scripted questionnaire that was used for non-advised sales and he queried whether it was appropriate for the FSA to take action against him when it had not queried the approach that the firm had adopted in such sales.

- 5.6. Mr Thommes submitted that the unfairness of these regulatory proceedings was compounded by the fact that he had put in place other systems and controls to prevent the firm from being used for mortgage fraud. In particular he stressed the fact that he had engaged an experienced compliance officer and the services of an external firm of compliance consultants whilst he ensured that his staff were adequately trained. He submitted that such attempts to bolster the compliance function at the firm demonstrated that he had done all that he could to put in place adequate systems and controls at the firm. He contended that he should not be held accountable for a few errors by the compliance officer nor should he be criticised when he had followed all of the advice given to the firm by the compliance consultants. Instead he said that the FSA should recognise that no system can be flawless.
- 5.7. Mr Thommes contended that the foregoing demonstrated that he had taken significant steps towards putting in place systems and controls appropriate for the firm's business. He also submitted that he had undertaken the appropriate level of supervision of those upon whom he relied. He said that his approach to matters such as the supervision of the compliance officer had been entirely reasonable and that it was unfair to now criticise him for not having personally undertaken work that was done by that member of staff. He further submitted that his approach to supervision within his firm and the systems and controls he had put in place demonstrated that he was aware of his regulatory responsibilities though he had struggled in interview to use the correct terminology to describe the significant influence functions that he held.

*The adequacy of the steps taken by Mr Thommes to put in place systems and controls*

- 5.8. In addition to outlining the steps he had taken to put in place adequate systems and controls Mr Thommes criticised the FSA for failing to identify what other systems and controls he should have had in place if it contended that there had been failings in his running of the firm in this area. He submitted that the FSA's failure to pinpoint any identifiable failings demonstrated that there were in fact no other obvious systems and controls which he could reasonably have been expected to put in place. He suggested that were he now running a firm he may well adopt a more 'hands on' approach if this was recommended by the FSA, however he maintained that his supervision of his employees and the systems and controls which were in place had been adequate. He submitted that the FSA's inability to identify what else he should have done betrayed the fact that the FSA assumed that there must have been a failure by senior management having identified 6 cases of mortgage fraud even though these 6

instances were amongst a total of 386 transactions, comprising 53 regulated applications, over 4 years.

- 5.9. Mr Thommes submitted that it was not appropriate for the FSA to allege that he had failed to put in place adequate systems and controls merely because there had been 6 cases of mortgage fraud. Instead he submitted that no system can be infallible and that consequently the FSA should, in the absence of evidence of his failings, concede that there was nothing more he should have done.

*The accuracy of information about fees given to customers*

- 5.10. In an effort to demonstrate that the firm had endeavoured to be transparent with customers about the fee structure it had employed, Mr Thommes sought to outline the information about fees given to customers at various stages of their dealings with the firm. He asserted that the firm had been explicit about matters such as the non-refundable initial fee. However he accepted that in a small number of cases the firm's description of the fees had not been consistent with information produced by the product provider. He also conceded that the information given to this small number of customers conflicted with the oral information given to them. However he insisted that where this had resulted in any confusion or concern the firm had acted responsibly and it had made repayment where appropriate.
- 5.11. Mr Thommes submitted that though there may have been some shortcomings in the way the firm had communicated with its customers the foregoing demonstrated that they did not merit the imposition of a prohibition order. Instead he contended that these failings, though regrettable, were of limited seriousness.

*Sanction*

- 5.12. Mr Thommes submitted that the conduct, when properly analysed, did not justify so severe a sanction as prohibition. Furthermore he submitted that the imposition of a prohibition order was neither consistent with the relevant guidance nor was it justifiable when compared to the approach taken in any cases.
- 5.13. Mr Thommes submitted that the seriousness of his alleged misconduct did not merit the imposition of a prohibition order, even if it was decided that it constituted evidence of a failure to properly supervise and put in place systems and controls. He submitted that there had been a 'handful' of fraudulent mortgage applications which had slipped through the net and that it would be disproportionate to prohibit him on the basis of these cases particularly when the last one was nearly 3 years old. He added 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. In making the preceding submission he emphasised that if the RDC agreed that he was not personally culpable for the fact that customers had been able to use the firm as a vehicle to commit mortgage fraud, then it would be wholly inappropriate to prohibit him on the basis that he lacked competence and capability solely because of the way the firm had communicated with clients about fees.

- 5.14. Mr Thommes submitted that a proper analysis of the facts in this case demonstrated that there were no grounds for the imposition of a prohibition order. 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 is the trigger for the consideration of a prohibition order required by ENF 9.12(4). To demonstrate the extent to which the FSA had erred when conceiving of the intention to impose the prohibition order set out in paragraph 1.1 Mr Thommes contended that the order was far too wide in the scope of its application. He submitted that it was otiose for the order to prohibit him from undertaking roles encompassing various actuarial functions when this was not something which he did. Instead Mr Thommes urged upon the RDC a realistic and sober analysis of the extent of his actual culpability in this matter and the sanction that it might merit.
- 5.15. Mr Thommes 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 submitted that such a warning would highlight to him the areas of concern felt by the FSA whilst it would also mark the gravity of his conduct. He also commented that any more draconian sanction would not be necessary in this case as he would be very assiduous in the future in an effort to ensure that any firm at which he held a significant influence function could not be used for the submission of fraudulent mortgage applications. Mr Thommes stressed that he was somebody who took seriously his regulatory obligations, as evidenced by his co-operation with this investigation and disciplinary process, and that he had a previously blameless record in the industry; therefore he asserted that the findings of the FSA investigation had shocked him. He further contended that this would be the most appropriate sanction as any remaining concerns that the FSA might have should be addressed by the fact that he was not presently approved and therefore he would need to seek approval to come back into the regulated community.

### **Findings**

- 5.16. The FSA finds that Mr Thommes is not a fit and proper person to carry out any controlled functions involving the exercise of significant influence and therefore the FSA finds that it should impose prohibition in the terms set out in paragraph 1.1 because he lacks competence and capability. The FSA finds that he had not put in place adequate systems and controls to prevent financial crime and nor had he properly supervised the general conduct of the firm.

#### *The FSA’s supervision of the firm*

- 5.17. The FSA does not accept the submission that it can be inferred that the problems at the firm, which are central to these disciplinary proceedings, were either so minor as to not justify a prohibition order or were in fact more imagined than real. The FSA finds that the issues, which form the subject matter of this notice, were highlighted to him 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 very real failings which can not be dismissed as having been overblown. The FSA also does not accept that the failings that have been identified can be excused simply because the firm had discussed with the FSA work that it proposed to undertake to address areas of

concern. The FSA considers that responsibility rests with firms, and those holding significant influence functions within them, and that they can not seek to abrogate this responsibility by highlighting what they perceive to have been failings by the regulator to pick up on problems at these firms.

*The steps taken by Mr Thommes to put in place adequate systems and controls*

- 5.18. The FSA accepts that Mr Thommes did take some steps to establish systems and controls at the firm to prevent it from being used for the purposes of financial crime. The FSA also accepts that Mr Thommes did perform some supervisory oversight of the general conduct of the firm. Notwithstanding the foregoing the FSA considers that Mr Thommes failed to put in place and maintain adequate systems and controls and that he failed to properly supervise and oversee the firm.
- 5.19. The FSA considers that had adequate systems and controls been in place, combined with adequate supervision, then the examination of 20 files would not have revealed the number of problems which were actually found. 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 most rudimentary of processes. The FSA finds that the problems on these files demonstrated that there had been a failure of the systems and controls at the firm and that there had been a failure to apply common sense.
- 5.20. Therefore, in the light of the foregoing, the FSA finds that there were very 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 problems can occur even where adequate systems and controls have been put in place, the FSA considers that in this case the failures are attributable to Mr Thommes' lack of competence and capability. The FSA finds that Mr Thommes is personally culpable for the failings which resulted in a significant number of files having serious problems with them.
- 5.21. The FSA also considers that the problems with the firm's client files demonstrate that Mr Thommes failed to adequately supervise and oversee the general conduct of the firm. The FSA considers that Mr Thommes should have had more direct contact with client files as this would have allowed him to better evaluate the work of the compliance officer and it may have enabled him to identify the failings which allowed the firm to be used for financial crime. Furthermore the FSA considers that he was responsible for the failure to put in place adequate systems to ensure that customers were treated fairly in respect of the non-refundable up front fees. This was an area where Mr Thommes was directly involved and therefore the failures in this area provide further, clear, evidence of his lack of competence and capability.

*The adequacy of the steps taken by Mr Thommes to put in place systems and controls*

- 5.22. In rejecting the submission that the FSA has failed to identify what else he could have done to supervise the staff at the firm and to put in place adequate systems and controls, the FSA notes that this is the responsibility of firms and those holding significant influence functions at those firms. 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 or to ensure that

customers were treated fairly. As is stated above the FSA considers that the difficulties with the files would have been identified by more robust processes. The FSA has made clear that it considers that Mr Thommes should have ensured that reasonable checks were undertaken to verify income information and to identify irregularities. This 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. Additionally the FSA has stated that it considers that Mr Thommes should have better supervised his staff. Had he been more engaged in his approach to supervision then he would have been better placed to ensure that the firm's compliance procedures were effective and that they were being applied correctly. Indeed as part of his oversight of the sales department, the letters to clients confirming the fees to be paid, came directly from Mr Thommes. Despite his apparent involvement in communicating with clients about this topic, there were still problems in this area. The FSA considers that this demonstrates the extent to which Mr Thommes failed to perform his significant influence function properly.

- 5.23. The FSA considers that the failings at the firm evidenced the limited understanding that Mr Thommes had of his regulatory responsibilities. The FSA notes that Mr Thommes had accepted that he had focussed upon generating money and considers that this may have been to the detriment of an appreciation of other aspects of his role. The FSA considers that Mr Thommes' lack of understanding, which was clearly demonstrated in interview with the FSA, also meant that he still lacked the insight to appreciate where things may have gone wrong. Mr Thommes indicated that were he now running a firm he would probably adopt a more 'hands on' approach if this was recommended by the FSA. The FSA considers that this assertion is both a tacit admission that there had been problems at the firm whilst this comment also demonstrates that Mr Thommes still lacked the insight to understand what more should be done to prevent financial crime and to ensure that customers are treated fairly. Therefore the FSA finds that not only did Mr Thommes 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 holding a significant influence function now.

*The accuracy of information about fees given to customers*

- 5.24. The FSA considers that the firm and Mr Thommes failed to ensure that customers were treated fairly in respect of the payment of non-refundable upfront fees. The FSA finds that the fees charging system at the firm had been inconsistent and misleading. The FSA notes that Mr Thommes had oversight of the sales department at the firm and yet despite his personal involvement in some of the relevant communications he had failed to prevent these problems arising. The FSA considers that this has a bearing upon an assessment of his competence and capability regardless of any attempts that may have been made to remedy the problems at a later stage.

*Sanction*

- 5.25. The FSA finds that it is proportionate and appropriate to impose the prohibition order as set out in paragraph 1.1. As such the FSA rejects the notion that it should consider privately warning Mr Thommes about his conduct. Instead the FSA considers that Mr

Thommes' conduct to have been seriously deficient and that it demonstrates that he lacks the competence and capability to perform a significant influence function and that a prohibition order should be imposed.

- 5.26. 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.
- 5.27. The FSA rejects the suggestion that a prohibition order could only be imposed in this case if Mr Thommes conduct demonstrated that he had been recklessly indifferent to the problems at the firm. Instead the FSA considers that Mr Thommes' lack of competence and capability, as demonstrated by his various failings, mean that the FSA should impose a prohibition order. The FSA also does not accept that its finding that it should impose a prohibition order should be diluted because of the length of time that has elapsed since the conduct in question nor does the FSA accept that it should find that the examples of irregularities on files were examples of a small number of cases that 'slipped through the net'. Furthermore the FSA rejects the submission that it should not impose a prohibition order because Mr Thommes' had a previously unblemished record or because of any co-operation with the investigation.
- 5.28. The FSA finds that Mr Thommes' conduct in his significant influence functions and his subsequent analysis of what went wrong demonstrates that a prohibition in the terms set out in paragraph 1.1 is appropriate. The FSA therefore rejects the suggestion that the prohibition order should be further limited in its scope.

### **Conclusion**

- 5.29. Having regard to the matters outlined above, the FSA concludes that Mr Thommes lacks competence and capability. He has 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 exposed to the serious risk of being used as a vehicle for financial crime.
- 5.30. The FSA also concludes that Mr Thommes failed in other regards. The FSA concludes that he failed to ensure the adequacy of the compliance arrangements at GFC. The FSA considers that he failed to supervise GFC staff and compliance personnel effectively. Furthermore the FSA concludes that he failed to ensure that GFC charged fees fairly and consistently, which meant that customers were not treated fairly
- 5.31. The FSA also has concerns about Mr Thommes' understanding of, and ability to comply with, regulatory requirements and standards on an ongoing basis. He failed to understand his responsibilities associated with regulated mortgage business and he was not aware of his responsibilities as an approved person. In particular the FSA consider that he was not aware of his responsibilities as a director holding controlled functions.

- 5.32. The FSA considers that as a result of the foregoing it should make a Prohibition Order in the terms set out in paragraph 1.1. Further analysis of this sanction is given below.

## **6. ANALYSIS OF SANCTION**

- 6.1. Having regard to the facts and matters described above, the FSA has considered whether Mr Thommes 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. It is the FSA's view that the nature and gravity of the breaches described above go directly to impugn Mr Thommes' competence and capability. The FSA considers that he poses a risk to lenders, consumers and to the FSA's statutory objectives of maintaining confidence in the financial system and reducing financial crime.
- 6.3. As a result, the FSA considers that Mr Thommes 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 proposes to exercise its powers to make a Prohibition Order against him in the terms set out in paragraph 1.1.

## **7. DECISION MAKER**

- 7.1. 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 you 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 Thommes 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 Thommes has 28 days from the date on which this Decision Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed on its 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](mailto: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 Thommes 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 Thommes is entitled to have access to:
- (1) the material upon which the FSA has relied in deciding to give him this Warning 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 Thommes this Decision Notice was sent to him with the Warning Notice. There is no secondary material to which the FSA must grant Mr Thommes access.

### **Confidentiality and publicity**

- 8.6. Mr Thommes 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 Thommes nor a 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 Thommes 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 be aware 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, you 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**

## ANNEX A

### **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 you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are 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.

***Principles for Businesses***

- 2.7. Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Businesses ("Principles") which apply either in whole, or in part, to all authorised persons.
- 2.8. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable for a disciplinary sanction where it is in breach of the Principles.
- 2.9. The Principles relevant to this matter are:
- (1) Principle 6 (customers' interests) which states that "*a firm must pay due regard to the interests of its customers and treat them fairly*"

**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 power 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.