

SEE FINAL NOTICE ISSUED ON 19 OCTOBER 2012

DECISION NOTICE

To: **Raymond Wagner**

Date of birth: **14/12/1942**

Individual Ref. No: **RXW00088**

Dated: **14 April 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 listed below, the FSA has decided to impose on Mr Raymond Wagner:

- (1) a financial penalty of £100,000, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), for failing to comply with Statement of Principle 1 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") issued under section 64 of the Act; and
- (2) a prohibition order, pursuant to section 56 of the Act, to prevent Mr Wagner from carrying out any function 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 concluded, on the basis of the facts and matters described below, that Mr Wagner is not fit and proper to carry out any function in relation to regulated activities carried on by authorised or exempt persons and he should be prohibited from doing so.
- 2.2. The FSA considers that Mr Wagner has breached Statement of Principle 1 of APER because he has failed to act with integrity in carrying out his controlled functions CF1 (director) and CF10 (Compliance Oversight). Mr Wagner was knowingly involved in the submission of a regulated mortgage application to a lender for his own benefit which contained inaccurate and misleading information.
- 2.3. The FSA further considers that Mr Wagner has failed to act with honesty and integrity as he was knowingly involved in the submission of four non-regulated, buy-to-let mortgage applications to lenders for his own benefit which contained inaccurate and misleading information.
- 2.4. The FSA also considers that Mr Wagner failed properly to supervise two employees at Ambergate Business Services Limited (“Ambergate”) which resulted in both individuals submitting mortgage applications through Ambergate containing false information. Mr Wagner put only minimal systems and controls in place to monitor mortgage applications (e.g. by way of file-checks). These systems and controls were inadequate and Ambergate was therefore at risk of being used for the purposes of financial crime
- 2.5. Mr Wagner poses a risk to lenders and consumers and to confidence in the financial system. This action also supports the FSA’s regulatory objective to reduce financial crime.
- 2.6. As a result of the nature and seriousness of these matters, the FSA considers that Mr Wagner has failed to meet minimum regulatory standards in terms of honesty and integrity and competence and capability, and he is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly, the FSA has decided to impose on him a financial penalty of £100,000 and to make the Prohibition Order.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

- 3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1 to this Decision Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Ambergate was a mortgage broker based in Piccadilly, London, which dealt mainly with high net worth clients. From 1 May 2005 to 31 August 2008 Mr Wagner held the sole controlling interest in Ambergate. He was a director of Ambergate from 1997 and he was the sole director from 10 December 2003.

- 4.2. With effect from 1 December 2001, Mr Wagner was approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) for Ambergate. He also became responsible for insurance mediation from 14 January 2005 and on 1 November 2007 he was approved to perform CF28 (systems and controls). From 1 December 2001 to 31 October 2007 he was also approved to perform CF13 (Finance) and CF21 (Investment Adviser) Mr Wagner. Mr Wagner also held CF27 (investment management) from 1 December 2001 to 27 July 2005, CF30 (customer) from 1 November 2007 to 26 June 2008 and CF8 (Apportionment and Oversight) from 1 December 2001 to 31 March 2009.
- 4.3. A high street lender raised concerns about a number of mortgage applications submitted by Ambergate between 6 February 2004 and 28 June 2007. This information came to the FSA's attention in September 2007.
- 4.4. The FSA visited the firm on 17 April 2008 which highlighted several concerns about Mr Wagner and Ambergate. This included concerns about the quality of the file reviews conducted by the firm and the role of Adviser A who had submitted mortgage applications containing false information whilst employed by the firm.

Mortgage applications for your own benefit

- 4.5. The FSA reviewed eleven buy-to-let mortgage applications and one residential mortgage application as part of its investigation. All twelve applications were submitted for Mr Wagner's personal benefit to two high street lenders between May 2002 and August 2007. The review found serious income discrepancies were present in five of the mortgage applications (one residential and four buy-to-let).
- 4.6. The result of the review of the mortgage applications is detailed below in paragraphs 4.7 to 4.12.

Residential Mortgage

- 4.7. In May 2005, a mortgage application was submitted in Mr Wagner's name which contained false information relating to his income. This application was submitted to a lender to obtain a loan of £1,062,500 towards the purchase of a house in Lincolnshire for £1,250,000.
- 4.8. The mortgage application signed by Mr Wagner stated that he was self employed and had a total income of £500,000 per annum. This income consisted of self employed earnings from Ambergate of £390,000 plus a rental income of £110,000.
- 4.9. Mr Wagner was shown the fact find and the mortgage application during an interview with the investigation team on 18 March 2009. He said that his income was not £500,000 and he did not know where that figure had come from. He stated that he had an income that originated from different sources, which included investment income and rental income from your properties, however when asked by the investigation team if this would be as much as £500,000 Mr Wagner stated "*No, nowhere, no, not at all*". He said that the fact find was completed by an adviser at the firm and he had not checked the details recorded by that adviser on this document. He also stated that the

adviser “*may have taken information from a previous application and put it on to this one*” when asked about the income discrepancy on the application.

- 4.10. More recently, when the matter was before the RDC, the FSA reviewed Product Sales Data received from the relevant lender. This data showed that on 21 July 2005 an application was submitted to the lender with a reference number that correlated to the reference number on the copy of mortgage application which was shown to him in the course of his interview. Moreover the postcode on the application corresponds to Mr Wagner’s residential address, the date of birth on the application is the same as his and the loan amount is the same as that recorded on the application. The total income declared on this application is £500,000. The lender has also confirmed that the income amount of £500,000 was the figure which submitted to them in the application.
- 4.11. Information received from HM Revenue and Customs (“HMRC”) for the year ending 2005 shows that Mr Wagner declared an income that consisted of dividends and rental income which became a small loss after expenses had been included. The £500,000 income stated on the application therefore represents a significant discrepancy in income that he could not adequately explain. He signed the application and, bearing in mind that it was for his own benefit, the FSA considers it implausible that he was unaware of the details set out within the application, including in particular the inflated income figure.

Buy-to-let Mortgages

- 4.12. The FSA reviewed eleven of Mr Wagner’s buy-to-let applications submitted to two high street lenders between May 2002 and August 2007. The review of these documents has found that six of the eleven mortgage applications had information relating to his income. Of the six applications, two had income details that roughly correlated with the income information held by HMRC. However, four contained income amounts which were substantially higher than this:

- (1) Application 1: This was submitted to a high street lender by Adviser A on 15 May 2006. The mortgage application stated that Mr Wagner’s income was £400,000 with an additional rental income of £162,000 per annum. The application contained a sanctioning record for loans greater than £2 million and/or cases outside standard board lending policy of the high street lender. Mr Wagner’s residential and buy-to-let mortgages had a total exposure of £3,548,375 and, therefore, a sanctioning record was created by the lender’s business assessors. The sanctioning record gathered information from the lender’s own affordability calculations, his previous lending history and also conducted internet searches in relation to Ambergate to assess whether it was appropriate to provide a mortgage loan for him. This document stated that he had a declared income of £400,000 and his current portfolio produced a net additional income of £21,000 per annum.

- (2) Application 2: This was submitted to a high street lender on 23 June 2006. The application stated that Mr Wagner’s income was £400,000 in addition to an annual rental income of £177,300. There is also a mortgage declaration included which had been signed and dated by him on 23 June 2006. This file also had a sanctioning record which stated that he had a declared income of

£400,000 excluding rental income. The document later stated that his buy-to-let portfolio produced a net additional income of £28,000 per annum.

- (3) Application 3: This was submitted by Adviser B to a high street lender on 2 April 2007. The self employed accounts section of the application stated that Mr Wagner's income was £400,000 and the other income section stated that he had a gross annual rental income of £206,100. A conversion checklist document, completed by Adviser B for this application, records his income as £400,000 and his rental income as £210,000. The declaration in relation to the actual mortgage application dated 2 April 2007 recorded his total personal income as £610,000. Directly beneath this figure is his signature. A sanctioning record is also included with the file which states that he was self employed with a salary of £400,000 and a rental income of £206,100.
- (4) Application 4: This was submitted to a high street lender on 11 July 2007. The application stated that Mr Wagner's self employed income was £400,000. The sanctioning record stated that he had a declared income of £400,000 which excludes rental income of over £200,000 per annum.
- 4.13. Mr Wagner said in interview that his residential application was submitted by other advisers at Ambergate and also that he had "*done so many mortgages and they [the advisers] just take the information of [sic] the files in the main*". However, irrespective of who actually completed the information, the applications were for Mr Wagner's own benefit and he should have ensured that applications were not submitted containing false information. The fact that he did not do so raises serious concerns in relation to his fitness and propriety.
- 4.14. The false income details in the application information either indicate a lack of checks by Mr Wagner, which allowed fraudulent information to be submitted, or he was aware that this false information was being submitted yet he did not prevent this from occurring. In relation to this his actual signature is directly below the income amount of £610,000 on the mortgage declaration in application 3 and the FSA therefore finds it implausible that he was not aware of the false information.
- 4.15. The HMRC records show that Mr Wagner's income comprised company dividends, rents and other income. His employment income and his total income (with rental and dividends added) are substantially less than the income figures that he declared on the mortgage applications. In the four buy-to-let applications detailed above, his income was recorded as £400,000 (with one application stating an additional income of £210,000 and the other three applications and file documentation stating that he had a rental income ranging from £28,000 to over £200,000). These amounts are substantially higher than the the income declared to HMRC, which he admitted in interview. He has not provided a credible explanation for this discrepancy.
- 4.16. The FSA's view is that Mr Wagner's has deliberately allowed false information to be submitted for his benefit and as a result he has obtained five mortgages (one residential and four buy-to-let) totalling approximately £1,906,095.

Systems and Controls Failures

- 4.17. As sole director (CF1) of Ambergate and holder of the CF8 and CF10 approved functions, and predecessor controlled functions, the FSA considers that Mr Wagner did not adequately monitor or organise appropriate monitoring of Adviser A and Adviser B and this enabled both individuals to submit mortgage applications through Ambergate for their own personal benefit which contained false information as follows:
- (1) Adviser A applied for three buy-to-let mortgages and one residential mortgage, through Ambergate between August and November 2005. The applications submitted contain inflated income details (ranging from £50,000 to £70,000) when compared to HMRC records. The income information Adviser A declared in his applications was more than that declared to HMRC for the tax year ending 5 April 2005 and the tax year ending 5 April 2006.
 - (2) Information obtained from the lender shows that Adviser B applied for three buy-to-let mortgages and one residential mortgage through Ambergate between July 2006 and January 2008. All of the applications contained inflated income details with the amount in each case stated as £50,000. In addition due to Adviser B also being the mortgage consultant on three of the applications he also certified his own mortgage documents as true copies. The income information Adviser B declared in his applications was more than that declared to HMRC for the tax years ending; 5 April 2006; 5 April 2007 and 5 April 2008.
- 4.18. It appears to the FSA that, through a lack of supervision by Mr Wagner over a significant period, he failed to notice that false information was being supplied to mortgage lenders by the two individuals at Ambergate. When he was asked by the FSA about the fraudulent mortgage applications submitted by one of the Ambergate staff, he stated that *“I would’ve thought I wouldn’t have needed to do tremendous checking on my own staff as such”*.
- 4.19. Mr Wagner also admitted in his compelled interview that he did not think it necessary to do many file reviews for his own staff. He stated that *“I did checks on certain things, probably not as many as I should but I did, I did do an active check on different cases”*. He also stated in interview that he would check between 10% and 25% of the adviser’s files - normally 10%.
- 4.20. According to the new business register from November 2004 to July 2008 Ambergate submitted 548 mortgage applications. During this period Mr Wagner conducted compliance checks on 47 applications and another Ambergate employee conducted checks on one application. Therefore in a period covering almost four years he checked less than 10% of the mortgage applications submitted by Ambergate. The FSA believes that this level of monitoring was not sufficient and indicates that the systems and controls that he had in place to check mortgage applications before or after completion were not fit for purpose. This put Ambergate at risk of being used for the purposes of financial crime. Further, this lack of systems and controls directly led to at least eight mortgage applications being submitted to lenders containing false and misleading information.

5. REPRESENTATIONS, FINDINGS & CONCLUSIONS

Representations

- 5.1. Mr Wagner made both oral and written representations to the FSA. He denied that he was knowingly involved in submitting false and misleading information both in respect of his own residential mortgage application and in the four buy-to-let mortgage applications described above. He also asserted that he was a fit and proper person and that he had both honesty and integrity.

Submissions relevant to all of the mortgage applications

- 5.2. Mr Wagner agreed that he did not earn the amounts declared on the applications however he maintained that he had not completed the false income details on any of the mortgage applications. Accordingly, he would not have misrepresented this information in any mortgage applications submitted on his behalf. He further argued that there was no need to provide false information in support of the mortgage applications as he had a long standing relationship with the lender in question.

Residential Mortgage Application

- 5.3. In turning to specifically address the impugned residential mortgage application, Mr Wagner submitted that the application was not in his handwriting but in the handwriting of someone else. He also submitted that it was not clear whether the version, which the FSA was relying on as evidence of the fact that he had provided false and misleading information, had in fact been submitted to the lender in question. In support of this he identified a number of discrepancies in the application form. He accepted that one of the signatures in the form looked similar to his own but he contended that it could have related to another application. He therefore argued that the copy of the residential mortgage application, which the FSA had relied upon, did not accurately reflect that which had actually been submitted. Mr Wagner speculated that the form could well be a composite of two other forms, describing the application as a “cut and shut”. Mr Wagner asserted that it was essential for the FSA to provide a copy of the application form which actually went to the lender before any properly informed determination could be made as to his involvement in compiling it.
- 5.4. Mr Wagner also relied upon evidence from one of his former employees who accepted that he had completed the manuscript version of the application form. This individual suggested that Mr Wagner had not played a part in preparing the document and nor had he encouraged its preparation. Mr Wagner also highlighted the fact that his former employee had claimed that this document had been provided for reference and record keeping purposes. Mr Wagner claimed that this explained why the application form had been created without Mr Wagner’s involvement.
- 5.5. Mr Wagner also provided evidence that the lender in question had sought to verify both Mr Wagner’s income and his ability to afford the residential mortgage with his accountants at the time. He argued that the lender relied on this, as well as his long-standing relationship, when deciding whether to approve the mortgage application. Furthermore Mr Wagner claimed that the record of suitability supported what he

considered to be his true income at the time. He also argued that the fact that the mortgage account had remained up to date was a factor to be taken into consideration when assessing whether he had misled the lender.

- 5.6. Given the foregoing, Mr Wagner submitted that the FSA could not safely conclude that he was knowingly involved in submitting the residential mortgage application and therefore it could not be concluded that he had been involved in providing false and misleading information. He further argued that it was wrong for the FSA to infer anything about his honesty and integrity without the version that was actually submitted. Mr Wagner argued that there was no case to answer in respect of the residential mortgage application and that therefore there was no case to answer in relation to any of the allegations as this was the only regulated product.

Buy-to-let mortgage applications

- 5.7. Mr Wagner argued that, at the relevant time, buy-to-let mortgages were not regulated by the FSA. He argued that it was therefore inappropriate for him to be subject to any disciplinary action for misconduct arising in connection with the buy-to-let mortgages as they fell (and indeed still fall) outside of the the scope of the FSA's remit.
- 5.8. Notwithstanding the foregoing submissions Mr Wagner also argued that he had not personally submitted any of the buy to let mortgage applications. He additionally contended that he had not supplied any of the intermediaries with the figures that were submitted to the lenders.
- 5.9. Mr Wagner submitted that his inability to use computers was evidence of the fact that he could not have submitted the electronic buy-to-let mortgage applications. This assertion echoed a submission that he had also made in relation to the residential mortgage application. Mr Wagner also identified to the FSA the individuals who he claimed had submitted the applications. He contended that their involvement in the process limited the responsibility that should be borne by Mr Wagner for the submission of these applications. Indeed Mr Wagner distanced himself from the applications by also contending that the signature appearing on one of the forms, underneath an income declaration could not be definitively shown to be his. He accepted that the signature might seem to a "lay person" to look like his. However he argued that as the FSA had not provided expert evidence proving that it was his signature and in the absence of any confirmation from him, the FSA could not conclude that this was in fact his signature.
- 5.10. Though Mr Wagner argued that the FSA had adopted a crude method for calculating his income Mr Wagner also submitted that the lender had in any event not relied upon the income information given on the application forms. To the extent that his declared income was of any relevance to the lender, or indeed to an assessment of his honesty, Mr Wagner asserted that the FSA had failed to take account of any tax planning. He claimed that it had been his intention to sell a property and that this would have given him an income equivalent to that which was recorded in the applications. Notwithstanding that assertion however, he maintained that his declared income was a complete irrelevance.

- 5.11. Mr Wagner submitted that in the light of the above it could not be concluded by the FSA that he lacked honesty and integrity.

Systems and controls failures

- 5.12. Mr Wagner submitted that the allegations which focussed upon his perceived systems and controls failings were as misconceived as the allegations concerning the mortgage applications. Mr Wagner criticised the FSA for concluding that the compliance checks that he had conducted amounted to fewer than 10% of new business conducted by his firm. Instead he claimed that the appropriate measure was to assess the number of compliance checks that had been conducted against the number of regulated residential mortgages that his firm had processed. He claimed that if this measure was used then it was apparent that in fact 18.5% of mortgage applications had been checked. He also highlighted other aspects of his compliance regime to demonstrate that he had not failed in his oversight of others. In particular he highlighted evidence which he asserted showed that he had responded appropriately when he had suspicions about the conduct of individuals and how he had augmented the compliance function at his firm.
- 5.13. Though Mr Wagner contended that the oversight at his firm had been “in excess of what might reasonably be expected” he also accepted that some at the firm had submitted fraudulent mortgage applications. He submitted that this did not mean that there had been a failure of systems and controls. He argued that any system would struggle to eliminate fraud if the perpetrators were sufficiently skilled and motivated and he maintained that he had demonstrated honesty, integrity, competence and capability when overseeing others at the firm.
- 5.14. Mr Wagner also questioned the relevance of this aspect of the case against him. Mr Wagner argued that even if the FSA allegations were correct, which he contended they were not, then it would be inappropriate for the FSA to conclude that he lacked honesty and integrity merely because of his alleged compliance failings. He submitted that as this went, at the highest, to his competence and capability, it was therefore irrelevant to the assessment that was being made.

Mr Wagner's health

- 5.15. Mr Wagner submitted that the FSA investigation had severely impacted upon his mental health. He contended that this was a factor to be taken into account by the FSA when assessing his fitness and propriety. He also contended that this was relevant to a determination of the appropriate sanction should the FSA find against him.
- 5.16. In addition to highlighting his mental health problems Mr Wagner also referred the FSA to some physical difficulties that he had endured. Mr Wagner asserted that these difficulties went some way to demonstrate why his involvement with his firm had reduced throughout the relevant period.

Character references

- 5.17. Mr Wagner submitted evidence from a number of character witnesses. He contended that this evidence demonstrated his honesty and integrity. Moreover he contended that this evidence was relevant to the assessment of whether or not he had been knowingly involved in misleading the lender on his residential mortgage application.

Sanction

- 5.18. Mr Wagner argued that the financial penalty proposed in the Warning Notice dated 29 October 2010 was disproportionate to the nature and seriousness of the alleged breaches by him. He also contended that it would not be appropriate to prohibit him in the light of all of the foregoing submissions which he submitted demonstrated that he did not lack honesty and integrity.

Procedural fairness

- 5.19. In addition it was submitted that the representations process had placed Mr Wagner at “an unfair disadvantage”. He complained that the process was unfair because after the oral representations meeting he had submitted additional written representations to which the enforcement team were then given the opportunity to respond. Having received these representations from Enforcement Mr Wagner then submitted a further short letter in which he represented that his inability to submit further representations was unfair.

The reliability of new evidence from Enforcement

- 5.20. Within the body of the letter in which he complained about the fairness of the process Mr Wagner also sought to challenge the reliability of the evidence which had been provided to the panel of the RDC by Enforcement. He argued that this material, from a high street lender, was unreliable because it was hearsay and because it contained a significant caveat given in relation to the income statement. He submitted that these problems with the ‘new’ evidence raised serious doubts about the definitive nature of the conclusions that could be drawn from this material and therefore it should be disregarded.

Findings

- 5.21. The FSA finds that Mr Wagner was involved in the submission of fraudulent applications for one residential mortgage and for four non-regulated buy-to-let mortgage applications. Furthermore the FSA finds that Mr Wagner failed to properly supervise two employees of Ambergate. It is axiomatic from the foregoing that the FSA rejects Mr Wagner submissions.

Residential Mortgage Application

- 5.22. The FSA rejects Mr Wagner’s submission that it would be inappropriate to make any findings that were reliant upon the application form, which he had criticised as potentially being a “cut and shut”. The FSA does not accept that this application form is likely to be a composite of other forms. Instead the FSA considers that it is a

document upon which it can rely. The FSA concludes that the signature on the form, which Mr Wagner accepted looked like his own signature, was placed by him on this application form. Furthermore the FSA rejects the suggestion that though Mr Wagner's signature appeared on this application form, it actually related to another application form. Additionally the FSA rejects the proposition that the evidence of Mr Wagner's former employee demonstrates that Mr Wagner had not been involved in the creation of this application form. The FSA finds it to be implausible that Mr Wagner, regardless of whether or not he could use a computer, would not have overseen the submission of his own residential mortgage application. The FSA also rejects, as being highly unlikely, the suggestion that the copy of the application form seen by the FSA had only been created, after the fact, for record keeping and reference purposes. Instead the FSA finds that the application form accurately reflected that which had been sent to the lender and the FSA considers that Mr Wagner was involved in creating and transmitting it. In reaching this finding the FSA also notes that Mr Wagner had not previously indicated that he had concerns about the structure and veracity of the form, which was supplied by him to the FSA.

- 5.23. The FSA notes that the 'new' evidence recently obtained from electronic records demonstrates that the income figure given to the lender equated to the figure recorded on the copy of the application form which Mr Wagner had sought to dismiss. The FSA rejects his submissions concerning the reliability of this evidence. The FSA does not consider that this material is objectionable hearsay and nor does the FSA agree that the material is equivocal or unreliable as contended by him. Therefore the FSA considers that this is evidence upon which it can safely rely. The FSA considers that this evidence provides compelling support for the contention that Mr Wagner misled the lender as to his actual income as the figure given to the lender did not accurately reflect his actual income. Furthermore the FSA considers that this evidence demonstrates that, regardless of any long standing relationship between Mr Wagner and the lender or any attempts that the lender may have made to verify his income, the income figure given in the application form remained of significance to the lender.
- 5.24. Notwithstanding the foregoing the FSA also considers that whether or not, when making its decision, the lender relied on the income figure supplied to them by or on behalf of Mr Wagner, it is still unacceptable for a regulated person to knowingly enter inaccurate information. The FSA considers that even if he knew that the lender would never rely on the income figure it would still be wrong for an individual to supply the wrong figure. The FSA also finds that the seriousness of mortgage fraud is not mitigated by the fact that an individual, such as Mr Wagner, was able to keep up with the mortgage repayments.

Buy-to-let mortgage applications

- 5.25. The FSA finds that Mr Wagner was knowingly involved in the submission of the four impugned buy-to-let mortgage applications. The FSA considers that whilst he may not have personally submitted any of the buy to let mortgage applications, the applications were made on his behalf at his behest and with his knowledge.

- 5.26. The FSA finds that the intermediaries were supplied with figures by Mr Wagner which they used to complete the applications and that he knew these figures were not true reflections of his income. The FSA considers that, whether or not Mr Wagner was able to use a computer, the applications made on his behalf would have been created using information supplied by him and he would have ensured that they reflected that which he wished to convey to the lenders.
- 5.27. The FSA rejects the suggestion by Mr Wagner that as he had queried whether he was the author of a signature on one of the applications forms the FSA could not then rely upon this signature as evidence of his involvement in the submission of this form. The FSA considers that because the signature appeared, as he conceded it did, to look like his signature the FSA was entitled to work on the assumption that it was Mr Wagner's signature in the absence of evidence to the contrary. The FSA notes that Mr Wagner did not provide any evidence to rebut the reasonable inference that this was his signature. The FSA therefore considers that this signature, being underneath the income figure on the relevant form, provides compelling evidence that Mr Wagner was aware of the false income details that were being sent to the lenders.
- 5.28. The FSA also rejects Mr Wagner's submission that it had adopted a crude method for calculating his actual income. Mr Wagner argued that this figure should have been calculated using a different methodology if the FSA wished to compare his actual income with that which was declared on the application forms. However the FSA considers that it is appropriate to use the income declared by him to HMRC as the measure against which to judge the income figure declared to the lenders. Moreover the FSA rejects his submission that, in taking the income declared to the HMRC as the appropriate measure, the FSA had failed to take account of the possibility that he may have anticipated, at the time of the completion of the application forms that he would have earned that which he recorded as his income. The FSA refutes the suggestion that he was permitted to supply the income figures that can be found on the buy-to-let mortgage application forms because he had at some point planned to sell some property.
- 5.29. The FSA rejects Mr Wagner's submission that supplying incorrect income details to lenders was irrelevant if the lenders did not rely on these figures when coming to their lending decisions. Notwithstanding the fact that he denied supplying misleading income details to the lenders, Mr Wagner contended that whether or not he had was actually a complete irrelevancy as these income figures were not relied upon by the lenders. The FSA considers that it is unacceptable that an individual should submit false and misleading information in a mortgage application on the premise that this will not be relevant to the lender's decision.
- 5.30. The FSA also rejects Mr Wagner's submission that it would be inappropriate to take any action against him for his conduct in relation to unregulated buy-to-let mortgages. Instead the FSA considers that whilst it may not be permitted to impose a financial penalty for conduct in relation to unregulated activities, it should still bring action against an individual whose misconduct in such an area raises serious questions about their fitness and propriety to work in financial services.

- 5.31. For all of the foregoing reasons the FSA finds that Mr Wagner's knowing involvement in the submission of these buy-to-let mortgage applications demonstrates that he lacks honesty and integrity.

Systems and controls failures

- 5.32. The FSA finds that Mr Wagner failed to have in place proper systems and controls which resulted in two employees of Ambergate being able to submit mortgage applications containing false information. The FSA rejects his submission that the compliance regime at Ambergate was adequate for the purposes of the prevention of financial crime. Whilst the FSA does not suggest that the submission of a fraudulent mortgage application through a particular firm means that the systems and controls at that firm must be inadequate, the FSA does consider that the misconduct of the two advisers at Ambergate is good evidence of the problems at the firm. The FSA finds that the compliance regime which was overseen by Mr Wagner was not robust enough to prevent the misconduct of the two advisers. The FSA considers that there were too few compliance checks and that overall that which Mr Wagner had done when overseeing the advisers at Ambergate was not of an adequate standard.
- 5.33. In the light of the foregoing the FSA finds that Mr Wagner lacks competence and capability.

Mr Wagner's health

- 5.34. The FSA notes the medical evidence which was put forward by Mr Wagner. However the FSA does not consider that this evidence impacts upon the findings made about his misconduct nor does the evidence concerning his mental and physical health mitigate the seriousness of what he had done and therefore it does not affect the penalty and sanction that the FSA intends to impose upon Mr Wagner.

Character references

- 5.35. The FSA also notes the character evidence put forward by Mr Wagner. The FSA does not consider that the evidence from the various witnesses as to his character undermines the significance of the evidence of his misconduct. Instead the FSA finds that this character evidence is of very limited value when contrasted with the evidence of the fraudulent residential and buy-to-let mortgage applications.

Sanction

- 5.36. The FSA finds that the financial penalty, which was originally proposed in the Warning Notice, is not disproportionate. Instead the FSA considers that the submission of a regulated residential mortgage application containing inaccurate and misleading information merits the imposition of a financial penalty of £100,000.
- 5.37. The FSA finds that in addition to the imposition of the financial penalty it must also impose a prohibition order upon Mr Wagner. The FSA considers that it is necessary to prohibit Mr Wagner in the light of its findings about his lack of honesty, integrity, competence and capability.

Procedural fairness

- 5.38. The FSA rejects Mr Wagner’s suggestion that he was placed at “an unfair disadvantage” at any time in the representations process. The FSA notes that Mr Wagner, having engaged at a late stage in the process, was given an opportunity to provide additional written representations having made his oral representations. When he was given this opportunity it was on the understanding that Enforcement would be given the opportunity to provide a written response to any points raised in these written representations. The FSA does not consider that this order of representations and response occasioned any unfairness to Mr Wagner. Moreover the FSA notes that in any event he provided a further short written response to the comments of Enforcement.

The reliability of new evidence from Enforcement

- 5.39. As is noted above the FSA considers that the new material provided by Enforcement is reliable and compelling evidence.

Conclusions

- 5.40. Accordingly, having regard to the facts and matters set out above, the FSA concludes that:
- (1) Mr Wagner contravened Statement of Principle 1 of APER, and lacks honesty and integrity, as demonstrated by being knowingly involved in submitting a residential mortgage application containing false and misleading information through Ambergate for his own personal benefit;
 - (2) Mr Wagner lacks honesty and integrity as demonstrated by being knowingly involved in the submission of buy-to-let mortgage applications to lenders containing false and misleading information for his own personal benefit; and
 - (3) Mr Wagner lacks competence and capability, as demonstrated by failing to have adequate systems and controls in place to monitor mortgage applications and supervise advisers. As a result, he failed to prevent the submission of mortgage applications containing false information through Ambergate by two employees.
- 5.41. The conduct described above goes directly to impugn Mr Wagner’s honesty and integrity, and competence and capability, and therefore demonstrates that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 5.42. The FSA considers that Mr Wagner poses a serious risk to consumers and lenders and to the FSA’s regulatory statutory objectives of maintaining confidence in the financial system and the reduction of financial crime.
- 5.43. The FSA has therefore decided that it is appropriate to impose on Mr Wagner a financial penalty of £100,000 and to make the Prohibition Order in the terms set out above.

6. ANALYSIS OF SANCTION

- 6.1. The FSA considers Mr Wagner's misconduct to be extremely serious. He was knowingly involved in the submission of false and misleading information to mortgage lenders for his own personal benefit. Additionally, he demonstrated a lack of competence and capability by failing to have adequate systems and controls in place to monitor mortgage applications and supervise advisers.

Financial Penalty

- 6.2. The FSA's general approach in deciding whether to take action and determining the appropriate level of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Guide ("DEPP"), which is part of the Handbook of Rules and Guidance.
- 6.3. The breach of APER set out above is sufficiently serious to merit the imposition of a substantial financial penalty. In determining the level of financial penalty, the FSA has had regard to all the relevant circumstances of the case and the factors set out in DEPP 6.5.2G (at the relevant time), including the following:

Deterrence: DEPP 6.5.2G (1)

- 6.4. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

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

- 6.5. The FSA has had regard to the seriousness of the breach, including the nature of the requirements and Statement of Principle breached, and the extent to which the breach illustrated a lack of honesty and integrity.
- 6.6. For the reasons set out above the FSA considers that the breach is of a serious nature.

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

- 6.7. The FSA considers that Mr Wagner acted in a deliberate manner in submitting, or allowing to be submitted, a regulated residential mortgage application on his own behalf which he knew contained inaccurate and misleading information.

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

- 6.8. The FSA notes that Mr Wagner is an individual, but considers that there is no evidence to suggest that he is unable to pay the financial penalty imposed or that there are exceptional circumstances that warrant a lower level of penalty.

Other action taken by the FSA: DEPP 6.5.2G (10)

- 6.9. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised and approved persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.
- 6.10. Having had regard to all the factors outlined above, the FSA has decided that it is appropriate to impose on Mr Wagner a financial penalty of £100,000.

Prohibition Order

- 6.11. The FSA has taken account of Mr Wagner’s behaviour including the nature of the requirements and Statement of Principle breached with respect to his residential mortgage application, and the submission of his buy-to-let mortgage applications. These demonstrate his lack of honesty and integrity.
- 6.12. The FSA has also taken account of Mr Wagner’s failure adequately to monitor mortgage applications and supervise advisers, and the extent to which this revealed serious and systemic weakness of Ambergate’s management systems and internal controls, the number of lenders exposed to a risk of loss, and the potential for Ambergate to be used for financial crime. This behaviour demonstrates his lack of competence and capability.
- 6.13. As a result, the FSA has decided that it is necessary to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm in order to achieve its statutory objectives of maintaining market confidence, protecting consumers and the reduction of financial crime.

7. DECISION MAKER

- 7.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

- 8.1. This Decision Notice is given to Mr Wagner under sections 57 and 67 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

- 8.2. Mr Wagner has the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the “Tribunal”). The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper

8.3. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by him (or on his behalf) and filed with a copy of this Notice. The Tribunal's contact details are The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).

8.4. 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>

8.5. A copy of Form FTC3 must also be sent to Paul Howick at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Access to evidence

8.6. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Mr Wagner is entitled to have access to:

- (1) the material upon which the FSA has relied in deciding to give him this notice; and .
- (2) any secondary material which, in the opinion of the FSA, might undermine that decision.

8.7. The material upon which the FSA has relied in deciding to give Mr Wagner this Decision Notice was sent to him with the Warning Notice dated 29 October 2010. There is no such secondary material to which he must be allowed access.

Third party rights

8.8. A copy of this notice is being given to Ambergate as a third party identified in the reasons above and to whom in the opinion of the FSA the matter is prejudicial. Ambergate has similar rights of representation and access to material in relation to the matter which identifies it.

Confidentiality and publicity

8.9. Mr Wagner 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). Section 391 of the Act provides that neither the FSA nor a person to whom a Warning Notice is given or copied may publish the notice or any details concerning it. He should note, however, that the FSA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. He should also be aware, that any Final Notice in this matter may contain reference to the facts and matters contained in this Decision Notice.

FSA contacts

- 8.10. For more information concerning this matter generally, Mr Wagner should contact Paul Howick (direct line: 020 7066 7954) of the Enforcement and Financial Crime Division of the FSA.

Martin Hagen

Deputy Chairman, Regulatory Decisions Committee

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; financial stability; public awareness; the protection of consumers; and the reduction of financial crime.

Prohibition

- 1.2. Under section 56 of the Act, 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, exempt person or exempt professional firm, the FSA may make a prohibition order.
- 1.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:
- (1) a specified function, any function falling within a specified description, or any function (section 56(2)); and
 - (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

Financial penalty

- 1.4. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure by an approved person to comply with a statement of principle. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

2. Regulatory Guidance

FSA's policy for exercising its power to make a prohibition order

- 2.1. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to withdraw its approval and/or make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG"). Although the references in this notice are to EG, the FSA has had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during some of the relevant period in which the misconduct occurred.

- 2.2. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 2.3. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the 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) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons.
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.4. EG provides at paragraph 9.23 that the FSA may impose a financial penalty in addition to imposing a prohibition order where it is appropriate to do so.

The FSA's policy on the imposition of financial penalties

- 2.5. At the relevant time the FSA's policy in relation to the imposition of financial penalties was set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 13 of ENF, to which the FSA has had regard. DEPP 6.1.2 provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 2.6. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
- (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach.
 - (2) DEPP 6.2.1G(2): The conduct of the person after the breach.

- (3) DEPP 6.2.1G(4): FSA guidance and other published materials.
- (4) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.

Determining the level of the financial penalty

- 2.7. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP6.5.2G sets out a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:
- (1) deterrence having regard to promoting high standard of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches;
 - (2) the nature, seriousness and impact of the breach in question;
 - (3) the extent to which the breach was deliberate or reckless;
 - (4) whether the person on whom the penalty is to be imposed is an individual;
 - (5) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed; and
 - (10) other action taken by the FSA.

3. Regulatory Requirements

(i) APER

- 3.1. APER sets out the Statements of Principle and Codes of Practice for Approved Persons detailing conduct which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 3.2. APER 3.1.3G stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 3.3. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 3.4. On the facts of this case, the FSA considers the most relevant Statement of Principle to be Principle 1 under which an approved person must act with integrity in carrying out his controlled function.

- 3.5. APER 4.1 sets out examples of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1.
- 3.6. APER 4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA does not comply with Statement of Principle 1. APER 4.1.4E considers that such conduct includes but is not limited to, deliberately providing false or inaccurate documentation or information, or deliberately falsifying documents. In considering a person's integrity the FSA may also have regard to whether that person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)).

(ii) Fit and Proper Test for Approved Persons

- 3.7. The section of the FSA handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.8. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to prohibit and/or withdraw approval of an individual in accordance with EG 9.8.
- 3.9. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's honesty, integrity and reputation, and their competence and capability.
- 3.10. In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. These include:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).
- 3.11. In determining a person's competence and capability FIT 2.2.1G provides that the FSA will have regard to matters including, but not limited to:
 - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).