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**FINAL NOTICE**

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**To: Gareth Flanagan**

**To: GMF Marketing Services Limited**

**IRN: GXF00062**

**FRN: 409667**

**Both at**

**Address: 7 Racecourse Road  
Londonderry  
County Londonderry  
BT48 7RB**

**Date: 27 March 2012**

**1. ACTION**

1.1. For the reasons given in this notice, the FSA hereby:

- (1) imposes on Mr Flanagan a financial penalty of £95,200;
- (2) withdraws the approval given to Mr Flanagan to perform controlled functions at GMF; and
- (3) makes an order prohibiting Mr Flanagan from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 27 March 2012.

1.2. Mr Flanagan agreed to settle at an early stage of the FSA's investigation. Mr Flanagan therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £136,000 on Mr Flanagan.

## **2. SUMMARY OF REASONS**

- 2.1. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this notice, the FSA has concluded that Mr Flanagan has failed to act with integrity in carrying out his controlled functions, in breach of Statement of Principle 1, by knowingly submitting mortgage applications through GMF in his own name which contained false information. The effect was to mislead lenders regarding his income, residence, employment status and proposed use of funds.
- 2.2. Mr Flanagan also failed to take reasonable steps to ensure the business of GMF for which he was responsible in his controlled functions complied with the relevant requirements and standards of the regulatory system in breach of Statement of Principle 7. In particular, he failed to:
  - (1) take reasonable steps to ensure that GMF did not submit false and misleading information to mortgage lenders about customers' incomes;
  - (2) establish and maintain adequate systems and controls such that GMF took reasonable steps to ensure it made suitable personal recommendations to its customers; and
  - (3) ensure that the competence and performance of GMF's advisers were adequately monitored.
- 2.3. Mr Flanagan failed to act with integrity and is not competent and capable in relation to the controlled functions which he was approved to perform. The FSA has therefore concluded that he is not fit and proper to perform functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm, and should be prohibited from doing so.
- 2.4. The action supports the FSA's statutory objectives of: reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime; maintaining market confidence in the UK financial system; and securing the appropriate degree of protection for consumers.

## **3. DEFINITIONS**

- 3.1. The definitions below are used in this Final Notice.
  - (1) "ENF" means the Enforcement Manual which was in force between 1 December 2004 and 27 August 2007;
  - (2) "EG" means the Enforcement Guide which has been in force since 28 August 2007;
  - (3) the "Act" means the Financial Services and Markets Act 2000;
  - (4) "DEPP" means the Decisions Procedures and Penalties Manual;
  - (5) the "FSA" means the Financial Services Authority;

- (6) “Mr Flanagan” means Gareth Flanagan;
- (7) “GMF” means GMF Marketing Services Limited;
- (8) the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);
- (9) the “Statements of Principle” means the FSA’s Statements of Principle and Code of Practice for Approved Persons; and
- (10) “HMRC” means Her Majesty’s Revenue and Customs

#### **4. FACTS AND MATTERS**

4.1. GMF was incorporated on 9 June 2003. It became authorised by the FSA on 4 January 2005 to carry on the following activities:

- (1) advising on pension transfers and pension opt outs;
- (2) advising on investments (except on pension transfers and pension opt outs);
- (3) advising on regulated mortgage contracts;
- (4) agreeing to carry on a regulated activity;
- (5) arranging (bringing about) deals in investments;
- (6) arranging (bringing about) regulated mortgage contracts;
- (7) making arrangements with a view to regulated mortgage contracts; and
- (8) making arrangements with a view to transactions in investments.

4.2. Mr Flanagan was the sole owner and director of GMF, which operates in Londonderry as a small independent financial advisory firm. GMF has been authorised since 4 January 2005. Mr Flanagan was the only approved person performing significant influence functions at GMF until 12 December 2011 and was solely responsible for compliance oversight until the Enforcement investigation. GMF now has new directors and a new person responsible for compliance oversight. Mr Flanagan is no longer employed by or at the firm has ceased to hold any shares in GMF.

#### **Personal mortgage applications**

4.3. Mr Flanagan submitted nine mortgage applications to lenders in his own name in respect of five properties between December 2005 and November 2007. Five of the mortgage applications were completed and the mortgage funds obtained amounted to £1,325,722. The other four applications did not proceed to completion.

4.4. The FSA identified that eight of the applications submitted by Mr Flanagan in his own name contained false information:

- (1) Eight of Mr Flanagan’s applications contained false or misleading information regarding his income. In particular, in five of the applications Mr Flanagan

declared a personal income which was substantially higher than the income he had declared to HMRC;

- (2) Three of Mr Flanagan's applications contained false information in respect of his place of residence;
- (3) Three of Mr Flanagan's applications contained false information regarding his employment status; and
- (4) One of Mr Flanagan's applications contained false information about the purpose of the mortgage.

False and inaccurate information about income

- 4.5. Mr Flanagan voluntarily provided information to the FSA about the income he had declared to HMRC during the period from 6 April 2004 to 5 April 2008.
- 4.6. In September 2010, Mr Flanagan's accountant notified HMRC that Mr Flanagan's self assessment tax returns covering that period had been inaccurate. This was because Mr Flanagan had not properly declared his dividend income from GMF. Mr Flanagan's accountant revised the returns as follows:

<b>Year ending 5 April</b>	<b>Total income declared in original tax return</b>	<b>Total income declared in revised return</b>
2005	£62,133	£85,577
2006	£87,166	£114,944
2007	£93,940	£249,496
2008	£160,799	£141,910

- 4.7. In December 2005, Mr Flanagan submitted a mortgage application in which he declared his basic annual salary to be £45,000. This was lower than the original income figure of £62,133 and the revised figure of £85,577 which Mr Flanagan declared to HMRC for the tax year ending 5 April 2005.
- 4.8. In July 2006, Mr Flanagan submitted a mortgage application in which he declared a net profit from self employment of £330,000 for the year 2005. This was significantly higher than the original income figure of £62,133 and the revised figure of £85,577 which he had declared to HMRC for the tax year ending 5 April 2005.
- 4.9. Mr Flanagan was asked to explain the reason for this discrepancy. He said "*I cannot fully recall. It could have been based on a miscalculation or forward forecasting*". Mr Flanagan's income declaration related to the year 2005, so it was not a forecasted figure.

- 4.10. In a period of five weeks between October and November 2006, Mr Flanagan submitted five mortgage applications in which he declared three different income figures:

<b>Date of application</b>	<b>Application type</b>	<b>Income figure required</b>	<b>Income figure declared</b>
17 October 2006	Residential	<i>Unknown</i>	Guaranteed basic salary of £190,000
17 October 2006	Residential	Basic annual income before tax	£190,000
13 November 2006	Residential	Basic income	£94,000
13 November 2006	Residential	Basic income	£94,000
20 November 2006	Buy-to-let	Total annual income	£250,000

- 4.11. The declared income of £94,000 was higher than the original income figure of £87,166 which Mr Flanagan declared to HMRC for the tax year ended 5 April 2006. The figures of £190,000 and £250,000 were substantially higher than both the original income figure of £87,166 and the revised figure of £114,944 which he declared to HMRC.
- 4.12. In November 2007, Mr Flanagan submitted a mortgage application in which he declared an annual income of £340,000. This figure was substantially higher than both the original income figure of £93,940 and the revised figure of £249,496 which Mr Flanagan declared to HMRC for the tax year ending 5 April 2007.
- 4.13. When asked about this discrepancy, Mr Flanagan pointed to the fact that GMF's profit before tax for the year ending June 2007 had been £342,629.

*Explanations given by Mr Flanagan*

During the course of the investigation, Mr Flanagan told the FSA that he:

- (1) did not recall exactly how he had calculated the income figures in each mortgage application (i.e. whether the figures were based on past or future earnings);
- (2) considered that he could afford the repayments of any mortgage for which he applied;
- (3) regarded the income and distributable profits of GMF as his own, since he was the sole shareholder;

- (4) made some applications with the sole intention of finding out how much a lender would lend to him; and
- (5) had exercised stupidity rather than dishonesty, and should have been more stringent when completing applications.

False information about current residence

- 4.14. Mr Flanagan has lived at his current address (“Property A”) since 2004.
- 4.15. In December 2005, Mr Flanagan submitted a residential remortgage application for another property which he owned (“Property B”) in which he stated that he had changed address to Property B in November 2005. In fact, Mr Flanagan had not changed his address in November 2005 or at all. He said that the incorrect information about his address was due to an “*administrative error*”.
- 4.16. In October 2006, Mr Flanagan submitted another residential remortgage application to a lender in respect of Property B. This application did not proceed to completion. In order to satisfy underwriting questions from the lender, Mr Flanagan provided a signed letter in January 2007 in which he stated that he had moved into Property B in November 2006 and let out Property A. To support this assertion, Mr Flanagan provided copies of personal bank statements and a utility bill to the lender which were addressed to him at Property B.
- 4.17. Mr Flanagan had not moved to Property B in November 2006 as stated in the letter, or at all. He confirmed to the FSA (both in interview and in writing) that he had lived only at Property A since 2004. Mr Flanagan said that he had intended to move to Property B and changed the postal address for his bank statements, but ultimately did not move to Property B for family reasons.
- 4.18. On the same day that Mr Flanagan submitted the residential remortgage application in respect of Property B, he submitted another handwritten mortgage application to the same lender in which he declared his residential address as Property A.
- 4.19. In November 2007, Mr Flanagan submitted a residential remortgage application to a lender in respect of another property (“Property C”). This application did proceed to completion. The application stated that Mr Flanagan’s current address was Property C and he was the owner occupier. However, Mr Flanagan actually lived at Property A at the time, and had done so since 2004.

False information about employment status

- 4.20. Mr Flanagan has been a director and sole shareholder of GMF since its incorporation in 2003.
- 4.21. In December 2005, Mr Flanagan submitted a mortgage application in which he stated that he was employed by GMF and held no shares in GMF. Mr Flanagan supplied to the lender a letter signed by a third party in support of this false statement.
- 4.22. In November 2006, Mr Flanagan submitted two mortgage applications to lenders in which he named the same third party as his employer rather than GMF. During the

course of its investigation, the FSA asked Mr Flanagan to provide information about the third party. At that time, Mr Flanagan failed to provide a full and candid explanation of his connection with the third party.

#### False information about reason for a mortgage

- 4.23. In October 2006, Mr Flanagan submitted a remortgage application for Property A. In the section of the application entitled “*Reason for remortgage*”, Mr Flanagan made a handwritten note: “*capital raising to purchase holiday home*”.
- 4.24. Mr Flanagan confirmed in interview that he had not applied for the remortgage to raise capital for a holiday home, suggesting that a member of his staff may have selected the wrong option from a drop-down box when inputting the application online.
- 4.25. Since this explanation could not be correct, the FSA required Mr Flanagan to explain in writing why he had made a handwritten note about raising capital to purchase a holiday home. Mr Flanagan then stated that he had been considering raising funds to purchase land or a holiday home around the time of making the application. He confirmed that the capital raised from the remortgage was in fact invested in GMF.

#### **Performance of significant influence functions at GMF**

- 4.26. Mr Flanagan was, during the relevant period, the only approved person performing significant influence functions at GMF. He was therefore solely responsible for:
  - (1) overseeing the establishment and maintenance of appropriate systems and controls at GMF; and
  - (2) ensuring that GMF complied with the relevant requirements and standards of the regulatory system.

#### Maintaining systems and controls to counter the risk of financial crime

- 4.27. In May 2010, a mortgage lender removed GMF from its lending panel after identifying concerns about irregularities in 15 mortgage applications submitted by GMF between January 2007 and June 2009. The lender’s concerns related to the veracity of information about customers’ income, employment and address. Of the 15 mortgage applications, two of the applications were Mr Flanagan’s personal applications.
- 4.28. GMF provided its records relating to the other 13 mortgage applications to the FSA. Mr Flanagan acted as a mortgage adviser in at least four cases. The FSA reviewed 12 of the files and found that:
  - (1) six of the files contained no evidence that the mortgage adviser had verified, or sought to verify, the customer’s income and employment;
  - (2) four of the files contained inadequate evidence that the mortgage adviser had verified the customer’s income and employment; and

- (3) therefore, ten of the 12 files (83%) did not demonstrate adequate verification of the customers' income and employment.
- 4.29. Mr Flanagan said in interview that GMF may have been lax in verifying customers' incomes when the mortgage market was buoyant in 2007 to 2008. He acknowledged that customers may have taken out mortgages without having their income verified by GMF.
  - 4.30. The FSA compared the incomes declared in five of the 12 customer mortgage applications to the customers' HMRC records, and found that:
    - (1) in two cases, the income declared on the mortgage application was higher than that declared to HMRC;
    - (2) in two cases, the self-employed income declared on the mortgage application was higher than the net profit declared to HMRC; and
    - (3) in one case, the income declared on the mortgage application could not be verified because the customer did not have any HMRC records.
  - 4.31. One of GMF's mortgage advisers ("Adviser A") told the FSA that they occasionally increased customers' income declarations in mortgage applications in circumstances where:
    - (1) the customer told Adviser A that they earned cash in hand income which they had not declared to their accountant or HMRC; or
    - (2) the customer told Adviser A that they could feasibly earn more income by working overtime in future.
  - 4.32. Mr Flanagan stated in interview that he had not been aware that Adviser A had included unverifiable income in customers' mortgage applications until Adviser A told him about this during the FSA's investigation. Adviser A asserted that Mr Flanagan had actual knowledge of that practice at the time as a result of the conversations that Adviser A had held with Mr Flanagan during that period.

Maintaining systems and controls to ensure the suitability of mortgage advice

- 4.33. Of the 12 mortgage files reviewed by the FSA:
  - (1) ten files (83%) did not contain evidence that the customer had received and read GMF's initial disclosure document or terms of business;
  - (2) eight files (67%) contained an insufficient or conflicting record of the customer's mortgage needs;
  - (3) 11 files (92%) did not contain sufficient evidence to demonstrate that an assessment of affordability had been made;



- (4) nine files (75%) did not demonstrate that the adviser had carried out adequate product research and comparison before recommending a particular mortgage product; and
- (5) none of the files contained an adequate record of the reasons why the adviser had concluded that their mortgage advice was suitable with regard to the customer's individual circumstances and needs.

4.34. Mr Flanagan acted as the mortgage adviser in at least four of these 12 cases. During interview, he acknowledged that there were record keeping deficiencies in GMF's mortgage files.

Maintaining systems and controls to ensure the suitability of investment advice

4.35. In November 2010, the FSA issued GMF with a requirement notice requiring it to appoint a skilled person to review past investment business, so as to ascertain the suitability of its investment advice.

4.36. The skilled person reviewed 24 client files originating from the period December 2006 to August 2010, in which Mr Flanagan had given investment advice. The skilled person deemed that:

- (1) four files (16%) contained suitable advice; and
- (2) twenty files (84%) were unclear in terms of suitability of advice.

4.37. The skilled person also reviewed 14 client files not relating to Mr Flanagan from the same time period, and deemed that:

- (1) two files (14%) contained suitable advice;
- (2) two files (14%) contained unsuitable advice; and
- (3) ten files (72%) were unclear in terms of suitability of advice.

4.38. The skilled person reported significant failings on the part of GMF, particularly in relation to the recording of information about investment clients. In respect of the unclear files, the skilled person undertook a client contact exercise and, based on the information provided by the clients, did not find any further instances of unsuitable advice within the sample.

4.39. The FSA reviewed a random sample of 14 of GMF's investment files originating from the period December 2007 to February 2011. Six of the 14 investment files pertained to investment advice given by Mr Flanagan.

4.40. Of the 14 investment files:

- (1) 13 files (93%) did not contain sufficient evidence that the customer had been issued with GMF's initial disclosure document or terms of business;
- (2) seven (50%) contained no evidence that the adviser had assessed the customer's experience or knowledge of investment products;

- (3) 13 files (93%) did not contain evidence that the adviser had obtained or verified the necessary information about the customer's financial situation;
  - (4) none of the files contained evidence that the adviser had carried out an adequate affordability assessment with regard to the customers' financial position;
  - (5) six of the files (43%) contained an unclear or conflicting record of the customer's risk profile;
  - (6) eleven of the files (79%) did not contain sufficient evidence to demonstrate that the adviser had carried out adequate product research and comparison before making an investment recommendation; and
  - (7) none of the files contained evidence to demonstrate that the customer had received, read and understood documents explaining the risks or costs associated with the recommended investment product(s) during the sales process.
- 4.41. The FSA did not find that this risk of unsuitable advice, following from poor record keeping, crystallised in systemic unsuitable sales.
- 4.42. During interview, Mr Flanagan agreed that some of GMF's past investment files contained the deficiencies and errors identified by the skilled person and the FSA.

#### Compliance oversight

- 4.43. Mr Flanagan was responsible for overseeing GMF's compliance function since January 2005.
- 4.44. GMF employed an external compliance consultant to visit GMF once or twice a year and provide standard templates for compliance procedure manuals. GMF occasionally sent a small sample of customer files to the external compliance consultant for review, but this was not a structured process.
- 4.45. Mr Flanagan reviewed the other advisers' files irregularly, without any particular methodology or template. No one at GMF did compliance checks on Mr Flanagan's files.
- 4.46. Mr Flanagan's regular meetings with GMF's other advisers focussed on commercial management information and productivity.
- 4.47. In January 2010, Mr Flanagan recruited an Operations Manager to carry out basic administrative checks of customer files. In October 2010, Mr Flanagan recruited an Operations Director to review all the firm's operational processes, including compliance processes.
- 4.48. In July 2011, Mr Flanagan recruited a Head of Supervision and Compliance who would assume responsibility for overseeing the firm's compliance function.
- 4.49. During interview, Mr Flanagan acknowledged that he was responsible for GMF's compliance and accepted that GMF's compliance processes had been inadequate.

### Supervision and monitoring of Adviser A

- 4.50. Between October 2007 and March 2008, Adviser A's advice was reviewed internally by GMF. The results of the reviews were recorded on evaluation forms which Mr Flanagan signed off as the nominated supervisor of Adviser A.
- 4.51. The FSA reviewed two of the mortgage files which had been reviewed by GMF during this period. The files had been deemed satisfactory in terms of containing adequate customer information and demonstrating that suitable advice had been given. The FSA found that these files did not demonstrate that Adviser A had gathered sufficient information about the customers' circumstances and needs, carried out adequate product research or ensured that the customers had understood the risks and costs associated with the recommended mortgages.
- 4.52. Adviser A's advice was not reviewed formally by GMF after March 2008. Mr Flanagan said that he would discuss a particular customer file with Adviser A if Adviser A brought a file to him with a question.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

### **Statement of Principle 1**

- 5.2. Mr Flanagan submitted eight mortgage applications to lenders which contained false information about his employment, income and/or address. Mr Flanagan must have known the information to be false at the time he made these statements. Specifically:
- 1) In relation to the application of July 2006, in which Mr Flanagan declared an income of £330,000, Mr Flanagan's explanation that the figure may have been forecasted was not correct as the figure appeared to correspond to the net profit of GMF for the year ending June 2005;
  - 2) In relation to the five mortgage applications dated October 2006 to November 2006, in which Mr Flanagan declared three distinct income figures, Mr Flanagan must have known that the figures he submitted were false given the short period of time in which the applications were submitted. It appears to the FSA that Mr Flanagan deliberately adjusted his income to maximise the likelihood that each mortgage application would be approved;
  - 3) In relation to the application of November 2007, in which Mr Flanagan declared an income of £340,000, Mr Flanagan ought reasonably to have known that submitting figures that were not relative to his personal income would mislead the lender;
  - 4) In relation to the two applications in which Mr Flanagan named a third party as his employer rather than GMF, Mr Flanagan did not dispute that this was false. He was, to all intents and purposes, self-employed as the owner of GMF and its sole director when he completed these mortgage applications. He knew this, as he stated in interview that he regarded the income of the firm as his own. In

particular, Mr Flanagan acted deliberately when he failed to give full and candid information to the lender and to the FSA about his connection to the third party;

- 5) In relation to the application in which he stated that the purpose of the loan was to purchase a holiday home, Mr Flanagan must have known this was false at the time he signed the mortgage application. His initial explanation, that it was an error by his staff, is not accepted by the FSA because Mr Flanagan made a handwritten note in the application confirming this was the purpose of the mortgage loan. Mr Flanagan's subsequent explanation that it had been intended for the purchase of the holiday home but subsequently spent on GMF is not credible, following on from his statement in interview that this was an administrative error by his staff. The more plausible explanation is that this was a deliberate act by Mr Flanagan; and
  - 6) In the three applications in which he did not give Property A as his address, Mr Flanagan must have known at all material times where he was living. The questions on the applications forms were clear and unequivocal, and it is implausible that Mr Flanagan could have entered an incorrect address by mistake. In particular, the repeated nature of this conduct, the provision of supporting material in the form of utility bills and, in the case of the third application, the provision of a handwritten letter all suggest that this was a deliberate act by Mr Flanagan to obtain a residential mortgage on a property which he would not occupy.
- 5.3. As, at the relevant time, Mr Flanagan was the sole owner and controller of GMF, and was a mortgage and investment adviser, he was aware, or should have been aware, of the need to make full and accurate disclosure in mortgage applications. He should have provided candid and accurate information in his applications, rather than make a judgement on what he thought the lender wanted to know. The false information disclosed by him could have affected the decision to lend or, at least, the extent to which the lender sought further information regarding proof of his income or the amount of due diligence done on his affairs.
- 5.4. Instead, Mr Flanagan provided false and inaccurate information to lenders in respect of his income, residence, employment status and intended use of a mortgage across the eight applications set out above, over a time period of two years. The nature of the false statements and the lack of plausible explanations for these suggest that Mr Flanagan acted deliberately.
- 5.5. Accordingly, Mr Flanagan breached Statement of Principle 1 by knowingly submitting false and misleading information to lenders. Mr Flanagan's actions in this regard demonstrate a lack of integrity.

#### **Statement of Principle 7**

- 5.6. As the founder and, formerly, the sole director of GMF, Mr Flanagan set the culture of the business. Mr Flanagan was responsible for ensuring GMF complied with the relevant requirements and standards of the regulatory system. He therefore should have put systems in place to counter the risk of financial crime and to ensure that GMF could demonstrate that it provided suitable mortgage and investment advice.

Mr Flanagan should also have ensured that GMF's compliance oversight function was adequate and that its advisers were appropriately supervised and monitored.

- 5.7. Mr Flanagan failed to ensure that he and other advisers at GMF complied with regulatory standards. Of the 12 mortgage files reviewed by the FSA, ten files did not demonstrate that income or employment information had been adequately verified. Mr Flanagan and GMF's failure to verifying customers' incomes was not in accordance with his and GMF's regulatory responsibilities.
- 5.8. The mortgage files reviewed by the FSA did not demonstrate that GMF had provided suitable advice. There were serious deficiencies within the files, including insufficient documentary evidence to demonstrate: the customers' mortgage needs, whether the customer could afford the mortgage, that sufficient research had been carried out; and an adequate explanation of the reasons for the adviser's recommendation.
- 5.9. The investment files reviewed by the FSA and the skilled person did not demonstrate that GMF had provided suitable advice. There was insufficient documentary evidence to demonstrate that the advisers had: assessed the customer's experience or knowledge of investment products; obtained or verified the customer's financial situation; carried out an adequate affordability assessment; set out a clear record of the customer's risk profile; carried out adequate product research and comparison; and provided evidence that the customer had been made aware of the risks and costs associated with the recommended investment products.
- 5.10. Mr Flanagan has been responsible for overseeing GMF's compliance function since January 2005. Mr Flanagan relied on the limited intervention of an external compliance consultant and did not devote sufficient time to his regulatory compliance responsibilities, due to the time pressures that came with being the sole director and a key adviser. He has accepted that the compliance arrangements at GMF were inadequate.
- 5.11. These failings amount to a breach of Statement of Principle 7, in that Mr Flanagan failed to take reasonable steps to ensure that GMF's business complied with the relevant requirements and standards of the regulatory system.

### **Fitness and propriety**

- 5.12. Mr Flanagan failed to act with integrity in carrying out his controlled functions, in breach of Statement of Principle 1. He has also demonstrated a lack of competence and capability in breach of Statement of Principle 7, by not taking reasonable steps to ensure the business of GMF for which he was responsible in his controlled functions complied with the relevant requirements and standards of the regulatory system
- 5.13. The facts and matters described above lead the FSA to the conclusion that Mr Flanagan's conduct fell short of the minimum regulatory standards required for approved persons performing controlled functions. As such, Mr Flanagan is not fit and proper in terms of his integrity, competence and capability to perform any function in relation to any regulated activity.

## **6. SANCTION**

### **Imposition of a financial penalty**

- 6.1. The FSA's policy on the imposition of financial penalties relevant to the misconduct as detailed in this Notice (which took place between January 2005 and September 2010) is set out in Chapter 6 of the version of DEPP in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP. The relevant sections of DEPP are set out in more detail in the Annex to this Final Notice. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of ENF, in force during part of the relevant period until 27 August 2007, and Chapter 7 of EG, in use thereafter.
- 6.2. The principal purpose of 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.
- 6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created for customers and the need to send out a strong message of deterrence to others.
- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

### **Deterrence (DEPP 6.5.2(1))**

- 6.5. The FSA considers that the imposition of the proposed financial penalty is appropriate as it supports the FSA's stance on credible deterrence, both in terms of discouraging Mr Flanagan and others from acting without integrity and encouraging him and others to observe regulatory standards and requirements.

### **The nature, seriousness and impact of the breach in question (DEPP 6.5.2(2))**

- 6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, the nature of the requirements on Mr Flanagan, the number of breaches and the period over which they occurred, the extent to which the breaches revealed systemic weaknesses of the management systems relating to Mr Flanagan's business, the nature and extent of the financial crime attributable to the breach, the extent to which the breaches demonstrate a lack of honesty and integrity and the number of lenders exposed to a risk of loss. Mr Flanagan's failings are considered to be particularly serious because the FSA places a great deal of emphasis on the responsibilities of senior management for the standards and conduct of the businesses they run.

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

6.7. The FSA considers that Mr Flanagan has acted in a deliberate and reckless manner.

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

6.8. The FSA recognises that the financial penalty imposed on Mr Flanagan is likely to have a significant impact on him as an individual, but it is considered to be proportionate in relation to the seriousness of the misconduct and to Mr Flanagan's position as an approved person performing significant influence functions at GMF.

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

6.9. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors, including the impact such a penalty might have on Mr Flanagan's financial resources and the need for credible deterrence.

**The amount of benefit gained or loss avoided**

6.10. The FSA has had regard to the amount of benefit gained by Mr Flanagan in relation to securing mortgages using false or misleading information.

**Conduct following the breach (DEPP 6.5.2(8))**

6.11. Mr Flanagan fully co-operated with the FSA's investigation. He co-operated with the completion of a review of GMF's past business, agreed to have all new business approved by a compliance consultant for a period of months and hired a full time compliance officer.

**Disciplinary record and compliance history (DEPP 6.5.2(9))**

6.12. There has been no previous disciplinary action against Mr Flanagan.

**Other action taken by the FSA (DEPP 6.5.2(10))**

6.13. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour.

**Conclusion**

6.14. Having considered all the circumstances set out above, the FSA has determined that £136,000 (before any discount for early settlement) is an appropriate financial penalty to impose on Mr Flanagan.

**Withdrawal of approval and prohibition**

6.15. The FSA has found that Mr Flanagan is not a fit and proper person, in that he lacks integrity and is not competent or capable of performing his controlled functions at GMF. Therefore, the FSA considers it appropriate and proportionate in all the circumstances to withdraw all the approvals given to Mr Flanagan to perform

controlled functions at GMF, and to make an order prohibiting Mr Flanagan from performing any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This prohibition will not prevent Mr Flanagan holding a percentage of the issued share capital of GMF provided that percentage does not exceed (whether acting alone or in concert) 20% and provided at all times he does not exercise any rights attached to those shares other than the passive receipt of dividends.

- 6.16. The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Flanagan's approval be withdrawn and that he be prohibited from performing any regulated activity. The relevant provisions of EG are set out in Annex A of this Notice.

## **7. PROCEDURAL MATTERS**

### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given to Mr Flanagan in accordance with section 390 of the Act.

### **Manner of and time for Payment**

- 7.3. The financial penalty must be paid in full by Mr Flanagan to the FSA by no later than 10 April 2012, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 11 April 2012, the FSA may recover the outstanding amount as a debt owed by Mr Flanagan and due to the FSA.

### **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 7.6. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

- 7.7. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142 /fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.



.....  
**Tom Spender**  
**FSA Enforcement and Financial Crime Division**

## **ANNEX A**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **1. Statutory provisions**

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
- 1.2. Section 56 of the Act provides that the FSA may make a prohibition order prohibiting an individual from performing a specified function.
- 1.3. Section 63 of the Act provides that the FSA may withdraw its approval to carry out a controlled function if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

#### **2. Handbook provisions**

- 2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

##### **Statements of Principle and the Code of Practice for Approved Persons**

- 2.2. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 2.3. APER 3.1.3G states 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.
- 2.4. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct

was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

- 2.5. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.6. The Statement of Principles relevant to this matter are:
  - (1) Statement of Principle 1, which provides that an approved person must act with integrity in carrying out his controlled function; and
  - (2) Statement of Principle 7 provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 2.7. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
- 2.8. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
  - (1) whether he exercised reasonable care when considering the information available to him;
  - (2) whether he reached a reasonable conclusion which he acted on;
  - (3) the nature, scale and complexity of the firm's business;
  - (4) his role and responsibility as an approved person performing a significant influence function; and
  - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.9. APER 4.1.3E(3) states that deliberately misleading (or attempting to mislead) a client, the firm or the FSA by act or omission is conduct that does not comply with Statement of Principle 1. APER 4.1.4E (9) states that such conduct includes, but is not limited to, providing false or inaccurate documentation or information.
- 2.10. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7. These include:
  - (1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems

of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.3E);

- (2) failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities (APER 4.7.4E);
- (3) failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities have arisen (taking account of the systems and procedures in place) (APER 4.7.5E).

## **DEPP**

- 2.11. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period.
- 2.12. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market 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. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.
- 2.13. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
- 2.14. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

### Deterrence: DEPP 6.5.2G(1)

- 2.15. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

- 2.16. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal

controls relating to all or part of a person's business, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach and the loss or risk of loss caused to consumers, investors or other market users.

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

- 2.17. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

- 2.18. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

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

- 2.19. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.20. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

- 2.21. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

**Enforcement Guide (“EG”)**

- 2.22. The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. Although the references in the Final Notice are to the EG, the FSA has also had regard to the appropriate provisions in ENF, which preceded the EG and applied during part of the relevant period.

- 2.23. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.

- 2.24. EG 9.1 states that the FSA's power under section 56 of FSMA 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.
- 2.25. EG 9.2 states that the FSA's effective use of the power under section 63 of FSMA to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 2.26. EG 9.3 states that in deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the FSA will consider all the relevant circumstances.
- 2.27. 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.
- 2.28. 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.
- 2.29. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case. These 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 the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
  - (2) Whether, and to what extent, the approved person has:
    - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
    - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) (EG 9.9(3));
  - (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

- (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
  - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7)); and
  - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
- 2.30. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include severe acts of dishonesty, which may have resulted in financial crime and serious lack of competence (EG 9.12(3)).
- 2.31. EG 9.14 states that where the FSA considers it is appropriate to withdraw an individual's approval to perform a controlled function within a particular firm, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.
- 2.32. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.