



Case number FS/2010/0037

*FINANCIAL SERVICES – withdrawal of approval and prohibition of approved person - whether Applicant made false and misleading representations in mortgage applications - yes - whether Applicant failed to deal with the Authority in open and co-operative manner - yes - whether Applicant dishonest - no - whether Applicant lacked integrity - yes - whether Applicant fit and proper person - no - prohibition from carrying out any function confirmed - reference dismissed*

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**GHANSHYAM BATRA**

**Applicant**

**- and -**

**THE FINANCIAL CONDUCT AUTHORITY**

**The Authority**

**Tribunal: Judge Greg Sinfeld  
Jo Neill ACA  
Martin Fraenkel**

**Sitting in public in London on 5 and 6 November 2013 and after consideration of the parties' written submissions received on 25 February 2014 and 11 March 2014**

**Peter Guest, counsel, for the Applicant**

**Alison Potter, counsel, instructed by the Financial Conduct Authority, for the Authority**

## DECISION

### Introduction

1. This is a reference by Mr Ghanshyam Batra of a decision made by the Financial Services Authority, now the Financial Conduct Authority, (together “the Authority”) in a Decision Notice dated 3 November 2010.

2. Mr Batra was, at all material times, the director, controller and approved person of Mortgage 10 Limited (“M10”), a mortgage and general insurance broker. In 2007, Mr Batra acquired 78 studio flats in two properties using mortgage funding. The Authority alleges that Mr Batra, through M10, submitted mortgage applications on his own behalf that contained false and misleading information, knowing it to be false. The Authority further alleges that, when it investigated the matter, Mr Batra failed to deal with the Authority in an open and co-operative manner.

3. On the basis of the alleged misconduct, the Authority took the view that Mr Batra was not fit and proper to perform controlled functions in relation to M10 and any function in relation to regulated activities. The Authority issued the Decision Notice stating that it had decided to:

(1) withdraw Mr Batra’s approval to perform controlled functions in relation to M10 under section 63 of the Financial Services and Markets Act 2000 (“FSMA”); and

(2) make a prohibition order against Mr Batra under section 56 of the FSMA preventing him from carrying out any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

4. Mr Batra contested the Authority’s decision. He denied any dishonesty or lack of integrity in relation to the mortgage applications and maintained that he is a fit and proper person to perform controlled functions.

5. We have not found, on the evidence, that the Authority has established that Mr Batra was deliberately dishonest. For the reasons set out below, we have found that Mr Batra lacked integrity. The fact that, since the Decision Notice was issued, M10 has been dissolved means that Mr Batra’s approval in relation to the business has fallen away. It follows that we do not need to reach any determination about the withdrawal of Mr Batra’s approval although, if M10 had still been in existence, we would have confirmed the Authority’s decision to withdraw Mr Batra’s approval to perform controlled functions in relation to M10. In the light of our finding that Mr Batra lacked integrity in relation to the submission of the mortgage applications and was not open and co-operative in his dealings with the Authority, we consider that prohibition is appropriate. Accordingly, the reference is dismissed and we direct the Authority to issue a final notice to Mr Batra prohibiting him from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

### **Applicable statutory provisions**

6. Section 56 FSMA gives the Authority power to prohibit an individual from performing any function in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm if it appears to the Authority that the individual is not a fit and proper person to perform that function.

7. Section 63 FSMA provides that the Authority may withdraw a person's approval under section 59 to perform controlled functions if the Authority considers that the person is not a fit and proper person to perform the function to which the approval relates.

8. Section 64 FSMA provides that the Authority may issue statements of principle with respect to the conduct expected of approved persons and a code of practice for the purposes of determining whether or not a person's conduct complies with the statement of principle.

9. Section 66(2) FSMA provides that a person is guilty of misconduct if, while an approved person, he fails to comply with a statement of principle issued under section 64.

### **Meaning of fit and proper**

10. Guidance on whether a person is regarded as fit and proper is contained in the Authority's Handbook in the part entitled Fit and Proper Test for Approved Persons ("FIT"). FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations are the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

11. FIT 2.1.1G states that, in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3 G which may have arisen either in the United Kingdom or elsewhere. FIT 2.1.3 G includes the following matters:

(5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;

(13) 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."

12. The part of the Authority’s Handbook entitled Statements of Principle and Code of Practice for Approved Persons (“APER”) sets out the principles which have been issued under section 64 FSMA. APER 2.1.2G, sets out the Statements of Principle which include the following:

5 “Statement of Principle 1: An approved person must act with integrity in carrying out his controlled function.

...

10 Statement of Principle 4: An approved person must deal with the [Authority] and with other regulators in an open and cooperative way and must disclose appropriately any information of which the [Authority] would reasonably expect notice.”

### Meaning of integrity

13. The meaning of integrity was considered by the Tribunal in *Hoodless and Blackwell v FSA* (2003). The Tribunal observed at [19]:

15 "In our view "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a  
20 finding of lack of integrity would not be appropriate.)"

14. While the passage quoted above is useful guidance as to the meaning of the concept, the second sentence is clearly not the only circumstance in which a person can be said to lack integrity. In the subsequent cases of *Vukelic v FSA* (2009) at [23] and *Atlantic Law LLP and Greystoke v FSA* [2010] UKUT B30 (TCC) at [96], the  
25 Tribunal has cautioned against attempting to formulate a comprehensive definition of integrity. As the Tribunal in *Vukelic* observed, integrity remains a concept “elusive to define in a vacuum but still readily recognisable by those with specialist knowledge and/or experience in a particular market.”

15. The Tribunal in *First Financial Advisors Limited v FSA* [2012] UKUT B16  
30 (TCC) agreed with the observation in *Vukelic* and endorsed the guidance in *Hoodless* and *Atlantic Law*. At [119], the Tribunal observed:

“Even though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity.”

35 We agree. A lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of  
40 such statements. Such behaviour was found to be evidence of a lack of integrity by the Tribunal in *Vukelic* at [119]:

5 “It may be that Mr Vukelic was not dishonest on this transaction in the  
sense of deliberately participating in a scheme to deceive and we are  
prepared to accept that he was not. But he turned a blind eye to what  
was obvious and failed to follow up obviously suspicious signs. We  
do not believe that an educated professional in a senior position could  
have been oblivious to the signs that the transaction depended on  
concealment for its success. It is possible, but unlikely, that Mr  
Vukelic simply failed to spot what should have been obvious to a  
person in his position. But if that had been so it would have resulted  
10 from an inexcusable failure to ask obvious questions.”

**Alleged misconduct**

16. The Authority justifies its decision to withdraw Mr Batra’s approval and  
prohibit him from carrying out any function by reference to specific instances of  
alleged misconduct on the part of Mr Batra. In relation to mortgage applications  
15 made to two lenders, namely Wave Lending Limited (formerly called Freedom  
Funding Limited, together “Wave”) and Mortgage Express, a subsidiary of Bradford  
and Bingley, the Authority alleges that Mr Batra made various representations that he  
knew to be false, namely:

- 20 (1) in mortgage applications to Wave, he misrepresented how he intended to  
use the studio flats in that he stated that:
  - (a) there would be a change from use as a hotel to residential use;
  - (b) the flats would not be let to corporate tenants; and
  - (c) all lettings would be in the form of Assured Shorthold Tenancies  
25 (“ASTs”);
- (2) he misstated his income in the mortgage application forms submitted to  
Wave and Mortgage Express;
- (3) he misrepresented the source of the funds for the deposit (or balance of  
the purchase price) for the properties in mortgage applications to Wave and  
Mortgage Express; and
- 30 (4) he did not disclose his relationship to the lessor of the properties in  
mortgage applications to Wave and Mortgage Express or in reply to a later  
question asked by Wave.

17. In relation to his dealings with the Authority, the Authority alleges that Mr  
Batra failed to deal with the Authority in an open and co-operative manner, in that:

- 35 (1) he misstated his income in an interview with the Authority in September  
2008;
- (2) he, as sole director and approved person, failed to ensure that M10  
provided information required by the Authority, namely a copy of the written  
notification to clients that M10 was no longer permitted to carry on regulated  
40 activities and a list of the clients who had been notified, within the specified  
time limit; and

(3) he failed to disclose information which he should have disclosed to the Authority, namely that one of the lenders, Wave, had initiated proceedings against him and obtained an injunction freezing his assets (“the Wave Proceedings”).

5 18. Mr Batra denied that he made any misrepresentations to the lenders. Mr Batra contended that he took every step within his power to tell lenders the truth prior to completion of the purchase of the properties. Shortly after completion, events occurred which led Mr Batra to change his business model and let the studio flats other than on ASTs. The supervening events were the grant of an injunction freezing  
10 Mr Batra’s assets on the application of Wave in December 2007 and the financial crisis in early 2008. In relation to the allegation of failure to co-operate with the Authority, Mr Batra denied misstating his income or that he was to blame for the failure to submit the requested information to the Authority within the time limit and submitted that he was advised by his solicitors that he did not have to disclose the  
15 Wave Proceedings to the Authority.

### **Role of the Tribunal on a reference**

19. Section 133(4) of the FSMA provides that, on a reference, the Tribunal may consider any evidence relating to the subject matter of the reference or appeal, whether or not it was available to the decision-maker at the material time. This is not  
20 an appeal against the Authority’s decision but a complete rehearing of the issues which gave rise to the decision.

20. Section 133(5) of the FSMA provides that, on a reference, the Tribunal must determine what (if any) is the appropriate action for the Authority to take in relation to the matter referred to it. Section 133(6) and (7) provide that the Tribunal must  
25 remit the matter to the Authority with such directions as the Tribunal considers appropriate for giving effect to its determination and the Authority must act accordingly.

### **Burden and standard of proof**

21. The burden of proof is on the Authority and the standard of proof to be applied  
30 in this case is the ordinary civil standard of proof on the balance of probability, namely whether the alleged conduct more probably occurred than not.

### **Evidence**

22. The Authority submitted seven bundles of documents. There had originally been more bundles but when it was realised that M10 had been dissolved and would  
35 no longer be a party to the proceedings, the Authority reviewed the documents in the case and reduced them considerably, for which we are grateful. There was also a Schedule of Admissions by Mr Batra. The Authority did not call any witnesses although it tendered a witness statement of Mr Karl Hopkins of Wave made for the purpose of the Wave Proceedings. Mr Hopkins was not available as he no longer  
40 lived in the UK and so he could not be asked any questions by the Tribunal or by Mr

Peter Guest, who appeared for Mr Batra. Mr Batra gave evidence on his own behalf. He did not call any witnesses and largely relied on the documents produced by the Authority. On the evidence before the Tribunal, we find the facts to be as set out below.

## 5 Findings of fact

### *Background*

23. Mr Batra has worked in the financial services industry since 1984. For many years, he was with Abbey Life where he mostly sold life assurance, pensions and investments to a variety of clients. In March 2000, he set up his own independent financial consultancy, Genesis Financial Care Limited, which dealt in life assurance, pensions and other financial investments. Mr Batra set up M10 in June 2000. Mr Batra was the sole director of M10. M10 carried on a mortgage broking business concentrating on residential and buy-to-let mortgages. Initially, such activities were unregulated but, with effect from 31 October 2004, M10 was authorised to carry on regulated activities, including advising on and arranging regulated mortgage contracts, insurance and investments. At the same time, Mr Batra was the only person approved to perform controlled functions CF1 (Director) and CF8 (Oversight) at M10.

### *Dylan House*

24. In 2006, Mr Batra spent three or four months negotiating to buy a property called Dylan House in Paddington, London W2. The property consisted of 23 self-contained studio flats. Dylan House was licensed by the local authority to be operated as a hotel but Mr Batra said that he did not think it was operated in that way because when he first went to see it, the occupants of the studio flats were all long-term tenants. Mr Batra said in evidence that, at the time of the purchase, most of the studio flats in Dylan House were let under ASTs. His evidence was that some of the others were let to overseas companies for use by their employees, who were on long term contracts in London.

25. Mr Batra said that he wanted to take long leases over the individual studio flats in the building and use the leases as security for buy to let mortgages which would fund the purchase of the leases. The owners of Dylan House were not willing to grant leases but wanted to sell the freehold interest which was held by a British Virgin Islands (“BVI”) company, Parta Properties Limited (“Parta”). It was eventually agreed that Parta would create a new lease for each studio flat and grant it to Mr Batra; Mr Batra would arrange mortgage finance for each studio flat lease. At the same time or immediately after the leases and mortgages were in place, the owners would transfer the shares in Parta to a trust incorporated in the BVI of which Mr Batra was a beneficiary. This meant that, indirectly, the trust owned the freehold of Dylan House and that Mr Batra owned the leaseholds of all the studio flats.

26. Mr Batra said that the mortgagees in relation to Dylan House were:

40 (1) Bank of Scotland;

- (2) Platform Home Loans;
- (3) Mortgage Express; and
- (4) Standard Life Bank.

27. Mr Batra said in evidence that he dealt with Mr Karl Hopkins, a business development manager at Platform Home Loans, and that Mr Hopkins knew all about the Dylan House transaction as he played a role in the approval of the funding from Platform Home Loans. Mr Hopkins was not called as a witness because he was living in Thailand but his witness statement in the Wave Proceedings (discussed at [59] – [64] below) was admitted in evidence. Mr Hopkins said in his statement that he left his employment at Platform in September 2005 and, after a period of gardening leave, joined Wave in January 2006. Mr Hopkins accepted that he had come into contact with Mr Batra at Platform Home Loans because Mr Batra had referred some mortgage business to the company but he denied having any involvement with the mortgages in relation to the studio flats in Dylan House because, at that time, he was not working for Platform but for Wave. Not having heard evidence from Mr Hopkins, we are unable to assess the accuracy of his statement that he had no knowledge of or involvement in the Dylan House transactions. We do not, however, think that it is necessary to make a finding on this issue in order to deal with the subject matter of the reference. Accordingly, in what follows we assume, without making a finding on the point, that Mr Hopkins had an awareness and played some role in Platform Home Loans financing the purchase of studio flats in Dylan House.

28. The transaction completed in September 2006 when Mr Batra acquired leasehold interests in the 23 studio flats in Dylan House granted by Parta and the BVI trust, of which Mr Batra was a beneficiary, acquired all the shares in Parta. Each mortgagee had agreed to lend between 80% and 85% of the aggregate buy-to-let value of the relevant set of leases being offered to them as security. The leases of the 23 studio flats were valued together at approximately £3.7 million. Mr Batra borrowed approximately £3.2 million in aggregate by way of the mortgages on each studio flat. The agreed price for the shares in Parta was approximately £2.8 million. The source of the finance was the money borrowed by Mr Batra by way of the mortgages on the studio flats. The difference between the purchase price for the shares and the amount borrowed against the leases left a surplus of some £234,000 (after payment of fees and expenses) that Mr Batra intended to use for renovating Dylan House. In the event, Mr Batra did not need to use the surplus cash as the renovations were paid for from income generated by lettings of the studio flats.

29. In evidence, Mr Batra said that he operated Dylan House as an aparthotel. It had a mix of tenants who stayed for varying periods of time. He said that, when a studio flat in Dylan House became vacant because a tenant gave up his lease and moved on, he would advertise for long-term tenants through estate agents and rental agents. The word “corporates” was used to describe the target tenants in documents and on the Dylan House website as well in his interview with the Authority. Mr Batra said that corporates means agencies, estate agents, rental agents, etc. When giving evidence, Mr Batra said that when he used the term “corporate clients” in his witness statement he meant estate agents and rental agents who would be a source of potential



tenants. We do not accept this explanation. In the interview with the Authority in September 2008, Mr Batra said:

5                                   “... the corporate market is where all my business comes from, we pretty much deal with a lot of corporates all around the world now ... we do a lot of business with Pepsi Cola, Schweppes, Adidas ...”

We consider that in his witness statement and in the interview with the Authority, Mr Batra used “corporates” to mean companies. We conclude that Mr Batra let some studio flats in Dylan House to companies as tenants.

*York House and Warwick House*

10   30. In late 2006 and early 2007, Mr Batra entered into negotiations with three individuals who owned two properties in Earl’s Court, London, namely:

- (1) York House; and
- (2) Warwick House (which was formed from two properties with separate postal addresses).

15   31. The properties contained a total of 78 studio flats with bedroom, bathroom and cooking facilities. Both properties were licensed by the local authority to be operated as hotels. Mr Batra said that they were being operated as “aparthotels” in all but name. The website for the period immediately after acquisition, which Mr Batra said he inherited from the previous owners showed that the properties were being offered  
20 for short stays of one day or a few days as well as for longer term occupation. The website was operated by a separate company, unconnected with Mr Batra, although his email address at M10 was shown as the contact on the website.

25   32. Mr Batra said that he wanted to acquire York House and Warwick House and, after refurbishing them, operate them in a similar manner to Dylan House. Mr Batra said that the negotiations, which started in January 2007, were very fraught. He said that the owners initially wanted £22 million for the properties. After some negotiations, the price dropped to £18 million and then £16 million before increasing to £20 million. Eventually, the purchase of price was agreed at £11.135 million.

30   33. Mr Batra said that he planned to structure the acquisition in the same way as he had done for Dylan House. The freehold interest would be owned by a BVI trust company on trust for the benefit of Mr Batra and his family. On completion, Mr Batra would be granted leasehold interests in each of the studio flats and would borrow against those interests on buy to let mortgages. This was not the same structure as Mr Batra had used when acquiring Dylan House. In that case, Mr Batra’s BVI trust  
35 company simply acquired the shares in a company which owned the freehold and had granted leases to Mr Batra. In the case of York House and Warwick House, Mr Batra had to incorporate two BVI companies, which were owned by a BVI trust company, to acquire the freeholds and grant the leases to Mr Batra. In reply to a question from Mr Guest, Mr Batra said:

5 “It was completely new and it was something that I had not a great deal of knowledge on. I had to rely on solicitors and people that knew how it would be structured. I do remember asking [my accountant], instead of BVI companies, can we do something in the UK? Can we do something in the Isle of Man? Why do we have to go to a BVI company? I still didn't understand, when I purchased Dylan [House], what the BVI really was at that time. Obviously I know now.”

*The mortgage applications*

10 34. Between March 2007 and September 2007, M10 made 78 mortgage applications to seven lenders on behalf of Mr Batra in respect of the leasehold interests in York House and Warwick House. The lenders were:

- (1) Bank of Ireland;
- (2) Clydesdale;
- (3) Mortgages Direct;
- 15 (4) Standard Life;
- (5) UCB Home Loans;
- (6) Mortgage Express; and
- (7) Wave.

20 35. The total amount lent was approximately £16.8 million. Each mortgage application (and thus each mortgage) related to an individual studio flat. Every mortgage application was signed by Mr Batra.

*The Wave mortgage applications*

25 36. In or about March 2007, Mr Batra contacted Wave and spoke to one of Wave's lending underwriters. Mr Batra explained that there were three buildings and he asked if Wave would finance 90% of the purchase of 20 of the 78 studio flats. Mr Batra told Wave's underwriter that the buildings were being run as aparthotels and that he intended to purchase all the apartments in each of the three buildings. Mr Batra explained that he already owned a similar property, Dylan House, and referred the underwriter to the Dylan House website which showed rates for daily and weekly  
30 lets of the studio flats. Approximately one week later, they spoke again and the underwriter told Mr Batra that Wave had rejected the proposal. Mr Batra could not recall the reason why Wave had declined to lend any money to purchase the studio flats.

35 37. Not long after, Mrs Batra contacted Mr Hopkins who was M10's business development manager at Wave. She told him that Wave had refused to lend any money in relation to the purchase of studio flats in York House and Warwick House. Mrs Batra then transferred the call to Mr Batra who discussed the proposal with Mr Hopkins. Mr Batra explained that he intended to buy York House and Warwick House which were three buildings containing 78 studio flats. Mr Batra said in  
40 evidence that he told Mr Hopkins then and on at least two other occasions when Mr

Hopkins visited M10's offices that York House and Warwick House would be operated on the same basis as Dylan House. Mr Batra showed Mr Hopkins the Dylan House website. Mr Batra told Mr Hopkins that he was acquiring the buildings. He was still negotiating with the vendors at the time and the structure of the purchase was not certain. Mr Batra explained that leasehold interests would be created in the buildings which he would purchase and he wanted to borrow against the security of the leaseholds. Mr Batra said that Mr Hopkins fully understood the proposal.

38. In his witness statement, Mr Hopkins agreed that Mr Batra showed him the Dylan House website and stated that he understood that Dylan House was being operated as an aparthotel. Mr Hopkins said that he told Mr Batra that Wave would not lend to buy hotel rooms. Mr Hopkins recalled that Mr Batra told him that the properties were being converted from a hotel into "proper" studio flats. Mr Hopkins' evidence was that he was concerned about the nature of the security for the lending as there was no point in Mr Batra applying for a mortgage on the basis of security that would be rejected.

39. We have not heard live testimony from Mr Hopkins and Mr Batra's counsel had no opportunity to cross examine him so, again, it is difficult for us to decide which of the conflicting versions of the discussions between Mr Batra and Mr Hopkins represents the truth. On balance, we prefer the version given by Mr Hopkins in his witness statement. We do so because Mr Hopkins's version appears to be more credible. We accept that Wave would not have been willing to lend money under a buy to let mortgage in order to finance the purchase of a leasehold interest in a hotel room or studio flat operated as a hotel room. The conditions of the Wave mortgage offers (see [44] below), in particular that all lettings must be in the form of a single AST, are consistent with the fact that Wave would not lend to buy hotel rooms. We consider that it is very unlikely that Mr Hopkins would recommend to his employer, Wave, that it should lend money by way of mortgage where the security was not acceptable to Wave. Further, we consider that it is unlikely that Mr Hopkins would spend a significant amount of time in discussing a proposal that he knew would be rejected by Wave. On this point, we find that Mr Batra did not make clear to Mr Hopkins that the studio flats in York House and Warwick House would be operated as an aparthotel.

40. At some point around April 2007, Mr Hopkins confirmed that Wave was prepared to lend money to fund the acquisition of 20 of the 78 studio apartments. During a visit to the M10 office, Mr Hopkins urged Mr Batra to submit the mortgage applications quickly. On 2 April 2007, Ms Sundeep Pooni of M10, acting on behalf of Mr Batra, submitted an application to Wave for a "decision in principle" in relation to the mortgages in relation to studio flats in York House and Warwick House. The application was signed by Ms Pooni. It stated that Mr Batra's "Total personal income" was £200,000 per annum. Wave accepted the application and confirmed its decision to lend in principle by fax on 3 April 2007.

41. On 8 May, 2007, M10, acting on behalf of Mr Batra, applied to Wave for mortgages in relation to 20 studio flats in York House and Warwick House. Mr Batra said that the application forms were completed online by Ms Pooni. She filled in one

application form with all the details except for the property details and then completed 20 different property information pages, one for each studio flat. The application form submitted by M10 stated that Mr Batra's "total personal income" was £200,000 per annum. The application form asked for the "source of deposit" and the answer given on the form submitted by M10 was "savings".

42. Mr Batra signed 20 declaration pages, one for each mortgage application. The declaration signed by Mr Batra for each Wave application was as follows:

"I/we declare that the statements and particulars in this application form are true and accurate and shall form part of any subsequent agreement ...

I/we will notify you promptly of any changes in the information given before the mortgage is completed."

43. The Wave application form also asked for the name of the vendor, and what relationship, if any, there was between the applicant and the vendor. The application forms submitted by M10 on behalf of Mr Batra, did not contain any information about the vendor. On 8 May 2007, Wave wrote to M10 in relation to each studio flat and asked for details of the vendor and of any relationship between Mr Batra and the vendor. On the same day, Ms Pooni replied to Wave stating that she had been advised there was no relationship between the vendors and Mr Batra. Mr Batra said that he understood the question to relate to the original vendors and at the time of the application it was still possible that the leases might be granted by the three owners to Mr Batra. Eventually, it became clear that the leases would be granted by a BVI company that would hold the freehold on trust for Mr Batra and members of his family. That was, in any event, the structure that Mr Batra had intended to adopt from early on as it mirrored the structure that he had previously used in relation to Dylan House. There was, however, no evidence that either Mr Batra or M10 ever informed Wave that the leases would be granted by a company that held the freehold on trust for Mr Batra and his family.

44. Wave issued the mortgage offers in relation to the 20 studio flats on 21 May 2007. Each offer was subject to conditions which included the following:

"LETTING OF THE PROPERTY – As this property will be let, the following additional conditions will apply:

The following are not acceptable:

- DSS tenants;
- tenants who have or will acquire diplomatic immunity;
- tenants that are limited companies;
- multi-let's;
- occupation by the borrower(s) or their family.

All lettings must be in the form of a single Assured Shorthold Tenancy ... within the meaning of the Housing act 1988 ... for a maximum term of one year."

45. The Wave mortgage offer also said “Your solicitor should confirm that appropriate authority has been obtained for the change of use from aparthotel”. Mr Batra said that he relied on his solicitors, SFM Legal, to deal with the change of use but they did not do so.

5 46. At the time of the offers, under the Housing Act 1988, a tenancy with an annual rent in excess of £25,000 as a tenant did not qualify as an AST. There was no evidence that Wave agreed to waive or vary any of the conditions at any time. Mr Batra accepted the mortgage offers by Wave by signing a form stating that he accepted the terms of the mortgage offer.

10 *The Mortgage Express mortgage applications*

15 47. In or about March 2007, Mr Batra contacted Mr Joel Oakes, an underwriter at Mortgage Express, to discuss borrowing money to purchase York House and Warwick House. Mortgage Express had provided some of the financing for Dylan House. Mr Batra referred Mr Oakes to the Dylan House website to demonstrate that it was being run as expected. Mr Batra told Mr Oakes that he intended to run the new properties in the same way. Mr Batra explained that he intended to upgrade the new properties to a higher standard than Dylan House and attract longer term corporate clients of the kind that had been secured at Dylan House. Mr Oakes expressed interest in providing funding. Mr Batra asked Mr Oakes if Mortgage Express would finance all 78 studio flats. Mr Oakes told him that Mortgage Express had a policy of limiting funding to £5 million per customer and, as Mr Batra already had funding of around £900,000 from Mortgage Express for Dylan House, the company could only lend up to the limit ie a further £4.1 million. In the event, Mortgage Express made offers to lend Mr Batra £4,139,500 which was slightly over the limit.

25 48. On 3 April 2007, M10, acting on behalf of Mr Batra, applied to Mortgage Express for mortgages in relation to 20 studio flats in York House and Warwick House. Mr Batra said that the application forms for the Mortgage Express mortgages were completed online by Ms Pooni. Mr Batra signed a separate declaration page for each application and those pages were posted to Mortgage Express by Ms Pooni.

30 49. The applications submitted to Mortgage Express asked the applicant to provide a figure for “estimated personal annual income from business (i.e. before tax is deducted)”. The application forms submitted to Mortgage Express by M10, on behalf of Mr Batra, stated that his estimated personal income from business was £100,000. The application forms for Mortgage Express also asked for the “source of funds” in respect of the balance of the purchase price. The forms submitted by M10 on behalf of Mr Batra stated “Applicant(s) – own savings”.

50. The applications submitted to Mortgage Express included the following declarations on the penultimate page of the form:

"The information in this application is true, accurate and complete ...

40 "Before completion of the loan, I/we undertake to ensure that all information that I/we have given to you is and remains true, accurate

and complete, and if it is not I/we will immediately notify you in writing."

51. Mr Batra accepted the mortgage offers made by Mortgage Express on the terms contained in the mortgage offers. Acceptance of the terms was shown by the receipt of funds from the various lenders by Mr Batra via his solicitors, SFM Legal, as agent on 15 October 2007.

#### *Completion*

52. It is clear from the documents relating to the Wave Proceedings that, between 10 and 12 October 2007, the various lenders transferred £16,579,100 to SFM Legal for the purpose of completing the acquisition of the York House and Warwick House. On 15 October, the freehold of York House was acquired from The York Hotel Limited for £5.1 million and the freehold of Warwick House was acquired from Mr Raouf Riad Meshreky and Mr Ramses Andraous for £6.05 million. The funding for the purchase of the freeholds was provided by the mortgages on the security of the leases granted to Mr Batra in relation to the 78 studio flats. In fact, the leases of the studio flats were not granted to Mr Batra until 1 November. We were never told why the mortgage monies were released before the leases which provided security for them were created.

53. Between 15 October and 1 November 2007, the freeholds of York House and Warwick House were held by a company which was owned by SFM Legal. This structure was part of a stamp duty avoidance scheme promoted by SFM Legal. It was subsequently established that the scheme was based on a fraud and did not work. There is no suggestion that Mr Batra was aware of the fraudulent nature of the scheme.

54. SFM Legal also proposed a structure whereby the deposit (ie the balance of the purchase price) for one studio flat was funded by a bridging loan and the amount was rolled forward to satisfy the balance on the other flats. We were not able to understand how such an arrangement would relieve Mr Batra from the need to finance the deposit on all the studio flats. Mr Batra freely admitted in evidence that he did not understand how either the stamp duty scheme or the funding structure in relation to the deposit worked. He said that he relied on SFM Legal even though, in the lead up to completion when he visited SFM Legal, he thought that everything was in a complete mess.

55. On 1 November 2007, the freeholds of York House and Warwick House were transferred to Sungold Group S.A and Nova Assets Limited, companies owned by a BVI trust for the benefit of Mr Batra and his family. On the same day, Sungold Group S.A and Nova Assets Limited granted Mr Batra 78 individual 99 year leases in relation to the studio flats in York House and Warwick House.

#### *Tax returns*

56. Mr Batra submitted a tax return to HMRC for the year ending 5 April 2006 on 30 January 2007. He filed his return for the year ending 5 April 2007 on 30 January

2008. The returns were prepared by his accountant, Mr Paul Windmill. They showed Mr Batra's taxable income including salary, benefits, interest and dividends after deduction of losses (but excluding net rental losses). Mr Batra's tax return for the year ending 5 April 2006 showed that he had a taxable income of £24,598. Mr Batra's tax return for the year ending 5 April 2007 declared a taxable income of £25,257. Box 5.20 of the 2006-07 return showed that Mr Batra had received "rents and other income" of £30,000 but the return indicated that he had expenses in excess of that amount.

57. In November 2012, Mr Batra submitted revised tax returns to HMRC and subsequently provided copies to the Authority in January 2013. The amounts shown in the revised tax returns were materially different from those in the original tax returns. In particular, box 5.20 of the revised 2006-07 return declared that Mr Batra had an income for "rents and other income from land and property" of £160,664.04 during the year.

58. Mr Batra had originally contended that he had numerous businesses and the tax returns were only his individual tax returns. He also maintained that he had been advised by his accountant that substantial payments that he received from Paddington Lettings Limited ("Paddington Lettings") did not need to be included in his tax returns. Paddington Lettings was a company owned by Mr Batra and of which he was a director. Paddington Lettings managed the lettings of Dylan House, York House and Warwick House. It collected the rent from the tenants and paid the employees and any expenses. Mr Batra's bank statements for the period March to September 2007 (so mostly outside the 2006-07 tax year but before he acquired York House and Warwick House) showed that Mr Batra received payments of approximately £230,000 and paid out approximately £223,000 in mortgage instalments. Mr Batra said that his accountant had advised him that as the amounts received from Paddington Lettings were used to defray amounts due under the mortgages, the payments did not form part of his taxable income. We do not make any finding on what advice Mr Batra was given by his accountant as it is not necessary for us to do so.

### *The Wave Proceedings*

59. On 21 December 2007, Wave obtained a freezing injunction against Mr Batra preventing him from removing from England and Wales, or in any way disposing of, dealing with or diminishing the value of, any of his assets, up to the value of £5 million. The injunction applied to all of Mr Batra's assets, including any assets which he had "the power, directly or indirectly, to dispose of or deal with as if [they] were his own".

60. On the same day, 21 December 2007, Wave sent an email to the Authority:

"Wave have 20 completed buy-to-let mortgages for Mr Batra which completed in October 2007. At the time of the application we were aware that the properties to be mortgaged were being changed from aparthotels to [buy-to-let] properties and conditioned the mortgage offer on this basis. ...

There has been no application for change of usage and indications provided to us are that a retrospective application would be declined as there is a need for hotels in that area.

...

5 Staff at Wave were carrying out arrears activity, and it came to light that the properties were not being used [as buy-to-let] but as a commercial development (a hotel). This was confirmed by a member of staff visiting two of the developments to obtain a room and by  
10 discovering websites advertising the hotels. So the change of use has not happened.”

61. On 8 January 2008, Wave contacted the Authority and alleged that it had been misled by Mr Batra into providing funding in the form of mortgages for the purchase of leaseholds of studio flats in the York House and Warwick House.

15 62. At a hearing in the High Court on 14 January 2008, the Court ordered that the injunction should continue. On 31 January 2008, Wave brought a claim against Mr Batra in the High Court for repayment of the approximately £5 million that it had lent him, plus interest. Wave alleged, inter alia, that it had been misled by Mr Batra as to his intended use of the moneys loaned and that he had breached the conditions of the mortgages. From February 2008, Wave refused to accept any payments of the  
20 mortgage instalments from Mr Batra.

63. Neither Mr Batra nor M10 informed the Authority about the Wave Proceedings. As stated above, Wave had reported Mr Batra and M10 to the Authority in December 2007 and January 2008 but Mr Batra was unaware of this. Mr Batra said in evidence that he was advised by Peters & Peters, the solicitors acting for him in relation to the  
25 injunction, that he did not need to tell the Authority about the injunction. There was, however, no evidence to corroborate that. There was evidence that Mr Batra had sought advice from the lawyer who represented him in relation to the Authority’s investigation. Mr Batra asked Paul Fallon of City Law if he should disclose the fact that Wave had commenced proceedings against him. On 4 April 2008, Mr Batra  
30 received an e-mail from Mr Fallon which stated as follows:

“The obligation on you as an approved person to report information to the FSA comes from Statement of Principle 4 of APER, which states that:

35 An approved person must deal with the FSA and with other regulators in an open and co-operative way and must disclose appropriately any information of which the FSA would reasonably expect notice.

40 The FSA is not going to be interested in you missing mortgage payments in circumstances where the lender refuses to accept the money because of ongoing litigation.

Mortgage 10 would have received a reporting schedule in its authorisation pack. This may set out further reporting requirements and you should check this if you are concerned that Mortgage 10 owes



a duty to report information about an officer missing a mortgage payment. However, I think it would be highly unlikely to do so.

5 Of course, there is nothing preventing you from writing a letter to the FSA to inform them generally about the dispute with Wave. But I very much doubt that would be sensible. Unless there is a formal determination by the Court of some wrongdoing on your part (which there is not) the FSA would be highly unlikely to take any action.

So you should leave it. If Wave don't want take the payments that is their problem, not yours.”

10 64. On 30 October 2009, Mr Batra and Wave entered into a settlement agreement and the Wave Proceedings were brought to an end. Mr Batra provided a redacted copy of the agreement to the Authority and the Tribunal. One of the clauses that was not redacted stated that, within 14 days of the agreement being signed, Wave would, if allowed to do so, notify the Authority in writing that it no longer wished to pursue  
15 its complaint against Mr Batra and M10. Wave contacted the Authority to see if it could withdraw its complaint but was told that the Authority had commenced its investigation and it was for the Authority to decide when and how that process should be brought to a conclusion.

*Use of the properties after completion*

20 65. Mr Batra’s evidence was that he intended to use York House and Warwick House for long term lets when he bought the properties in October 2007 but that the Wave Proceedings in December 2007 and the financial crisis which began in 2007 but really took hold in 2008 meant that he could not survive if he restricted lettings to long term tenancies and non-corporate tenants. Accordingly, Mr Bata operated the  
25 properties as aparthotels in the same way as Dylan House ie with a mix of short-term tenants (or guests) and long-term tenants, some of whom were companies using the studio flats for their employees. The properties offered certain facilities and services, some of which had to be paid for separately, including laundry, 24 hour reception and concierge, cleaning and housekeeping.

30 66. Mr Batra’s response in 2011 to the Authority’s Statement of Case stated that Mr Batra had let out studio flats in York House and Warwick House at rents in excess of £25,000 per annum and to tenants that were companies. In evidence before us, Mr Batra maintained that the studio flats in respect of which he had borrowed money from Wave were not let to limited companies or for rents in excess of £25,000. We  
35 did not have complete evidence of the lettings at York House and Warwick House. The evidence showed that certain flats, which were not mortgaged to Wave, had been let to limited companies and/or for an annual rent in excess of £25,000. After being interviewed by the Authority in September 2008, Mr Batra wrote a letter, dated 13 October, in which he stated that:

40 “In the case of corporate agreements it is not possible to identify the studio apartments to which the agreements relate as they take whichever of the studio apartments are available at the time.”

The letter also included one tenancy agreement that had “Corporate company” written in manuscript at the top and which related to a studio flat which was subject to a Wave mortgage.

5 67. We prefer the explanation given by Mr Batra in the letter in October 2008 to his evidence before us at the hearing. There was no evidence, other than Mr Batra’s testimony, of any system to ensure that studio flats mortgaged to Wave were never let to companies or for rents in excess of £25,000. We find that there was no such system in place and, accordingly, we conclude that Mr Batra did not try to prevent studio flats that were subject to a Wave mortgage being let to limited companies or  
10 for rents in excess of £25,000.

#### *Investigation by the Authority*

15 68. Following the complaints by Wave and a similar complaint by Mortgage Express on 17 December 2007, the Authority started to investigate M10 and Mr Batra. The Authority issued the first Supervisory Notice on 16 July 2008. Under that notice, M10 was required to inform all its clients that it was no longer able to act and send a list of the clients who had been notified to the Authority by 30 July 2008. The letters were sent to clients in August 2008 but M10 did not notify the Authority that it had done so or provide a list of the clients at that time. The Authority interviewed Mr Batra on 12 September 2008 and the matter of the notification to clients was  
20 discussed. During that interview, Mr Batra’s solicitor said that he was in possession of copies of the letters to clients but they were not provided to the Authority at the meeting nor was any list of clients to whom the letters had been sent provided to the Authority immediately after the meeting. The Authority issued a second Supervisory Notice on 28 November 2008 which required notification to be made by 12 December  
25 2008. Mr Batra and M10 complied with the SSN on or around 20 April 2009.

69. During the interview in September 2008, Mr Batra stated that the figure of £200,000 shown as his personal annual income on the Wave mortgage application form was a mistake and his income was £100,000.

### **Discussion**

#### 30 *False and misleading statements*

70. The Authority alleges that Mr Batra misstated his income on the mortgage application forms submitted to Wave and Mortgage Express, in his tax returns submitted to HMRC for the years ending 5 April 2006 and 5 April 2007 and in interview with the Authority in September 2008. The Authority contends that this  
35 shows that Mr Batra lacks integrity in the sense discussed at [13] – [15] above.

71. In the interview with the Authority in September 2008 and in evidence before us, Mr Batra said that the figure of £200,000 in the Wave application was a mistake and his income was £100,000. He said that Ms Pooni had completed the statement of income and he did not know where she had obtained the figure of £200,000. It seems  
40 unlikely to us that Ms Pooni simply entered £200,000 in error as that amount was

given in both the application for a decision in principle and, later, in the actual mortgage applications.

72. In his witness statement of 17 January 2012, Mr Batra acknowledged that there was a discrepancy in the figures given in relation to his income on the different mortgage applications to Wave and Mortgage Express but that he was earning far more than the minimum threshold required by the lenders.

73. In evidence before us, Mr Batra also contended that both amounts were accurate as the forms asked for information about his annual income in different ways. He relied on the distinction in wording to suggest that the Wave form asked for gross personal income and Mortgage Express asked for net, ie after tax, income from the business. We do not accept this explanation as the effect of tax, the top rate of which was 40% at the time, could not account for the difference between £200,000 and £100,000. Further, Mr Batra's tax returns for the year when the applications were made declared an annual taxable income of approximately £25,000. His return for the year before had shown an income of some £24,000. We do not have to determine what figures should have been declared in Mr Batra's tax returns for 2005-06 and 2006-07. Our task is to determine whether Mr Batra knowingly or recklessly misstated his income. In relation to the mortgage application forms submitted to Wave and Mortgage Express, the significance of the figures in the original tax returns is that Mr Batra must have been aware that his personal income for tax purposes (and it was never suggested that he was in receipt of substantial non-taxable income) was £24,000 and £25,000 at the time of the mortgage applications.

74. In cross examination Mr Batra said that, at the time the application form was completed, he did not know he was earning more than £100,000 a year although he also said in evidence that, at the time, his income was higher than £200,000. When asked by us whether he had read the form before signing it, Mr Batra said:

“Because everything was in such a rush, I just signed all the stuff, and sent it in. I gave it to [Ms Pooni] to do because we had so many application forms. And Wave's in particular was not done 20 times - so perhaps I could have checked and double checked and triple checked again, but I don't know. ... I would have scanned through it but I didn't pick up the 200,000, no.”

75. It is clear that the Wave and Mortgage Express application forms show different amounts for Mr Batra's income and that the tax returns show different figures yet again. Mr Batra's explanations for the different amounts shown on the mortgage application forms changed over time and were inconsistent. We do not accept Mr Batra's explanations for the discrepancy between the figures in his tax returns and the figures given for annual income on the Wave and Mortgage Express mortgage applications. The mortgage applications asked for Mr Batra's personal income and not the income of his businesses such as M10 or Genesis Financial Care Limited which would have accounted for tax on their profits separately. Accordingly, we would expect the figures in the application to be the same as or very similar to those shown on Mr Batra's own personal tax returns.

76. We do not accept that the different amounts shown on the Wave and Mortgage Express as Mr Batra's personal income are both correct. Both figures are round numbers, neither reflects the amounts shown as income in Mr Batra's tax returns. In conclusion, we find that neither figure was accurate.

5 77. We conclude that Mr Batra probably did not know exactly how much he was  
earning at the time but that he cannot have believed that both amounts shown on the  
Wave and Mortgage Express application forms were accurate statements or even  
reasonable estimates of his annual income at the time. We accept that the Wave and  
Mortgage Express application forms were completed by Ms Pooni but Mr Batra  
10 signed the declarations and must take responsibility for the contents. We conclude  
that Mr Batra probably would have known that the amounts shown on the Wave and  
Mortgage Express application forms were not true and accurate figures when he  
signed the declarations if he had taken care to review the forms which Ms Pooni had  
prepared. We find that Mr Batra probably did not check the forms before signing  
15 them.

78. We accept that Wave and Mortgage Express were primarily concerned that the  
level of income generated by the properties would be sufficient to service the  
mortgage payments and, subject to minimum thresholds which he met, Mr Batra's  
personal income was irrelevant. Mr Batra knew this also but that cannot excuse the  
20 failure to check the correctness of amounts shown as income on a form on which Mr  
Batra signed a declaration that its contents were true and accurate.

79. We do not consider that the Authority has established that Mr Batra was  
dishonest but it is quite clear that he did not consider whether the figures shown as  
annual income were accurate when he signed the declarations. It appears to us that  
25 Mr Batra left the completion of the applications to Ms Pooni and took no care or  
responsibility for their contents. As his previous counsel put it in the Amended Reply  
to the Authority's Amended Statement of Case, "[Mr Batra] has been a bit cavalier  
with the accuracy of the figures he produced to the lenders when obtaining these loans."  
We would have used the word "reckless" rather than cavalier. We consider that the  
30 disregard for whether the contents of mortgage application forms, bearing  
declarations as to their truth and accuracy, are correct displayed by Mr Batra shows a  
clear lack of integrity.

80. It is clear that each Wave mortgage was subject to the conditions that the flats  
would be let under ASTs, ie the annual rent would not exceed £25,000, and they  
35 would not be let to limited companies. By accepting Wave's mortgage offers, Mr  
Batra represented that he intended to use the studio flats as residential properties let  
under AST's. Mr Batra said in evidence that he intended from the start to use the  
Warwick House and York House in the same way as Dylan House, ie as aparthotels.  
It followed that he intended to and did let the studio flats to corporate tenants or other  
40 tenants other than under ASTs. As we have already found, there was no system to  
prevent the studio flats which were mortgaged to Wave being let to corporates or  
other than under AST's and that did happen in at least one case. We conclude that Mr  
Batra never intended to comply with the conditions of the Wave mortgages or, at the

very least, was unconcerned as to whether he did so or not. We consider that such an attitude towards his obligations to Wave shows a clear lack of integrity.

5 81. We also consider that Mr Batra failed to inform Wave and Mortgage Express when the source of funds for the deposit was no longer as stated in the mortgage applications. Both mortgage applications stated that the source of the deposit would be Mr Batra's savings but, by the time of completion, Mr Batra intended to use a bridging loan structure suggested by his solicitors and which he did not understand. We were not shown any documents in which, prior to completion, either Mr Batra or M10 informed Wave or Mortgage Express that the source of the deposit was not 10 savings but a loan. We accept that Mr Batra intended to use his own resources for the deposit when the application form was completed but the failure to inform the lenders when that intention changed demonstrates a lack of integrity.

15 82. The Authority alleged that Mr Batra did not disclose his relationship to the lessor of the properties in mortgage applications to Wave and Mortgage Express or in reply to a later question asked by Wave. We accept that the structure of the deal to acquire Warwick House and York House remained unclear to Mr Batra until quite a late stage. We also gained the impression that Mr Batra tended to confuse his role as beneficiary of the BVI trust acquiring the freehold and as individual acquiring the leases which provided the security for the mortgages. We do not regard Mr Batra's 20 failure to explain the whole transaction to the lenders as an attempt to mislead the Wave and Mortgage Express. We conclude that either Mr Batra did not understand the structure of the transaction or that he did not think it important to provide full information about the transaction to Wave and Mortgage Express. We consider that Mr Batra should have been careful to explain all the details of the transaction to the 25 lenders. Mr Batra said that he did so but we find that Mr Hopkins and Wave did not have an understanding of the structure. The evidence does not allow us to make such a finding in relation to Mortgage Express. Our view is that such a failure to deal in an open and transparent way with lenders shows a lack of integrity.

*Failure to deal with the Authority in open and co-operative manner*

30 83. The Authority states that Mr Batra failed to deal with it in an open and co-operative manner in that he misstated his income in an interview with the Authority in September 2008 when he said that his income was £100,000. We have already found that he did misstate his income in the applications or at least was reckless as to whether the figures given were accurate. For the same reasons, we find that Mr Batra 35 misstated his income in the interview and that he either knew that the figure was not accurate or was reckless as to whether it was accurate or not. As he was under investigation by the Authority, we would have expected Mr Batra to be especially careful to ensure that his answers to questions were accurate. Mr Batra was not careful. He gave an answer which we have found and he now accepts was not 40 accurate. Mr Batra's evidence before us was that he received more than £200,000 in income annually during that period.

84. The Authority states that Mr Batra's failure to disclose information which he should have disclosed to the Authority, namely that Wave had initiated proceedings

against him and obtained an injunction freezing his assets, was a failure to deal with the Authority in open manner. Mr Batra was advised by his solicitors that he did not need to disclose the Wave Proceedings to the Authority. The Authority submitted that the Wave Proceedings should have been disclosed under Statement of Principle 11 (for M10) and Statement of Principle 4 (for Mr Batra). The Authority says that Mr Batra cannot hide behind legal advice and the obligation to deal openly with the Authority remains with Mr Batra and M10. We do not accept the Authority's submission on this point. We consider that there may be cases where it is clear that an approved person should disclose something to the Authority notwithstanding professional advice that he is not required to do so but we do not consider that this is such a case. Mr Batra did disclose the proceedings to his insurers. We accept Mr Batra's evidence that he sought advice from two firms of solicitors on whether he or M10 were required to disclose the Wave Proceedings to the Authority. He was advised that neither he nor M10 needed to disclose the proceedings to the Authority. In the circumstances, we consider that Mr Batra acted properly and did not fail to deal with the Authority in an open manner when he did not disclose the Wave Proceedings.

85. The Authority also alleges that Mr Batra, as sole director and approved person, failed to ensure that M10 provided information required by the Authority, namely a copy of the written notification to clients that M10 was no longer permitted to carry on regulated activities and a list of the clients who had been notified. It is accepted that the notification letters were sent to clients. They were sent a little after the expiry of the initial deadline but nothing turns on that in this case. The Authority's complaint is that M10 did not provide the information confirming that the letters had been sent to the Authority until much later. That is not really disputed. There was some suggestion that the Authority could have taken the letters away from the September 2008 interview but that does not really address the issue as the obligation was on M10 to provide the information not on the Authority to collect it. We recognise that M10 notified its clients and the failure to provide information to the Authority in this case was in the context of an investigation where meetings were happening and other correspondence was being exchanged. We consider that a failure to comply with a requirement to provide information is a failure to co-operate with the Authority but not as serious as a failure to notify the clients would have been.

### **Conclusions**

86. Our view is that the Authority has not established, on the balance of probabilities, that Mr Batra was deliberately dishonest. We have concluded, however, that Mr Batra displayed a lack of integrity in that he was reckless as to the truth of statements made to Wave and Mortgage Express. In the light of our finding that Mr Batra lacked integrity in relation to the submission of the mortgage applications and in his dealings with the Authority, we consider that prohibition is appropriate.

87. As is the usual practice of this Tribunal, we issued our decision in draft for the parties to comment on any typographical errors or slips. The Authority pointed out that, at [5] and in our final determination, we had directed the Authority to issue a final notice to Mr Batra prohibiting him from carrying out "any controlled function", instead

of “any function”, in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. We repeated the error in setting out the Authority’s position at [16]. The Authority stated that the Tribunal’s erroneous reference followed the language used in paragraph 7 of the Authority’s Re-Amended Statement of Case which used the term “any controlled function” and said that “[b]y way of a Decision Notice dated 3 November 2010, the Authority decided to” impose a prohibition order in the said terms. In fact, as stated above, the Decision Notice referred to a prohibition order preventing Mr Batra from carrying out any function. An inappropriate reference to “any controlled function” also appeared in the Authority’s skeleton argument at paragraph 18. We are grateful to the Authority for acknowledging that they erred in referring to “any controlled function” in places but that does not explain or excuse the slips in our draft decision which were unintended. We had understood that the proposed prohibition of Mr Batra in relation to any controlled function in relation to M10 fell away when M10 was dissolved and that we were concerned with a prohibition preventing him from performing any function generally. For that reason, we simply stated at the end of the paragraph setting out our conclusions ([86] above) that we consider that prohibition is appropriate. It is regrettable that our decision wrongly referred to “any controlled function” in places where it should have said “any function” but such slips are why we send out decisions in draft.

88. Following the communication from the Authority, we gave Mr Batra an opportunity to make further submissions on the issue of the appropriate prohibition as he had not done so before. Mr Guest submitted that the Authority’s Decision Notice relied heavily on Mr Batra’s alleged dishonesty and we had found that the Authority had not proved that Mr Batra had been deliberately dishonest. Mr Guest contended that, in the circumstances, Mr Batra should not be prohibited from performing “any function”. He pointed out that the conduct which led to the reference was a one-off and did not involve any risk to funds belonging to members of the public. He asked us to note that the transactions in the proceedings were non-regulated business.

89. We have considered Mr Guest’s further submissions carefully but we are not persuaded that anything less than a prohibition in relation to any function would be appropriate in this case. We do not consider that a prohibition against carrying on any function is only appropriate where there is a finding of dishonesty. Mr Batra showed a lack of integrity as described above and also seemed not to appreciate that his recklessness in relation to the mortgage applications was wrong. We are not satisfied that a person who displayed such an attitude could be effectively supervised. Further, we consider that there is a real risk that a person who shows a lack of integrity in relation to his own obligations would show an equal disregard of proper standards of behaviour in relation to others.

#### **Determination**

90. For the reasons given above, the reference is dismissed and we direct the Authority to issue a final notice to Mr Batra prohibiting him from carrying out any function in relation to any authorised person, exempt person or exempt professional firm, in relation to any regulated activity.

**GREG SINFIELD  
JUDGE OF THE UPPER TRIBUNAL**

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**RELEASE DATE: 13 May 2014**