
FINAL NOTICE

To: **Abbey Mortgages Limited**

Of: 39 Church Road
Bexleyheath
Kent
DA7 4DD

Date: **14 October 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS ("the FSA") gives you final notice of its decision to issue a public censure.

1. ACTION

1.1. The FSA gave Abbey Mortgages Limited ("Abbey"/"the Firm") a Decision Notice on 14 October 2008 which notified the Firm that pursuant to section 205 of the Financial Services and Markets Act 2000 ("the Act"), and on the basis that Abbey has agreed to undertake a past business review and to vary its Part IV permission by agreeing not to advise on or arrange self-certified business mortgages contracts, the FSA has decided to issue a public censure about Abbey in respect of breaches of the FSA's Principles for Businesses ("Principles") and related FSA Rules between 1 January 2006 and 14 April 2008 ("the relevant period").

- 1.2. Abbey Mortgages Limited breached Principle 9 (suitability of advice) and Principle 2 (due skill care and diligence) in relation to advised sales of regulated (self-certified) mortgage contracts.
- 1.3. The penalty also takes into account the fact that Abbey has breached FSA Rules 4.7.2R, 4.7.4R, 4.7.6R and 4.7.17R in the part of the Handbook entitled Mortgages and Home Finance: Conduct of Business (“MCOB”). The details of these rules are set out in Annex 1 to this notice.
- 1.4. In taking this action, the FSA has had regard to the financial position of the firm. Were it not for this factors the FSA would have sought to impose a financial penalty of £50,000.
- 1.5. Abbey agreed to settle this matter and will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.6. The public censure will be issued on 16 October 2008 and will take the form of this Final Notice, which will be published on the FSA’s website.

2. REASONS FOR THE ACTION

- 2.1. Based on the review of a sample of 20 out of 113 self certified mortgaged completed between June 2006 and June 2007 and a review of Abbey’s systems and controls between January 2006 and April 2008, the FSA has concluded that during the relevant period, Abbey failed to take reasonable care to ensure the suitability of advice given to customers; and failed to take reasonable care to organise and control its affairs responsibly and effectively in respect of its procedures for handling complaints and its compliance arrangements. These breaches relate to the operation of Abbey’s self-certified mortgage sales process.
- 2.2. In summary, Abbey failed to take reasonable steps to ensure the suitability of its advice in accordance with Principle 9 in that it:
 - (1) recommended mortgage contracts which did not appear to take into account customers’ needs and circumstances;

- (2) failed to gather and record sufficient information about its customers to demonstrate the suitability of, and the reasons for, its recommendations, including information about their personal and financial circumstances; and
 - (3) had inadequate sales processes in place for the recommendation of mortgage sales to its customers and did not make or retain sufficient records on file to demonstrate affordability and suitability of the mortgages that it sold.
- 2.3. Abbey failed to conduct its business with due skill and care in respect of its mortgage advisory process, in accordance with Principle 2 in that it failed to set up and organise its business in accordance with proper standards by failing to put in place adequate compliance arrangements, anti-money laundering controls, or complaints handling procedures. In addition Abbey failed to carry out straightforward checks which would have enabled it to ascertain the accuracy of information provided by customers and to prevent the risk of the firm being used to commit financial crime by third parties, These failings demonstrate a lack of competence on behalf of the Firm.
- 2.4. The FSA considers that Abbey's failings are particularly serious due to the fact that many of its customers were consolidating debts and/or had adverse credit histories. Abbey's conduct exposed its customers to potentially significant financial detriment by failing to give proper consideration to the long term implications of the products recommended, given their customers' circumstances.
- 2.5. Further, Abbey failed to give sufficient ongoing attention to ensure that the Firm's procedures met the necessary regulatory requirements. The breaches revealed serious weaknesses in the management systems and internal controls which exposed the Firm to the risk of being used to commit financial crime by third parties.
- 2.6. The FSA notes that Abbey co-operated with the investigation and moved quickly to agree the facts and matters with the FSA. The FSA also acknowledges that Abbey intends to continue its business as an Approved Representative of an approved firm.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

3.1. The FSA's statutory objectives are set out in Section 2(2) of the Act. The relevant objectives for the purpose of this case are Public Awareness and the Protection of Consumers.

3.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purpose of protecting the interests of consumers.

3.3. Section 205 of the Act provides:

“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect”.

3.4. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the “Principles for Businesses” which apply either in whole, or in part, to all authorised persons. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory system and reflect the FSA's regulatory objectives. Breaching a Principle makes a firm liable to disciplinary action.

3.5. The Principles and Rules which are relevant to this matter are set out below.

FSA's Principles for Businesses

3.6. **Principle 2** (Due skill care and diligence) provides that: *“A firm must act with due skill care and diligence”*

3.7. **Principle 9** (Suitability of advice) provides that: *“A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgement.”*

FSA Rules

- 3.8. The relevant FSA rules are MCOB 4.7.2R, 4.7.4R, 4.7.6R and 4.7.17R. The details of these rules are set out in Annex 1 to this notice.

4. FACTS AND MATTERS RELIED UPON

- 4.1. Abbey is a small firm of mortgage advisers with its Head Office in Bexleyheath, Kent. It provided advice in relation to a range of mortgage products, including self-certified mortgages. It has been authorised and regulated by the FSA since 31 October 2004. Its authorised business also includes advising on and arranging insurance contracts.
- 4.2. Abbey has 4 directors, 2 of whom are based in Bexleyheath and 2 in Stokesley, Cleveland. During the relevant period, there were 5 sales advisors selling mortgages for Abbey (including 2 of the directors).
- 4.3. Leads were generated by the Stokesley office, however appointments with customers were divided equally between two of the directors. Fact Finds completed by advisors at Abbey's Stokesley office were sent to the Bexleyheath office, where Mr Evans, one of the directors, would review the Fact Find and recommend a product for the Stokesley office's customers. Prior to March 2008 Mr Evans was responsible for making product recommendations for all Fact Finds completed at both of Abbey's offices, regardless of whether he had been the advisor who had completed the Fact Find with the customer. All completed client files were stored at the Bexleyheath office where compliance monitoring was performed.
- 4.4. The FSA visited Abbey in 2007 as part of a thematic project looking at the sale of self-certified mortgage products.
- 4.5. During the visit, the FSA identified a number of deficiencies in relation to the recommendation of self-certified mortgages to customers. Following the visit the FSA commenced a formal investigation to ascertain the extent of the issues identified during the thematic project visit.

- 4.6. The FSA reviewed a sample of 20 customer files from a total of 113 self-certified mortgages completed during the relevant period as part of its investigation. The FSA also examined matters highlighted in a report prepared by external compliance consultants, commissioned by the Firm.
- 4.7. The investigation covered Abbey's sales process, and focussed on the main consumer risk issues:
- (1) assessing whether a suitable recommendation could have been made from the information on file;
 - (2) establishing the adequacy of the information obtained from the customers; and
 - (3) assessing Abbey's systems and controls for ensuring the suitability of advice.

Summary of investigation findings

- 4.8. The file review revealed the following:
- (1) 5 of the 20 files (25%) reviewed contained no clear reasons for self-certification;
 - (2) None of the files (100%) reviewed contained sufficient evidence of in support of the income stated or any evidence of an assessment of the plausibility of income and/or expenditure;
 - (3) 10 of the 20 files reviewed involved interest only mortgages/ Of these 10 files, only 3 (30%) contained evidence of discussions and disclosure of a capital repayment vehicle, although all files contained a KFI giving the risks of such products;
 - (4) There is no evidence that Abbey considered a capital repayment vehicle for customers who were borrowing into retirement on an interest only mortgage basis;
 - (5) 15 of the 20 files (75%) involved remortgaging for reasons of debt consolidation, but Abbey were only able to demonstrate in 3 of those 15 files (20%) that it considered the appropriateness of debt consolidation and the

implications of securing short term debts by adding them to a long term mortgage; and

(6) 6 out of 20 files (33.3%) involved lending into retirement. There was some evidence of consideration of post-retirement income in 4 of those 6 files. However, with the exception of one file, it was not possible to establish whether such post-retirement income was plausible.

4.9. In addition, the FSA found that Abbey's anti money laundering procedures and complaints handling procedures were not written or formalised and that its compliance monitoring procedures were inadequate.

5. ANALYSIS OF BREACHES

Principle 9

5.1. Abbey did not take reasonable steps to ensure suitable advice was given to customers. In a number of instances, the products that were recommended by Abbey's advisers appears to be unsuitable having regard to the particular circumstances of the customers concerned. In other instances, Abbey failed to demonstrate that the products it recommended were suitable for its customers.

Sales process failed to ensure suitability of advice

5.2. Abbey did not investigate adequately the financial position of its customers. Abbey failed to enquire fully about customers' income, expenditure, credit history and debt position, so it could not consider fully all matters relating to income and expenditure in assessing the affordability of its recommendations. In so doing, there was no evidence of income verification in relation to mortgages on a self-certification basis.

5.3. Abbey gave inadequate consideration to customers' ability to repay where the mortgage terms extended beyond the customers' stated retirement age and in the particular instances in which interest only mortgage products were recommended.

5.4. In 95% of the client files reviewed, there was no evidence of any product research to support the recommendations made by Abbey's advisers. Abbey's client files also contained insufficient details of advice given to customers and the reasons for its

recommendations. In some instances, there were no suitability letters. In others, a suitability letter was on the customer file but contained insufficient and/or inaccurate information.

5.5. Abbey failed to ensure that the product it recommended matched its customers' needs as stated in the fact find. For example, one customer requested a repayment mortgage and was recommended and provided with an interest only mortgage.

5.6. Prior to March 2008, Mr Evans made recommendations for all customers. Mr Evans did not however always meet with the customer himself. Instead he based his advice on Fact Finds completed by other advisers. These Fact Finds often contained insufficient details about the financial circumstances of the customers, and the impression given to the customer was that the adviser with whom they were dealing had sourced the products. This created the risk that:

(1) recommendations were made by a person who might not have had the appropriate level of knowledge about the customer to enable suitable recommendations to be made; and

(2) given that the advisers did not make the recommendations and therefore may not have been sufficiently knowledgeable about the products, the Firm could not ascertain the extent or the content of disclosure that was provided to a customer by the advisers about the key features and risks of the product at the point of sale.

Inability to demonstrate suitability of advise

5.7. Abbey also failed to obtain and record sufficient Know Your Customer ("KYC") information to establish customers' needs and objectives at the time the recommendation was being made. For example, "Reasons Why" file notes contained insufficient information to explain why a particular product, lender or term had been recommended having regard to customers' needs, preferences and personal and financial information.

5.8. Abbey's failure to gather or record sufficient information about its customers' financial circumstances meant that Abbey could not demonstrate the suitability of its

self-certified mortgage recommendations for its customers. Customers were therefore exposed to the risk of financial loss in the event that they had taken up unsuitable products.

- 5.9. The failure to ensure that its advisers gathered and recorded sufficient personal and financial information about customers also meant that Abbey's ability to check the suitability of recommendations to enter into mortgage contracts was severely hindered.
- 5.10. Abbey had inadequate sales processes in place for the recommendation of mortgage sales to its customers. Consequently Abbey breached Principle 9 because it did not make or retain sufficient records on file to demonstrate it had fully considered the affordability and suitability of the mortgages that it sold. Its recommendations were made on the basis of insufficient fact find information.
- 5.11. In view of the facts and matters discussed in paragraphs 5.1 to 5.10 above, the FSA considers that Abbey breached Principle 9 of the FSA's Principles for businesses. The FSA considers that the above paragraphs also demonstrate that Abbey breached MCOB 4.7.2R, 4.7.4R, 4.7.6R and 4.7.17R.

Principle 2

- 5.12. Abbey failed to conduct its business with due skill and diligence in that it did not organise and operate its business in accordance with proper standards.

Failure to address obvious anomalies in customer application data

- 5.13. Abbey failed to carry out straightforward checks in circumstances in which it would have been obvious to a reasonable person that these checks were necessary. These failures prevented Abbey from ascertaining whether the applications made and information provided by clients was accurate and genuine. For example, Abbey failed to carry out checks:
 - (1) to ascertain a customer's income where the customer had provided blank pay slips as proof of identity;

- (2) where a customer’s bank statement indicated that the customer was in receipt of child tax credits, yet the fact find disclosed that she had no children living with her; and
 - (3) where two other applicants declared that they had been self-employed for almost two years and earned a joint income of £50,000. However, they were each receiving disability benefit of £170 per month, had 6 months of mortgage arrears, and were facing eviction along with other debts.
- 5.14. The impact of failing to carry out these checks was that Abbey would not have been able to identify and act upon any anomalies in mortgage applications, This increased the risk of Abbey being used by third parties to commit financial crime.
- 5.15. Abbey could not demonstrate how it monitored and reviewed the quality and suitability of its advice. It also had not documented compliance procedures in respect of the day to day running of the business. Although all the files reviewed contained a “Compliance Checklist” sheet, this was nothing more than a ‘tick box’ exercise to check that key documents were on the customer file. With the exception of one customer, there was no evidence that any significant compliance concerns were ever raised. Abbey conducted some monitoring of the completed fact finds from the Stokesley office, however this monitoring was inadequate and isolated from the overall compliance monitoring conducted from the Bexleyheath office.
- 5.16. Abbey failed to adequately supervise its more junior advisers. The junior advisers conducted fact find via the telephone, yet there was no monitoring of those calls to assess whether communications had been conducted in a compliant manner. Furthermore, Abbey wrongly categorised its own advisers as Appointed Representatives, which hindered the adequacy of any monitoring and supervision of these advisers.
- 5.17. Abbey completely overlooked its responsibility to establish and maintain formalised anti-money laundering procedures in respect of its business activities. As a result its staff was not provided with formal training on anti-money laundering measures. Abbey’s failure to establish and maintain anti-money laundering procedures meant

that the Firm could not adequately counter the risk it might be used in connection to financial crime.

- 5.18. Abbey failed to establish and maintain adequate and formalised procedures for complaints handling. In the absence of any complaints handling procedures, Abbey's staff did not receive any training on complaints handling. Customers who may have had a complaint, were therefore at a material risk of not having their complaints dealt with or even recorded adequately, whilst staff would have been unable to identify complaints and/or deal with them appropriately.
- 5.19. Accordingly, given the conduct set out in paragraphs 5.12 to 5.18 above, Abbey breached Principle 2.

6. ANALYSIS OF SANCTION

- 6.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook and came into force on 28 August 2007. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"). As neither ENF nor DEPP were in force throughout the entirety of the relevant period of the investigation, the FSA considered both ENF and DEPP in deciding upon the outcome. Both manuals set out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. The principal purpose of a public censure is to promote high standards of regulatory conduct by deterring firms who have committed breaches from committing further breaches and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant business.
- 6.2. The FSA considers that the following factors are particularly relevant in this case.

Deterrence

- 6.3. A public censure would deter Abbey from further breaches of regulatory rules and Principles. Equally, other firms will be deterred from following Abbey's practices and

this will promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

The nature, seriousness and impact of the breach in question

- 6.4. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious or systematic failings in the firm's systems and controls and the number of customers who were affected and/or placed at risk of loss. For the reasons set out below the FSA considers that the breaches in this case are of a serious nature.
- 6.5. Abbey's failings are viewed as being serious because:
- (1) the failings impacted customers who were financially vulnerable;
 - (2) failures in information gathering were widespread and systemic in nature; and
 - (3) due to insufficiencies in the fact finding, recording of customers' personal and financial information (including evidence and reasons for recommendations) and verification of self-certified income, it was not possible for Abbey to demonstrate that it had considered the interests of its customers or that its customers had been treated fairly in terms of the affordability and suitability of recommendations.
- 6.6. The FSA has taken into account the following matters which have served to mitigate the seriousness of its failings:
- (1) Prior to the investigation, Abbey voluntarily engaged a firm of external compliance consultants and commenced an overhaul of its procedures;
 - (2) Abbey has co-operated fully with the FSA investigation and accepts that there were management and control failures in relation to its monitoring of sales. To address the risk of unsuitable recommendations having been made to customers, Abbey will appoint an external compliance consultant to undertake a past business review of its business during the relevant period with a view to:

- (a) identifying any unsuitable recommendations;
 - (b) assessing any loss to customers; and
 - (c) paying any redress where unsuitable advice has led to loss.
- (3) Abbey has agreed to vary its Part IV permission formally to cease advising on and arranging self certification mortgages to avoid any further risk of consumer detriment; and
- (4) Abbey intends to effect the orderly closure of its business from end January 2009.

The extent to which the breach was deliberate or reckless

- 6.7. The FSA has found no evidence to show that Abbey acted in a deliberate manner.

The amount of benefit gained or loss avoided

- 6.8. The total fees from the total self-certified business written in the relevant period is £160,000.

Conduct following the breach

- 6.9. The FSA has taken into account Abbey's co-operation with the FSA's investigation. Abbey intends to move from being directly authorised to being an Appointed Representative only.

Disciplinary record and compliance history

- 6.10. Abbey has not been the subject of previous disciplinary action.

Other action taken by the FSA

- 6.11. In determining whether to impose a public censure, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

The size, financial resources and other circumstances of the firm

- 6.12. All of these factors would ordinarily merit the imposition of a substantial financial penalty. However the FSA considers that in accordance with DEPP 6.4.2(8)G as

mirrored by ENF 12.3.3(6)G, there are exceptional circumstances under which the Firm's inability to pay the level of financial penalty which their conduct would ordinarily attract could be dealt with by way of a public censure. In this case there is evidence that Abbey has insufficient resources to pay a financial penalty in addition to dealing with and paying for Past Business Review and any redress that is deemed appropriate. The FSA has been mindful of the need to ensure that the interests of customers are protected and has sought to ensure that Abbey can fulfil its obligation in this respect.

7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this notice was made by Settlement Decision Makers on behalf of the FSA.

8. IMPORTANT

8.1. This Final Notice is given to Abbey in accordance with section 390 of the Act.

8.2. 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.

FSA contacts

8.3. For more information concerning this matter generally, please contact Francesca Harte at the FSA (direct line: 020 7066 1482 / fax: 020 7066 1483).

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Georgina Philippou

Project Sponsor, for and on behalf of the FSA

Annex 1

Mortgage Conduct of Business Rules

- 8.4. MCOB 4.7.2R provides that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage

contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer.

8.5. MCOB 4.7.4R(1) provides that, for the purposes of MCOB 4.7.2R, a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that:

- (1) the customer can afford to enter into the regulated mortgage contract;
- (2) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
- (3) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.

8.6. MCOB 4.7.6R provides that in relation to MCOB 4.7.4 R(1)(a) and (b), where a firm makes a personal recommendation to a customer to enter into a regulated mortgage contract where a main purpose is to consolidate existing debts it must also take account of the following, where relevant, in assessing whether the regulated mortgage contract is suitable for the customer:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the customer to secure a previously unsecured loan; and
- (3) where the customer is known to have payment difficulties, whether it would be more appropriate for the customer to negotiate an arrangement with his creditors than to take out a regulated mortgage contract.

8.7. MCOB 4.7.8G provides that a firm may generally rely on any information provided by the customer for the purposes of MCOB 4.7.4 R(1)(a) unless, taking a common-sense view of this information, it has reason to doubt it.

8.8. MCOB 4.7.17 requires a firm to make and retain a record of customer information obtained and to information which explains why the firm concluded that any personal recommendation satisfied the suitability requirements.

