
FINAL NOTICE

To: **Mr Adrian Childs**

Of: 21 Rodney Drive
Mudford
Christchurch
Dorset
BH23 3ER

Individual ref: AEC01049

Date: 10 July 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you a final notice in respect of the following action:

1. ACTION

- 1.1. The FSA gave Mr Adrian Childs (“Mr Childs”) a Decision Notice on 10 July 2009 which notified you that pursuant to sections 56 and 66 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to take the following action:
- (1) A prohibition order prohibiting Mr Childs from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm; and
 - (2) To publish a public statement of misconduct.
- 1.2. On 9 January 2009, Mr Childs was declared bankrupt. Were it not for this, the misconduct set out in this notice would have merited a financial penalty of £50,000.

- 1.3. Mr Childs confirmed on 30 June 2009 that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4. Accordingly, for the reasons set out below and having agreed with Mr Childs the facts and matters relied on, the FSA imposes a prohibition order on Mr Childs and will publish a public statement of misconduct.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to take this action as a result of Mr Childs' conduct as an approved person under section 59 of the Act, at Black and White Group Limited ("Black and White") between September 2006 and 31 October 2007 ("the Relevant Period"). During the Relevant Period, Mr Childs was the Chief Operating Officer of Black and White and was approved to perform the following controlled functions ("CF"):

- (1) CF 1 (Director).
- (2) CF 8 (Apportionment and Oversight).
- (3) CF 14 (Risk Assessment).
- (4) CF 15 (Internal Audit).
- (5) CF 17 (Significant Management (other business operations)).
- (6) CF 19 (Significant Management (financial resources)).

Mr Childs ceased to be an approved person on 4 February 2008.

- 2.2. During the Relevant Period, Mr Childs' conduct fell short of the FSA's prescribed regulatory standards for approved persons. Mr Childs' conduct demonstrated a serious lack of competence and capability and he is therefore considered not fit and proper to perform any controlled function in relation to any regulated activity.
- 2.3. Mr Childs sought and received approval from the FSA to perform a number of controlled functions at Black and White. In doing so, Mr Childs assumed substantial responsibility for ensuring that Black and White met its regulatory responsibilities.
- 2.4. Mr Childs failed to discharge these responsibilities. Mr Childs did not understand, or take any steps to understand, his responsibilities as an approved person. The controlled functions held by Mr Childs included significant influence functions.
- 2.5. Mr Childs failed to carry out the CF1 (Director) and CF8 (Apportionment and Oversight) controlled functions adequately.
- 2.6. Mr Childs failed to carry out the CF 14 (Risk Assessment), CF 15 (Internal Audit), CF 17 (Significant Management (other business functions), and CF 19 (Significant Management (financial resources) controlled functions at all.

2.7. The FSA also considers that Mr Childs breached Statement of Principles 6 and 7 of the Statements of Principle for Approved Persons (“APER”) set out in the FSA’s Handbook in that he:

- (1) failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled functions, in breach of APER 6 by failing to take reasonable steps to maintain an appropriate level of understanding of Black and White’s financial position.
- (2) failed to take reasonable steps to ensure that the business of Black and White for which he was responsible complied with the relevant requirements and standards of the regulatory system in breach of APER 7, by failing to take reasonable steps to ensure that Black and White implemented adequate and appropriate systems and controls, relating in particular to:
 - (a) monitoring the suitability of sales made by Black and White’s advisers;
and
 - (b) ensuring that accurate regulatory returns were submitted to the FSA regarding Black and White’s capital adequacy requirement and overall financial position.

2.8. As a result of the nature and seriousness of the breaches, the FSA has concluded that Mr Childs fails to meet the minimum regulatory standards in terms of competence and capability and is not a fit and proper person to perform any controlled functions in relation to regulated activities carried on by authorised persons, exempt persons and professional firms.

2.9. In mitigation, Mr Childs accepts that he should not have held controlled functions for areas where he had no active involvement at Black and White, including areas relating to Black and White’s compliance function, sales processes and dealings with customers. The FSA also acknowledges that Mr Childs has been open and co-operative with the FSA and has agreed the facts quickly ensuring an efficient resolution of the matter.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

3.1. The FSA’s statutory objectives, as set out in section 2(2) of FSMA, include the protection of consumers.

3.2. The relevant statutory provisions, regulatory requirements and guidance are set out in an Annex attached to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

The Firm

- 4.1. Black and White was authorised by the FSA from 31 October 2004 with permission to advise on and arrange regulated mortgage contracts, and advise on and arrange associated non-investment insurance contracts. Black and White specialised in remortgages and associated insurance.
- 4.2. Black and White's Head Office was based in Rugeley, Staffordshire. Between January and July 2007, Black and White had approximately 1,000 customers. Over the Relevant Period, Black and White generated turnover of £11 million from residential mortgages, remortgages and associated Payment Protection Insurance ("PPI") sales.
- 4.3. Black and White went into administration on 15 February 2008 and liquidation on 23 June 2008.
- 4.4. Black and White's primary business was advising and arranging mortgage contracts. 82% of Black and White's mortgage business concerned advising and arranging remortgages. A remortgage involves the transfer of the sum outstanding on the existing mortgage to a new provider on new terms and conditions.
- 4.5. A substantial number of Black and White's customers were 'sub-prime'. Sub-prime customers are customers with low or impaired credit ratings who may find it difficult to obtain finance from traditional sources.
- 4.6. Black and White had a panel of between 20 to 25 mortgage lenders. Black and White's advisers were obliged to consider all of the products offered by the lenders on its panel when considering the most suitable mortgage product for a customer.
- 4.7. Black and White also sold single premium and regular monthly premium PPI, (also known as Accident, Sickness and Unemployment ("ASU") insurance), in connection with mortgages and re-mortgages. PPI is an insurance policy that will pay out a sum of money to cover monthly repayments on a mortgage for a set period of time, in the event that a customer is unable to work through accident or sickness or becomes unemployed subject to the customer meeting certain qualifying conditions.
- 4.8. PPI providers typically paid higher commission on sales of single premium PPI.

The FSA's Approved Persons Regime

- 4.9. The approved persons regime enables the FSA to hold individuals to account for the carrying out of their responsibilities in relation to the firm for which they have been approved to perform controlled functions. It creates a framework through which the FSA can promote, amongst other things, the protection of customers' interests by ensuring that approved persons adhere to certain standards of conduct.
- 4.10. The FSA expects approved persons who are approved to perform controlled functions to understand their responsibilities under their controlled functions before deciding

whether or not to accept the appointment. Approved persons should ensure that they are performing the controlled functions that they are approved to hold.

- 4.11. An approved person is a person in relation to whom the FSA has given its approval under section 59 of the Act for the performance of a controlled function. In order for a person to be approved by the FSA that person must satisfy the FSA that they are Fit and Proper to hold the functions that they intend to perform. Once approved, an approved person is subject to the requirements of the approved persons chapter of the FSA Handbook (APER). APER sets out the standard of conduct expected by the FSA from approved persons.

Significant influence functions

- 4.12. During the Relevant Period the Supervision Manual (“SUP”) defined significant influence functions as the governing functions, the required functions, the systems and controls functions and the significant management functions. The significant influence functions are likely to result in the person responsible for its performance exercising a significant influence on the conduct of a firm’s affairs. Significant influence functions include governing functions which are performed by those persons responsible for directing the affairs of the firm (such as a Director (CF1)). Significant influence functions also include required functions, such as Apportionment and Oversight (CF8), whose function is to ensure that lines of responsibility and the systems and controls needed to run the business are clear and effective.
- 4.13. The significant influence functions are designed to ensure senior management responsibility for managing firms and ensuring that firms comply with regulatory requirements.

Mr Childs’ roles and responsibilities

- 4.14. Mr Childs was a director of and a shareholder in Black and White throughout the Relevant Period. During the Relevant Period Mr Childs earned an annual salary of £83,550 from Black and White. Mr Childs held the controlled functions of Director (CF1) and Apportionment and Oversight (CF8).
- 4.15. As a director, Mr Childs was responsible for ensuring that Black and White complied with the FSA’s regulatory requirements, including meeting the FSA’s Threshold Conditions for Firms.
- 4.16. Threshold Condition 4 requires firms to maintain adequate financial resources. The FSA relies on firms submitting accurate financial information through Retail Mediation Activities Returns (“RMAR”) to enable it to properly monitor their financial position. It was therefore incumbent on Black and White to have appropriate systems and controls to monitor and accurately report its financial position.
- 4.17. Mr Childs also had a responsibility to ensure that Black and White had sufficient information to enable it to manage the business effectively, including ensuring that Black and White’s systems and controls were effective in calculating its financial position.

- 4.18. Mr Childs's responsibilities as Apportionment and Oversight officer, meant he was required to monitor (either personally or through a compliance department or other department) compliance with Black and White's relevant regulatory requirements. Mr Childs was also required to ensure that Black and White had individuals allocated to certain functions including directors. During the Relevant Period, Black and White did not have a Finance Director.
- 4.19. Mr Childs' job title at Black and White was Chief Operating Officer. In practice, this meant that Mr Childs managed and controlled Black and White's business premises and information technology infrastructure.
- 4.20. Mr Childs held the controlled function for significant management (other business operations) (CF17), although in practice he did not have a significant responsibility for any of Black and White's business operations.
- 4.21. Mr Childs held the controlled function for Internal Audit (CF 15). However, Mr Childs did not take steps to ensure that Black and White had an internal audit function or a process to assess whether Black and White was adhering to its own internal processes.
- 4.22. Mr Childs held the controlled function for Risk Assessment (CF 15). However, Mr Childs did not take steps to ensure that the risks to which Black and White was exposed were identified, reported and mitigated.

Impact of Mr Childs' failings

- 4.23. As set out above, Mr Childs failed to perform those controlled functions that he had been approved by the FSA to perform. In two areas in particular, Mr Childs' failure to perform his controlled functions contributed to significant failings by Black and White.

Financial systems and controls

- 4.24. Mr Childs held the controlled function of Significant Management (financial resources) (CF19). Pursuant to this controlled function, Mr Childs was obliged to manage Black and White's financial resources, including ensuring that Black and White's financial liabilities were appropriately managed. Mr Childs failed to do so. Mr Childs took no steps to understand the financial situation at Black and White, instead leaving financial matters to the other Black and White directors. Mr Childs did so whilst knowing that Black and White did not have a Finance Director in place.
- 4.25. As a consequence, Mr Childs was unaware of the following issues relating to Black and White's financial position:
- (1) by 4 July 2007, Black and White owed H.M. Revenue and Customs ("HMRC") £401,986 and that HMRC had warned Black and White that, if it did not pay this debt, a winding-up petition would be issued;

- (2) between August and October 2007, Black and White and HMRC negotiated a repayment schedule. Mr Childs was also unaware that each time an agreement was reached, Black and White fell behind in its payments due to HMRC; and
- (3) Black and White, despite being in substantive discussions with the FSA regarding its financial position, had failed to disclose the existence of the debt owed to HMRC or its potential consequences to the FSA.

Treating customers fairly

- 4.26. As a Director (CF1) of Black and White, Mr Childs was obliged to take reasonable steps to ensure that Black and White met its regulatory responsibilities.
- 4.27. As set out at 4.1 - 4.9 above, Black and White's business was to provide advice to customers in relation to mortgages and PPI. Black and White was obliged to take steps to ensure that the advice it provided to customers was suitable and appropriate. The key risk to Black and White achieving this was the culture prevalent within Black and White. This culture resulted in advisers being placed under significant pressure to make sales, including sales of particular products which were the most profitable for Black and White, without regard to whether or not the sale was suitable for the customer.
- 4.28. The culture at Black and White was reflected in the remuneration scheme it had in place to reward its advisers. Black and White designed the remuneration scheme to incentivise advisers to meet sales targets. Black and White also took steps to ensure that the remuneration scheme influenced advisers to sell particular products; specifically those products that generated the highest rates of commission for Black and White. The remuneration scheme rewarded advisers for the volume and value of the sales made without any regard to whether or not the sale was suitable.
- 4.29. Despite being a Director (CF1) and holding the controlled function for Appointment and Oversight (CF8) at Black and White, Mr Childs did not consider that it was his responsibility to consider the extent to which the culture and remuneration scheme in place at Black and White created a risk that customers would receive unsuitable advice.
- 4.30. Mr Childs assumed that others at Black and White would ensure that the recommendations made by the advisers were suitable. In particular, Mr Childs assumed that Black and White's sales process and compliance department would ensure that any sales were suitable. However, Mr Childs did not take any steps to satisfy himself of the appropriateness of the sales process or the effectiveness of the compliance department. Consequently, Mr Childs failed to understand that Black and White's systems and controls were inadequate in a number of respects including:
 - (1) suitability audits were conducted infrequently and over the Relevant Period, the number of files audited decreased significantly from 22% of applications in September 2006 to 5% in March 2007 and, after March 2007, not at all;

- (2) the PPI Audit Checklist was inadequate in that it did not require the reviewer to consider whether or not the recommendation to purchase PPI was suitable; and
- (3) senior management at Black and White did not hold the Compliance Department in high regard. For example, when the Compliance Department highlighted issues which potentially impacted suitability, these issues were not followed up.

5. ANALYSIS OF BREACHES AND SANCTION

Prohibition order

- 5.1. In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the FSA's Enforcement Guide ("EG") and in particular the provisions of EG 9.9.
- 5.2. The FSA has considered whether Mr Childs is a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. In this respect, the FSA considers that he has failed to demonstrate the competence and capability required to perform any controlled function in relation to any regulated activities.
- 5.3. The FSA expects senior management within firms to ensure that they take responsibility for managing the risks in their firms properly and to ensure that they have appropriate systems and controls in place to manage those risks. Mr Childs was aware that much of Black and White's business concerned the provision of advice to sub-prime customers and that those customers were relying on the advice and recommendations of Black and White's advisers. Despite this, Mr Childs failed to take any steps to determine the extent to which there were risks to customers receiving suitable advice from Black and White.
- 5.4. Additionally, Mr Childs has failed to demonstrate to the FSA that he had any substantive understanding of Black and White's business and his obligations as a person approved to perform controlled functions.
- 5.5. The FSA has therefore concluded that Mr Childs is not a fit and proper person as he lacks the competence and capability to perform any controlled function in relation to regulated activities.
- 5.6. Having regard to its regulatory objectives to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it appropriate to make an order prohibiting Mr Childs from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

Financial Penalty

- 5.7. The FSA also considers that, in failing to act with due skill and care as a director by failing to ascertain the firm's true financial position and the firm's breach of its capital adequacy requirement, Mr Childs was in breach of APER 6.
- 5.8. In failing to take reasonable steps as a director of Black and White to ensure that Black and White established and maintained appropriate systems and controls to comply with the relevant requirements and standards of the regulatory system in relation to:
- (1) compliance and sales practices; and
 - (2) adequate and appropriate finance systems and controls

Mr Childs was in breach of APER 7.

- 5.9. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"). The FSA has had regard to both DEPP and ENF as both Manuals applied at separate times during the relevant period. The Manuals set out a non-exhaustive list of criteria that may be of particular relevance in determining the appropriate level of financial penalty for an approved person.
- 5.10. In determining the financial penalty that would have been appropriate and proportionate were it not for the fact that Mr Childs has been declared bankrupt, the FSA has considered all the relevant circumstances of the case contained in ENF and DEPP. The FSA considers the following factors to be particularly important:
- (1) *Deterrence:*

In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.
 - (2) *The nature, seriousness and impact of the breach:*

Mr Childs held a senior position at Black and White. In failing to carry out his controlled functions with due skill and care, Mr Childs' conduct contributed to the firm's failure to establish and maintain clear and effective systems and controls to run Black and White in compliance with regulatory requirements. Mr Childs's conduct is particularly serious given the nature of Black and White's customer base.
 - (3) *The extent to which the breach was deliberate or reckless:*

The FSA has not determined that Mr Childs conduct was deliberate or reckless.
 - (4) *Whether the person on whom the penalty is to be imposed is an individual:*

The FSA recognises that the financial penalty imposed on Mr Childs is likely to have a significant impact on him as an individual.

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

The FSA has information which suggests that Mr Childs is unable to pay the financial penalty proposed as a result of his bankruptcy.

- (6) *The amount of benefit gained or loss avoided:*

Other than the remuneration paid to Mr Childs by Black and White, the FSA has no further information on the amount of benefit gained or loss avoided by Mr Childs.

- (7) *Conduct following the breach:*

Mr Childs has co-operated with the investigation.

- (8) *Disciplinary record and compliance history:*

The FSA has not previously taken any disciplinary action against Mr Childs.

- 5.11. In light of these factors the FSA considers that a financial penalty of £50,000 would have been appropriate were it not for Mr Childs' current financial circumstances.

6. DECISION MAKERS

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

7. IMPORTANT

- 7.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

- 7.2. Section 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 a 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 or prejudicial to the interests of consumers.

FSA contacts

- 7.3. For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062).

Georgina Philippou
FSA Enforcement Division