
FINAL NOTICE

To: Case Funding Centre
Firm reference number: 304446
Address: Milecross House
42 Milecross Road
Newtownards
County Down
BT23 4SR

Dated: 18 December 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives final notice about the imposition of a financial penalty on Case Funding Centre ("CFC"):

1. ACTION

- 1.1. The FSA gave CFC a Decision Notice on 18 December 2009 ("the Decision Notice") which stated that it had decided to impose a financial penalty of £35,000 on CFC, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act").
- 1.2. CFC was also required to appoint a skilled person to review its systems and controls in relation to financial crime risks.

- 1.3. CFC agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this reduction the FSA would have sought to impose on CFC a financial penalty of £50,000.
- 1.4. Accordingly the FSA has today imposed a financial penalty of £35,000 on CFC.

2. REASONS FOR THE ACTION

- 2.1. In summary, between October 2004 and August 2008 ("the relevant period"), CFC failed to take reasonable steps to ensure that:
 - (1) it had adequate systems and controls in place to counter the risk that it could be used by its customers and/or employees to perpetrate financial crime. The FSA identified 16 mortgage applications containing false and/or misleading employment and/or income information that were submitted to lenders through CFC (from 17 client files that it reviewed);
 - (2) its recruitment process was sufficiently robust so as to ensure that all mortgage advisers recruited by CFC were fit and proper; and
 - (3) it maintained appropriate records of the information provided by and to clients as part of the mortgage advice and sales process.
- 2.2. The FSA concluded that the facts and matters set out above constituted a failure by CFC to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, and a failure to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment, in breach of Principles 3 and 9 respectively.
- 2.3. CFC's failures are serious because they involve the facilitation of mortgage fraud. Mortgage fraud is extremely serious in that it exposes lenders to the risk of irrecoverable losses and has contributed to the destabilisation of the lending market. In 16 out of 17 cases reviewed, this risk crystallised as the applications were found to contain false and/or misleading information.

2.4. In determining the appropriate level of financial penalty, the FSA had regard to the following mitigating factors:

- (1) CFC had been open and co-operative throughout the FSA's investigation; and
- (2) CFC had accepted that there were serious failings during the relevant period and put in place a number of measures in order to improve its practices and procedures to ensure that the business fully complied with regulatory standards in future.

3. RELEVANT STATUTORY PROVISIONS

3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

4.1. CFC has been trading as a mortgage and general insurance broker in Northern Ireland since 1997. CFC operates as a partnership and was authorised by the FSA on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:

- (1) advising on regulated mortgage contracts;
- (2) agreeing to carry on a regulated activity;
- (3) arranging (bringing about) regulated mortgage contracts; and
- (4) making arrangements with a view to regulated mortgage contracts.

4.2. On 14 January 2005, CFC was also granted permission to carry on the following regulated activities in relation to non-investment insurance contracts:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) arranging (bringing about) deals in investments;

- (3) assisting in the administration of insurance;
- (4) dealing in investments as agent; and
- (5) making arrangements with a view to transactions in investments.

4.3. During the relevant period, CFC operated primarily as a mortgage packager. However, as an authorised person it was still required to comply with the Principles. Moreover, in addition to its packaging work, CFC submitted a number of advised and non-advised mortgage applications to lenders during the relevant period, thereby acting as a mortgage broker.

Financial crime risk management systems

- 4.4. During the course of its investigation, the FSA found that CFC had no procedures in place to ensure that the income and employment information declared by customers on their mortgage applications was correct. In particular, the FSA found that CFC's advisers did no more than "sense check" the level of declared income in each case. No documentary evidence was sought in support of the information provided by the customer. Consequently, there was nothing to prevent CFC's customers from submitting false and/or misleading information to lenders and therefore no risk management system in place at CFC to counter the risk that it would be used to perpetrate mortgage fraud or other financial crime.
- 4.5. The FSA also found instances where applicants were employed by CFC or its sister company and yet advisers had failed to verify the income information supplied by comparing it to the information held on company record. For example, Mortgage Adviser A, who worked at CFC's sister company, declared an annual income of £45,000 on a mortgage application made through CFC in October 2007. CFC's internal records show that Mortgage Adviser A only received income of £9,571 during the four months she worked as an adviser, which is equivalent to an annual income of £28,713. This, together with the fact that there is a significant discrepancy between the income information declared by Mortgage Adviser A on her mortgage application form and that held on record by Her Majesty's Revenue and Customs ("HMRC"), indicates that Mortgage Adviser A submitted a fraudulent mortgage application through CFC.

- 4.6. In total, the FSA found that 16 mortgage applications submitted through CFC contained false and misleading information about the employment and income of the applicants and were therefore fraudulent.

Recruitment process

- 4.7. In addition to the above, the FSA identified failings at CFC in respect of the firm's recruitment process. In particular, CFC had failed to implement a sufficiently robust recruitment system so as to ensure that only fit and proper individuals were recruited as mortgage advisers. For example:

- (1) Mortgage Adviser B was recruited in March 2008 despite CFC being aware that his previous employer terminated his contract because he was found to have been submitting buy-to-let mortgage applications as residential mortgage applications. This type of conduct is generally considered to be mortgage fraud. A lender ("Lender A") was so concerned about Mortgage Adviser B's conduct that it subjected Mortgage Adviser B to an ongoing monitoring requirement. CFC's main concern was whether Mortgage Adviser B was still able to submit business to Lender A and therefore whether CFC could continue to be classified as whole of market, rather than whether such behaviour constituted a possible lack of honesty and integrity on the part of Mortgage Adviser B. Once recruited, no amendments were made to the terms of Mortgage Adviser B's contract and no steps were taken to monitor or supervise Mortgage Adviser B more stringently than other new employees.
- (2) Mortgage Adviser C joined CFC in July 2008. As part of the recruitment process, a reference was obtained from his previous employer which stated that they were currently investigating concerns with regard to the quality of his business. In particular, they were concerned about Mortgage Adviser C's use of self-certification mortgage products. Despite this, CFC recruited Mortgage Adviser C without any investigation of the allegations against him and took no additional measures in relation to monitoring or supervising him.
- (3) In March 2009, another lender ("Lender B") stopped accepting business from Mortgage Adviser C due to concerns about the quality of his business and,

consequently, Mortgage Adviser C resigned from CFC. Despite being aware of a potential risk to CFC and its customers as a result of Mortgage Adviser C's conduct, CFC took no steps to review the business he had submitted.

- (4) Mortgage Adviser D joined CFC in June 2008. As part of the recruitment process, a reference was obtained from his previous employer which stated that he had been subject to an investigation for allowing an unauthorised individual to process business under his name and due to general concerns surrounding the quality of his business. Whilst a clause was inserted in Mortgage Adviser D's contract allowing for immediate termination if he had any dealings with the unauthorised individual, CFC did not fully investigate the matter until September 2008 when the issue was flagged by their external compliance consultant.

Record-keeping

- 4.8. During the course of its investigation, the FSA identified serious concerns in relation to record keeping. In a majority of the files reviewed it was not possible to determine whether affordability and suitability had been assessed due to the lack of customer and product related information recorded.
- 4.9. In cases where information was recorded, it was in some instances inaccurate. For example, in three of the cases reviewed there was contradictory information on file as to whether the sale had been advised or non-advised.
- 4.10. The majority of CFC's mortgage advisers worked off-site in their own offices and therefore most of the firm's client files were not held centrally. Instead, advisers were required to upload their files remotely to a central client management system. However, the FSA found that CFC had no procedures in place to ensure that they had received all the relevant documents and information from the advisers. Compliance with the requirement was not, therefore, monitored or enforced.
- 4.11. Finally, CFC was unable to provide the FSA with certain client files, requested by way of a statutory requirement letter during the course of the investigation, because it had disposed of them.

5. ANALYSIS OF MISCONDUCT AND SANCTIONS

- 5.1. The FSA concluded that CFC failed to implement systems and controls to counter the risk that it would be used to commit financial crime, and to adopt a sufficiently robust approach to the recruitment of mortgage advisers, thereby ensuring that only fit and proper individuals were recruited. These were examples of its failure to take reasonable care to organise and control its affairs responsibly and effectively with proper risk management systems, in breach of Principle 3.
- 5.2. The FSA found that CFC did not obtain and/or make records of sufficient personal or financial information to demonstrate the suitability of its recommendations. As a result, CFC failed to take reasonable steps to ensure the suitability of its advice for customers who were entitled to rely upon its judgment, in breach of Principle 9.

Analysis of sanction

- 5.3. The FSA had regard to the guidance published in the FSA's Enforcement Guide ("EG") and in the Decision Procedures and Penalties Manual ("DEPP"). The FSA also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during part of the relevant period in which CFC's misconduct occurred.
- 5.4. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 5.5. In determining whether a financial penalty is appropriate the FSA is required to consider all relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considered that a financial penalty was an appropriate sanction, given the serious nature of the breaches and the fact that they facilitated mortgage fraud and exposed lenders to a risk of financial loss. The penalty would also serve to deter others in the industry from similar misconduct.

- 5.6. The FSA considered the nature and seriousness of the contraventions by CFC, whether the breached identified were deliberate or reckless, the number and duration of the breaches and the number of customers placed at risk.
- 5.7. The FSA concluded that there was a risk that customers may have been given unsuitable advice but also took into account that many customers may have provided CFC with false information about their employment and incomes.
- 5.8. The FSA took into account CFC's full cooperation and the fact that it quickly agreed with the FSA the facts of the case. The FSA has also considered CFC's commitment to take reasonable steps to comply with regulatory requirements. CFC has not previously been the subject of disciplinary action.
- 5.9. The FSA took into account financial penalties imposed on other authorised persons for similar and more serious conduct and to previous cases where lesser penalties were imposed on authorised persons for less serious conduct or more limited record-keeping failures.
- 5.10. The FSA also took into account CFC's size and financial resources.
- 5.11. Having considered all the circumstances set out above, the FSA determined that £50,000 (before any discount for early settlement) was the appropriate financial penalty to impose on CFC.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this Notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties Manual.

7. IMPORTANT

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

Manner of and time for payment

- 7.2. The financial penalty must be paid in full by you to the FSA in instalments as follows: £10,000 on 15 January 2010, £10,000 on 15 February 2010, £10,000 on 15 March 2010 and £5,000 on 15 April 2010.

If the financial penalty is not paid

- 7.3. If all or any of the financial penalty is outstanding at the end of each instalment due date, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

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

FSA Contacts

- 7.6. For more information concerning this matter generally, please contact Chris Walmsley at the FSA (direct line: 020 7066 5894 /fax: 020 7066 5895).

Tom Spender
Head of Department
Financial Services Authority

1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, maintaining confidence in the financial system and the protection of consumers.
- 1.2. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement by or under the Act.

Principles for Businesses

- 1.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles breached are as follows:
 - (1) Principle 3 (Management and control): A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and
 - (2) Principle 9 (Customers: relationships of trust): A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

Financial Penalties

- 1.4. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. The FSA has also had regard to the appropriate provisions of the Enforcement Manual ("ENF") which was in force until 27 August 2007, and therefore during part of the relevant period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased

public awareness of regulatory standards also contributes to the protection of consumers.

- 1.5. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 1.6. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
 - (a) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach
 - (b) DEPP 6.2.1G(2): The conduct of the person after the breach
 - (c) DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person
 - (d) DEPP 6.2.1G(4): FSA guidance and other published materials
 - (e) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases
- 1.7. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:
 - (a) DEPP 6.5.2G(1): Deterrence
 - (b) DEPP 6.5.2G(2): The nature, seriousness and impact of the breach in question;
 - (c) DEPP 6.5.2G(4): Whether the person on whom the penalty is to be imposed is an individual;

- (d) DEPP 6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
- (e) DEPP 6.5.2G(6): The amount of benefit gained or loss avoided;
- (f) DEPP 6.5.2G(8): Conduct following the breach;
- (g) DEPP 6.5.2G(9): Disciplinary record and compliance history;
- (h) DEPP 6.5.2.G(10): Other action taken by the FSA;
- (i) DEPP 6.5.2G(12): FSA guidance and other published materials; and
- (j) DEPP 6.5.2G(13): The timing of any agreement as to the amount of the penalty.