
FINAL NOTICE

To: **Andrew Jeffreys trading as Chepstow Financial Services**

Of: Richmond House
14 Beaufort Square
Chepstow
Monmouthshire
NP16 5EP

Date **5 June 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty:

1. THE PENALTY

- 1.1. The FSA gave you, Andrew Jeffreys trading as Chepstow Financial Services, a Decision Notice on 5 June 2008 (“the Decision Notice”) which notified you that, for the reasons set out below and pursuant to section 206 of the Financial Services and

Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £10,500 on you, in respect of breaches of Principles 3, 7 and 9 of the FSA’s Principles for Businesses (“the Principles”), and of rules in Chapter 4 of the section of the FSA’s Handbook entitled “Mortgage and Home Finance: Conduct of Business Sourcebook” (“MCOB”) between 31 October 2004 and 12 September 2007 (“the relevant period”).

- 1.2. You agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30 percent (Stage 1) discount under the FSA's executive settlement procedures. The FSA would have otherwise sought to impose a financial penalty of £15,000 on you.

2. REASONS FOR THE ACTION

Summary

- 2.1. The FSA has concluded that, during the relevant period, in relation to self-certification mortgages, you failed to exercise adequate management and control over your sales processes and advisers and failed to treat your customers fairly as a result of inadequate disclosures and failing to obtain and record sufficient information from your customers.

- 2.2. The FSA has made the following findings.

- (1) You failed to establish proper procedures in respect of various aspects of your activities and to make and retain appropriate records in respect of those activities. Specifically, you failed to demonstrate how you carried out the training, supervision and monitoring of advisers. You also failed to put in place adequate systems and procedures to counter the risk that the business could be used to facilitate mortgage fraud. This demonstrates that you failed to take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3.
- (2) You failed to disclose adequately to clients the additional fees payable as a result of your use of packagers to source products and you therefore failed to communicate information to customers in a way which was clear, fair and not misleading, in breach of Principle 7.

- (3) You failed to obtain and record sufficient personal and financial information from your clients to be able to assess the affordability of recommended mortgage contracts. Also you did not make and retain sufficient records to demonstrate the suitability of, and the reasons for, your recommendations. You therefore failed to take reasonable care to ensure the suitability of your advice, in breach of Principle 9.

2.3. The above failures are regarded by the FSA as serious because you failed to ensure that you made and retained adequate records of personal and financial information in a number of key areas of your business. Also, the widespread record keeping failures identified by the FSA would hinder any independent assessments completed by a third party such as the FSA's supervision staff and Financial Ombudsman Service if any customer complaints needed to be investigated.

2.4. The FSA has taken into account the following steps taken by you which are regarded as mitigating factors:

- (1) you have been open and cooperative with the FSA's investigation;
- (2) you accepted there had been management and control failures during the relevant period, and you appointed external compliance consultants immediately after the FSA drew the failures to your attention and implemented a series of changes to your practices and procedures; and
- (3) there is no evidence that you have sought to profit or avoid a loss as a result of the identified failings.

3. STATUTORY PROVISIONS, GUIDANCE AND REGULATORY REQUIREMENTS

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

3.2. 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

- 3.3. The FSA's statutory objectives, set out in section 2(2) of the Act, are market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 3.4. 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 imposed upon it by or under the Act.
- 3.5. 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.
 - (2) Principle 7 (Communications with clients): A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
 - (3) Principle 9 (Customers: relationships of trust): A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customers who is entitled to rely upon its judgment.
- 3.6. The MCOB rules which have been breached, and details of the guidance to which the FSA has had regard, are set out in Annex 1 to this Notice.

4. FACTS AND MATTERS RELIED UPON

- 4.1. You are a small mortgage broker, who commenced trading in 1988 and you have been authorised by the FSA since 31 October 2004. You advise primarily on regulated mortgage contracts, although you also have permission to advise on and arrange insurance contracts.

- 4.2. You operate as a sole trader with two administrative staff although you have previously employed two other advisers. During the period of breach, you advised on 409 mortgage contracts.
- 4.3. You were one of 89 mortgage brokers visited by the FSA's Small Firm's Division ("SFD") in 2007 as part of a thematic project looking into the "quality of sales processes in relation to self-certification mortgages contracts" project. During this visit, concerns about your systems and controls were identified. As a result, you were one of seven firms referred to FSA's Enforcement Division ("Enforcement") from the project.

Breaches of Principles

- 4.4. The following main issues of concern were identified.
- (1) Insufficient time was spent on the management and control of the sales process and supervision of the other advisers. It became evident that, while you and your advisers had informally discussed cases, had reviewed each others' files for compliance and had attended appropriate training courses, you had no formal procedures to ensure that these issues were discussed in a structured manner and no records of these activities were maintained (Principle 3).
 - (2) Your record keeping systems were insufficient and did not enable you to identify that additional documents received from clients were not in line with the information previously provided by them, resulting in a failure to mitigate the risks of false or inaccurate information being submitted to lenders. For example, in one client file, it was evident that documents received after the fact find process cast doubt on the accuracy of information provided by the client, which you failed to identify (Principle 3).
 - (3) You failed to provide information to clients in an appropriate and timely manner (Principle 7). For example:
 - (a) the relevant Key Facts Illustrations ("KFI") were not always retained on the client files or there were several different KFIs present on the

same client file with no explanation or indication as to which mortgage contract had been recommended;

- (b) in three of the 20 client files reviewed by the FSA, the KFI had been issued after the mortgage contracts had completed; and
 - (c) in instances where packagers were being used to source products, the additional fees relating to the packager were not adequately disclosed to the clients.
- (4) There were specific failures regarding the suitability of advice in terms of affordability and your record keeping relating to your recommendations as to the suitability of mortgage contracts (Principle 9). In particular:
- (a) in the fact find process, you failed to gather and record information on the affordability section of the fact find document and relied only on a customer declaration of affordability. In the opinion of the FSA, asking customers to make declarations that they can afford mortgage contracts does not remove your obligation to assess whether, in relation to clients' personal and financial circumstances and needs and preferences, your recommendations are suitable;
 - (b) in all the files reviewed, the clients had self-certified their income, and it was not possible to understand from the files why, for example, employed applicants had self certified their incomes. The reasons given for self certification of income were broadly generic and you failed to provide a satisfactory explanation about how you had assessed whether clients' incomes were realistic and appropriate to their circumstances;
 - (c) in the files reviewed the FSA found no evidence of a breakdown of income and expenditure or that consideration had been given to the clients' levels of disposable income;
 - (d) in at least one case, the term of the mortgage term exceeded the customer's retirement age but it was not possible to assess from your

records whether the mortgage contract entered into was affordable into retirement; and

- (e) you could not demonstrate why particular mortgages and lenders had been recommended to your clients. There was also inadequate evidence of product research on your client files. Even in instances where product research was on file, it was difficult to assess the basis on which that particular product had been recommended.

- 4.5. You accepted the FSA's findings about the shortcomings in your mortgage sales process and training and competency regime during the relevant period. Remedial action has been undertaken with the support of an external compliance consultant.

5. ANALYSIS OF THE SANCTION

- 5.1. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of the FSA's Decision Procedures and Penalties Manual ("DEPP"). DEPP took effect from 28 August 2007, replacing the FSA's previous policy in relation to the imposition of financial penalties (which was contained in Chapter 13 of the Enforcement Manual ("ENF")). As the conduct described in this Final Notice occurred at the time both the FSA has considered the both relevant sections of Chapter 13 ENF and Chapter 6 DEPP.
- 5.2. 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).
- 5.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.1G 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 includes:

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

- 5.4. The FSA considered the seriousness of the contraventions by you, including the nature of the requirements breached, whether the breaches identified were deliberate or reckless, the number and duration of the breaches and the number of customers placed at risk.
- 5.5. Although the FSA found no evidence that the conduct in issue was deliberate, we concluded from our review of customer files that, due to the lack of evidence to support the assessment of suitability, there was a risk in every case that the customer had been given unsuitable advice. You were able to address the FSA's concerns about a small number of client files in which it appeared on the face of it that unsuitable recommendations had been made.

DEPP 6.5.2G(8): Conduct following the breach;

- 5.6. The FSA has taken into account your co-operation with the FSA's investigation and its willingness to take all reasonable steps to satisfy the FSA that regulatory requirements will be met by you on an on-going basis. The FSA has also taken into account that you have not been the subject of previous disciplinary action by the FSA.

DEPP 6.5.2G(10): Other action taken by the FSA

- 5.7. The FSA has taken into account penalties imposed on other authorised persons for similar and more serious conduct and to previous cases where private warnings were given to authorised persons for less serious conduct.
- 5.8. The FSA, having regard to all circumstances, considered the appropriate level of financial penalty to be £15,000 before any discount for early settlement.

6. DECISION MAKERS

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by 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.

Manner of and time for payment

- 7.2. The financial penalty must be paid by you to the FSA in six equal instalments of £1,750, with the instalments to be received by the FSA on 1 July 2008, 1 August 2008, 1 September 2008, 1 October 2008, 3 November 2008 and 1 December 2008.

If the financial penalty is not paid

- 7.3. If any of the instalments of the financial penalty are outstanding on the day after the due date for payment, the FSA may recover the outstanding amounts 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 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, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894, or fax: 020 7066 5895).

Jonathan Phelan
Head of Department
FSA Enforcement Division

ANNEX 1: Relevant rules and guidance

MCOB 4.7 Advised sales

MCOB 4.7.2: 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 (see MCOB 4.3.4 R (2), MCOB 4.3.5 G and MCOB 4.3.6 G).

MCOB 4.7.4: For the purposes of MCOB 4.7.2 R:

- (1) 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:
 - (a) the customer can afford to enter into the regulated mortgage contract;
 - (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
 - (c) 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;

MCOB 4.7.17 Record keeping

- (1) A firm must make and retain a record:
 - (a) of the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7; and
 - (b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2 R satisfies the suitability requirements in MCOB 4.7.4 R(1). This explanation must include, where this is the case, the reasons why a personal recommendation has been made on a basis other than that described in MCOB 4.7.13 E(1).

- (2) The record in (1) must be retained for a minimum of three years from the date on which the personal recommendation was made.

MCOB 5.5.1 A firm must provide the customer with an illustration for a regulated mortgage contract before the customer submits an application for that particular regulated mortgage contract to a mortgage lender, unless an illustration for that particular regulated mortgage contract has already been provided.

The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. Imposing financial penalties and public censures show 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.

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 (DEPP6.1.2G).

The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G 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) DEPP6.2.1G(1): The nature, seriousness and impact of the suspected breach
- (b) DEPP6.2.1G(2): The conduct of the person after the breach
- (c) DEPP6.2.1G(3): The previous disciplinary record and compliance history of the person
- (d) DEPP6.2.1G(4): FSA guidance and other published materials

- (e) DEPP6.2.1G(5): Action taken by the FSA in previous similar cases

The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP6.5.2G 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:

- (f) DEPP6.5.2G(2): The nature, seriousness and impact of the breach in question
- (g) DEPP6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed
- (h) DEPP6.5.2G(8): Conduct following the breach
- (i) DEPP6.5.2G(9): Disciplinary record and compliance history.