
FINAL NOTICE

To: **Capital Mortgage Connections Ltd**
Of: **Bishops Court**
Albyn Place
Aberdeen
AB10 1YL

Dated: **20 November 2006**

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 Capital Mortgage Connections Limited ("CMC/the firm") a Decision Notice on 10 November 2006 which notified CMC that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £25,000 discounted by 30% to £17,500 (for early settlement) on CMC in respect of breaches of the following FSA Principles for Businesses, between 4 April and 17 October 2005 ("the relevant period"):

- (1) **FSA Principle 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems);**
- (2) **FSA Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly); and**

- (3) **FSA Principle 7 (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).**

1.2 The following FSA Rules are also relevant:

- (1) FSA Rule 3.7.3R in the part of the FSA Handbook (“the Handbook”) entitled Mortgages: Conduct of Business (“MCOB”) – this rule prohibits unsolicited real time qualifying credit promotions to customers (what is more commonly referred to as “cold-calling”);
- (2) FSA Rules 5.3.1R and 5.5.14R in the part of the Handbook entitled Insurance: Conduct of Business (“ICOB”) – these rules set out certain requirements as to pricing information that must be given when advising on certain types of insurance contracts (including Accident, Sickness and Unemployment (ASU) insurance policies as relevant to this matter); and
- (3) FSA Rules 3.1.1R and 3.2.6R in the part of the Handbook entitled Senior Management Arrangements, Systems and Controls (“SYSC”) – these rules set out that a firm must take reasonable care to establish and maintain (i) such systems and controls as are appropriate to its business and (ii) effective systems and controls for compliance with applicable requirements and standards under the regulatory system.

1.3 Accordingly, for the reasons set out below and having agreed with CMC the facts and matters relied on, the FSA imposes a financial penalty on CMC in the amount of £17,500.

2. REASONS FOR THE ACTION

2.1 The FSA decided to impose a financial penalty on CMC in respect of **breaches of Principles 3, 6 and 7** that occurred in the relevant period.

2.2 In summary, CMC's failings in the relevant period were as follows:

- (1) over 85% of the firm's business was generated by way of cold-calling and therefore CMC failed to take reasonable care to organise and control its affairs responsibly and effectively (**Principle 3**) and failed to treat its customers (which includes prospective customers in this context) fairly (**Principle 6**);
- (2) over 97% of ASU insurance policies sold by the firm were on a single premium basis rather than the potentially cheaper option of a regular premium, and CMC was unable to demonstrate that it advised of the potentially cheaper option and gave appropriate pricing information to its customers in this regard. This created a significant risk that a number of CMC's customers bought single premium ASU without being advised of potentially cheaper options. As a result CMC failed to treat its customers fairly (**Principle 6**) and failed to pay due regard to the information needs of its clients (**Principle 7**); and

- (3) CMC failed to establish and maintain appropriate systems and control to ensure that its business could comply with the applicable requirements and standards under the regulatory system and as a result failed to take reasonable care to organise and control its affairs responsibly and effectively (**Principle 3**).

3. FACTS AND MATTERS RELIED ON

3.1 CMC is a mortgage broker and packager, involved in the sale of mortgages and mortgage related insurance. CMC has been regulated by the FSA since 31 October 2004 and its head office is based in Glasgow.

3.2 The FSA's Small Firms Division (SFD) visited the firm in November 2005, reviewing a sample of customer files (out of a possible 369 customers from the relevant period) and interviewing key senior staff. The purpose of the visit was to review CMC's selling practices and compliance arrangements and to assess the extent to which the firm was complying with the FSA's Principles for Businesses. The firm was subsequently referred to the FSA's Enforcement Division and the following failures were identified:

- (1) in the relevant period over 85% of the firm's business was generated through telephone marketing whereby CMC staff would select prospective customers to call from the telephone book and, without identifying themselves as calling from CMC, ask a series of questions about the prospective customer's mortgage arrangements. The mortgage information obtained was not used other than to create business for CMC. The member of CMC staff would then seek permission for an advisor from CMC to contact the prospective customer if CMC believed it could save him money on his mortgage. This method of telephone marketing did not comply with MCOB 3.7.2R, demonstrating that the firm failed to take reasonable care to organise and control its affairs responsibly and effectively (**Principle 3**) and failed to treat its customers (which includes prospective customers in this context) fairly (**Principle 6**);
- (2) in the relevant period CMC sold 220 ASU insurance policies of which 214 were on a single premium basis rather than the potentially cheaper option of a regular premium. CMC was unable to demonstrate that it discussed regular premium ASU with these customers or that, in cases where the premium was added to the mortgage (as frequently occurred), the customers were made aware of the interest that would be charged on the single premium (as is required by ICOB 5.3.1R and 5.5.14R). This created a significant risk that a large number of CMC's customers bought single premium ASU without being advised of potentially cheaper options. As a result CMC failed to treat its customers fairly (**Principle 6**) and failed to pay due regard to the information needs of its clients (**Principle 7**);
- (3) despite monitoring procedures apparently being in place during the relevant period to review for compliance issues, a number of problems were identified from the files reviewed, including:

- (a) the failings identified at 3.2(1) and (2) above;
- (b) a lack of evidence that CMC properly assessed affordability of mortgage contracts with its customers;
- (c) a lack of evidence that the appropriate factors to be taken into account when consolidating debt were considered; and
- (d) the firms' Combined Initial Disclosure Documentation being deficient in a number of areas.

This reflects a failure to take reasonable care to establish and maintain (i) such systems and controls as are appropriate to its business and (ii) effective systems and controls for compliance with applicable requirements and standards under the regulatory system (as is required under SYSC 3.1.1R and 3.2.6R), and a resulting breach of Principle 3.

4. ANALYSIS OF SANCTION

- 4.1 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual ("ENF"), which is part of the FSA's Handbook of rules and guidance. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.
- 4.2 In determining whether a financial penalty is appropriate, and if so its level, the FSA is required to consider all the relevant circumstances of the case. ENF 13.3.3 sets out the factors that may be of particular relevance in determining the level of a financial penalty. The factors set out are not exhaustive (ENF 13.3.4). For the avoidance of doubt, this analysis of the level of penalty was undertaken before applying the 30% (stage 1) discount (ENF 13.7.3).

ENF 13.3.3(1): The seriousness of the misconduct or contravention

- 4.3 The FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches and the number of customers affected and/or placed at risk. Details of the breaches are set out above. For the reasons set out below the FSA considers that the breaches in this case are of a serious nature.
 - (1) the very high percentage of business generated by CMC through cold-calling;
 - (2) the very high percentage of failings in respect of ASU pricing advice means there is a significant risk of customer detriment;

- (3) the extensive compliance failings and therefore weaknesses in the firms systems and controls.

ENF 13.3.3(2): The extent to which the contraventions were deliberate or reckless

- 4.4 The FSA has not concluded that the contraventions were deliberate or reckless.

ENF 13.3.3(3): The size, financial resources and other circumstances of the firm and the amount of profit accrued or loss avoided

- 4.5 In determining the level of penalty, the FSA has taken full account of the firm's financial resources. The FSA has also been mindful of the need to ensure that the interests of customers are protected. In such circumstances, a financial penalty should not be fixed at a level that would effectively prohibit the firm from carrying out a past business review (see 4.6 below) and providing redress where appropriate. Taking full account of these factors, and having considered and discussed with the firm its latest financial statements, the FSA has decided that a penalty of £25,000 discounted by 30% to £17,500 (for early settlement) is appropriate.

ENF 13.3.3(5): Conduct following the contravention

- 4.6 CMC stated that, as of 5 December 2005, it ceased conducting telephone cold-calling activities after the FSA made clear its concerns. For customers who were sold ASU policies in the relevant period, CMC agreed to review those client files and conduct a past business review to ensure that customers are treated fairly, to include the payment of redress if appropriate.

ENF 13.3.3(6): Disciplinary record and compliance history

- 4.7 CMC has no previous disciplinary record.

ENF 13.3.3(7): Previous action taken by the FSA in relation to similar behaviour

- 4.8 In determining the level of penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

5. DECISION MAKER

- 5.1 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.

6. IMPORTANT

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

Manner of and time for Payment

- 6.2 The financial penalty must be paid in full by CMC to the FSA by no later than 31 January 2007.

If the financial penalty is not paid

- 6.3 If all or any of the financial penalty is outstanding on 1 February 2007, the FSA may recover the outstanding amount as a debt owed by CMC and due to the FSA.

Publicity

- 6.4 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.

- 6.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 6.6 For more information concerning this matter generally, you should contact Dan Enraght-Moony at the FSA (direct line: 020 7066 0166 /fax: 020 7066 0167).

Jonathan Phelan
FSA Enforcement Division