
FINAL NOTICE

To: DB UK Bank Limited (trading as DB Mortgages)

Of: Winchester House
1 Great Winchester Street
London
EC2N 2DB

Date: 15 December 2010

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 DB UK Bank Limited (trading as DB Mortgages) (“DBM” or “the Firm”) a Decision Notice on 15 December 2010 which notified the Firm 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 £840,000 in respect of breaches of Principle 3 (Management and control) and Principle 6 (Customers’ interests) of the

FSA's Principles for Businesses ("the Principles") and Rules 11.3.1 R, 12.4.1 R, 13.3.1 R and 13.4.1 R of the Mortgage and Home Finance: Conduct of Business Sourcebook ("MCOB") in the period between 13 January 2006 and 1 December 2008 ("the Relevant Period").

- 1.2. DBM will carry out a customer redress programme to redress the failings set out in this notice (as set out in more detail at paragraphs 2.9 to 2.11 below). The total estimated cost of redress for the period is approximately £1.5 million including interest in relation to refunds of fees and charges and the payment for customers to receive independent financial advice. In addition, there will be a customer contact exercise which may lead to further redress but the amount can not be quantified at this time.
- 1.3. The Firm confirmed on 8 December 2010 that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber). Accordingly, for the reasons set out below, the FSA imposes a financial penalty in the amount of £840,000. DBM qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have sought to impose a financial penalty of £1,200,000 on the Firm.

2. REASONS FOR THE ACTION

- 2.1. The breaches of the Principles and MCOB Rules, which are described in more detail in section 4 below, relate to a number of serious failings by DBM in its lending policy and practices, and in its treatment of customers who were in arrears.

Principle 3

- 2.2. The Firm breached Principle 3 between January 2006 and January 2008 in that it failed to take reasonable care to organise and control its lending activities responsibly and effectively, with adequate risk management systems, in that it failed to consistently ensure that in accordance with its own lending policy:
 - (1) in relation to interest-only mortgages where the capital repayment vehicle was stated to be the sale of the customer's home, it obtained the required

additional information from customers as to where the customer was intending to live at the end of the mortgage term; and

- (2) in relation to self-certified mortgages, customers who had requested a self-certified mortgage were offered a different mortgage product with a lower interest rate when their circumstances indicated that they might have qualified for such a product.

2.3. The Firm also breached Principle 3 between January 2006 and January 2008 in that its lending policy did not ensure that its underwriting staff specifically checked that customers who were less than 60 years old at the time of application and whose mortgage term would extend into retirement would be able to afford their mortgages when they were in retirement. The Firm also did not have effective systems in place to ensure sufficient records to demonstrate that underwriting staff had treated all such customers fairly when considering their applications for mortgages. This prevented the Firm, in breach of MCOB 11.3.1R, from being able to show in all cases that before deciding to enter into a regulated mortgage contract sufficient account was taken of the customer's ability to repay.

2.4. Further, the Firm breached Principle 3 throughout the Relevant Period in that it failed to take reasonable care to organise and control its arrears handling and repossession activities responsibly and effectively, with adequate risk management systems. The following failings were identified in DBM's oversight of mortgage servicing activities:

- (1) DBM failed to establish and maintain sufficient oversight of the mortgage arrears and repossessions handling processes and procedures, including by failing to conduct appropriate and sufficient compliance checks in relation to the breaches identified in section 2.6 below; and
- (2) DBM failed to have adequate systems and controls in place to ensure that the process for the waiving and refunding of fees was organised and controlled effectively.

Principle 6

- 2.5. The Firm breached Principle 6 and MCOB 13.3.1R during the Relevant Period in that it failed to ensure that the relevant mortgage servicing staff had an adequate understanding of, and implemented, the requirement to treat customers fairly in their mortgage arrears and repossession activities.
- 2.6. The following failings were identified during the Relevant Period, in that DBM:
- (1) did not always take reasonable steps to ensure that customers were informed of the range of options available to them and that customers' individual circumstances were taken into account during key stages of the arrears handling and repossessions process;
 - (2) failed to ensure that customer complaints were appropriately recognised and adequately dealt with by the relevant mortgage servicing staff;
 - (3) applied certain charges to customers' accounts that were unfair in that the charges were repeatedly charged or did not accurately reflect the cost of administering an account in arrears. As a result of some of these charges, the Firm was also in breach MCOB 12.4.1 R;
 - (4) failed to develop an appropriate cost-based approach to the calculation of its arrears charges and therefore could not be sure that they were a reasonable estimate of the cost of administering an account in arrears. As a result of this, the Firm was also in breach of MCOB 12.4.1 R; and
 - (5) failed to ensure that all arrears information communicated to customers was accurate in content. Further, the Firm failed to ensure that customers in arrears were provided with the relevant arrears information or, where such information was provided, that this was done within the required regulatory time frame. As a result of this, the Firm was also in breach of MCOB 13.4.1 R.

Seriousness of conduct

- 2.7. The FSA considers DBM's failings to be serious given the importance of ensuring that mortgage lending activities are conducted responsibly and take into account customers' interests. The FSA also considers DBM's failings to be serious because

these failings created a significant risk that a large number of customers who were in mortgage arrears or who had incurred a mortgage shortfall debt (including customers with impaired or non-standard credit profiles) were not treated fairly. In some instances, such customers were also put at a risk of financial loss.

2.8. The FSA recognises the following factors which mitigate the seriousness of DBM's failings:

- (1) DBM has worked in an open and co-operative way with the FSA during the investigation;
- (2) DBM was proactive in commissioning an external review of the FSA's concerns and sharing its findings with the FSA;
- (3) prior to the commencement of the FSA's investigation, DBM made improvements to its mortgage arrears handling and repossession practices and procedures and has made further improvements since, including by reorganising its mortgage compliance arrangements;
- (4) DBM appointed an external firm to provide expert advice regarding its arrears handling activities and has implemented the recommendations made by that firm; and
- (5) DBM has agreed to a wide-ranging customer redress programme as set out below.

Redress programme to be undertaken by DBM

2.9. DBM has agreed to the following redress programme in response to the failings identified in this Notice.

2.10. For failings in relation to DBM's mortgage lending activities, DBM will write to all borrowers who were under 60 when they took their mortgage with DBM and had a regulated mortgage contract with a repayment date stretching beyond their assumed retirement age. DBM will cover the reasonable cost of independent advice and, where appropriate, pay redress to the borrowers.

2.11. For failings in relation to DBM's treatment of customers in arrears:

- (1) DBM will write to all borrowers with regulated mortgage contracts which went into arrears and pay redress as appropriate;
- (2) DBM will refund any broken arrangement fees and debt counsellor fees charged at any time during the life of the mortgage loan;
- (3) DBM will refund a proportion (£83) of each £250 solicitor instruction fee charged to borrowers in arrears. This is the amount by which the fee exceeded the administrative costs incurred by DBM;
- (4) DBM will refund to borrowers any returned direct debit fee or returned cheque fee if that fee had already been charged in the same month;
- (5) DBM will refund £50 to every borrower who was charged a £50 monthly arrears management fee prior to 31 May 2010; and
- (6) DBM will notify all borrowers who are currently in arrears of the full range of options which may be available to them.

3. RELEVANT STATUTORY PROVISIONS

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 maintaining market confidence and the protection of consumers.

3.2. Section 206 of the Act provides:

“(1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.”

3.3. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.

3.4. DBM is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act. 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 purposes of protecting the interests of consumers.

3.5. Principle 3 states:

“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.”

3.6. Principle 6 states:

“A firm must pay due regard to the interests of its customers and treat them fairly.”

3.7. MCOB 11.3.1 R provides that:

(1) *“A firm must be able to show that before deciding to enter into, or making a further advance on, a regulated mortgage contract, or home purchase plan, account was taken of the customer's ability to repay.”*

(2) *“A mortgage lender must make an adequate record to demonstrate that it has taken account of the customer's ability to repay for each regulated mortgage contract that it enters into and each further advance that it provides on a regulated mortgage contract. The record must be retained for a year from the date at which the regulated mortgage contract is entered into or the further advance is provided.”*

3.8. MCOB 12.4.1 R provides that:

(1) *“A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, a charge for arrears on a customer except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the customer being in arrears.”*

3.9. MCOB 13.3.1 R provides that:

(1) *“A firm must deal fairly with any customer who:*

(a) *is in arrears on a regulated mortgage contract or home purchase plan;*

- (b) *has a sale shortfall; or*
 - (c) *is otherwise in breach of a home purchase plan.*
- (2) *A firm must put in place, and operate in accordance with, a written policy (agreed by its respective governing body) and procedures for complying with (1).”*

3.10. MCOB 13.4.1 R provides that:

- (1) *“If a customer falls into arrears on a regulated mortgage contract, a firm must as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following in a durable medium:*
- (a) *the current FSA information sheet on mortgage arrears;*
 - (b) *a list of the due payments either missed or only paid in part;*
 - (c) *the total sum of the payment shortfall;*
 - (d) *the charges incurred as a result of the payment shortfall;*
 - (e) *the total outstanding debt, excluding charges that may be added on redemption; and*
 - (f) *an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared.”*

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. DBM is a mortgage lender which, amongst other regulated activities, conducts first charge regulated mortgage business. DBM does not deal with mortgage customers directly, and its mortgage products are offered and distributed solely through intermediaries.

- 4.2. During the period January 2006 to January 2008, DBM operated as a non-bank specialist lender in sub-prime and near-prime mortgage products. Sub-prime and near-prime mortgages are secured loans to borrowers who are perceived to have a high credit risk, often because of a poor credit history, or have other characteristics that are associated with an impaired or non-standard credit profile.
- 4.3. As at 31 December 2009, DBM had entered into approximately £1.5 billion mortgage contracts. Approximately £1 billion of these mortgage contracts were regulated by the FSA.
- 4.4. DBM was one of the firms that took part in the FSA's thematic work in connection with the FSA's Arrears Handling and Repossessions Thematic Review which started in 2008.

Basis of FSA's findings

- 4.5. After the commencement of the FSA's investigation, DBM engaged a third party to undertake a review of the following:
- (1) for responsible lending, a random sample of 66 cases originated between April 2006 and February 2008 (the period up to which DBM originated mortgages) ("the Responsible Lending Sample"); and
 - (2) for arrears handling and repossessions, a random sample of 77 cases which had fallen into arrears prior to 1 December 2008 ("the Arrears Handling and Repossessions Sample").
- 4.6. A wide variety of mortgage products were captured within the samples in order to reflect potential variations in the various mortgage products within the Firm.

DBM's lending activities

- 4.7. The matters set out in paragraphs 4.8 to 4.12 below relate to the period January 2006 to January 2008, being the period when DBM was involved in relevant regulated mortgage lending activity.

Lending into retirement

- 4.8. DBM's Business Underwriting Guidelines required that where a customer was 60 years old or more at the time of applying for a mortgage loan, details of that customer's post-retirement income should be documented on the mortgage application form. The effect of this was that when a customer was under 60 years at the time of entering into the mortgage loan, relevant mortgage staff were not specifically instructed to consider the affordability of the mortgage loan during retirement.
- 4.9. In 8 of the 18 cases reviewed (44%) where the customer was under 60 at the time of the mortgage application and the mortgage loan was to continue past the customer's assumed retirement age, DBM was unable to demonstrate that it had obtained sufficient information about the customer's ability to repay the mortgage loan following the retirement of that customer.

Interest-only mortgages

- 4.10. Interest-only mortgages are mortgages for which the customer pays the monthly interest on the amount borrowed until the end of the mortgage period, at which point the entire capital amount falls due. Unlike repayment mortgages, the customer does not repay the capital over time but should have a repayment vehicle in place or some other means of repaying the capital at the end of the mortgage term.
- 4.11. For interest-only mortgages, if the proposed method of capital repayment was through the sale of the customer's home, DBM's own lending policy required further details to be obtained, such as details of where the customer would live at the end of the mortgage term. However, in 5 of the 25 cases reviewed (20%) where the repayment vehicle for the interest-only mortgage was given as the sale of a property, DBM failed to demonstrate that further details had been obtained about where the customer would live at the end of the mortgage term. In a further 10 of the 25 cases reviewed (40%), it was unclear whether further details had in fact been obtained from the customer.

Self-certified mortgages

- 4.12. According to DBM's lending policy, in circumstances where customers contacted DBM for a self-certified mortgage but might have qualified for another mortgage

product with a lower interest rate, the lower interest rate product should have been offered to that customer. However, DBM failed to ensure that this policy was being followed, as in 32 out of the 53 cases reviewed (60%) where the customer had applied for and been offered a self-certified mortgage, customers were not offered a mortgage product with lower interest rates even where their circumstances indicated that they might have qualified for a lower interest rate product.

DBM's arrears handling and repossession activities

Oversight of mortgage servicing activities

- 4.13. Relevant mortgage servicing staff had set objectives for the period within which customers were required to clear any outstanding arrears or agree concessions such as a reduced monthly payment. The relevant mortgage servicing staff were responsible for handling telephone arrears calls, making and monitoring arrangements to repay with customers in arrears, arranging field agent visits, issuing arrears statements, and passing unresolved arrears cases to litigation.
- 4.14. DBM provided oversight of the activities of the relevant mortgage servicing staff. Field agents also engaged to visit customers who were in arrears with their mortgage or who had incurred a mortgage shortfall debt.
- 4.15. As further detailed below, DBM failed to implement and maintain adequate compliance monitoring processes, including by maintaining adequate oversight of the arrears handling and repossession activities of the relevant mortgage servicing staff.

Failure to take borrowers' individual circumstances into account / inform borrowers of potential alternatives

- 4.16. In dealing with customers who were in arrears with their mortgages, DBM focussed on agreeing the maximum amount which the customer could pay each month to clear the outstanding amount (an "Arrangement to Pay"). The Arrangement to Pay was in addition to the customers' ongoing monthly contractual payment obligations in respect of the mortgage loan.
- 4.17. DBM's Mortgage Arrears Policy during the Relevant Period required the customer to pay a minimum of 10% of the outstanding arrears balance prior to being able to make

an Arrangement to Pay. This minimum amount was sometimes more than 10% of the outstanding arrears balance if the mortgage account was more than three months in arrears. The relevant servicing staff were encouraged as part of DBM's Mortgage Arrears Policy to clear outstanding amounts in the shortest possible time period.

- 4.18. Based on the Arrears Handling and Repossessions Sample, in 18 cases out of the 77 cases reviewed (23%), DBM failed to take steps to determine a customer's individual circumstances and therefore could not adequately have taken such information into account during key stages of the arrears and repossessions handling process (such as prior to an Arrangement to Pay being established or the litigation process being commenced).
- 4.19. In 10 out of the 77 cases reviewed (13%), no details or insufficient details of the customer's income and expenditure were obtained by the mortgage servicing staff prior to an Arrangement to Pay being made with the customer.
- 4.20. Options which DBM could offer to customers in arrears, as set out in its policy document, included:
 - (1) changing the method of payment of the instalments (cheque or cash rather than Direct Debit);
 - (2) changing the mortgage repayment method (e.g. offer an interest-only payment method);
 - (3) extending the term of the mortgage loan;
 - (4) spreading the repayment of the arrears over the remaining term of the mortgage loan;
 - (5) capitalising fees that are due from the borrower as a result of the arrears; and
 - (6) treating the arrears as part of the original mortgage loan amount by capitalising the arrears and normalising the borrower's mortgage loan account.
- 4.21. A Final Notice letter (or Letter before Action) was sent to customers when DBM decided to instruct solicitors to commence possession proceedings in respect of a

mortgaged property. The Final Notice letter asked the customer to contact DBM within seven days of the date of the letter with “*acceptable proposals to bring the customer’s account up to date*” otherwise solicitors would be instructed to commence legal action for possession of the mortgaged property. In the Arrears Handling and Repossessions Sample, there were 22 cases where a Final Notice letter was sent to customers. In 15 of these 22 cases (68%), DBM was unable to demonstrate that it had taken steps to inform the customers of the range of potential alternatives to repossession, prior to a Final Notice letter being sent.

- 4.22. Further, an internal review conducted by DBM in April 2008 included a review of a sample of 33 Letters before Action. According to this review, only 11 of the 33 (33%) Letters before Action accurately quoted the correct seven day period for the customer’s arrears to be paid off before solicitors were instructed.
- 4.23. In 5 out of the 77 cases reviewed (6%), complaints made by borrowers were not recorded by mortgage servicing staff as a complaint and were not adequately addressed by DBM.
- 4.24. The above indicates that, prior to changes introduced by DBM in November 2008, arrears resolution centred on collecting payments via an Arrangement to Pay and that steps were not always taken to inform customers of the range of potential alternatives to repossession. The above also indicates that sufficient consideration was not always given to customers’ individual circumstances, for example, by failing to obtain Income and Expenditure information prior to making an Arrangement to Pay. As a result of this, there is a risk that applications for possession orders may have been made by DBM without sufficient steps being taken to determine that such orders were being used as a last resort.

Regulatory information to customers

- 4.25. According to MCOB 13.4.1 R, if a customer falls into arrears, a firm must, as soon as possible and, in any event, within 15 business days of becoming aware of that fact, provide the customer with certain information such as:
 - (1) the current FSA information sheet on mortgage arrears;

- (2) a list of the due payments either missed or only paid in part;
- (3) the total sum of the payment shortfall;
- (4) the charges incurred as a result of the payment shortfall;
- (5) the total outstanding debt, excluding charges that may be added on redemption; and
- (6) an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared.

4.26. However, in 8 out of 77 cases reviewed (10%), DBM failed to ensure that borrowers in arrears were provided with the relevant arrears information or, where it was provided, DBM failed to ensure that it was provided within the regulatory time frame.

Fees and charging

Application of fees

4.27. The process for the waiving and refunding of fees in DBM involves a manual component which relies on mortgage servicing staff identifying inappropriate or waived charges and capturing these on a spreadsheet for action. Further, the relevant mortgage servicing staff were given discretion to waive or refund fees with little formal oversight by DBM. In 17 out of 77 cases reviewed (22%), fees waived or inappropriately charged were not refunded to a customer's account but were left outstanding. This led to the risk of an inconsistent approach being applied by case handlers in relation to the waiving and refunding of fees.

Unfair charges

4.28. During the Relevant Period, DBM failed to take sufficient steps to ensure that arrears fees and charges were based on a reasonable estimate of the cost of the additional administration caused by the customer being in arrears, for example no sufficient activity-based costing exercise was undertaken during the Relevant Period.

4.29. In addition, DBM levied a number of unfair charges on customers in arrears, including:

- (1) a fee for a returned direct debit which was repeatedly charged by DBM;
- (2) the portion of the fee for instructing a solicitor which exceeded the underlying cost to DBM; and
- (3) a fee for a broken arrangement to pay, which was charged whilst a customer was also paying an arrears management fee.

4.30. The above charges were unfair because they were repeatedly charged or they did not accurately reflect the additional administrative costs incurred by DBM.

5. ANALYSIS OF BREACHES AND SANCTION

Principle 3

5.1. In the period January 2006 to January 2008, DBM failed to organise and control its lending activities responsibly and effectively, with adequate risk management systems, as it did not ensure that its own lending policy was being followed in that:

- (1) in relation to interest-only mortgages, where the customer's intended repayment vehicle was the sale of their property, relevant mortgage servicing staff were required under DBM's lending policy to obtain further details from the customer as to where they would live at the end of the mortgage term, as set out above. However, DBM failed to demonstrate that this had consistently been done; and
- (2) in relation to self-certified mortgages, DBM failed, contrary to its own lending policy, to ensure that a mortgage product with a lower interest rate was offered to customers who had applied for a self-certified mortgage when their circumstances indicated that they might have qualified for a different product.

5.2. DBM was also in breach of Principle 3 during the period January 2006 to January 2008 in that its lending policy did not specifically require its underwriting staff to consider the ability of a customer who was less than 60 years old at the time of the application to repay a mortgage loan where that loan continued into the customer's retirement. DBM in its lending policy therefore failed to organise its lending activities responsibly and created a significant risk of customers being treated unfairly.

5.3. DBM also breached Principle 3 during the Relevant Period in that it failed to put in place adequate risk management systems relating to the oversight of its arrears handling and repossessions responsibilities. Although DBM had oversight of the activities of the relevant mortgage servicing staff, DBM failed to conduct appropriate and sufficient compliance checks on the activities of the mortgage servicing staff as further detailed in paragraph 5.4 below. Further, DBM did not ensure that there were adequate systems and controls for the waiving and refunding of fees to customers in arrears. This led to a risk of an inconsistent approach being applied by the relevant mortgage servicing staff in the process of waiving and refunding fees to borrowers. As a result, DBM was in breach of Principle 6.

Principle 6

5.4. In complying with their obligations under Principle 6 and MCOB 13.3.1 R, firms should ensure that customers are treated fairly if they are in arrears with their mortgage. However, the failings below demonstrate that relevant mortgage servicing staff had an inadequate understanding of TCF and / or failed to consider TCF when undertaking mortgage arrears and repossessions activities. In breach of Principle 6 and MCOB 13.3.1 R:

- (1) during key stages of the arrears handling and repossessions process, DBM, did not, on all occasions, pay due consideration to a customer's individual circumstances and failed to take reasonable steps to ensure that customers were informed of the range of options available to them. As a result there was a risk that a court order for repossession of a customer's home was not used only as a last resort;
- (2) DBM failed to pay due regard to the interests of its customers and to treat its customers fairly by not ensuring that customer complaints were recognised and properly dealt with by the relevant mortgage servicing staff;
- (3) DBM did not treat its customers fairly as it applied certain charges and fees to customers' accounts that were unfair. Further, the portion of the fee for instructing a solicitor which exceeded the underlying cost to DBM and the entire fee for a broken Arrangement to Pay was in breach of MCOB 12.4.1 R.

Also, in breach of MCOB 12.4.1 R, DBM did not during the Relevant Period undertake a sufficient exercise to determine that its fees were a reasonable estimate of the cost of administering an account in arrears; and

- (4) DBM failed to ensure that information communicated in Letters before Action to customers was accurate in content. Further, in failing to ensure that customers in arrears were provided with the relevant arrears information, or where it was provided, failing to ensure that this was done within the required regulatory time frame, DBM also failed to comply with MOCB 13.4.1 R.

5.5. When exercising its powers the FSA seeks to act in a way which it considers most appropriate for the purpose of meeting its regulatory objectives as set out in section 2(2) of the Act. The FSA considers that imposing a financial penalty in respect of the Firm meets the regulatory objective of protecting consumers.

5.6. In deciding to take the action proposed, the FSA has had regard to the guidance published in the FSA Handbook, in particular as set out in Chapter 12 of the Enforcement Guide (“EG”) and Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”), which form part of the FSA Handbook of Rules and Guidance. Prior to 28 August 2007 the guidance was 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.

Deterrence

5.7. 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.

The nature, seriousness and impact of the breach

5.8. In determining the appropriate sanction, 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 who suffered financial loss.

5.9. The FSA considers DBM's failings to be serious because:

- (1) the failings persisted over a significant period of time and impacted a significant number of customers;
- (2) a substantial number of customers who already had an adverse credit status were put at risk of further financial detriment; and
- (3) arrears rates in the sub-prime sector are higher than those in the rest of the mortgage market, and as DBM specialised in the sub-prime sector, a significant proportion of its customers have suffered charges which were unfair.

The extent to which the breach was deliberate or reckless

5.10. The FSA has not determined that DBM deliberately or recklessly contravened regulatory requirements.

The size, financial resources and other circumstances of the Firm

5.11. There is no evidence to suggest that DBM is unable to pay the financial penalty.

The amount of benefit gained or loss avoided as a result of the breaches

5.12. The FSA has not determined that DBM set out to accrue additional profits or avoid a loss through the way in which it operated its systems and controls and processes.

Conduct following the breaches

5.13. As mentioned above, DBM has cooperated with the FSA since the commencement of the investigation. DBM has also taken some extensive remedial steps, for example, it has reviewed and revised its TCF processes and procedures over the course of the

Relevant Period and subsequently, and has improved its oversight of its mortgage servicing activities. It has also agreed to provide substantial redress to its customers.

Disciplinary record and compliance history of the Firm

- 5.14. DB UK Bank Limited was the subject of disciplinary action on 5 April 2004 when it traded under the name “Morgan Grenfell & Co Limited”. A financial penalty of £190,000 was imposed for breaches of Principle 6 and Principle 8 in respect of DB UK Bank Limited's conduct towards a customer and the management of conflicts of interest in the course of a programme trade. This disciplinary action was not related to either the lending activities or the arrears handling and repossessions activities of DBM.

6. CONCLUSION

- 6.1. Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objective of the protection of consumers, the FSA imposes a financial penalty of £840,000 (£1,200,000 prior to the application of a 30% stage one settlement discount) on the Firm.

7. DECISION MAKERS

- 7.1. 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.

8. IMPORTANT

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

Manner of and time for Payment

- 8.2. The financial penalty must be paid in full by the Firm to the FSA by no later than 29 December 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 8.3. If all or any of the financial penalty is outstanding on 30 December 2010, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

Publicity

- 8.4. 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. 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.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.6. For more information concerning this matter generally, you should contact Greg Sachrajda (Tel: 020 7066 3746) of the Enforcement and Financial Crime Division of the FSA.

Georgina Philippou
FSA Enforcement and Financial Crime Division