
FINAL NOTICE

To: **Edward Allen**

Of: **Homeplan Finance UK Limited**

Individual reference: **EIA01004**

Date: **4 November 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 decision to prohibit you, Edward Allen, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, and impose a public censure on you.

1. ACTION

1.1. The FSA gave you a Decision Notice on 3 November 2008 which notified you that the FSA had decided to take the following action:

- (1) to publish a statement of your misconduct pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”) for failing to comply with Principles 6 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“APER”);

- (2) pursuant to section 63 of the Act, to withdraw the approval granted to you to perform controlled functions, in relation to Homeplan Finance UK Limited (“Homeplan”); and
- (3) to make an order pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

1.2. The FSA considers that the misconduct in this case warrants a financial penalty of £15,000. However, the FSA has considered your current and anticipated financial circumstances and ascertained that you would suffer serious financial hardship if the FSA imposed such a penalty. Under these exceptional circumstances, the FSA has decided to censure you publicly instead.

1.3. You confirmed on 3 November 2008 that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.4. Accordingly, for the reasons set out below, the FSA hereby imposes a public censure on you, withdraws the approval given to you to perform controlled functions, and makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

2. REASONS FOR THE ACTION

2.1. The FSA has concluded that you have breached APER 7 because, in your capacity as a director performing controlled function 1 (Director) and controlled function 8 (Apportionment and Oversight), you failed to take reasonable steps to ensure that the business of Homeplan complied with the relevant requirements and standards of the regulatory system. In particular, you failed to:

- (1) implement adequate systems and controls regarding the quality of mortgage advice given to customers, the gathering of relevant customer information and the clarity of documentation and information provided to customers;

- (2) ensure that recommendations given were supported with appropriate product research and that you could demonstrate that the recommendation given was suitable for the customer in question; and
- (3) monitor adequately Homeplan's sales of mortgage contracts in respect of sales and produce adequate management information.

2.2. The FSA has also concluded that you have breached APER 6 because, in the performance of your significant influence function, you failed to exercise due skill, care and diligence in managing the business for which you were responsible. You neglected the business of Homeplan and your business and regulatory responsibilities during an extended period of time in which you were absent from Homeplan due to illness. During this period you failed to ensure that your responsibilities as CF1 and CF8 were delegated appropriately and effectively.

2.3. As a result of the breaches of APER 6 and APER 7 customers of Homeplan were exposed to the risk that Homeplan's recommendations were unsuitable.

2.4. As a result of the nature and seriousness of these breaches, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of competence and capability and are not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and professional firms. Accordingly the FSA proposes to withdraw your approval and prohibit you.

2.5. This action supports the FSA's market confidence and consumer protection objectives.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. 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.

Public censure

3.2. Pursuant to section 66 of the Act the FSA may, if an approved person is guilty of misconduct, publish a statement of that person's misconduct, if the FSA is satisfied that it is appropriate in all the circumstances. Section 66(2)(a) states that a person is

guilty of misconduct if, while an approved person, they have failed to comply with a statement of principle issued under section 64 of the Act.

- 3.3. The FSA's policy in relation to the issue of public censures is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 12 of the Enforcement Manual (ENF). DEPP came into effect on 28 August 2007. The principal purpose of issuing a public censure 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.
- 3.4. The FSA will consider the full circumstances of each case when determining whether or not to issue a public censure. DEPP6.4.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. They are similar to those for determining the amount of penalty set out in DEPP 6.5.
- 3.5. DEPP 6.4.1G (8) states that in exceptional circumstances, (excluding any manipulation or attempted manipulation of their assets) if the person has inadequate means to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in favour of a public statement. Examples of such exceptional circumstances include verifiable evidence that a person would suffer severe financial hardship if the FSA imposed a financial penalty.
- 3.6. DEPP 6.5.2G (5)(a) provides that the FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach.
- 3.7. The Enforcement Guide (EG) provides at paragraph 9.23 that the FSA may issue a public censure in addition to imposing a prohibition order where it is appropriate to do so.

Withdrawal of approval

- 3.8. Section 59 of the Act provides that a person shall not perform a controlled function unless the FSA approves the performance by that person of the controlled function. The FSA may grant an application for approval if the FSA is satisfied under section 61 of the Act that the person in respect of whom the application is made is a fit and proper person to perform the function to which the application relates.
- 3.9. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

Prohibition

- 3.10. Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.
- 3.11. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:
 - (1) a specified function, any function falling within a specified description, or any function (section 56(2)); and
 - (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).
- 3.12. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide (“EG”).

3.13. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

3.14. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Regulatory Requirements

(i) APER

3.15. APER set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, do not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

3.16. APER 3.1.3G stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the

characteristics of the particular controlled function and the behaviour expected in that function.

3.17. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

3.18. In this case, the FSA considers the most relevant Statements of Principle to be:

- (1) Statement of Principle 6 (“APER 6”) under which an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.
- (2) Statement of Principle 7 (“APER 7”) under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which they are responsible in their controlled function complies with the relevant requirements and standards of the regulatory system.

3.19. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes failing to take reasonable steps to:

- (1) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the Firm’s regulated activities (APER 4.7.3E);
- (2) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the Firm’s regulated activities (APER 4.7.4E); and adequately inform themselves about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking into account of the systems and procedures in place) (APER 4.7.5E) .

(ii) Fit and Proper Test for Approved Persons

- 3.20. The section of the FSA handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.21. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to withdraw approval of an individual in accordance with EG 9.8.
- 3.22. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. One of the considerations is the person’s competence and capability.
- 3.23. In determining a person’s competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. The guidance includes:
 - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were approved by the FSA on 31 October 2004 to perform the controlled function of CF1 (Director) and CF8 (Apportionment and Oversight) at Homeplan. You are a director and mortgage adviser at Homeplan and submitted applications to lenders on behalf of Homeplan’s customers. There is one other director at Homeplan.
- 4.2. Homeplan has been authorised by the FSA to sell regulated mortgage contracts since 31 October 2004.

4.3. Homeplan was one of 50 mortgage brokers visited by the FSA's Small Firms and Contact Division ("SFCD") in 2008 ("the 2008 visit") as part of a thematic project looking into the 'quality of advice processes' in mortgage brokers. It had previously been visited by the FSA in 2006 in connection with a similar project to assess the quality of mortgage advice in firms.

4.4. Homeplan was visited during the FSA's first mortgage quality of advice thematic work in 2006 ("the 2006 visit"). The FSA identified number of failings in respect of Homeplan's systems and controls on that occasion, which included the following:

- (1) The fact find did not collect all information which would have been needed to make an assessment of the customer's needs (e.g. retirement preferences, attitude to risk, full details of debts);
- (2) Homeplan did not have any formal training and competence arrangements, so the FSA required it to formalise these arrangements;
- (3) Homeplan did not assess affordability as part of looking at the needs of individual customers;
- (4) Homeplan had no process for monitoring advisors; and
- (5) The files examined by the FSA on the visit did not demonstrate clearly the reasons why a particular mortgage was suitable for a particular customer

4.5. Despite these failings being brought to your attention by the FSA on the 2006 visit, you failed to take any or any adequate steps to remedy these failings in advance of the 2008 visit.

4.6. After the FSA visit in 2006, you were incapacitated through illness for over a year. During this period, you have accepted that you were unable to maintain the required level of competence and involvement with the business. You effectively retired from the business in September 2007. Further, you ceased to act as a director and compliance manager immediately after the FSA visit on 16 January 2008. You did not withdraw as a director of the business until 31 March 2008 and continue to hold controlled functions in respect of Homeplan.

4.7. Unless otherwise stated the facts and matters set out in paragraphs 4.5 to 4.22 below, relate to the period between 31 October 2004 and 16 January 2008 (“the Relevant Period”).

Failure to gather relevant customer information

4.8. Homeplan’s sales advisers completed ‘fact finds’ during telephone conversations with customers. However, these were often not completed in full. Specifically, information about the following was not always gathered or recorded:

- (1) details of existing mortgages and any redemption charges;
- (2) adverse credit details and existing debts;
- (3) customers’ expected retirement dates;
- (4) net income and expenditure; and
- (5) attitude to risk relating to repayment options.

4.9. Homeplan failed to ensure that it made and retained adequate records of its customers’ personal and financial information in a number of key areas of the business. Also, the widespread record keeping failures identified by the FSA have led to Homeplan being unable to demonstrate that the advice given to customers was suitable.

Conclusion

4.10. In the performance of your controlled function, you were responsible for establishing and maintaining adequate procedures for the collection of key facts and information from customers so that suitable recommendations could be made. You failed to do this. As a result, customers were exposed to the risk that the advice they received which was unsuitable due to the lack of information available upon which the mortgage adviser made a recommendation.

Failure to provide clear information to customers

- 4.11. Homeplan offered both an advised and non-advised service but used the same process for both. Homeplan failed to operate a distinct sales process for each type of service and failed to consider the regulatory implications of non-advised sales.
- 4.12. Homeplan used a single template Initial Disclosure Document (“IDD”) which recorded that Homeplan would provide advice. When customers decided to proceed on a non-advised basis Homeplan did not re-issue an amended IDD.
- 4.13. In addition, the IDD was not clear in setting out what customers would be charged by Homeplan and when any discount would be applied to the fees.

Conclusion

- 4.14. In the performance of your controlled function, you had responsibility for establishing and maintaining adequate sales processes which distinguished advised from non-advised sales and providing customers with clear information about costs and fees. You failed to do this and the documentation sent to customers was confusing. As a result, customers were exposed to the risk that they did not understand the fee they would pay for the service Homeplan provided or the scope of the service they received.

Inadequate suitability letters

- 4.15. Homeplan’s letters to customers were inadequate to evidence that it had provided suitable advice and there was no other evidence that Homplan had taken adequate steps to research the product recommended.
- 4.16. Its usual practice was to issue a letter of suitability detailing the reasons why a particular mortgage product had been recommended. However, the reasons given for each recommendation were often unclear and did not reflect the information contained within the fact find. Specifically, suitability letters failed to set out the implications, or potential implications, of an applicant borrowing into retirement or of self-certifying their income.

- 4.17. In some cases, Homeplan failed to retain a copy of the suitability letter or any other record of suitability. In these cases, Homeplan was unable to show that the recommendation made was suitable.
- 4.18. In all cases, there was no product research on the customer file. Homeplan could not evidence why recommendations made were more suitable than other products available.

Conclusion

- 4.19. The lack of clarity in Homeplan's letters led to customers being exposed to the unacceptable risk that they did not understand the advice they had received and/or that the recommendation made was not suitable. Further, in the absence of any product research, the lack of evidence of suitability on customer files meant that Homeplan was unable to monitor the adequacy of its sales processes and customer documentation. In the performance of your controlled function you were responsible for ensuring that Homeplan had adequate procedures to ensure it complied with relevant regulatory standards concerning the recording of recommendations given. You failed to take reasonable steps to do this.

Inadequate Monitoring of sales

- 4.20. Homeplan did not produce any management information in relation to the mortgage sales carried out and did not carry out adequate monitoring of its sales.
- 4.21. Homeplan had a check form for each file which was simply a tick list of nine items, including suitability and fact find. This form was signed by you or another director of Homeplan. However, when completing this form, you did not take reasonable steps actually to check that the file was complete or to ascertain the suitability of advice given.
- 4.22. Homeplan had no training and competence arrangements in place appropriate for the nature of the business. You did not maintain a Continuing Professional Development (“CPD”) log for you or the other advisers.

Conclusion

- 4.23. The absence of any means by which management information could be gathered or individual sales checked meant that you were unable to monitor Homeplan's sales and procedures and did not ascertain that its procedures and sales processes were inadequate.
- 4.24. Further, the lack of training and competence assessments meant that customers were exposed to the unacceptable risk that they would receive advice from untrained or incompetent advisers.

5. ANALYSIS OF BREACHES

- 5.1. The FSA has concluded that you have breached Statement of Principle 7 in your failure to put in place adequate procedures to ensure that:
 - (1) you identified that all relevant customer information was obtained and recorded;
 - (2) Homeplan provided its customers with clear information;
 - (3) you incorporated relevant information in your recommendation to customers within any suitability letter, the need for product research and the need to evidence why any recommendations to customers were suitable;
 - (4) monitor sales files to ensure they contained all relevant information and that the quality of advice given was satisfactory;
 - (5) identify management information as an essential requirement for monitoring and business planning at Homeplan and retain management information;
 - (6) ensure adequate systems and controls were in place in relation to the above issues.
- 5.2. The FSA has concluded that you have breached Statement of Principle 6 by neglecting to perform your responsibilities during the period in which you were absent due to illness. You failed to delegate these responsibilities appropriately and effectively.

- 5.3. You also failed to take appropriate steps to remedy the failings which were brought to your attention during the FSA's 2006 visit. Given the similarity between the findings on the two visits in 2006 and 2008 the FSA considers this to be an aggravating factor.
- 5.4. These breaches are so serious as to demonstrate a lack of competence and capability for the purposes of the basic standards of fitness and propriety required for approved persons.
- 5.5. The FSA considers that you pose a serious risk to lenders and customers, and therefore to the FSA's regulatory statutory objectives of maintaining confidence in the financial system and protecting consumers.
- 5.6. The FSA therefore considers that it is necessary to publicly censure you and prohibit you from performing any functions in relation to any regulated activities carried out by any authorised person, exempt person or exempt professional firm. But for your financial circumstances, the FSA would have imposed a financial penalty of £15,000 on you.

6. DECISION MAKER

- 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. 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.

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

FSA contacts

7.4. For more information concerning this matter generally, you should contact Catherine Harris (direct line: 020 7066 4872 /fax: 020 7066 4873) of the Enforcement Division of the FSA.

Signed:

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Jonathan Phelan

Head of Department

FSA Enforcement Division