
FINAL NOTICE

To: George White Motors Limited

**Of: Athena Avenue
Elgin Industrial Estate
Swindon
Wiltshire
SN2 8EJ**

Date: 20 August 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 George White Motors Limited (“George White”) a Decision Notice on 12 August 2008 which notified George White 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 £28,000 on George White. This penalty is in respect of breaches of Principle 9 of the FSA’s Principles for Businesses (the “Principles”) and associated rules between 1 July 2006 and 31 December 2007 (the “Relevant Period”) in relation to advised sales of payment protection insurance (“PPI”) by staff at George White’s motorcycle retail stores.
- 1.2. George White confirmed on 8 August 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3. Accordingly, for the reasons set out below and having agreed with George White the facts and matters relied upon, the FSA imposes a financial penalty on George White in the amount of £28,000.
- 1.4. George White agreed to settle at an early stage of the FSA's investigation. It therefore 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 imposed a financial penalty of £40,000 on George White.

2. REASONS FOR THE ACTION

- 2.1. The FSA has decided to impose a financial penalty on George White for breaches of the FSA's Principles and rules in relation to its sale of PPI.
- 2.2. These breaches, which are described in more detail in sections 4 and 5 below, relate to George White's failure to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement (Principle 9).
- 2.3. George White breached Principle 9 by failing to take reasonable care to recommend a PPI product for which its customers were eligible and/or which was suitable for the customers' demands and needs, and by failing to adequately monitor its sales.
- 2.4. During the Relevant Period George White's failings exposed 282 customers to the risk of buying PPI policies for which they were not eligible, and/or which were not suitable for their demands and needs. As a result George White failed to treat its customers fairly.
- 2.5. George White's breaches are viewed as particularly serious as during the Relevant Period:
 - (1) Both the form and content of the firm's Statement of Demands and Needs ("SODAN") were inadequate and did not enable the firm to demonstrate that eligibility or suitability of regular and single premium PPI policies had been fully assessed or considered.
 - (2) George White failed to ensure that SODAN's were always appropriately completed, and failed to ensure that recommendations made to customers consistently matched their customers' needs.
 - (3) In some instances customers were recommended a regular premium policy but were sold a single premium policy.
 - (4) During the Relevant Period the firm sold PPI without effective monitoring of its sales force. Whilst George White had systems and controls in place these were not sufficiently robust to ensure its sales staff were selling PPI fairly.
 - (5) The FSA identified that customers were put at an unacceptable risk of buying PPI policies that they were either ineligible for, or that were unsuitable for them. George White's existing monitoring procedures failed to identify this

matter.

- (6) The failings arose against a background of high profile communications by the FSA highlighting the need for firms to ensure their PPI sales processes were meeting FSA requirements.

2.6. There are several factors which the FSA has taken into account in mitigation:

- (1) George White took a number of steps to improve its systems and controls for the sale of PPI after being visited by an FSA Supervision team in May 2007. The firm:
 - (a) amended the wording of its SODAN;
 - (b) held one-on-one conversations with all staff to ensure their understanding of the single premium policy offered and the need to explain to customers the features of the single and regular premium policy and the differences between them; and
 - (c) appointed an independent training company in November 2007 to supervise all employees who are themselves responsible for supervising sales staff and to review 10% of written business each month.
- (2) Although George White sold single premium PPI to customers having only recommended regular premium PPI to them, and without advising them of the difference between the policies, there was no additional cost to the customer as the firm reduced its commission to ensure that the customer did not pay more as a result of the change (although the cancellation rights under the single premium policies were less advantageous to the customer).

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.

3.2. Section 206 of the Act provides:

"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 an amount as it considers appropriate."

Principles for Businesses

3.3. The FSA's 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.

3.4. Principle 9 (customers: relationships of trust) states that:

"A firm must take reasonable care to ensure the suitability of its advice and

discretionary decisions for any customer who is entitled to rely upon its judgement."

Rules and guidance

- 3.5. Relevant FSA rules and guidance are set out in Annex A to this Notice.
- 3.6. Details of the FSA's policy on imposing financial penalties are also set out in Annex A to this notice.

FSA communications regarding PPI during the Relevant Period

- 3.7. During the Relevant Period, the FSA communicated to firms the importance of having in place robust systems and controls when selling PPI.
- 3.8. In November 2005, the FSA published on its website the results of the first phase of its thematic work on PPI, highlighting a number of key areas where firms were not treating their customers fairly. This report identified, amongst other things, that compliance monitoring was very poor in some cases.
- 3.9. The report also identified that if a firm gives advice it should review how the suitability assessment is made to ensure the adviser fully assesses the customer's need for PPI. Should it then go on to recommend a PPI policy to a customer, a firm must clearly set out the reasons why it has concluded that a customer requires PPI and why it is recommending the policy. The report also noted that in around two-thirds of firms selling on an advised basis, SODANs were too generalised and lacked sufficient customer-specific information to be of use to customers.
- 3.10. A second phase of PPI thematic work was reported on in October 2006. The FSA noted that for smaller firms, whose main business was not financial services, there was a risk of customer detriment owing to poorly trained sales staff and lack of supervision of their activities. The FSA also highlighted its concern that some firms were still failing to establish that the PPI policies they recommended were suitable because they were not collecting sufficient information from the customer.
- 3.11. The report also stressed that the suitability assessment should take into account the relevance of any exclusions and limitations and that the SODAN must be tailored to the individual customer's circumstances.
- 3.12. The FSA visited George White in May 2007 as part of a third phase of thematic work on PPI and identified a number of concerns relating to the firm's sale of PPI.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. George White has been authorised to advise upon and sell non-investment insurance contracts since 14 January 2005.
- 4.2. George White's main business is as a motorcycle dealer. It has a secondary business selling third party consumer finance, PPI and other insurance to customers in connection with their motorcycle purchases.

- 4.3. The FSA's investigation related to PPI sales made through George White's branch network. The firm employed 12 PPI sales staff in its 4 branches during the Relevant Period. George White sold PPI products to its customers on an advised basis. The sales were made face to face and by telephone and formed part of a motorcycle sale.
- 4.4. George White initially placed all finance with their preferred provider, who only offered one optional PPI policy. This policy covered life, accident or sickness and unemployment and was a regular premium policy (paid for on a monthly basis). If the preferred provider declined the business, the customer would then be placed with the secondary provider, who offered the following optional PPI policies: Gold (life, critical illness, accident or sickness and unemployment), Silver (life and accident or sickness) and Bronze (life and critical illness), all of which were single premium policies (involving the borrowing of an interest-bearing lump sum from the provider to pay 3-5 years' worth of premiums in advance).
- 4.5. George White sold 282 PPI policies during the Relevant Period. 170 PPI policies were regular premium with the remaining 112 PPI policies being single premium. The income the firm generated from those sales amounted to approximately £92,000.

Eligibility

- 4.6. George White asked customers questions which were designed to ensure that they were eligible for PPI, i.e. that a customer fell within the age limits prescribed by the insurer, held the correct employment status, and held the correct UK residency status. In a number of cases the firm's sales advisers did not record appropriate answers to these questions in the SODAN, and failed to gather sufficient information about employment status. For example, residency was variously recorded as "Tenant", "Mortgaged" and "Owner" rather than stating whether the customer was a UK resident. Additionally, George White's sales staff did not always record a customer's date of birth. In other instances the customer's employment status was recorded as either "Employed" or "No", rather than whether the customer was full or part time, and, if part time, the number of hours worked. The fact that SODANs were completed in this way demonstrates that the firm failed to properly train its sales advisers to understand the purpose of asking these questions. This meant that in some cases the firm failed to establish that its customers were eligible for PPI.

Suitability

- 4.7. George White asked customers questions designed to gather sufficient information about their demands and needs to ensure that a suitable recommendation could be made. A standard list of questions were asked in every case and "yes/no" answers were recorded on the SODAN.
- 4.8. George White, however, failed to gather information from its customers regarding:
- (1) whether the customer suffered from pre-existing medical conditions; and
 - (2) whether the customer held any existing insurance cover;

- 4.9. The lack of information meant that George White was unable to assess the suitability of a PPI policy for its customers.

The Statement of Demands and Needs

- 4.10. The SODAN is an integral part of the sales documentation. It should document a customer's individual circumstances pertinent to the insurance and should include the firm's recommended PPI policy and the reasons for the recommendation.
- 4.11. George White used generic SODANs which were not individually tailored to each customer. The SODAN George White used during the Relevant Period did not include a section for the provision of reasons for the recommendation; rather there was a tick-box which indicated a recommendation had been made. George White failed to record the reasons why it recommended a PPI policy to its customers.
- 4.12. The SODANs used during the Relevant Period were not completed in full in every case. In some cases eligibility questions had been answered incorrectly as described above. In one case the entire form had been struck through, yet a PPI policy had been sold, and in another the customer had answered "no" to the questions aimed at suitability and yet the firm had recommended PPI.

Regular/single premium PPI policy

- 4.13. During the Relevant Period a number of customers were recommended a regular premium PPI policy from George White's preferred finance provider yet were sold a single premium policy from the firm's secondary finance provider. Customers would be referred to the secondary provider if they were declined by the preferred finance provider. On these occasions George White did not inform customers that they might be sold a single premium rather than regular premium policy, and did not advise them of the differences between single and regular premium policies, such as the fact that single premium policies involve the borrowing of an interest-bearing lump sum to pay the premium.

Sales monitoring

- 4.14. The sales monitoring in place during the Relevant Period consisted of a senior staff member visiting each of the showrooms on a weekly basis and carrying out observations of staff and file reviews.
- 4.15. Approximately two staff observations were conducted each week. No written record of these observations was kept.
- 4.16. Three or four files would be reviewed at each site. File reviews consisted of ensuring that the SODAN had been completed correctly and that the information provided matched the recommendation. No written record of these reviews was kept.
- 4.17. The findings of these observations and reviews would be discussed with the staff at

the showrooms as appropriate.

- 4.18. The firm held monthly “Finance and Insurance Review” meetings. However, these were mainly performance based and although compliance would be discussed it was only in terms of ensuring that staff were aware of George White’s obligation to be compliant. No monitoring activities, findings or trends were discussed.

Management information

- 4.19. No management information was produced for senior management in relation to the PPI sales monitoring carried out. Senior management were not therefore able to adequately consider any trends or compliance failings that management information would have identified.

5. ANALYSIS OF BREACHES

- 5.1. The FSA considers that George White has breached Principle 9 of the FSA’s Principles for Businesses in the following respects:

- (1) George White failed to gather sufficient information about each customer. Because of this George White was unable to ensure that its customers were eligible for the PPI policies sold or that those policies were suitable for their needs.
- (2) The SODAN used during the Relevant Period did not allow George White to record that an individual customer’s circumstances were considered before a recommendation was made, and did not allow George White to explain the reasons for the recommendation. Consequently, George White was unable to demonstrate that it had taken reasonable care to consider the suitability of the PPI product recommended to its customers.
- (3) George White failed to inform its customers of the differences between single and regular premium PPI or, if they were declined finance by the first provider, that their PPI policy would be changed from a regular to single premium policy. George White also failed to advise customers when their PPI policy was changed from regular to single premium PPI.
- (4) George White was unable to demonstrate that its compliance monitoring was adequate and that it identified issues in the sale of PPI policies.
- (5) George White failed to produce management information, meaning that senior management were unable to inform themselves of any potential shortcomings in its PPI sales processes.
- (6) By reason of the above failings, George White’s sales process created an unacceptable risk of PPI being mis-sold to its customers.

- 5.2. George White also breached the following provisions of ICOB:

- (1) ICOB 4.3.1 R (requirement for suitability);
- (2) ICOB 4.3.2 R (information about the customer's demands and needs); and
- (3) ICOB 4.4.1 R (statement of demands and needs).

6. ANALYSIS OF THE SANCTION

Determining the level of the financial penalty

- 6.1. The FSA's policy in relation to the imposition of financial penalties 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 13 of the Enforcement Manual ("ENF"), to which the FSA has had regard in addition to DEPP. DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Extracts from DEPP are set out in Annex A.

Deterrence

- 6.2. As communicated to the market in the FSA's thematic update on the sale of PPI published on 26 September 2007, in line with its general approach, the FSA is seeking to increase the level of fines in cases where this is warranted by the nature, seriousness and impact of the breach in question, and by the likely impact on deterrence. Firms have been given due warning of their obligations to treat customers fairly, both generally and on PPI in particular. Consequently, the FSA will now seek to impose relatively higher fines for firms in the PPI market where standards fall below required levels.

The seriousness of the breaches

- 6.3. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the extent to which the breaches revealed serious or systemic weakness of the management systems or internal controls, the number of customers who were exposed to risk of loss and the number of customers likely actually to suffer financial detriment.
- 6.4. For the reasons set out at paragraph 2.5 above and having regard to the impact on George White's customers, the FSA considers that the breaches are of a serious nature.

The extent to which the breach was deliberate or reckless

- 6.5. The FSA does not consider that George White acted in a deliberate or reckless manner.

The amount of profits accrued

- 6.6. The FSA has taken into account the income of £92,000 George White received from sales of PPI during the Relevant Period.
- 6.7. The sale of PPI is a tertiary activity for George White (behind motor sales and arranging credit) and, in terms of total profits made, it is a small part of George White's business.

The size, financial resources and other circumstances of the firm

- 6.8. There is no evidence to suggest that George White is unable to pay the penalty.

Conduct following the breach

- 6.9. After being visited by an FSA Supervision Team in May 2007 George White made a number of changes to its processes, detailed in paragraph 2.6(1).
- 6.10. George White and its senior management have cooperated fully with the Enforcement action, and received full credit for settlement at an early stage. Without this level of cooperation the financial penalty would have been higher.
- 6.11. George White has agreed to conduct a customer contact exercise as part of settlement with the FSA. The firm will be writing to all customers that were sold a PPI policy during the relevant period, asking them to review the terms of the policy and will pay redress where appropriate.

Disciplinary record and compliance history

- 6.12. George White has been authorised to conduct insurance business by the FSA since 14 January 2005 and has not been the subject of previous FSA disciplinary action.

Previous action taken in relation to similar failings

- 6.13. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

FSA guidance and other published materials

- 6.14. In determining the appropriate level of financial penalty, the FSA has had regard to the fact that the FSA published a wealth of materials (as described at paragraphs 3.7 to 3.11 above) which raised relevant concerns and set out examples of compliant behaviour in relation to the sale of PPI. George White's apparent disregard of these materials increases the seriousness with which the FSA has viewed the breaches.

7. CONCLUSIONS

- 7.1. Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, the FSA has decided to impose a financial penalty of £28,000 on George White.

8. DECISION MAKER

- 8.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

- 9.1. This Final Notice is given to George White in accordance with section 390 of the Act.

Manner of and time for Payment

- 9.2. The financial penalty must be paid in full by George White to the FSA no later than 3 September 2008, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 9.3. If all or any of the financial penalty is outstanding on 4 September 2008, the FSA may recover the outstanding amount as a debt owed by George White and due to the FSA.

Publicity

- 9.4. 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 George White or prejudicial to the interests of consumers.
- 9.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.6. For more information concerning this matter generally, you should contact Suzanne Burt (direct line: 020 7066 1062 /fax: 020 7066 1063) of the Enforcement Division of the FSA.

William Amos

Head of Retail 1

FSA Enforcement Division

Annex A: Rules and guidance

1. Insurance: Conduct of Business

- 1.1. The part of the FSA Handbook entitled Insurance: Conduct of Business (ICOB) in force during the Relevant Period contained rules and guidance relevant to sales of PPI.
- 1.2. From 6 January 2008 ICOB was replaced by the Insurance: New Conduct of Business sourcebook (ICOBS).

Suitability

- 1.3. ICOB 4.3.1 R (1) provides that an insurance intermediary must take reasonable steps to ensure that, if in the course of insurance mediation activities it makes any personal recommendation to a customer to buy or sell a non-investment insurance contract, the personal recommendation is suitable for the customer's demands and needs at the time the personal recommendation is made.
- 1.4. ICOB 4.3.2 R provides that in assessing the customer's demands and needs, the insurance intermediary must:
 - (1) seek such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the insurance intermediary to identify the customer's requirements. This must include any facts that would affect the type of insurance recommended, such as any relevant existing insurance;
 - (2) have regard to any relevant details about the customer that are readily available and accessible to the insurance intermediary, for example, in respect of other contracts of insurance on which the insurance intermediary has provided advice or information; and
 - (3) explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the non-investment insurance contract commences and throughout the duration of the contract; and take account of the information that the customer discloses.
- 1.5. ICOB 4.3.6 R provides that in assessing whether a non-investment insurance contract is suitable to meet a customer's demands and needs, an insurance intermediary must take into account at least the following matters:
 - (1) whether the level of cover is sufficient for the risks that the customer wishes to insure;
 - (2) the cost of the contract, where this is relevant to the customer's demands and needs; and

- (3) the relevance of any exclusions, excesses, limitations or conditions in the contract.

Statement of Demands and Needs

1.6. ICOB 4.4.1 R states that:

- (1) unless ICOB 4.4.2 R (which is not relevant to George White) applies, where an insurance intermediary arranges for a customer to enter into a non-investment insurance contract (including at renewal), it must, before the conclusion of that contract, provide the customer with a statement that:
 - (a) sets out the customer's demands and needs;
 - (b) confirms whether or not the insurance intermediary has personally recommended that contract; and
 - (c) where a personal recommendation has been made, explains the reasons for personally recommending that contract.
- (2) The statement in (1) must reflect the complexity of the contract of insurance proposed.
- (3) Unless (4) applies, the statement in (1) must be provided in a durable medium.
- (4) An insurance intermediary may provide the statement in (1) orally if:
 - (a) the customer requests it; or
 - (b) the customer requires immediate cover;but in both cases the insurance intermediary must provide the information in (1) immediately after the conclusion of the contract, in a durable medium.

2. The FSA's policy on the imposition of financial penalties

- 2.1. The FSA's policy in relation to the imposition of financial penalties 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 13 of the Enforcement Manual (ENF). 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.
- 2.2. 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.
 - (1) DEPP6.2.1G(1): The nature, seriousness and impact of the suspected breach.

- (2) DEPP6.2.1G(2): The conduct of the person after the breach.
- (3) DEPP6.2.1G(3): The previous disciplinary record and compliance history of the person.
- (4) DEPP6.2.1G(4): FSA guidance and other published materials.
- (5) DEPP6.2.1G(5): Action taken by the FSA in previous similar cases.

3. Determining the level of the financial penalty

- 3.1. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP6.5.2G, and previously ENF 13.3.3 G, sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.
- 3.2. Factors that may be relevant to determining the appropriate level of financial penalty include:
 - (1) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2 G (2) (b)); and
 - (2) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2 (9) (d)).
- 3.3. Corresponding provisions are set out in ENF 13.3.3 G, which sets out factors that may be relevant when determining the appropriate level of financial penalty for a firm including the following:
 - (1) whether the misconduct or contravention revealed serious or systematic weaknesses of the management systems or internal controls relating to all or part of the firm's business (ENF 13.3.3 G (1) (c)); and
 - (2) disciplinary record and compliance history. This will include whether the FSA has previously requested the firm to take remedial action, and the extent to which that action has been taken (ENF 13.3.3 G (6)).