
FINAL NOTICE

To: GMAC-RFC Limited
Of: 5 Arlington Square, Downshire Way, Bracknell RG12 1WA
Date: 28 October 2009

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 GMAC-RFC Limited (“GMAC”/“the firm”) a Decision Notice on 26 October 2009 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 £2.8 million on the firm. This penalty is imposed for breaches of Principle 3 (Management and control) and Principle 6 (Customers’ interests) of the Principles for Businesses (“the Principles”) and Rules 12.4.1 R and 13.3.1 R in the Mortgages and Home Finance: Conduct of Business sourcebook (“MCOB”) in the period between 31 October 2004 and 30 November 2008 (“the Relevant Period”).
- 1.2. GMAC 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 sought to impose a financial penalty of £4 million on GMAC.

- 1.3. GMAC will also carry out a customer redress programme with a view to providing redress to those customers who were charged specific excessive and unfair charges (i.e. charges that were not a reasonable estimate of the costs of the additional administration required as a result of the customer being in arrears) in respect of their mortgage account. The estimated cost of redress for the period 1 November 2004 to 31 August 2009 is up to £7.7 million, plus interest, for both regulated mortgage contracts and buy-to-let contracts.
- 1.4. GMAC confirmed on 23 October 2009 that it will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.5. Accordingly, for the reasons set out below and having agreed with GMAC the facts and matters relied on, the FSA imposes a financial penalty on the firm in the amount of £2.8 million.

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 and sustained failings by GMAC in its dealings with some of its customers in arrears or facing repossession, in relation to their mortgage with GMAC.
- 2.2. The firm breached Principle 3 during the Relevant Period in that it failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, the following failings were identified in that GMAC:
 - (1) failed to ensure that mortgage servicing staff were given sufficient training in treating customers fairly (“TCF”); and
 - (2) before 2008, only obtained limited management information to assess the servicing of mortgage arrears and repossessions to ensure the fair treatment of customers.

2.3. The firm breached Principle 6 during the Relevant Period in that it failed to pay due regard to the interests of its customers and treat them fairly. In particular, the following failings were identified in that GMAC:

- (1) failed to ensure that mortgage servicing staff had an adequate understanding of and implemented the requirement to treat customers fairly in handling its mortgage arrears and repossessions;
- (2) until late 2008, focussed on the collection of payment of arrears over a short period of time within fixed mandates, rather than always establishing a suitable arrangement based on the customer's individual circumstances;
- (3) applied certain charges to a customer's account that were unfair in that they did not accurately reflect the actual cost of administering an account in arrears;
- (4) had not arrived at a cost-based approach to the calculation of its arrears charges and therefore could not be sure that they were reasonable compared to the actual cost incurred;
- (5) caused some letters to be sent to customers that were either factually inaccurate or did not contain sufficient information to give customers a clear and accurate statement of their mortgage account; and
- (6) sometimes issued proceedings for repossession before all alternatives to repossession had been considered and accordingly, did not always use litigation only as a last resort.

2.4. The firm also breached MCOB 12.4.1R and 13.3.1R in relation to the facts described at paragraph 2.3 above.

2.5. Accordingly, the findings merit the imposition of a substantial financial penalty. In deciding upon the appropriate disciplinary sanction, the FSA recognises the following factors which mitigate the seriousness of the findings:

- (1) GMAC's senior management have worked in an open and co-operative way with the FSA during the investigation, and agreed the facts quickly, ensuring early resolution of the matter and timely redress for customers;

- (2) GMAC was proactive in suggesting a substantial customer contact and redress package in relation to certain charges¹ imposed on customers by the firm in connection with arrears handling and repossession actions;
- (3) GMAC substantially reviewed and revised its TCF processes, procedures and management information over the course of 2008, including commissioning an independent firm of management consultants to review the work undertaken;
- (4) GMAC no longer charges certain fees,² and mortgage servicing staff have greater flexibility to waive arrears charges;
- (5) GMAC introduced a loan modification programme to assist with arrears resolution and an audit of all court cases where the order granted is different to the order sought by GMAC and where customer applications are upheld; and
- (6) GMAC has improved its oversight of its mortgage servicing activities, for example elevating monthly governance meetings from operational management to board level and by increased involvement in the training of mortgage servicing staff.

3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE

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. GMAC is an authorised person for the purposes of section 206 of the Act. A requirement imposed on a firm includes the Principles and Rules made under section

¹ Solicitors' instruction fee, non-payment by direct debit fee, early repayment charge ("ERC") on arrears fee balances.

138 of the Act, which 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.

3.4. Principle 3 provides that:

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

3.5. Principle 6 provides that:

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

3.6. MCOB 12.4.1 R provides:

(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.

3.7. MCOB 13.3.1 R provides:

(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).

² Arrears fee where there is a performing arrangement to pay (“ATP”).

4. FACTS AND MATTERS RELIED ON

4.1. Since October 2004, GMAC has been authorised by the FSA with permission to arrange and administer regulated mortgage contracts. GMAC operated as a non-bank lender in the prime, sub-prime and buy-to-let mortgage sectors. GMAC reduced its loan originations from August 2007 and stopped all originations in May 2008; since then it has concentrated on the management of its loan book. It has around £3.9 billion of regulated mortgage contracts under its administration. During the Relevant Period, GMAC administered 188,543 regulated mortgage contracts with a total balance of approximately £24.6 billion.

4.2. GMAC was one of the firms that took part in the FSA's thematic work in connection with its Arrears Handling and Repossessions Thematic Review which started in 2008.

Mortgage account servicing

4.3. Field counsellors were engaged by GMAC to visit customers to discuss their mortgage arrears and to consider available options. GMAC regularly reviewed mortgage account servicing, but outcomes in arrears and repossessions focussed on quantitative measurements, such as the average number of days to get to court order, and did not provide any qualitative assessments of performance or TCF.

4.4. GMAC carried out a gap analysis of the training provided to mortgage servicing staff and noted that as at October 2008, the staff only received a limited amount of generic TCF training, which was not tailored to how mortgage servicing and arrears handling was carried out. Mortgage servicing staff were given limited guidance on how to implement TCF on a day to day basis in their work.

4.5. Not all new mortgage servicing staff within the arrears department were given sufficient information about the application of TCF and temporary staff did not attend any induction process and so were unaware of TCF initiatives. There was inadequate measurement of the mortgage servicing staff's TCF knowledge or on-going assessment through performance of the staff's application of TCF in arrears handling.

4.6. An FSA review of audits carried out by GMAC showed that few TCF and customer outcome measures were included or commented on in those audits. For example,

there was no analysis of why “Arrangements to Pay”³ (“ATPs”) failed or why GMAC’s applications within repossession proceedings had an average success rate of only 33.2%. As a result, there was insufficient management information to measure whether customers were being treated fairly.

- 4.7. GMAC commissioned a report on arrears policy, practices and procedures by an independent firm of management consultants who reported in draft in January 2009. The report observed that there was not a clear view of the end to end operations within mortgage servicing which prevented a complete understanding by GMAC of actual procedures, associated risks, required management information or staff capabilities in respect of its mortgage account servicing. This in turn generated a risk of weak compliance and governance. This was demonstrated by an issue raised earlier in September 2008 by GMAC’s own audit, which identified the failure to consistently grant the proper authorisation to execute arrears amendment transactions.

Arrears handling

- 4.8. GMAC’s Collections Policy applied to customers who were in arrears with their mortgage or who had incurred a mortgage shortfall debt. Mortgage servicing staff applied that policy with the assistance of guidance. However, the guidance concentrated on information provision and establishing the reason for arrears in dealings with customers rather than a consideration of all appropriate arrears rehabilitation tools.
- 4.9. Options available to GMAC included alterations to the payment date, repayment type, extension to the term of the mortgage, capitalisation of arrears or a switch to a different mortgage product. These were considered if requested by the customer, but would not be routinely offered as an option by GMAC. A review of training programmes for mortgage servicing staff indicated that, prior to changes introduced in November 2008, arrears resolution centred on collecting payments via an ATP, with insufficient assessment of the viability of the ATP or whether there were other options to resolve the arrears situation that would produce a better outcome for the customer.

³ An arrangement to pay is an agreement with the customer to effect a monthly payment over an agreed term in order to clear the customer’s arrears.

4.10. The thematic review identified that some letters were sent to customers that were misleading or did not accurately reflect the status of the mortgage account. Insufficient control or monitoring of these letters meant that letters were sent to customers that:

- (1) in one instance, quoted two different arrears amounts in the same letter;
- (2) continued to threaten legal action where there had been a decision to suspend the application for repossession;
- (3) when letters before action were issued, demanded full repayment of arrears where there was no evidence that this was a demand that the customer could meet; and
- (4) explained the procedure for applying for a suspended possession order but did not explain the effect of an immediate order for possession. GMAC's practice was to apply for an order for possession suspended for a fixed period only if the customer agreed, prior to the hearing, to a repayment plan that was acceptable to GMAC. If no agreement was made, GMAC would apply for an immediate order for possession, but the effect and consequences of this were not explained clearly to the customer.

4.11. A review of GMAC's Collections Policy confirmed that staff were required to draw attention to the Citizens Advice Bureau National Debt Line, provide guidance on income maximisation and confirm that field counsellor visits were available and that those visits were to establish facts. However, the thematic review of file notes and call recordings did not demonstrate that this information was always being given to customers.

4.12. The Collections Policy in force in 2006 and 2007 was structured to focus on the collection of arrears payments, rather than reaching a flexible arrangement that took into account individual customer's circumstances. It instructed:

- (1) "where possible collect full payment of the arrears immediately, preferably by direct debit;
- (2) if full payment is not possible, collect a part payment of the arrears;

- (3) if no payment is immediately possible following point two above, obtain agreement to pay in instalments any arrears that might remain”.
- 4.13. Applications for immediate repossession orders were frequently made by GMAC without evidence that all other viable options had been considered and that repossession was being used only as a last resort.
- 4.14. GMAC’s Collections Policy also required that each account that was two or more months in arrears was to be reviewed every 60 days. However, an internal audit review of 30 accounts in arrears demonstrated that 6 of those accounts were not reviewed in accordance with its own policy.
- 4.15. GMAC had management information which showed that an application by the customer to postpone or dismiss an eviction was often successful and GMAC was not always successful in securing the order it had applied for. However, prior to 2008, GMAC did not analyse or take further action in relation to that information.

Arrears charges

- 4.16. GMAC imposed certain charges related to activities carried out whilst the customer was in arrears, in circumstances that resulted in the unfair treatment of customers.
- 4.17. These unfair charges were:
 - (1) charges for non-payment of the monthly mortgage payment by direct debit, when the account was in arrears and no monthly payment was being made;
 - (2) calculation and imposition of the Early Repayment Charge on mortgage balances which included arrears fees and charges within that balance; and
 - (3) the proportion of the solicitors’ instruction fee that exceeded the actual cost.
- 4.18. The above charges were unfair because they did not accurately reflect the additional administration work to the mortgage account caused by the fact that the customer was in arrears.

5. ANALYSIS OF BREACHES AND SANCTION

- 5.1. Principle 3 requires that a firm takes reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In failing to ensure the mortgage servicing staff were given sufficient training in treating customers fairly and failing to obtain and use appropriate management information, GMAC failed to put in place adequate oversight of the mortgage servicing function and failed to properly consider and act on management information it obtained in relation to TCF and arrears handling.
- 5.2. This led to a risk that the firm's systems and controls were insufficient in relation to the handling and oversight of mortgage arrears to ensure the fair treatment of customers, and accordingly, the firm was in breach of Principle 3.
- 5.3. Principle 6 requires that a firm must pay due regard to the interests of its customers and treat them fairly. In doing so, firms should ensure that customers are treated fairly if they are in arrears with their mortgage by being flexible in considering a customer's individual circumstances to ensure that the firm uses court action for repossession of a customer's home only as a last resort.
- 5.4. In focussing mainly on the collection of payment of arrears rather than always considering what may be a more suitable arrangement based on the customer's circumstances and in issuing proceedings for repossession before all alternatives to repossession had been considered, the firm failed to pay due regard to the interests of some of its customers.
- 5.5. In addition, GMAC did not treat its customers fairly as a result of applying certain charges and fees to customers' accounts that were unfair as they did not accurately reflect the additional cost of administering an account in arrears in breach of MCOB 12.4.1R and 13.3.1 R.
- 5.6. This resulted in some customers incurring excessive and unfair charges (i.e. charges that were not a reasonable estimate of the costs of the additional administration required as a result of the customer being in arrears) and accruing additional costs that could have been avoided had GMAC adopted a more flexible and fairer approach to arrears management tailored to the customer's individual circumstances.

- 5.7. As a result of the above, GMAC failed to pay due regard to the interests of its customers and treat them fairly in breach of Principle 6.
- 5.8. 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 objectives of market confidence and protection of consumers.
- 5.9. In deciding to take this action, 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 it 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

- 5.10. 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

- 5.11. 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.

5.12. The FSA considers GMAC's failings to be serious because:

- (1) the failings persisted over a significant period of time and impacted a large number of customers some of whom already had an adverse credit status;
- (2) a portion of GMAC's lending was to the sub-prime sector and arrears rates in this sector are higher than those in the rest of the mortgage market; and
- (3) the FSA has published a considerable amount of material on the importance of regulated firms treating customers fairly ("TCF") to communicate to firms the FSA's expectations in relation to a firm's obligation in respect of TCF.

The extent to which the breach was deliberate or reckless

5.13. The FSA has not determined that GMAC deliberately or recklessly contravened regulatory requirements.

The size, financial resources and other circumstances of the firm

5.14. There is no evidence to suggest that GMAC is unable to pay the penalty.

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

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

5.16. During the Relevant Period, GMAC's fees and charges were not calculated on the basis of cost incurred, rather GMAC were guided by prevailing market fees charged by other lenders.

Conduct following the breaches

5.17. GMAC implemented significant changes to its systems and controls and practices as detailed above and will implement a customer redress programme.

- 5.18. GMAC has been given full credit for co-operating with the FSA by agreeing a substantial customer contact and redress package detailed at para 1.3 above to ensure timely redress for consumers.

Disciplinary record and compliance history of the Firm

- 5.19. GMAC has not been the subject of previous disciplinary action.

6. CONCLUSION

- 6.1. Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA has imposed a financial penalty of £2.8 million 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 you 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 11 November 2009, 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 12 November 2009, 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 Suzanne Burt at the FSA (direct line: 020 7066 1062 /fax: 020 7066 1063).

Georgina Philippou

Project Sponsor

FSA Enforcement and Financial Crime Division