
FINAL NOTICE

To: **Mr John Paul Keay**
trading as Jack Keay Mortgage Services

Address: **86 Duncreggan Road**
Derry
BT48 0AA

Dated: **21 April 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, John Paul Keay trading as Jack Keay Mortgage Services, final notice about a decision to cancel the permission granted to you to carry on regulated activities

1. ACTION

1.1. The FSA gave you, Mr John Paul Keay trading as Jack Keay Mortgage Services, a Decision Notice dated 3 October 2007 ("the Decision Notice") which notified you that, for the reasons listed below, and pursuant to section 45 of the Financial Services

and Markets Act 2000 (“the Act”), the FSA had decided to cancel the permission granted to you pursuant to Part IV of the Act (“your Part IV permission”).

- 1.2. You referred the matter to the Financial Services & Markets Tribunal (“the Tribunal”) on 29 October 2007. However, you failed to file or serve a reply or response to the FSA’s statement of case and, therefore, on 16 April 2008, the Tribunal Chairman directed that your reference should be dismissed without further hearing.
- 1.3. Accordingly, for the reasons set out below, the FSA has cancelled your Part IV permission with effect on 21 April 2008.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters and conclusions described in the Warning Notice issued to you on 8 August 2007 (“the Warning Notice”), and the Decision Notice, the FSA concluded that your Part IV permission should be cancelled.
- 2.2. In the opinion of the FSA:
 - (1) as a sole trader, you do not have adequate human resources in relation to your regulated activities (**Threshold Condition 4 – Adequate resources**); and
 - (2) as the authorised person, you are not a fit and proper person having regard to all the circumstances including the nature of the regulated activities you carry on, and your failure to ensure that your business affairs are conducted soundly and prudently (**Threshold Condition 5 - Suitability**).
- 2.3. A copy of the relevant extract of the Warning Notice is attached to and forms part of this Notice.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

4.1. This Final Notice is given to you under section 54 and in accordance with section 390 of the Act. The following statutory rights are important.

Publicity

4.2. 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.

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

FSA contacts

4.4. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894/fax: 020 7066 5895).

Jonathan Phelan
Head of Department
FSA Enforcement Division

EXTRACT FROM WARNING NOTICE DATED 8 AUGUST 2007

2. REASONS FOR THE PROPOSED ACTION

2.1 The FSA has concluded, on the basis of the facts and matters described below that you are failing to satisfy the Threshold Conditions set out in Schedule 6 to the Act

("the Threshold Conditions").

2.2 In the opinion of the FSA:

- (1) as a sole trader, you do not have adequate human resources in relation to your regulated activities (**Threshold Condition 4 – Adequate resources**); and
- (2) as the authorised person, you are not a fit and proper person having regard to all the circumstances including the nature of the regulated activities you carry on, and your failure to ensure that your business affairs are conducted soundly and prudently (**Threshold Condition 5 - Suitability**).

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Facts and matters relied on

Background

4.1 JKMS became authorised from 31 October 2004 and regulated by the FSA to carry on the following activities:

- (1) advising on regulated mortgage contracts;
- (2) agreeing to carry on a regulated activity;
- (3) arranging regulated mortgage contracts; and
- (4) making arrangements.

4.2 With effect from 14 January 2005, JKMS was additionally granted permission to carry on the following insurance mediation activities:

- (1) advising excluding Pension Transfers/Opt Outs);
- (2) arranging deals in investments; and
- (3) making arrangements.

4.3 You are a sole trader. Mr Donal O'Doherty is an appointed representative who works

at the business premises on a self-employed basis. JKMS employs two administrative staff and its main activity is arranging regulated mortgage contracts.

- 4.4 Mortgage advice is provided by you and by Mr O'Doherty. Mr O'Doherty has a separate portfolio of clients to you and your client records are stored in a separate place on your premises to those relating to Mr O'Doherty's clients.
- 4.5 The FSA conducted a review of a sample of your files and supporting documentation. The FSA also interviewed you as part of its investigation, initially in April 2006 and having been informed that you had remedied various breaches which the FSA had either found or which you had admitted, the FSA re-interviewed you in February 2007. Despite having allowed you a period of approximately 10 months to remedy the problems identified, the FSA found numerous regulatory breaches. Significantly, some of the breaches relate to deficiencies which you informed the FSA had been specifically rectified but which the FSA found had not been remedied as claimed. The FSA's findings are as set out below.

Failure to take appropriate action following notification of submission of mortgage applications based on false information, and removal from lenders' panels (Threshold Condition 5 and Principle 2)

- 4.6 In July 2005 you were notified by Lender A of its decision to remove you from its panel because falsified bank statements had been submitted in support of your clients' mortgage applications to Lender B. Despite these notifications from lenders of serious problems with applications being submitted through your business, the FSA found no evidence that your systems for checking and certifying information and documents provided by clients was substantially reviewed or revised until, at the earliest, December 2005 or January 2006.
- 4.7 You said you had delegated responsibility for making further enquiries of Lender A, concerning the falsified bank statements, to Mr O'Doherty but that you had failed to monitor his progress in this regard. Your account does not accord with the account provided by Mr O'Doherty, who said he took such steps of his own volition, rather than following instructions from you.

- 4.8 You told the FSA you had not taken any steps to inform either lenders or clients of the submission of false documents in support of mortgage applications.

Submission of false documents in support of mortgage applications (Threshold Condition 5 and Principle 3)

- 4.9 The FSA found that false documentation had been submitted to lenders through your business in support of mortgage applications. Even when notified by lenders that various applications would be declined, you failed to investigate the reasons for this (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).
- 4.10 The FSA found discrepancies in the information provided by your clients as to their employment and banking details. You failed to investigate the reasons for this and were unable to explain the discrepancies (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).
- 4.11 You accepted you did not make any checks as to the authenticity of information on payslips which were being submitted to lenders in support of clients' mortgage applications. In particular, you did not query the authenticity of a computerised payslip provided by a larger national/regional employer, even though falsified documents submitted with your clients' mortgage applications included computerised payslips from large employers (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).
- 4.12 Having purportedly taken remedial steps, you told the FSA that you now take appropriate action to verify clients' income. However, you also informed the FSA you had recently submitted a mortgage application for one client in circumstances in which she had failed to provide an employer's payslip when you requested it. She had further failed to obtain verification of her income from her employer, as you had requested and you were not aware of the reasons for these failures. The only evidence of the client's income was therefore a bank statement which had not been authenticated. This should have given you cause for concern sufficient to prompt you to ensure that adequate verification was obtained (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).

- 4.13 You also told the FSA that you examine bank statements, checking to see whether the income shown corresponds with the payslips provided. However, the FSA found that the files reviewed contained only payslips and bank statements which did not correspond with each other in terms of the period of time covered, rendering meaningful checks of this type impossible (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).

Certification of copy documents (Threshold Condition 5 and Principle 3)

- 4.14 Your business certified supporting documents, which were found to have been falsified as being true copies of the originals. You confirmed to the FSA that it was your business practice to accept at face value the documents provided by customers to verify their incomes.
- 4.15 You admitted that copy documents were certified as being true copies of the originals, despite the fact that the person certifying the copies on behalf of your business, being either yourself or Mr O’Doherty had not, on every occasion, examined the original documents.
- 4.16 You told the FSA that you or Mr O’Doherty now only certify copy documents once you have seen the originals. However, the FSA found that copies of relevant documents on client files had not been certified, which raises concerns as to whether you are adhering to any revised procedure (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).

Re-submission of rejected mortgage applications (Threshold Condition 5 and Principle 3)

- 4.17 You resubmitted false supporting documentation to lenders in circumstances where other lenders had rejected mortgage applications containing the same false documentation. The FSA found no evidence of any attempt by you to establish the reasons why those applications were rejected. Instead, the same documentation was used to support mortgage applications to different lenders (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).
- 4.18 In one case, the lender had notified you that the reason for the application being

rejected was due to adverse information. You admitted you had made no attempt to establish the nature of this adverse information before proceeding to submit applications to two other lenders in respect of the same client. The FSA established during the investigation that the pay slips, form P60 and bank statements submitted in support of that client's application were false and that there was a notable discrepancy in the banking documents which had been provided by the client.

- 4.19 You informed the FSA that one in four or five of your customers did not initially provide an accurate financial history. You also said it would be very difficult to incorporate a credit check procedure into your processes.
- 4.20 You did not explain why, in circumstances where an application had been rejected by the first lender (due to a failure to meet that lender's criteria) neither you nor Mr O'Doherty did not investigate the applicant's financial circumstances prior to resubmission of the mortgage application to another lender. The FSA found that in relation to one client you had submitted an application to a prime lender in circumstances where it should have been apparent that such an application was likely to be rejected due to adverse credit (see MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.8G).

Failure to complete affordability assessments (Threshold Condition 5 and Principle 3)

- 4.21 You told the FSA you had no system in place to assess the affordability of the recommended mortgage for each client and such affordability assessments were only done if the lender required it. There was no evidence that an affordability assessment had been completed in some of the files reviewed (see MCOB 4.7.2R, MCOB 4.7.4R, and MCOB 4.7.17R).
- 4.22 In relation to non advised sales, you informed the FSA that even though an affordability assessment was not necessary, you had now introduced such a system. However, the procedures implemented do not satisfy the FSA that affordability will be properly assessed for each client. For example:

- (1) several affordability assessments omitted provision for items such as council

tax and utility bills including in one case, food and mortgage payments;

- (2) figures had been incorrectly totalled and in one case, double-counted; and
- (3) a client's fact find document had not been updated even though a loan had been taken out after the original fact find document, which rendered the mortgage potentially unaffordable to the client.

4.23 The FSA review revealed serious concerns about the adequacy of your current procedures for assessing affordability. Several affordability assessments omitted provision for fundamental household expenditure.

Failure to make and retain accurate records (Threshold Condition 5 and Principle 3)

4.24 The FSA identified specific failures in the way your business recorded important client information (see MCOB 4.7.17R) as follows:

- (1) your failure to retain copies of documents supplied by clients;
- (2) your failure to carry out and keep records of affordability assessments;
- (3) the occupations of two clients had been incorrectly recorded, potentially rendering their insurance invalid (a matter which you have since remedied);
- (4) in six files there was no explanation of why the clients had changed their original preference for capital and interest mortgages to interest-only mortgages;
- (5) in four files the amount of fees payable to you had changed since the date of the Initial Disclosure Document ("IDD") but there was no record on file that a revised IDD had been issued;
- (6) there was no record on one client's file that her mortgage application was not proceeding; and
- (7) in the case of another client there was no record on file of the reason for her

changing mortgage provider.

- 4.25 In all of the files reviewed, insufficient client details had been recorded and on some files no evidence had been retained as to the clients' incomes. You accepted that changes to clients' requirements had not been properly documented.
- 4.26 You told the FSA that changes in clients' circumstances are now routinely documented and if there had been a significant time-lapse since the completion of the fact find document, a new one would be completed. However, the files reviewed raised concerns about whether you were adhering to any such procedure.

Failures in competence and effective monitoring (Threshold Condition 4 and Principle 3)

- 4.27 The FSA has serious concerns as to your personal knowledge and understanding of regulatory matters.
- (1) You did not understand the distinction between "advised" and "non-advised" sales. This was reflected in confusion in a client file as to whether the sale was concluded on an advised or non advised basis.
 - (2) You gave inconsistent answers as to the use of scripted questions in non-advised sales.
 - (3) You did not understand the importance of maintaining effective monitoring of your client files and your staff.
- 4.28 You failed to maintain any adequate systems and controls to monitor compliance with the FSA's regulatory requirements. You admitted that up to around December 2005 you had not carried out any monitoring in respect of client files on which you personally acted as the mortgage adviser.
- 4.29 You said that your practice had been to review 10% of files on which Mr O'Doherty acted as mortgage adviser on a six monthly basis, although you had not, at that time, received appropriate training to do so.
- 4.30 You also said that you had put in place a system whereby your appointed

representative would check a proportion of your client files. However, you did not take any steps to ensure that your appointed representative attended the appropriate training to enable him to do this. Furthermore, you had not considered and managed the potential conflict of interest of relying on your appointed representative to assess the quality of your advice.

4.31 Despite being given an extensive period of time to remedy your failing processes you failed to do so. The FSA found that your client files illustrated serious concerns about the adequacy of your file review process (see MCOB 4.7.2R).

4.32 The FSA has ongoing concerns about your personal individual competence in the field of mortgage advice. Your responses to the FSA and the failings discovered in the files highlight your lack of understanding of regulatory requirements and consumer interests, as well as your basic lack of competence in the field of mortgage advice. If you are not competent, it follows that you are not able to provide effective supervision of others within the business, including Mr O'Doherty.

Failure to be open and co-operative (Threshold Condition 5 and Principle 11)

4.33 You failed to notify the FSA that you had been removed from the panels of mortgage intermediaries of at least three mortgage lenders. You informed the FSA that your business had been removed from only one lender's panel. You also denied that a second lender had notified you in writing that it had removed your business from its panel. The FSA found that you had been removed from three lenders' panels.

Analysis of Breaches of the Threshold Conditions and Principles

4.34 In accordance with the guidance contained in COND, the FSA has considered whether you conduct your business in compliance with proper standards, including the FSA's Principles for Businesses.

4.35 The FSA has also considered, in accordance with COND 2.5.4(G)(2)(a),(b) and (c), whether you have conducted your business in compliance with proper standards; whether you exercise competent and prudent management; and whether you can demonstrate that you conduct your business affairs with the exercise of due skill, care

and diligence.

- 4.36 You failed to respond appropriately to notification by lenders of removal from their panels, and to notification that mortgage applications had been submitted by you based upon false information.
- 4.37 You failed to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.
- 4.38 You failed to be open and co-operative in all your dealings with the FSA and during interview made statements which were inconsistent with evidence obtained from lenders.
- 4.39 You informed the FSA you are willing to comply with the requirements and standards under the regulatory system. However, you have failed to conduct your business in compliance with proper standards, and have failed to satisfy the FSA that you are or will ever be ready and organised to do so.
- 4.40 You failed to satisfy the FSA that you conduct or will conduct your business with the exercise of due skill, care and diligence, as set out above. You have also failed to satisfy the FSA that your business has a competent and prudent management.
- 4.41 As such, the FSA is not satisfied that you are a fit and proper person in accordance with Threshold Condition 5 to remain authorised to carry on regulated activities, having regard in particular to the overall need to be satisfied that your affairs are and will be conducted soundly and prudently.
- 4.42 As you are a sole trader, the FSA considers that you do not have adequate human resources in terms of quality in relation to the regulated activities that you carry on in accordance with Threshold Condition 4.
- 4.43 The FSA therefore has very serious concerns about your ability to comply with regulatory requirements and to satisfy the Threshold Conditions. For that reason, and in support of the FSA's statutory objectives, we consider that your Part IV permission

should be cancelled.

- 4.44 The FSA has concluded that you have not demonstrated that its affairs have been and will be conducted soundly and prudently and in compliance with Threshold Condition 5. The FSA arrives at this conclusion for the reasons set out above.

Conclusion

- 4.45 JKMS is not fit and proper to have Part IV Permission because:
- (1) you, as the sole trader, are not fit and proper to carry out functions in relation to regulated activities carried on by an authorised person and the FSA is proposing to prohibit you from doing so;
 - (2) JKMS has not conducted its business in compliance with proper standards;
 - (3) JKMS has not demonstrated that it has or will have a competent and prudent management;
 - (4) JKMS has not demonstrated that it has conducted or will conduct its affairs with the exercise of due skill, care and diligence;
 - (5) JKMS has not been open and cooperative in all its dealings with the FSA;
 - (6) JKMS has not demonstrated that it is ready, willing and organised to comply with the requirements and standards under the regulatory system;
 - (7) JKMS has not taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it; and
 - (8) JKMS has contravened the regulatory system by failing to comply with the Principles for Businesses, specifically Principles 2, 3, and 11.
- 4.46 The failings identified above call into question your competence and capability as well as your understanding of and ability to comply with regulatory requirements and standards on an ongoing basis.