
FINAL NOTICE

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

Individual ref: **JPK00011**

Dated: **21 April 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you final notice about an order prohibiting you, Mr John Paul Keay, from performing any function in relation to regulated activities

1. THE ORDER

- 1.1. The FSA gave you a Decision Notice dated 3 October 2007 ("the Decision Notice") which notified you that, for the reasons listed below, and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order prohibiting you, Mr John Paul Keay, trading as Jack Keay Mortgage

Services, from performing any function in relation to regulated activities (“the Prohibition Order”).

- 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 hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to regulated activities. The Prohibition Order takes effect on 21 April 2008.

2. REASONS FOR THE ORDER

- 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 you are not fit and proper to perform any function in relation to regulated activities.
- 2.2. In particular, in the opinion of the FSA, you are not fit and proper because:
 - (1) you failed to act with the competence and capability required of an approved person by failing to have in place adequate systems and controls and oversight arrangements with the consequence that your business was used and may be continuing to be used for the submission of mortgage applications containing or supported by false information;
 - (2) you demonstrated a serious lack of compliance with regulatory standards in the way you managed the business of Jack Keay Financial Services for which you were responsible;
 - (3) you failed to make appropriate disclosures of information both to the FSA concerning your removal from various lenders’ panels and to lenders and clients concerning mortgage applications submitted on the basis of false information; and

- (4) you failed to deal with the FSA in an open and cooperative way and failed to disclose appropriately information of which you were aware and of which the FSA would reasonably expect notice.

- 2.2 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 57 and in accordance with section 390 of the Act.

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 PROPOSED ACTION

2.1 The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper to carry out functions in relation to regulated activities carried on by authorised persons and you should be prohibited from doing so.

2.2 In the opinion of the FSA you are not fit and proper because:

- (1) you failed to act with the competence and capability required of an approved person by failing to have in place adequate systems and controls and oversight arrangements with the consequence that your business was used and may be continuing to be used for the submission of mortgage applications containing or supported by false information;
- (2) you demonstrated a serious lack of compliance with regulatory standards in the way you managed the business of Jack Keay Financial Services for which you were responsible;
- (3) you failed to make appropriate disclosures of information both to the FSA concerning your removal from various lenders' panels and to lenders and clients concerning mortgage applications submitted on the basis of false information; and

- (4) you failed to deal with the FSA in an open and cooperative way and failed to disclose appropriately information of which you were aware and of which the FSA would reasonably expect notice.

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Facts and matters relied on

- 4.1 You are an authorised person and a sole trader trading as Jack Keay Mortgage Services. Mr Donal O'Doherty, who is a self-appointed representative of Jack Keay Financial Services, works on a self employed basis from your offices.
- 4.2 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 by you 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. 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.

Submission of mortgage applications containing or supported by false information

- 4.3 You failed to make any, or any adequate, checks as to the authenticity or accuracy of documents relied upon in making mortgage applications. In particular:
- (1) you failed to check the authenticity of payslips, particularly computerised payslips provided by larger national/regional employers;
 - (2) you failed to check whether the payslips corresponded with the clients' bank statements; and

- (3) you failed to obtain verification of a client's income in circumstances where a payslip was not available and there were discrepancies in the information provided by clients as to their employment and banking details.
- 4.4 You claim to have delegated to Mr O'Doherty the task of making further enquiries of a lender in relation to falsified bank statements. You however failed to monitor Mr O'Doherty or follow up his progress in this regard.
- 4.5 You stated that you considered it to be the lender's, rather than your responsibility, to assess the authenticity of mortgage applications and supporting documentation.
- 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 two notifications of serious problems with applications being submitted through your business, the FSA found no evidence that your processes for checking and certifying information and documents provided by clients were substantially reviewed or revised until, at the earliest, December 2005 or January 2006.

Certification of copy documents

- 4.7 You failed to have any process in place to ensure that copy documents were only certified if the original documents had been examined by either you or your appointed representative. You admitted that in practice 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.
- 4.8 Accordingly, you were not in a position to properly assess the original documents and in particular to investigate any inconsistencies and inaccuracies within those documents. You confirmed that it was your business practice to accept at face value the documents provided by customers to verify their incomes.

Re-submission of rejected mortgage applications

- 4.9 You failed to take any steps to identify the reasons why applications had been rejected by a lender, prior to submitting further applications, often with the same false supporting documentation, to another lender.
- 4.10 The FSA is aware that three lenders have removed you from their panels because of concerns about submission of mortgage applications containing false information.
- 4.11 You admitted you did not make enquiries as to the reasons why applications had been rejected before resubmitting the application to a different lender. This is despite the fact that you also stated you believed some of your customers did not initially provide an accurate financial history. On one occasion you were informed by a lender that your client's application had been rejected due to adverse information. You did not investigate the nature of this adverse information before resubmitting the application to two other lenders. The FSA found that payslips, P60 forms 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.

Failures in competence and effective monitoring

- 4.12 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.
- 4.13 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.
- 4.14 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.

4.15 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.

4.16 The FSA also 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; and

(3) You did not understand the importance of maintaining effective monitoring of your client files and your staff.

4.17 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 complete affordability assessments

4.18 You told the FSA that 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.

4.19 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.

Failure to make and retain accurate records

4.20 The FSA identified specific failures in the way your business recorded important client information, for example:

- (1) your failure to retain copies of documents supplied by clients;
- (2) your failure 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) no record was kept of why clients had changed their original preference for repayment mortgages to interest-only mortgages;

- (5) no record was kept of whether a revised Initial Disclosure Document ("IDD"), had been issued in four files, in circumstances where the amount of fees payable to you had changed since the date of the original IDD;
- (6) in one of the files reviewed the fact find document had not been updated to take account of a loan taken out by the client several months after the original fact find document had been completed. That loan rendered the mortgage potentially unaffordable for the client;
- (7) no record was kept on one client's file that her mortgage application was not proceeding; and
- (8) in the case of another client there was no record on file of the reason for her changing mortgage provider.

4.21 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 although you told the FSA that changes in clients' circumstances were 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. The FSA found that, despite your assertions, these procedures were not being adhered to.

Failure to make appropriate disclosures of information, and inconsistencies of information disclosed with other evidence

- 4.22 You failed to disclose to the FSA that three lenders had removed your business from their panel of brokers. You denied that you had been removed from Lender A's panel, until the FSA produced a copy of a letter from Lender A to you confirming the same.
- 4.23 Your explanation of the actions taken by you once Lender A had notified you that you would be removed from its panel, following the discovery of false bank statements submitted in support of your clients' applications, is not consistent with the account

provided by your appointed representative. You said you had instructed the appointed representative to contact the local branch of the lender to investigate the problem whereas the appointed representative said he had approached the lender, on his own initiative and was not acting on instructions from you.

- 4.24 You told the FSA you had not taken any steps to inform either lenders or clients that mortgage applications had been submitted on the basis of false information.

Conclusions

- 4.25 The FSA has concluded that you are not fit and proper in accordance with the regulatory requirements and with regard to the relevant guidance. In reaching this conclusion, the FSA has had regard to your conduct in that:

- (1) you pose a risk to lenders and consumers by continuing to perform functions in relation to regulated activities;
- (2) you failed to put in place adequate systems and controls to prevent your business being used as a conduit for financial crime;
- (3) you failed to put in place an adequate procedure for the certification of copy documents;
- (4) you failed to review rejected applications in order to identify the reasons for rejection (which may relate to inclusion of false information, and/or to your failure to identify that the application would not meet that lender's criteria);
- (5) the procedures which you have put in place to assess the affordability of recommended mortgages for clients are inadequate or are not routinely adhered to;
- (6) you failed to implement adequate record keeping procedures; and

(7) you failed to take appropriate action in response to notification by lenders of your removal from their lending panels and notification by the FSA that mortgage applications had been submitted on the basis of false information.

4.26 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.

5. PROPOSED SANCTION

5.1 The FSA has considered whether you are a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance.

5.2 In view of the FSA's findings as set out above, the FSA considers that you fail to satisfy one of the three assessment criteria for fitness and propriety: competence and capability; and that therefore you are not fit and proper to carry on functions in relation to regulated activities.

5.3 You have indicated your willingness to comply with regulatory requirements and standards (as well as other legal and professional obligations and ethical standards). However, the FSA considers that you lack the appropriate competence and capability to achieve and maintain minimum standards.