
FINAL NOTICE

To: **Legacy Financial Planning Limited**
Address: **Legacy House
407 Preston Road
Clayton le Woods
Chorley
Lancashire
PR6 7JA**
Date: **16 January 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 Legacy Financial Planning Ltd (“the Firm”) a Decision Notice on 16 January 2009, which notified the Firm that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to impose a financial penalty of £28,000 on the Firm in respect of a failure to comply with Principles 9 and 7 of the FSA’s Principles for Businesses (“the Principles”) between 20 September 2006 and 11 September 2007 (“the Relevant Period”).
- 1.2. The Firm confirmed on 7 January 2009 that they would 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 the Firm the facts and matters relied on, the FSA hereby imposes a financial penalty on the Firm of £28,000.

1.4. The Firm agreed to settle at an early stage of the FSA's investigation. It therefore qualifies for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount the FSA would have imposed a financial penalty of £40,000 on the Firm.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to impose a financial penalty on the Firm for breaches of the FSA Principles within the relevant period. In summary, the FSA has made the following findings:

(1) The Firm failed to take reasonable steps to ensure the suitability of its advice, **in contravention of Principle 9 (Customers: relationships of trust)**, by issuing suitability letters that did not always explain why the relevant transaction was suitable for the customer, having regard to his personal and financial circumstances and attitude to risk; and the Firm did not make or retain records that could demonstrate the suitability of its advice.

(2) The Firm failed to pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading, **in contravention of Principle 7 (Communications with clients)**, in that it: provided customers with suitability letters that failed to adequately disclose the risks and/or disadvantages of the recommended transaction; provided customers with a Fees and Commission Statement ("Menu") that failed to make a fair comparison between the Firm's commissions and the market average; failed to provide adequate risk warnings to insistent customers; and issued projections to customers that did not provide a fair comparison of benefits.

2.2. The Firm's failings are viewed as being serious because:

(1) the failure to provide adequate suitability letters, to adequately monitor advice and to assess the ongoing competence of advisers, exposed

approximately 170 customers to a potential risk of loss from the provision of unsuitable advice;

- (2) the failure to communicate with customers in a way that was clear, fair and not misleading prevented customers from making informed investment decisions; and
- (3) the failures in record keeping meant that the Firm was unable to demonstrate how the products recommended to customers were suitable and appropriate to the customer's circumstances.

2.3. In the FSA's opinion, the Firm's misconduct merits the imposition of a financial penalty. In determining the level of penalty, the FSA had regard to the following mitigating factors.

- (1) The Firm accepted at an early stage in the investigation that there were inadequacies in the content of suitability letters sent to customers. The Firm also accepted that they failed to adequately monitor or control advice given to customers, or assess the ongoing competency of advisers.
- (2) The Firm has been proactive in taking steps to rectify its shortcomings. After compliance issues were raised by the FSA, the Firm began a program of action to improve its overall compliance controls, including instructing an external compliance consultant to conduct a review of the effectiveness of its internal file monitoring and redraft its suitability letters for all types of business transacted. Compliance at the Firm has improved as a result.
- (3) To address the risk of unsuitable recommendations having been made to customers, the Firm has appointed an external compliance consultant to undertake a past business review of recommendations made by the Firm to its customers during the relevant period. The Firm has agreed, where appropriate, to pay appropriate redress where unsuitable advice has led

to loss. The external compliance consultant will provide updates to the FSA to assist its ongoing supervision of the Firm.

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 financial crime. In taking action against the Firm, the FSA is working towards its objectives of protecting consumers.
- 3.2. The FSA is authorised by section 206 of the Act to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed upon it by or under the Act.
- 3.3. Under the FSA's rule-making powers, the FSA has published in the FSA's Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons and, in particular, apply in whole to the Firm. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. Breaching a Principle makes a firm liable to disciplinary action. The Principles relevant to this matter are set out below.
 - (1) Principle 9 (Customers: relationships of trust): 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.
 - (2) Principle 7 (Communications with clients): A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Firm is a limited company conducting personal investment business in the Lancashire area. On 1 November 2004, the Firm became authorised to advise on and arrange designated investment business. The Firm's main activity is the provision of general investment advice to UK clients, with a particular emphasis on retirement and inheritance planning. During the relevant period, the Firm recommended approximately 170 regulated investment contracts, including investment bonds, personal pension schemes and stakeholder pension schemes.
- 4.2. The Firm has two directors, Mr Brendon Utley and Mr Mark Chester, who are the only approved persons at the Firm. Mr Utley holds the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight) and CF30 (Customer). Mr Chester holds the controlled functions of CF1 (Director), CF11 (Money Laundering Reporting) and CF30 (Customer). Both Mr Utley and Mr Chester provide investment advice.
- 4.3. The FSA visited the Firm on 9 and 10 October 2007 as part of the FSA's ongoing thematic Investment Quality of Advice Processes Project*. During the visit the FSA identified serious concerns about the Firm's suitability of advice given to customers and the way in which the Firm communicated with its clients.
- 4.4. The FSA began a formal investigation into the Firm on 26 March 2008.

* The Investment Quality of Advice Processes Project focussed on firms' understanding of the Treating Customers Fairly ("TCF") initiative and how this understanding fed into the quality of advice provided by firms to their customers.

5. ANALYSIS OF BREACHES

Breach of Principle 9 (Customers: relationships of trust)

- 5.1. The FSA concluded that the Firm failed to take reasonable care to ensure the Firm gave suitable advice to its customers.
- 5.2. In 8 of 20 files reviewed by the FSA (40%), and in 6 of 23 files reviewed by an external compliance consultant (26%), the suitability letter failed to explain why the relevant transaction was suitable for the customer. Suitability letters were formulaic and failed to link the customer's needs, priorities and attitude to risk to the product recommended.
- 5.3. In 2 of 20 files reviewed by the FSA, the suitability letter explained that investment bonds had been recommended ahead of tax efficient wrappers because Local Authorities, when assessing whether individuals have the means to pay for residential care, do not include investment bonds in their financial assessment. However, in such circumstances, Local Authorities may decide that the purchase of an investment bond was deliberate deprivation, and may include the bond in their financial assessment. In these two suitability letters, the rationale for recommending investment bonds ahead of tax efficient wrappers was incorrect.
- 5.4. The Firm devised and operated a formal Training and Competency programme, which aimed to ensure that the Firm gave suitable advice to its customers. Although this programme was in operation throughout the relevant period, it failed to identify any of the issues detailed in this notice. The Firm reviewed 20 customer files during this period, all of which were graded as green, indicating that 'the file demonstrates suitability/ TCF; clear explanations in the suitability letter; thorough fact find and general record keeping; only a few suggestions for improvement'. The FSA reviewed one of these files and found that it did not adequately demonstrate suitability and did not provide clear explanations in the suitability letter.
- 5.5. The Firm's failure to provide customers with adequate suitability letters, keep records of the suitability of its recommendations, and undertake effective file reviews, prevented the Firm from monitoring or controlling the suitability of its

recommendations and therefore exposed approximately 170 customers to the risk of receiving unsuitable advice. The Firm's failure to understand Local Authority residential care guidance may have resulted in at least two customers receiving unsuitable advice.

Breach of Principle 7 (Communications with clients)

- 5.6. The FSA concluded that the Firm failed to communicate with customers in a way that was clear, fair and not misleading.
- 5.7. In all files reviewed by the FSA, and in all files reviewed by the external compliance consultant, the Firm's Menu did not disclose the market average commission charged for investment bonds. Without this information, customers were unable to make an informed decision as to whether to arrange an investment bond through the Firm.
- 5.8. In 13 of 20 files reviewed by the FSA (65%), and in 11 of 23 files reviewed by the external compliance consultant (48%), the suitability letter did not contain a summary of the main consequences and any possible disadvantages of the transaction. For example:
 - (1) the Firm recommended that four customers surrender their savings in individual savings accounts ("ISAs") or their investments in open-ended investment companies ("OEICs") or unit trust schemes to invest in investment bonds, without explaining the tax implications of doing so;
 - (2) the Firm recommended that a further eight customers invest in investment bonds instead of ISAs, OEICs or unit trust schemes, without explaining the tax implications of doing so; and
 - (3) the Firm recommended that eight customers invest in property funds without explaining the liquidity risk of such funds.
- 5.9. The Firm sold products to at least three insistent customers, on a non-advised basis, after the customer had rejected their recommendation. In all three cases, the Firm failed to adequately explain:

- (1) the reasons why the recommendation transaction was suitable;
- (2) the reasons why the customer's preferred transaction had not been recommended; and
- (3) the risks and disadvantages of the customer's preferred transaction.

The failure to give a balanced view of the risk of proceeding with the transaction may have impacted on the decision made by the customer.

5.10. The Firm sold products to at least two customers after providing pension illustrations that may have been misleading.

- (1) The Firm provided one customer with an illustration demonstrating the benefits from a pension written to the age of 75. As the customer wished to retire at 65, and as their two existing pensions were written to the age of 65 and 60 respectively, this illustration did not provide a fair comparison of benefits.
- (2) The Firm provided one customer with an illustration demonstrating the benefits from a pension written to the age of 83. As the customer's chosen vesting age was 75, this illustration did not provide a fair comparison of benefits.

6. ANALYSIS OF THE SANCTION

6.1. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA's Handbook. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore during part of the relevant period.

6.2. 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.

- 6.3. The FSA will consider all the relevant circumstances of the case when deciding whether or not to impose a financial penalty. In light of the systemic weaknesses identified above, and the risk of loss to consumers caused by those breaches, the FSA considers it appropriate to impose a financial penalty on the Firm.
- 6.4. The FSA will also consider all the relevant circumstances of the case when deciding on the level of financial penalty.
- 6.5. The FSA considers the following factors to be particularly relevant in this case:

(1) DEPP 6.5.2 G(1): Whether or not deterrence may be effectively achieved

A financial penalty would deter the Firm from further breaches of regulatory Principles. Equally, other firms will be deterred from following the Firm's practices and this will promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

(2) DEPP 6.5.2 G(2): The nature, seriousness and impact of the breach in question

In determining the seriousness of the Firm's failings, the FSA has had regard to the nature of the breaches, the duration of the breaches, and the number of customers who were affected and/or placed at risk.

(3) DEPP 6.5.2 G(5): The size and financial resources of the firm

The Firm is a small firm whose breaches have put at risk a relatively small customer base.

(4) DEPP 6.5.2 G(8): The Firm's conduct following the breach

The Firm has been proactive in taking steps to rectify its shortcomings.

(5) DEPP 6.5.2 G(9): Disciplinary record and compliance history

The Firm has not been the subject of previous disciplinary action.

(6) DEPP 6.5.2 G (10): The FSA's approach in similar previous cases

In determining that a financial penalty is appropriate, the FSA has taken account of sanctions against other authorised persons for similar conduct. In the circumstances, the FSA considers that a financial penalty, together with the remedial action described in paragraph 2.4, is a proportionate and appropriate outcome to this case.

- 6.6. Having considered all the circumstances above, the FSA has determined that £40,000 (before any discount for early settlement) is the appropriate financial penalty to impose 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 by the Firm to the FSA by no later than 30 January 2009.

If the financial penalty is not paid

- 8.3. If all or any of the financial penalty is outstanding on 31 January 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. The information may be published in such a 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.

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 Paul Howick (direct line: 020 7066 7954 or fax: 020 7066 7955) of the Enforcement Division of the FSA.

Jonathan Phelan

Head of Department

FSA Enforcement Division