
FINAL NOTICE

To: Leybridge Limited

**Of: The Garden Suite, Pine Grange, Bath Road, Bournemouth.
BH1 2PF**

Date: 21 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 the following action:

1. ACTION

- 1.1. The FSA gave Leybridge Limited ("Leybridge") a Decision Notice on 14 August 2008 which notified Leybridge that pursuant to section 206 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to impose a public censure on Leybridge. This public censure is in respect of breaches of Principle 9 of the FSA's Principles for Businesses (the "Principles") between 31 October 2004 and 8 February 2008 (the "Relevant Period") in relation to advised sales of regulated mortgages.
- 1.2. Leybridge has confirmed on 12 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 Leybridge the facts and matters relied on, the FSA imposes a public censure on Leybridge.
- 1.4. But for Leybridge's financial circumstances, the FSA would have imposed a penalty of £24,000 (discounted by 30% to £16,800 for early settlement) in respect of these breaches.

2. REASONS FOR THE ACTION

- 2.1. The FSA has decided to issue a public censure on Leybridge for breaches of Principle 9 in relation to its sale of regulated mortgages.
- 2.2. These breaches, which are described in more detail at section 4 and 5 below relate to Leybridge's failure during the Relevant Period to take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who were entitled to rely upon its judgment (Principle 9).
- 2.3. Leybridge breached Principle 9 by failing to take reasonable care to recommend regulated mortgage products which were suitable for its customers; to explain, support and evidence the bases of its recommendations and to conduct appropriate compliance monitoring in respect of its sales.
- 2.4. The FSA regards Leybridge's failings as serious because they exposed 425 customers to an unacceptable risk of buying mortgage products that were not suitable for them during the Relevant Period. As a result Leybridge might have failed to treat its customers fairly.
- 2.5. The FSA has taken into account the following points which are regarded as mitigating factors:
 - (1) Leybridge has been open and has cooperated fully with the FSA's investigation;
 - (2) Leybridge has accepted that there were management and control failures during the Relevant Period. Accordingly it implemented a series of changes to its practices and procedures immediately after the FSA highlighted the failures during a visit to Leybridge in February 2008; and
 - (3) Leybridge has agreed to remedial action in the form of a customer contact exercise and has committed to compensate those who may have suffered any detriment as a result of Leybridge's failings.

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 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 judgment."

Rules and guidance

- 3.5. Details of the FSA's policy on imposing financial penalties are set out in Annex A to this notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Leybridge has been authorised by the FSA to sell regulated mortgage contracts since 31 October 2004.
- 4.2. Leybridge is a limited company with three directors. During the Relevant Period, Leybridge employed three salespersons who between them advised on 425 mortgage contracts.
- 4.3. Leybridge was one of 50 mortgage brokers visited by the FSA's Small Firms and Contact Division ("SFCD") in 2008 as part of a thematic project looking into the 'quality of advice processes' in mortgage brokers.
- 4.4. Unless otherwise stated the facts and matters set out in paragraphs 4.5 to 4.16 below relate to the Relevant Period.

Gathering customer information

- 4.5. Leybridge completed 'fact finds' during telephone conversations between sales advisers and customers. These were often not completed in full. Specifically, information about the following was not always gathered or recorded:
- (1) Previous mortgage details and any redemption charges;
 - (2) Adverse credit details and existing debts;
 - (3) Net income and expenditure; and

(4) Attitude to risk in terms of repayment options.

- 4.6. Leybridge failed to ensure that it made and retained adequate records of its customers' personal and financial information in a number of key areas of the business. Also, the widespread record keeping failures identified by the FSA have led to Leybridge being unable to demonstrate that the advice given to customers was suitable.

Suitability of advice

- 4.7. Customers who are employed and can prove their income most commonly take out full status mortgages. However, Leybridge sometimes recommended self certification mortgages to such customers. In these circumstances Leybridge often recorded no explanation as to why this type of mortgage was recommended.
- 4.8. Leybridge issued a letter of suitability to its customers detailing the reasons why a particular mortgage product had been recommended. The reasons given for each recommendation were often generic and did not reflect the information contained within the fact find. For example, where a customer had applied for a full status loan, Leybridge incorrectly referred to self-certification mortgages in the suitability letter.
- 4.9. Suitability letters issued by Leybridge failed to set out the implications, or potential implications, of borrowing into retirement or of self-certifying income.
- 4.10. The affordability of the proposed monthly mortgage payment was calculated and set out in Leybridge's suitability letter as a percentage of a customer's gross income. Leybridge therefore failed to take into consideration any tax or other regular payments or deductions from a customer's gross income when calculating affordability.
- 4.11. Where a mortgage application was rejected by a lender and a subsequent application was made by a customer for an alternative product, Leybridge failed to document the reasons for this. In addition, new Keyfacts Illustrations ("KFI") and suitability letters were not always issued prior to the new application being made.

Monitoring

- 4.12. Leybridge employed a 'peer to peer' file checking system. This involved the sales adviser firstly checking his own sales file for the existence and completion of key documents. The file was then passed to a mortgage processor who once again checked for the inclusion and completion of the same key documents and later checked that the mortgage offer matched the mortgage detailed in the sales adviser's recommendation. These checks were carried out on every file prior to the completion of the mortgages.
- 4.13. Leybridge's directors checked a sample of client files following the completion of the mortgages. Although a checking procedure was in place Leybridge's directors did not complete this sample file checking on a regular basis and did not adequately collate the results of these checks for management information and quality control purposes.
- 4.14. The file checks performed by Leybridge were on a quantitative rather than qualitative basis. In essence, sales advisers and mortgage processors would check each file for the existence of requisite documentation, not the standard of its completion. Directors

would then check only a sample of files and did not do so on a regular or adequate basis. Directors also limited their checks to the existence of requisite documentation.

- 4.15. Further, there was no adequate system in place for directors to record that files had been reviewed, nor any procedure to formalise what directors should review, how this should be recorded and how the results of the file reviews should be used to assess the competence of Leybridge's sales staff and the adequacy of its systems and controls.

Management information

- 4.16. Leybridge produced limited management information for senior management in relation to the mortgage sales monitoring carried out. Senior management was not therefore able to consider adequately any trends or compliance failings that proper management information might have identified.

5. ANALYSIS OF BREACHES

Principle 9

- 5.1. By reason of the facts and matters referred to in paragraphs 4.5 to 4.16 above, the FSA considers that Leybridge has breached Principle 9 of the Principles.
- 5.2. Leybridge's failure to obtain and/or record sufficient information about its customers during the fact find had adverse ramifications throughout the entire sales process. Most significantly Leybridge made recommendations to its customers without having full or adequate knowledge of their circumstances. This exposed 425 customers to an unacceptable risk of taking out mortgage contracts that were not suitable for them during the Relevant Period.
- 5.3. Leybridge did not clearly or adequately record and therefore could not evidence why self certification mortgages were on occasion recommended where customers were employed and able to prove their income. Furthermore, there is no evidence that Leybridge informed customers that by adopting such a product they were likely to pay a higher rate of interest on their borrowing. Leybridge's failure to draw this fact and the costs consequences of it to the customer's attention meant that customers were not in a position to make an informed decision regarding the options available. Those customers may therefore have received unsuitable advice.
- 5.4. During the fact finding process, Leybridge recorded the proposed retirement age for each customer. However, information was not always recorded as to a customer's attitude to the risk of lending into retirement. On occasions, Leybridge further recommended mortgages to its customers which continued beyond the customer's proposed retirement age. There is no evidence that the risks of borrowing into retirement were brought to the customer's attention, nor any proof that Leybridge considered how monthly mortgage payments might be met during retirement. Leybridge's failure to address these issues led to a number of customers being exposed to the risk of being unable to afford their monthly mortgage payments during retirement.
- 5.5. Leybridge's failure to take account of a customer's net income as opposed to gross during the affordability calculation meant that customers were provided with an

incorrect analysis of whether they were able to afford the mortgage being recommended. Customers were therefore misled and may have entered into a mortgage contract which they wrongly believed to be affordable.

- 5.6. The use of generic paragraphs in the suitability letters issued by Leybridge, which were not always applicable to the customer's particular circumstances, resulted in incorrect, unclear and potentially misleading information being provided. Therefore, customers did not always receive a clear or accurate message as to why a recommended product was considered by Leybridge to be suitable for them.
- 5.7. A customer should be in possession of a KFI prior to receiving a mortgage offer. Leybridge sometimes failed to issue timely KFI documents, specifically where a change in mortgage lender or product was recommended. This resulted in customers not being provided with sufficient information regarding the proposed lending prior to the application being made. Leybridge failed to evidence that customers were aware of the terms of the mortgage contract recommended, or the risks associated with it.
- 5.8. The use of the 'peer to peer' file checking system adopted by Leybridge failed to ensure that appropriate checks were carried out independently. Due to the small size of the business, the sales advisers checked their own work. Similarly, the mortgage processors checked their own work along with that of the advisers.
- 5.9. The emphasis on quantitative over qualitative monitoring of sales files by mortgage processors and, in relation to only a sample of files, directors resulted in little, if any, consideration being given to the suitability of advice provided by advisers. This resulted in any management information being incomplete and insufficient to assist senior management to identify potential problems and take any necessary remedial action.
- 5.10. The lack of effective monitoring of sales files meant that senior management relied on identifying potential problems on an ad-hoc basis. This led to the possibility of senior management failing to identify possible breaches of procedure, for example, advisers not fully completing the fact find. This risk was heightened by the significant gaps in the effective recording of the results of the monitoring process.

6. ANALYSIS OF THE SANCTION

Policy on public censure

- 6.1. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Relevant extracts from DEPP are set out in Annex A.

Deterrence

- 6.2. The principal purpose of issuing a public censure 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 (DEPP 6.1.2G).

The seriousness of Leybridge's breaches

- 6.3. The FSA has had regard to the seriousness of the breaches, including the nature of the requirement 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 above and having regard to the impact on Leybridge's customers, the FSA considers that the breaches are of a serious nature.

The extent to which the breaches were deliberate or reckless

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

The amount of profits accrued

- 6.6. The FSA has taken into account the profits Leybridge made from sales of regulated mortgages during the Relevant Period.

The size, financial resources and other circumstances of the firm

- 6.7. The FSA has taken full account of Leybridge's financial resources. The FSA has also been mindful of the need to ensure that the interests of customers are protected and that a financial penalty would effectively prevent Leybridge from completing its customer contact exercise and providing compensation where appropriate. But for Leybridge's financial circumstances, the FSA would have imposed a penalty of £24,000 (discounted by 30% to £16,800 for early settlement) in respect of these breaches.

Conduct following the breach

- 6.8. Once the FSA informed the firm of its concerns, Leybridge reviewed and amended its monitoring and record keeping activities.
- 6.9. Leybridge and its senior management have cooperated fully with the FSA during its investigation.
- 6.10. Leybridge has also committed to a customer contact exercise and to compensate any customers who may have been disadvantaged as a result of the breaches.

Previous action taken in relation to similar failings

- 6.11. In determining the appropriate sanction, the FSA has taken into account sanctions 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.

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 issue a public censure on Leybridge.

8. DECISION MAKER

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

9. IMPORTANT

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

Publicity

- 9.2. 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 Leybridge or prejudicial to the interests of consumers.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.4. For more information concerning this matter generally, Leybridge should contact Catherine Harris (direct line: 020 7066 4872 /fax: 020 7066 4873) of the Enforcement Division of the FSA.

Signed:

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Jonathan Phelan
Head of Department
FSA Enforcement Division

Annex A: Rules and guidance

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

- 1.1. The FSA's policy in relation to the issue of public censures 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 12 of the Enforcement Manual (ENF), to which the FSA has also had regard. The principal purpose of issuing a public censure 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.
- 1.2. The FSA will consider the full circumstances of each case when determining whether or not to issue a public censure. DEPP6.4.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty, which include the following.
 - (1) DEPP6.4.2 G(1): deterrence;
 - (2) DEPP6.4.2G(2): the degree of profit made or loss avoided as a result of the breach;
 - (3) DEPP6.4.2G(3): the seriousness of the breach
 - (4) DEPP6.4.2G(4): conduct after the breach
 - (5) DEPP6.4.2G(5): co-operation and compensation
 - (6) DEPP6.4.2G(6): The previous disciplinary record and compliance history of the person.
 - (7) DEPP6.4.2G(7): Action taken by the FSA in previous similar cases.
 - (8) DEPP6.4.2G(8): the impact on the person concerned

2. Determining the level of the financial penalty

- 2.1. 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.
- 2.2. 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)).
- 2.3. Corresponding provisions are set out in ENF 12.3 which sets out factors that may be relevant when determining whether it is appropriate to issue a public censure rather than impose a financial penalty.