
FINAL NOTICE

To: **Lawrence Scofield Mortgages Limited**

Of: **2 Fisher Gate
Ripon
North Yorkshire
HG4 1DY**

Date **30 July 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives final notice about a decision to impose a financial penalty on Lawrence Scofield Mortgages Limited.

1. ACTION

1.1. The FSA gave Lawrence Scofield Mortgages Limited (“LSML”) a Decision Notice on 30 July 2007 which notified LSML 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 £10,500 on LSML for failing to comply with Principles for Businesses and for failing to treat its customers fairly, between 31 October 2004 and 13 November 2006 (“the period in issue”). LSML has breached:

- (1) Principle 3 (Management and control), and
- (2) Principle 7 (Communications with clients),

in respect of systems and controls and record keeping, all in relation to advised sales of regulated mortgage contracts. LSML has also failed to demonstrate compliance with MCOB 4.7.2R and 4.7.17R.

- 1.2. LSML agreed to settle at an early stage of the FSA’s investigation. It therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. The FSA would otherwise have imposed a financial penalty of £15,000 on LSML based on the facts and the matters described in this Final Notice.
- 1.3. LSML agreed that it would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4. Accordingly, for the reasons set out below and having agreed with LSML the facts and matters relied on, the FSA imposes a financial penalty on LSML of £10,500.

2. REASONS FOR THE ACTION

2.1. LSML failed to:

- (1) maintain adequate systems and controls in relation to its sales process; and
- (2) ensure that it made and retained records of all relevant personal and financial information about its clients to demonstrate how it assessed as suitable the regulated mortgage contracts that it recommended.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

3.1. The FSA’s statutory objectives, set out in section 2(2) of the Act include the

protection of consumers.

- 3.2. The FSA has the power, pursuant to Section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate on an authorised person if it considers that the authorised person has contravened a requirement imposed on it by or under the Act.

Principles for Businesses

- 3.3. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 3.4. Under the FSA's rule-making powers, the FSA published the Principles for Businesses ("Principles").
- 3.5. Principle 3 states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 3.6. Principle 7 states that 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.

MCOB

- 3.7. Part of the FSA Handbook deals with rules and guidance in relation to mortgages and is entitled Mortgages and Home Finance: Conduct of Business ("MCOB"). Rule 4.7.2R states that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer.
- 3.8. MCOB 4.7.4R says that, for the purposes of MCOB 4.7.2R, a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is, or should reasonably be, aware, the firm has reasonable grounds to conclude that : (a) the customer can afford to enter into the regulated mortgage contract; (b) the regulated mortgage contract is

appropriate to the needs and circumstances of the customer; and (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.

- 3.9. MCOB 4.7.17R states that a firm must make and retain a record of (1) the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7, and (2) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2R satisfies the suitability requirements in MCOB 4.4.4R(1).

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. LSML was one of 65 mortgage brokers (78 firms in total) to be visited by the FSA in 2006 as part of its "mortgages quality of advice process" project. It was one of six firms referred to the FSA's Enforcement Division from the project.
- 4.2. The FSA's Small Firms Division ("SFD") visited LSML on 3 and 4 August 2006. During the visit, SFD identified issues of concern about LSML's systems and controls, sales processes, and training and competence regime. Towards the end of the project, on 11 October 2006, SFD wrote to LSML summarising the findings from its visit.
- 4.3. SFD's findings are summarised below.
- (1) It found no evidence in client files that it reviewed of how LSML had assessed affordability of recommended mortgage contracts as there was no recorded breakdown of the client's income and expenditure and/or an adequate explanation of how the clients were likely to be able to afford the recommended mortgage contracts.
 - (2) In cases where clients were self-certifying their income to lenders, LSML could not provide SFD with a satisfactory explanation about how it had assessed whether the clients' incomes were realistic and appropriate to their circumstances.

- (3) In cases where debt consolidation was being contemplated, it was not clear to SFD whether and how LSML had explained to the clients the implications of converting unsecured debt to secured debt, including the long-term cost of doing so. Also, LSML appeared not to have made and retained adequate records of information about the nature of the debt being consolidated.
 - (4) It was not clear to SFD from LSML's records why LSML had recommended particular regulated mortgage contracts to clients.
 - (5) Although appropriate in principle, in practice the "suitability letters" used by LSML were not adequate because they did not sufficiently address the specific needs and circumstances of individual clients.
 - (6) LSML could not demonstrate to SFD's satisfaction how it monitored and reviewed suitability of advice and training and competence issues.
- 4.4. The Principal of LSML replied in a letter dated 13 November 2006 saying that changes to its procedures had been instigated, including a budget planner, as a means of demonstrating a more accurate assessment of affordability and a self-certification affordability declaration for clients had been introduced for use in self-certification applications.
- 4.5. The matter was referred to the FSA's Enforcement Division ("Enforcement") on 23 October 2006.

Enforcement investigation

- 4.6. Enforcement reviewed a new sample of 25 client files. Conclusions from the review are summarised below.
- (1) In each client file, it was evident that the "affordability calculator" on LSML's template fact find document had not been completed and LSML could not in the period in issue readily demonstrate how the recommended mortgage contracts were suitable in terms of affordability.
 - (2) There was little evidence of steps having been taken to verify clients' income, and it was not possible to understand from the clients' files why, for example,

employed applicants had self-certified their incomes.

- (3) LSML did not have a non-advised sales process in place for circumstances in which its customers did not wish to take mortgage advice.
- (4) It was not possible to assess from LSML's records whether mortgage contracts that went beyond the clients' retirement ages were suitable and affordable into retirement.
- (5) LSML used generic "suitability letters" which had not been appropriately tailored to the clients' circumstances and were therefore capable of being misleading.
- (6) Where there was evidence that advisers' client files had been reviewed by LSML, Enforcement found no particular evidence that discrepancies had been identified and addressed. For example, in reviewing advisers' work, the general failure to complete the affordability calculator had not been identified and acted upon.
- (7) As the Principal devoted much of his time to giving mortgage advice, it appeared that he had devoted insufficient time to management and oversight of LSML's sales process and supervision of its advisers.

4.7. LSML has recognised the need to improve its management and oversight arrangements and sales process and has made changes to its sales process to address the FSA's concerns, mainly in terms of improving its record keeping and ensuring that in future its sales process is adhered to.

Breaches of Principles

4.8. LSML failed to ensure that it made and retained adequate records of personal and financial information about its clients, including a lack of assessment of affordability and evidence of product research which might otherwise have indicated how it had recommended suitable regulated mortgage contracts. The failure is serious because it hindered the ability of LSML's management to carry out effective monitoring and checking of the suitability of recommendations to enter into regulated mortgage

contracts. This therefore demonstrated that LSML failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems and therefore demonstrates a breach of Principle 3. Consequently, lenders may have entered into mortgage contracts in circumstances where all relevant information about the customers' financial position had not been made available. Such a failure would also hinder any independent assessments completed by a third party such as the FSA's supervision staff, and the Financial Ombudsman Service if any customer complaints needed to be investigated.

- 4.9. LSML's management failed to demonstrate to the FSA's satisfaction that it had taken reasonable steps to ensure that client files and suitability of advice were monitored and reviewed. It failed to identify and act upon the failure at LSML to complete the affordability calculator. It also failed to put in place a system for non-advised sales.
- 4.10. LSML used a generic suitability letter. In practice, the individual suitability letters did not sufficiently address the specific needs of each individual client, and were therefore capable of misleading customers. LSML failed to pay due regard to the information needs of its clients and communicate information to them in a way which was clear, fair and not misleading. This demonstrates a breach of Principle 7.
- 4.11. While the FSA found no particular evidence of unsuitable advice, LSML's records were not adequate and a proper assessment could not be made. LSML has agreed to the appointment of a skilled person to report on whether, beneath the record keeping failures, LSML failed to make suitable recommendations, to help mitigate any risk to consumers. The skilled person will also report on the use of appropriate suitability letters and the effectiveness and use of the affordability calculator by LSML's advisers. LSML had introduced a new affordability calculator, however, there was no evidence it had been used.

Breaches of MCOB

- 4.12. LSML failed to take reasonable steps to ensure that the personal recommendation it made to a customer to enter into a regulated mortgage contract was suitable for that customer. Suitability letters sent by LSML were not specific enough. This demonstrates a breach of MCOB 4.7.2R.

- 4.13. LSML failed to retain adequate records of customer information and has therefore breached MCOB 4.7.17R.

5. ANALYSIS OF THE SANCTION

- 5.1. The FSA's general approach to taking disciplinary action is set out in Chapter 11 of the Enforcement Manual ("ENF"), which is part of the FSA's Handbook of rules and guidance. The purpose of taking disciplinary action, generally, is to show that regulatory standards are being upheld.
- 5.2. The FSA's policy on the imposition of financial penalties is set out in ENF 13. The principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating, generally, to firms and approved persons, the benefit of compliant behaviour (ENF 13.1.2G).
- 5.3. In determining whether a financial penalty is proportionate, the FSA will take into account all the relevant circumstances of a case. ENF 13.3.3 sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty, which include the following:

ENF 13.3.3(1): The seriousness of the misconduct or contravention

- 5.4. The FSA 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 placed at risk. The misconduct hindered the ability of LSML's management to monitor and check the suitability of advice. It hindered the ability of any third parties to make assessments as necessary. Also, its use of generic suitability letters ran the risk of confusing its customers.

ENF 13.3.3(2): The extent to which the misconduct was deliberate or reckless

- 5.5. The FSA found no evidence that the conduct in issue was deliberate or reckless. Nevertheless, the FSA required the appointment of a skilled person to review a

sample of LSML's past business and to report on whether, beneath the record keeping failures, LSML failed to make suitable recommendations to help mitigate any risk to consumers.

ENF 13.3.3(3): Size, financial resources and other circumstances of the firm

- 5.6. The FSA is satisfied that LSML has the means to pay the level of financial penalty imposed on it. In determining the level of penalty, the FSA has also taken into account the likely cost of appointing a skilled person.

ENF 13.3.3(4): The amount of profits accrued or loss avoided

- 5.7. The FSA found no evidence that LSML sought to make profit or avoid loss by the approach taken to record keeping or by the failure in its systems and controls.

ENF 13.3.3(5): Conduct following the contravention

- 5.8. The FSA has taken into account LSML's willingness to take all reasonable steps to satisfy the FSA that it will comply with regulatory requirements on an on-going basis. LSML has agreed to appoint a skilled person to undertake work to assess a sample of client files in terms of suitability of advice and to produce a report which may include, as appropriate, any further remedial steps. LSML also reviewed the documents used during its sales process and made suitable changes to address the FSA's concerns.

ENF 13.3.3(6): Disciplinary record and compliance history

- 5.9. LSML has no previous disciplinary record.

ENF 13.3.3(7): Previous action taken by the FSA

- 5.10. The FSA has taken into account penalties imposed on other authorised persons for similar and more serious conduct and also private warnings given to authorised persons for less serious conduct or more limited record-keeping failures.

6. DECISION MAKERS

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive decision makers on behalf of the FSA.

7. IMPORTANT

- 7.1. This Final Notice is given to LSML in accordance with section 390 of the Act. The following statutory rights are important.

Manner of and time for Payment

- 7.2. The financial penalty must be paid in full by LSML to the FSA by no later than 13 August 2007, 14 days from the date of this Final Notice.

If the financial penalty is not paid

- 7.3. If all or any of the financial penalty is outstanding on 14 August 2007, the FSA may recover the outstanding amount as a debt owed by LSML and due to the FSA.

Publicity

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

FSA contacts

7.6. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan
Head of Department
FSA Enforcement Division