

---

**FINAL NOTICE**

---

**To:** Mr Mohammed Habib (trading as MAH Mortgage and Finance)

**Address:** 242 Stoney Stanton Road  
Coventry  
CV1 4FP

**Date of Birth:** 19 September 1956

**Date:** 4 September 2008

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to impose a public censure on you.**

**1. THE ACTION**

1.1. The FSA gave you, Mr Mohammed Habib, trading as MAH Mortgage and Finance a Decision Notice dated 8 August 2008 (“the Decision Notice”) which notified you that pursuant to section 205 of the Financial Services and Markets Act 2000 (“the Act”) the FSA has decided to impose a public censure on you. The public censure is imposed on the basis that: you have agreed to vary your Part IV permission so that you can not carry on any regulated activity; and you undertake certain remedial action (as further detailed at paragraph 2.4 below). This action is in respect of breaches of Principle 9 of

the FSA's Principles for Businesses ("the Principles"), and of the rules in Chapter 4 of the section of the FSA's Handbook entitled "Mortgages and Home Finance: Conduct of Business Sourcebook" ("MCOB"), between 31 October 2004 and 11 January 2008 ("the relevant period").

- 1.2. Were it not for your current personal financial difficulties, the FSA would have imposed a financial penalty on you for the amount of £22,500.
- 1.3. You confirmed on 8 August 2008 that you will 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 you the facts and matters relied upon, the FSA hereby imposes a public censure on you.

## **2. REASONS FOR THE PUBLIC CENSURE**

2.1. The FSA has concluded that, during the relevant period, you failed to take reasonable care to ensure the suitability of advice given to customers.

2.2. The FSA has made the following findings.

- (1) You failed to take reasonable steps to ensure the suitability of your advice in breach of Principle 9 in that you:
  - (a) failed to obtain from customers, and make records of, sufficient information to demonstrate the suitability of your advice, including information about their particular needs, preferences and personal and financial circumstances;
  - (b) failed to ensure that you carried out and documented appropriate assessments of the affordability of recommended mortgage contracts, thereby exposing customers to the risk of being recommended a mortgage contract that they may not be able to afford;
  - (c) failed to verify any of the income-related information provided by customers where you ought to have been aware that income information supplied was or could have been inaccurate;

- (d) recommended self certification mortgages where there was a lack of documentary evidence to justify and explain the recommendation;
- (e) recommended lending into retirement where there was no assessment of the affordability of the mortgage into retirement and no documentary evidence to justify and explain the recommendation;
- (f) failed to record how or the reasons why particular mortgage contracts were recommended, in particular, to record evidence of any product research being carried out; and
- (g) recommended mortgage contracts which appeared not to take into account customers' stated needs and circumstances by, for example, recommending interest only mortgages to customers who, according to your files, had indicated that having the certainty of their mortgages being repaid in full at the end of the term was a key requirement.

2.3. Your failures are regarded by the FSA to be serious for the following reasons.

- (1) The failure to obtain and record sufficient personal and financial information about customers meant that the suitability of advice could not be demonstrated, and all customers were therefore exposed to the risk of being recommended an unaffordable and/or unsuitable mortgage contract. These failings were systematic weaknesses in your procedures.
- (2) Lenders may have carried out their MCOB 11 “responsible lending” assessments in circumstances where the information regarding customers' financial positions made available by you was inaccurate.
- (3) The widespread record keeping failures identified by the FSA would 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 need to be investigated.

- (4) The failure to ensure that you implemented remedial action, as instructed by the FSA, creates a risk that customers may not have been provided with suitable advice in every case during the period of enhanced supervision.
- 2.4. The FSA has taken into account the following steps taken by you which are regarded as mitigating factors.
- (1) You cooperated fully with the FSA's investigation.
  - (2) Since the FSA's visit in June 2007 you have improved your mortgage sales process and voluntarily agreed for a third party compliance consultant to undertake supervision of all of your mortgage sales prior to submitting an application to a lender.
  - (3) You have agreed that a third party compliance consultant will carry out an independent past business review with a view to identifying all unsuitable recommendations and assessing customer detriment (and to pay redress to customers where appropriate).
  - (4) You have agreed to vary your Part IV Permission so that you can not carry on any regulated activity from 30 September 2008. The FSA notes that you have not submitted any new business since 8 August 2008.

### **3. STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS**

- 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. The FSA has the power, pursuant to section 205 of the Act, to impose a public censure where the FSA considers an authorised person has contravened a requirement imposed upon it by or under the Act.
- 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. The relevant Principle breached is Principle 9 (Customers: relationships of trust), which requires 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 judgement.

- 3.4. The MCOB rules which have been breached, and details of the guidance to which the FSA has had regard, are set out in Annex 1 to this notice.
- 3.5. Details of the FSA's policy on imposing a public censure are also set out in Annex 1 to this notice.

#### **4. FACTS AND MATTERS RELIED ON**

##### **Background**

- 4.1. You are a sole trader operating as a mortgage broker in Coventry. You are authorised to carry on the following regulated activities:
  - (1) advising on investments \*(except on Pension Transfers and Pension Opt Outs);
  - (2) advising on regulated mortgage contracts;
  - (3) agreeing to carry on a regulated activity;
  - (4) arranging (bringing about) deals in investments\*;
  - (5) arranging (bringing about) regulated mortgage contracts;
  - (6) making arrangements with a view to regulated mortgage contracts; and
  - (7) making arrangements with a view to transactions in investments\*.

\* in respect of non-investment insurance contracts only
- 4.2. During the relevant period you were the only mortgage adviser at MAH Mortgage and Finance.
- 4.3. You have not been the subject of any previous disciplinary action by the FSA.
- 4.4. You were one of a number of mortgage brokers to be visited by the FSA's Small Firms Division ("SFD") in 2007 as part of its "self certification and affordability of mortgage contracts" project. During the visit initial file reviews identified serious concerns about the suitability of your advice and as a result you voluntarily agreed to have all future mortgage sales signed off by your external compliance consultant prior to submitting a

mortgage application to a lender to ensure that all of your mortgage sales were compliant with Principle 9 and MCOB.

- 4.5. After the visit a review of twenty three of your mortgage files (which included all mortgage business in 2007) confirmed the concerns about the suitability of your mortgage advice. As a result you were one of seven mortgage brokers to be referred to the FSA's Enforcement Division (“Enforcement”) from this project.
- 4.6. An aggravating factor in this case is that you failed to act in a prompt and timely manner on the advice of your external compliance consultant in contravention of a formal supervision agreement put in place by the FSA during its supervision visit in 2007. In June 2007 you agreed with the FSA supervision team to have all future mortgage sales signed off by your external compliance consultant prior to submitting an application to a lender and this included implementing any remedial action advised by the consultant. You received a report from your compliance consultant four months on, in October 2007, which demonstrated that, whilst improvements had been made to the standard of the files submitted for review, you failed to act upon the advice of your external compliance consultant in relation to implementing all the recommendations and/or taking remedial action, as instructed by the FSA.
- 4.7. However, the two latest compliance reports of January and March 2008 have been provided to the FSA and demonstrate that you are now complying with the supervision arrangement in that the remedial actions are being implemented.

**Failure to take reasonable care to ensure the suitability of your advice**

- 4.8. Enforcement reviewed a sample of twenty of your mortgage sales files and identified the following main issues and concerns about the suitability of your advice in relation to your regulated mortgage business.
- 4.9. You did not always obtain and/or record information about customers' mortgage needs and preferences, creating a risk that you recommended mortgage contracts without having reasonable grounds to conclude that the contracts were appropriate to the customers' needs and circumstances and were therefore suitable.

- 4.10. You did not always gather and record sufficient and/or accurate information about customers' personal and financial circumstances to demonstrate the affordability, and therefore suitability, of the mortgage contracts recommended. In particular, we found insufficient information regarding customers' incomes, occupations, outgoings, and credit status. Where information had been gathered we found some of the information to be implausible or inconsistent. As a result you exposed customers to the risk of being recommended a mortgage contract that they may not be able to afford.
- 4.11. You did not always make adequate assessments of the customer's ability to afford regulated mortgage contracts. In some instances you used the client's gross annual income when making an assessment of the affordability of the mortgage contract, rather than the net annual income. Furthermore, in seventeen of the twenty files reviewed the affordability assessments were based on the lenders' introductory interest rates with no consideration given to affordability following the end of the discount periods of the recommended mortgage contracts. As a result of these inaccurate assessments you exposed customers to the risk of being recommended a mortgage contract they may not be able to afford and, in one instance, you failed to recognise that, based on the information recorded on the fact find regarding income and expenditure, the customer would not have been able to afford the monthly mortgage repayments after the discount period at the reversionary interest rate.
- 4.12. In self-certified lending cases there was no evidence on any of the files reviewed that you took any assessment of the income being self-certified where, taking a common-sense view, you ought to have been aware that income information supplied was or could have been inaccurate. As a result, it is possible that in some circumstances the self certification mortgage recommended may have been unaffordable and/or unsuitable.
- 4.13. Where you recommended a self-certification mortgage there was a lack of documentary evidence to justify the recommendation. For example, in all cases reviewed where the customer was self employed (fifteen cases) you recommended a self certification mortgage. Out of these cases twelve failed to record why self employed income could not be proven and in some instances there was information on file which suggested that accounts were available to verify income.

- 4.14. In four of the cases reviewed customers were advised by you to take out regulated mortgage contracts beyond their normal retirement age. In all cases there was no assessment of affordability into retirement and there was no documentary evidence on file to justify and explain the recommendation, including information about any pension or other provision in place.
- 4.15. In all of the cases reviewed you failed to make and retain records to explain why particular products were recommended and therefore failed to demonstrate their suitability. In particular, you are required to recommend the mortgage contract that is the least expensive for the customer taking into account the pricing elements identified by the customer as being the most important to them. There was no evidence on any files reviewed that you had undertaken any product research prior to recommending mortgage contracts to demonstrate that you had recommended the least expensive mortgage. Therefore there is a risk in every case that mortgage contracts were recommended to customers without having reasonable grounds to conclude that the recommended contracts were the most suitable of those available.
- 4.16. In seven of the cases reviewed you recommended mortgage contracts which may not be suitable taking in to account customers' needs and circumstances, by recommending interest-only mortgages to customers who, according to your files, wanted the certainty of their mortgage being repaid in full at the end of the term (and where there was no documented evidence of any discussion about repayment vehicles or timescales for moving to capital and interest contracts).
- 4.17. The failure to obtain and record accurate information about customers' stated needs and preferences and personal and financial circumstances and the failures to undertake any product research prior to recommending mortgage contracts are breaches of MCOB 4.7.2R and MCOB 4.7.4R (1).
- 4.18. The failure to gather and record on the customers' files the facts and matters supporting the assessment of suitability are breaches of MCOB 4.7.17R.
- 4.19. As a result of the failings referred to above you did not have regard to customers' stated needs and circumstances in breach of MCOB 4.7.2R and MCOB 4.7.4R (1).



4.20. Many of these failures appear to have been systematic. You repeatedly failed to accurately record a customer's ability to be able to repay a mortgage and how or why recommended mortgage contracts were selected.

4.21. As a result of the failings referred to at paragraphs 4.8 to 4.20 above you failed to take reasonable care to ensure the suitability of your advice for customers who were entitled to rely upon your judgement in breach of Principle 9.

## **5. ANALYSIS OF THE SANCTION**

5.1. The FSA considered the seriousness of the contraventions by you, including the nature of the requirements breached, whether the breaches identified were deliberate or reckless, the number and duration of the breaches and the number of customers placed at risk.

5.2. Although the FSA found no evidence that the conduct in issue was deliberate, we concluded from our review of customer files that there was a risk in every case that the customer may have been given unsuitable advice.

5.3. The FSA has taken into account that you have not been the subject of previous disciplinary action by the FSA, your cooperation with the FSA's investigation and your willingness to take all reasonable steps to satisfy the FSA that regulatory requirements will be met by you on an on-going basis.

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

5.5. The FSA would normally have sought to impose a financial penalty on you for the amount of £22,500. However, because you provided verifiable evidence that you would suffer serious financial hardship if the FSA imposed a financial penalty, the FSA considered the appropriate action to be a public censure.

## **6. DECISION MAKER**

- 6.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

## **7. IMPORTANT**

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

### **Publicity**

- 7.2. 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.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

- 7.4. For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240).

Jonathan Phelan  
Head of Department  
FSA Enforcement Division

## **ANNEX 1: Relevant rules and guidance**

### **MCOB 4.7 Advised sales**

**MCOB 4.7.2 R:** 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 (see MCOB 4.3.4 R (2), MCOB 4.3.5 G and MCOB 4.3.6 G).

**MCOB 4.7.4 R:** For the purposes of MCOB 4.7.2 R:

- (1) 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.

**MCOB 4.7.7 E:** For the purposes of 4.7.4.R (1) (a):

- (2) In assessing whether a customer can afford to enter into a particular regulated mortgage contract, a firm should give due regard to the following:
  - (a) information that the customer provides about his income and expenditure, and any other resources that he has available;
  - (b) any likely change to the customer's income, expenditure or resources; and
  - (c) the costs that the customer will be required to meet once any discount period in relation to the regulated mortgage contract comes to an end (on the assumption that interest rates remain unchanged).

**MCOB 4.7.8 G:** For the purposes of 4.7.4 R (1) (a) a firm may generally rely on any information provided by the customer, unless taking a common-sense view of this information it has reason to doubt it.

**MCOB 4.7.13 E:** In relation to MCOB 4.7.4 R (1) (c), a firm should, out of all the regulated mortgage contracts identified as being appropriate for that customer, recommend the one that is the least expensive for that customer taking into account those pricing elements identified by the customer as being most important to him.

**MCOB 4.7.17 R:** Record keeping.

- (1) A firm must make and retain a record:
  - (a) of 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
  - (b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2 R satisfies the suitability requirements in MCOB 4.7.4 R (1). This explanation must include, where this is the case, the reasons why a personal recommendation has been made on a basis other than that described in MCOB 4.7.13 E(1).
- (2) The record in (1) must be retained for a minimum of three years from the date on which the personal recommendation was made.

### **MCOB 11.3 Responsible lending**

**MCOB 11.3.1 R (1):** A firm must be able to show that before deciding to enter into, or making a further advance on, a regulated mortgage contract, or home purchase plan, account was taken of the customer's ability to repay.

### **The FSA's policy on the imposition of a public censure**

- (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. It was previously set out in Chapter 12 of the Enforcement Manual (ENF). 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.

(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;

- DEPP6.4.2G (1): Whether or not deterrence may be effectively achieved.
- DEPP6.4.2G (2): If the person has made a profit or avoided a loss as a result of the breach.
- DEPP6.4.2G (3): The seriousness, nature and degree of the breach.
- DEPP6.4.2G (5): If the person has admitted the breach and provides full and immediate co-operation to the FSA.
- DEPP6.4.2G (8): The impact on the person concerned. If the person has inadequate means to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. It would only be in an exceptional case that the FSA would be prepared to agree to issue a public censure rather than impose a financial penalty. Examples of such exceptional cases could include where there is:
  - a) verifiable evidence that a person would suffer serious financial hardship if the FSA imposed a financial penalty;
  - b) verifiable evidence that the person would be unable to meet other regulatory requirements, particularly financial resource

requirements, if the FSA imposed a financial penalty at an appropriate level.

(3) Corresponding provisions are set out in ENF 12.3.3 G, 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. These include the following:

- ENF 12.3.3 G (1): If the approved person has made a profit or avoided a loss as a result of the breach or misconduct.
- ENF 12.3.3 G (2): The seriousness and nature of the breach duration and frequency of the misconduct.
- ENF 12.3.3 G (3): Whether the approved person has admitted the breach or misconduct and provides full and immediate co-operation to the FSA.
- ENF 12.3.3 G (6): If the approved person has inadequate means to pay the level of financial penalty which their breach or misconduct would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to impose a public statement rather than a financial penalty. Examples of such exceptional cases could include:
  - a) verifiable evidence that an approved person would suffer serious financial hardship if the FSA imposed a financial penalty; and
  - b) verifiable evidence that the firm would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level.