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**FINAL NOTICE**

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**To: Mandrake Associates Limited**

**Of: Alexandra House  
33 Alexandra Road  
Wisbech  
Cambridgeshire  
PE13 1HQ**

**Date: 17 July 2008**

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

**1. ACTION**

1.1. The FSA gave Mandrake Associates Limited ("MAL/the Firm") a Decision Notice on 17 July 2008 which notified the Firm that pursuant to Section 205 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to issue a public censure about Mandrake Associates Limited ("MAL/the Firm") in respect of breaches of:

- (1) Principle 6 (Customers' interests) of the Principles for Businesses ("PRIN");  
and
- (2) FSA rules: Dispute Resolution: Complaints ("DISP") 1.2.1R, 1.2.22R, 1.4.4R, 1.4.5R, 1.6.1R and DISP 3.9.14R at the time in force,

which occurred between 1 October 2002 and 9 October 2006 ("the Relevant Period").

- 1.2 In deciding to take this action, the FSA has had regard to the financial position of the firm and the undertakings given by it. Were it not for these factors the FSA would have sought to impose a financial penalty of £400,000.
- 1.3 MAL agreed to settle this matter and will not be referring the matter to the Financial Services and Markets Tribunal.

## **2. REASONS FOR THE ACTION**

- 2.1. The action is in respect of breaches of the FSA Rules and Principle identified in paragraph 1.1 that occurred between 1 October 2002 and 9 October 2006. These breaches relate to MAL's use of complaint handling procedures which were inappropriate in terms of ensuring the fair handling and appropriate investigation of its mortgage endowment complaints and MAL's failure subsequently to identify and remedy endemic problems in its handling of mortgage endowment complaints.
- 2.2. During the Relevant Period, the conduct of MAL fell below the standards expected under the regulatory system for the following reasons:
  - (1) MAL failed to ensure that its mortgage endowment complaints handling procedures were operating effectively, failed to provide adequate resources for the handling of mortgage endowment complaints and failed to ensure that complaint handling personnel were trained to carry out fair and unbiased investigations. In addition, MAL failed to finalise complaints within a reasonable time and failed to provide complainants with updates about the progress of investigation in a timely fashion.

The overall effect of the mortgage endowments complaints process at MAL in the Relevant Period was a complaint handling system that resulted in an enhanced risk of the rejection and/or delay of potentially valid complaints. MAL prioritised matters other than complaints handling and sought to avoid liability which would entail the payment of redress to complainants. MAL was required by the FSA to stop handling complaints on 7 August 2006 until it

provided the FSA with a remedial plan to improve the quality of its complaint handling. At this time, MAL still had 1,248 complaints to conclude which had been outstanding for an average of 18 months. Having regard to these factors, MAL failed to pay due regard to the interests of its customers and treat them fairly in breach of Principle 6; and

- (2) MAL failed to ensure that it had in place effective internal complaints handling procedures and failed to ensure that the procedures that were in place were operating effectively. MAL did not take reasonable steps to ensure that it handled complaints fairly, consistently and promptly nor did it provide all relevant complainants with the requisite updates at 4 weeks and 8 weeks following the receipt of complaints. MAL also failed to comply with the requirement to cooperate fully and promptly with the directions of the Financial Ombudsman Service (“the Ombudsman”). Having regard to these factors, MAL failed to comply with the requirements set out in DISP 1.2.1R, 1.2.22R, 1.4.4R, 1.4.5R, 1.6.1R and 3.9.14R at the time in force.

2.3. The Firm’s failings are viewed by the FSA as being particularly serious for the following reasons:

- (1) the failings in MAL's mortgage endowment complaints handling continued over a four year period and were endemic in nature. MAL was aware that its complaint handling process would be likely to result in a low number of complaints being upheld. MAL also avoided or delayed having to finalise decisions and pay redress in respect of mis-sold endowment policies and in doing so, disregarded the interests of the complainants. Customers whose endowment mortgage complaints were rejected or delayed inappropriately were exposed to the risk that they would not receive compensation to which they may have been entitled, either at all or on a timely basis;
- (2) the Firm's failings exposed a large number of customers to potential financial loss. Between 1988 and 2000, MAL sold approximately 17,412 endowment mortgage policies. Between 1 October 2002 and 9 October 2006 MAL received complaints about 2,127 endowment mortgage policies. As clients

complained about multiple policies, the number of individual complainants was approximately 10% less.

- (3) the failings occurred at a time when there was a high level of awareness within the financial services industry of the importance of handling mortgage endowment complaints properly, particularly in light of points raised in the letters written by John Tiner, then a Managing Director of the FSA, to chief executives of mortgage endowment product providers ('the Tiner letters') setting out the FSA's concerns about mortgage endowment complaint handling;
- (4) the failings also occurred in the Firm's knowledge of the risk that it was engaging in a course of conduct that undermined its ability to pay due regard to its customers' interests and thereby breached the requirements of the regulatory system, having regard to the Firm's previous dealings with regulators; and
- (5) MAL did not react swiftly or robustly to rectify the defects in its complaint handling process.

2.4. In considering these matters the FSA has taken account of the fact that during the Relevant Period, the Firm faced competing priorities and was engaged in litigation for the purposes of securing payments for redress arising out of its Pension Review. This litigation placed pressure upon the resources of MAL and impacted the establishment of contingency plans.

2.5. The outstanding Financial Ombudsman Service awards from the Relevant Period are now up to date.

2.6. In addition, the Firm has undertaken to:

- (1) engage a suitably qualified and independent consultant to assess an ongoing sample of its mortgage endowment complaints decisions; and
- (2) resolve its current outstanding mortgage endowment complaints within 12 months.

2.7. MAL's failures would ordinarily merit the imposition of a substantial penalty but for the factors set out at paragraph 1.2 above.

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

3.1. Section 205 of the Act provides:

*“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect”.*

#### **FSA’s Principles for Businesses**

3.2. FSA Principle 6 provides that a firm must pay due regard to the interests of its customers and treat them fairly.

#### **Complaint handling**

3.3. During the Relevant Period, DISP rules 1.2.1R, 1.2.22R, 1.4.4R, 1.4.5R, 1.6.1R and 3.9.14R at the time in force, applied.

3.4. DISP 1.2.1R provides that a firm must have in place and operate effective internal complaint handling procedures.

3.5. DISP 1.2.22R provides that a firm must put in place appropriate management controls and take reasonable steps to ensure that it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems as well as any specific problem identified by a complaint.

3.6. DISP 1.4.4R states that a firm must, within four weeks of receiving a complaint, send the complainant either a final response or a holding response, which explains why it is not yet in a position to resolve the complaint and indicates when the firm will make further contact (which must be within eight weeks of receipt of the complaint).

3.7. DISP 1.4.5R provides that a firm must, by the end of eight weeks after its receipt of a complaint, send the complainant either a final response or a response which explains that the firm is still not in a position to make a final response, gives reasons for the further delay and indicates when it expects to be able to provide a

final response; and informs the complainant that he may refer the complaint to the Ombudsman if he is dissatisfied with the delay and encloses a copy of the Ombudsman's explanatory leaflet.

- 3.8. DISP 1.6.1R provides that a firm must cooperate fully with the Ombudsman in the handling of complaints against it. The relevant guidance in DISP 1.6.2G provides that cooperation with the Ombudsman includes, but is not limited to, producing requested documents, adhering to any specified time limits, attending hearings when requested to do so and complying promptly with any settlements or awards.
- 3.9. DISP 3.9.14R (version in effect from 1 June 2003) provides that a firm must comply promptly with any money award or direction made by the Ombudsman or any award of money or other award made by an ombudsman appointed under the PIA Ombudsman scheme (including any interest payable by order of the PIA Ombudsman or the Ombudsman).

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

##### **The Firm - background**

- 4.1. MAL was established in 1974 as a firm of Independent Financial Advisers with its Head Office in Wisbech, Cambridgeshire. It provided advice in relation to a range of products including endowment mortgages (and in particular low cost endowment ("LCE") mortgages). Historically, MAL derived its mortgage business from two principal markets: the military (50%) and through its association with Countrywide's estate agency and relocation service (around 30%).

##### **Disciplinary and other relevant history**

- 4.2. Before the formation of the FSA, the endowment market was regulated by the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) until 1995, and the Personal Investment Authority (PIA) until 2001. MAL was regulated by the Personal Investment Authority ("PIA") until 1 December 2001 when the FSA assumed responsibility for its regulation.

- 4.3. MAL was the subject of disciplinary action by the PIA in September 1998 arising out of a monitoring visit which identified inadequate complaints handling procedures, training and competence procedures and compliance procedures.
- 4.4. On 28 March 2006 MAL applied to vary its permissions not to dispose of, deal with or diminish the value of any of its assets without the prior consent of the FSA.
- 4.5. On 26 July 2006, MAL again applied to vary its permissions so that it could not undertake any regulated activities.

### **Regulatory context**

- 4.6. The failings occurred at a time when there was a high level of awareness within the industry of the issues surrounding mortgage endowment sales and associated concerns regarding the handling of complaints regarding mortgage endowment sales.
- 4.7. The FSA publicly stated in December 1999 that an industry-wide review of mortgage endowment sales along the lines of the Pensions Review would be disproportionate and in October 2000 that the appropriate mechanism for delivering redress in relation to mis-sales of mortgage endowments was through the complaints handling processes of firms.
- 4.8. The importance of mortgage endowment complaint handling processes was highlighted again in November 2000, via PIA Regulatory Update 80, and again in July 2001, via PIA Regulatory Update 91.
- 4.9. On 4 April 2002, John Tiner, then a Managing Director at the FSA, sent a letter to all major firms who acted as product providers or financial advisers in relation to mortgage endowment policies. This letter set out the FSA's concerns about the way in which complaints about mortgage endowment were being dealt with. Most notably, its purpose was to accentuate the importance of fair handling of complaints. Firms were asked to respond to the letter and to review and, if necessary, to revise their complaints handling procedures in the light of the concerns expressed.

- 4.10. The Tiner Letter included an annex which listed specific action points to enable firms to avoid unfairness in respect of their handling of mortgage endowment complaints ("the Tiner Points").
- 4.11. In December 2004, the FSA sent another letter to the chief executives of larger mortgage endowment firms and financial advisers, advising that while many firms were achieving the required standards for complaints handling, some were not. The 2004 Tiner Letter specifically mentioned the high uphold rate of complaints referred to the Ombudsman as a point of concern.
- 4.12. The 2002 and 2004 Tiner Letters were available on the FSA's website together with information on regulatory standards and the processing of mortgage endowment complaints.
- 4.13. The FSA issued a further report in July 2005 called *"Mortgage Endowments: Progress report and next steps"* which stated that supervisory work, and potentially enforcement, would be vigorously pursued against those firms that still fall short in their complaints handling. Firms were strongly advised to ensure that they were in a position to handle any increases in complaints that may arise as a result of the sending out of 'red' projection letters, and of time bars implemented by some firms.
- 4.14. On 10 November 2005, MAL was placed on the list of worst performers based on a rolling three month average of several indicators.
- 4.15. In December 2005, the FSA wrote to MAL stating that:

*"Mandrake Associates Limited had the largest proportion of cases outstanding over 8 weeks old of all the firms that report to the FSA, with an average of 97%. Furthermore, the number of complaints outstanding each month has risen consistently and where cases are being closed the firm appears to be rejecting the complaint in virtually every case."*

The FSA requested details of the Firm's proposed remedial action.



- 4.16. In a letter dated 23 January 2006, MAL stated that the analysis of the endowment complaints and establishment of contingency plans had been delayed due to the impact of an ongoing legal dispute with a third party on the resources of the Firm.
- 4.17. Between January 2006 and June 2006, the FSA was in contact with MAL on no less than five occasions at which the backlog of outstanding complaints and outstanding Ombudsman's awards that were yet to be paid were highlighted and requests for action were made. MAL did not comply with the deadlines citing a lack of resources due to the awaited court ruling in its legal dispute.
- 4.18. On 7 August 2006 MAL was asked by the FSA to stop handling complaints until it had satisfied a number of conditions relating to its procedures and plans for dealing with mortgage endowment complaints handling.

#### **Mortgage endowment complaint handling**

- 4.19. In the period from 1 October 2002 to 9 October 2006, MAL received complaints about 2,127 mortgage endowment policies from clients who alleged that MAL had mis-sold them an endowment mortgage ("the Complainants"). As some clients complained about multiple policies, the number of individual complainants is approximately 10% less. Of those complaints, MAL concluded and rejected 624 and upheld none.

#### ***The process for handling complaints***

- 4.20. The procedure for handling and processing complaints is set out in the Firm's Complaints Handling Procedures which states that the Firm would comply with all the procedural requirements of the Ombudsman and which required members of MAL staff to familiarise themselves with the complaints handling procedures.
- 4.21. The contents of MAL's complaints handling procedures also incorporated the relevant rules set out in DISP particularly in relation to the requirements to update complainants within specified time limits. Broadly the process for dealing with complaints was as follows:

- (1) all complaints were to be forwarded to the Firm's Compliance Officer, for investigation by him or by one of his staff. The complaint was to be acknowledged within 5 days and investigated '*promptly and fully*';
- (2) the complaint investigator was required to notify the member of staff involved in the complaint and obtain a report from him / her within 10 days;
- (3) the procedure gave the complaint investigator discretion to determine the most appropriate method of carrying out the investigation provided that it was carried out '*objectively and thoroughly*' and '*the final determination will be made by reference to all the evidence secured and on a balance of probabilities*';
- (4) the complaint investigator was then required to update the complainant at 4 weeks and 8 weeks after receipt of the complaint in those cases where the investigation had not been concluded; and
- (5) after 8 weeks the complainant is to be notified of their option to refer the case to the Financial Ombudsman Service (if not already so advised).

#### ***MAL's Complaints Handling Team***

- 4.22. MAL's complaints were handled by a team consisting of a senior member of staff who had responsibility for dealing with complaints and an assistant. Oversight of this function remained with a director of MAL, who while not having day to day involvement in complaints handling, signed off any complaints decision letters where the complaints handler had been the sales advisor.
- 4.23. The director was involved in designing the complaints handling procedures at a high level and carried out checks on the figures in the Complaints' Register at least four times a year from July 2005.

## The Conduct

### *Principle 6*

- 4.24. FSA Principle 6 provides that a firm must pay due regard to the interests of its customers and treat them fairly. However, the overall effect of the manner in which mortgage endowment complaints were handled at MAL in the Relevant Period was such that enabled MAL to avoid or delay liability which would entail the payment of redress to complainants. As such MAL failed to pay due regard to the interest of complainants and treat them fairly.
- 4.25. The failings in the way MAL handled its mortgage endowment complaints are as follows:

#### Unfair handling of complaints

- 4.26. MAL failed to have in place effective procedures to ensure the fair handling of complaints. It failed to provide formal training on how to deal with and, if necessary, accept complaints, how to calculate redress and failed to provide any guidance on the issues highlighted in the Tiner letters to its complaints handlers. Senior management provided very limited guidance to complaints handlers and such that was provided was limited to examples of FDLs drafted by other members of staff.
- 4.27. MAL also failed to take reasonable steps to ensure that complaints handlers took an objective and thorough approach to investigating complaints. Senior management confirmed in interview that, “...*the policy is basically not to uphold complaints because we don’t feel that we mis-sold...*”
- 4.28. Senior managements’ belief that sales advisers would not have mis-sold policies meant that they believed the need to contact sales advisers to establish what had been said at the point of sale could be dispensed with. Complaints handlers did not obtain reports from the sales advisers concerned in 98% of cases, as required by the Firm's own internal procedure, causing potentially valuable evidence to be ignored. The Firm has stated that it did this because it thought that all the report

would be substantially the same, namely, that the adviser would not remember the particulars of the sale.

- 4.29. In 36 of the 52 (68%) complaints files reviewed, one of the reasons for rejection was the assertion that the initial sales adviser would not have made assurances that the LCE policy was guaranteed to pay off the mortgage loan at the end of the term. However, only one file contained any evidence of the sales adviser being contacted for his recollection of the sale.
- 4.30. Complaint handlers also made unjustifiable assumptions about the nature of the information that sales advisers may or may not have provided to the client at the point of sale.
- 4.31. Reliance was placed on the assumption that the customer was provided with documents namely the house purchase booklet and/or a Home Buyer's Guide at the point of sale as evidence that the customer was aware of the risks that a LCE mortgage was not guaranteed to pay off the mortgage loan at the end of the policy term. However, the 1997 version of this Guide makes no reference to the risks associated with an endowment policy and does not state that there is no guarantee that the policy will pay off the loan. The 2000 version was updated to include these warnings. It is to be noted that 1,882 of the complaints recorded in the Complaints' Register relate to sales that pre-date the 1997 version of the Home Buyer's Guide.
- 4.32. In 33 of the 52 (63%) complaints files reviewed, the Firm relied upon the assumption that certain key documents such as the house purchase booklet, would have been supplied to the customer at the time of the initial consultation and/or subsequent sale of the endowment policies without proof that these key documents were in fact supplied to the customer.
- 4.33. Complaints were also rejected on the assumption that customers with pre-existing endowment policies were aware of the risks associated with the product and could not have been the victim of mis-selling. MAL applied this assumption despite specific guidance in the 2002 Tiner Letter which advised Chief Executive Officers ("the CEOs") to avoid rejecting complaints simply on the basis of the existence of a prior endowment policy at the time of the sale.

- 4.34. In 26 of the 52 (50%) complaints reviewed, one of the reasons for rejection cited in the Final Decision Letter ("FDL") was the assumption that the complainant understood the nature of the product and its risks because he/she had previously held an endowment policy.
- 4.35. MAL demonstrated, at the very least, a selective attitude to the evidence relied upon to determine the complainant's attitude to risk by accepting the customer's responses that supported the sale of an endowment policy but ignoring the answers that indicated the possibility of an endowment being unsuitable. As such MAL failed to ensure that complaints handlers applied a consistent approach to dealing with mortgage endowment complaints, particularly when considering customers attitude to risk.
- 4.36. One of the reasons cited for rejection in the FDL was that the complainant's attitude to risk was consistent with the sale of a LCE policy. The evidence from complaints handlers indicated that even where customers had indicated their attitude to risk as being 1 out of 10 they would be reticent to accept this at face value and would look to pre-existing investments held by the complainant which in their view would indicate that the customers did not have as low an attitude to risk as he/she indicated. However, where complainants assessed their attitude to risk as 2 or more out of 10, their complaint was rejected on the strength of the answer.
- 4.37. In 22 of the 52 (42 %) complaint files one of the stated reasons for rejecting the complaints was that the complainant's attitude to risk was consistent with the sale of a LCE despite MAL having no record on the client file of the client's attitude to risk at the point of sale. In all 22 files (i.e. where attitude to risk is a feature) it was noted however, that MAL determined originally that an LCE was appropriate irrespective of the complainant's stated attitude to risk.
- 4.38. MAL rejected complaints on the basis that they were time barred. However there was insufficient evidence in 8 out of the 52 (15%) complaints files to show that the customer had received the appropriate 'red projection letters' which would enable the Firm to ascertain the appropriate time limits.

4.39. Across the Relevant Period, the Ombudsman was finding in favour of complainants in approximately 10% of cases. This included some cases where MAL had not issued a Final Decision Letter. Where MAL had issued a Final Decision Letter, the Ombudsman overturned MAL's decision and found in favour of the complainant in approximately 10% of cases.

#### ***Prompt handling***

4.40. Between 1 October 2002 and 9 October 2006, the Firm's complaints register shows that MAL received 2,127 mortgage endowment complaints. Of this number, the Firm closed 809 of which 624 were rejected by the Firm. The remaining 185 were either withdrawn by the Complainants prior to being considered by MAL or have been referred directly to the Ombudsman.

4.41. Of the 1,318 complaints that are shown as being open within the complaints register, 229 complainants have referred their cases to the Ombudsman even though MAL had failed to complete its assessment of the complaints. The remaining 1,089 complaints have remained unresolved.

4.42. Of the 1,089 unresolved complaints, 552 complaints have been unresolved for over a year as at 9 October 2006 with another 173 being unresolved for over 2 years. On average they had been outstanding for 18 months.

4.43. When MAL did conclude a complaint, it took an average of 7 months to send out an FDL to the complainants.

4.44. Furthermore, in 65% of the files reviewed by the FSA, a draft FDL had been lying on the file for an average of 117 days (almost 4 months) before being sent to the complainant. During this period no further investigation was carried out by MAL.

4.45. The periods stated above indicate that MAL failed to deal with complaints promptly.

#### ***Failure to update customers***

4.46. MAL's complaints register shows that the Firm only sent a final response or holding response within 4 weeks in 20% of the mortgage endowment complaints

which would require such a letter with a further 46% of required letters being sent a week later.

- 4.47. The complaints register shows that a further update as required within 8 weeks was complied with in only 10% of complaints received in the Relevant Period with a further 27% of required letters being sent within a further week. The failure to provide all relevant complainants with an update within 4 weeks and 8 weeks respectively are also in contravention of the Firm's own procedures.

***Failure to cooperate with the Ombudsman***

- 4.48. MAL failed to comply with the requirement to cooperate fully and promptly with the directions of the Ombudsman. The Firm failed to pay redress in connection with the final decisions of the Ombudsman that were decided in favour of the complainant within a reasonable time.
- 4.49. As of 9 October 2006, the Ombudsman made 40 decisions against MAL and in favour of the complainant. Of those 40 final decisions made in favour of the complainant, 21 awards remained to be paid as at 9 October 2006 which had been outstanding for an average of 12 months. In one case payment has been outstanding for two and a half years. In the 19 cases where redress is shown to have been paid by MAL, the complainants waited, on average, 12 months for payment.
- 4.50. The average award, as at 9 October 2006, paid by MAL in the 19 cases in which it has paid redress was approximately £2,500.

***Failure to adequately resource complaints handling***

- 4.51. MAL failed to employ sufficient staff to process the complaints it received. This issue had been highlighted by the FSA previously and by the Firm's complaints handlers in 2005. MAL acknowledged the inadequacies in this area to the FSA on a number of occasions and was aware of the likelihood of further increases in the number of complaints received by the Firm. The Firm's complaints register shows a marked increase in the number of complaints received by the Firm during the relevant period. The number of complaints received by the Firm increased from 69

in 2002 to 248 in 2003, 452 in 2004 and 816 in 2005. These increases resulted in a significant backlog of cases being carried forward from year to year resulting in a backlog of 1,089 complaints by October 2006. MAL's response to the problems was wholly inadequate.

### **DISP breaches**

#### ***DISP 1.2.22R***

4.52. The facts and matters set out in paragraphs 5.6 to 5.25 above demonstrate that MAL breached DISP 1.2.22R by failing to have in place appropriate management controls and by failing to take reasonable steps to ensure that it handled complaints fairly, consistently and promptly.

#### ***DISP 1.4.4R & 1.4.5R***

4.53. MAL's failure to provide complainants with an update within 4 weeks is in contravention of the Firm's own procedures and a breach of FSA rule DISP 1.4.4R and the failure to provide 90% of complainants with a further update within 8 weeks is a breach of FSA rule DISP 1.4.5R.

#### ***DISP 1.6.1R & 3.9.14R***

4.54. As stated at paragraph 4.48, MAL failed to comply with the requirement to cooperate fully and promptly with the directions of the Ombudsman. The Firm failed to pay redress in connection with the final decisions of the Ombudsman that were decided in favour of the complaint within a reasonable time. These failures amount to breaches of FSA rules DISP 1.6.1R and 3.9.14R.

#### ***DISP 1.2.1R***

4.55. DISP 1.2.1R provides that a firm must have in place and operate effective internal complaint handling procedures.

4.56. As set out at paragraph 4.21 above, MAL's complaints handling procedures incorporated, among other things, the requirement for complaints handlers to investigate complaints fully and promptly, to obtain a report from the member of



staff involved in the complaint and update complainants within specified time limits.

4.57. The facts and matters set out at paragraphs 4.26 to 4.51 above demonstrate that the Firm's procedures were not followed in a number of material ways. In particular:

- (1) complaint handlers did not obtain reports from the sales advisers concerned in 98% of cases, as required by the Firm's own internal procedure, causing potentially valuable evidence to be ignored;
- (2) the procedures required investigations to be carried out '*objectively and thoroughly*', however complaints handlers were evaluating complaints with a view to rejecting complaints on the basis that MAL's endowment sales procedures were so sound that a mis-sale was inconceivable. The Firm's senior management believed sales advisers would not have mis-sold policies and the reports would be substantially the same and as such dispensed with the need to contact them to establish what had been said at the point of sale;
- (3) MAL failed to send a final response or holding response in the majority of complaints; and
- (4) MAL failed to provide updates to complainants beyond 8 weeks.

4.58. In addition to failing to operate its existing procedures effectively, MAL failed to ensure that it had in place effective internal complaints handling procedures. In particular:

- (1) MAL failed to employ sufficient staff to process the complaints it received and to deal with its backlog of cases; and
- (2) MAL failed to provide complaint handlers with formal training on complaints handling or on its internal complaints handling procedures.

4.59. Having regard to the facts and matters above, in failing to ensure that it had in place effective internal complaints handling procedures and in failing to ensure that the procedures that were in place were operated effectively, MAL breached DISP 1.2.1R.

## **5. ANALYSIS OF THE BREACHES**

- 5.1. In the period from 1 October 2002 and 9 October 2006, MAL breached regulatory rules and a principle in relation to its handling of mortgage endowment complaints received from customers.

### ***PRIN 6***

- 5.2. In failing to ensure that ‘thorough and objective’ investigations were carried out; failing to provide complaints handlers with appropriate training to ensure that staff were applying the proper procedure when handling complaints; and failing to provide sufficient resources to enable complaints to be dealt with promptly, MAL failed to treat its customers fairly.
- 5.3. The consequence of the inadequacies of mortgage endowment complaints handling procedures at MAL is that complaints which would have otherwise have been upheld or processed under an appropriate complaint handling system were placed at risk of rejection and/or delay. In this regard MAL failed to pay due regard to the interests of its customers in breach Principle 6.

### ***DISP breaches***

- 5.4. Throughout the Relevant Period, MAL failed to ensure that that its internal complaints handling procedures as set out at paragraph 4.20 to 4.21 were operating effectively; failed to provide complainants with updates, or cooperate fully and promptly with the directions of the Ombudsman. These matters demonstrate that MAL failed to comply with the requirements of DISP, in particular DISP 1.2.1R, 1.2.22R, 1.4.4R, 1.4.5R, 1.6.1R and DISP 3.9.14R at the time in force in respect of the handling of its mortgage endowment complaints.

## **6. ANALYSIS OF SANCTION**

- 6.1. By virtue of MAL's use of complaint handling procedures that were inappropriate in terms of ensuring the fair handling and appropriate investigation of its mortgage endowment complaints and that MAL failed subsequently to identify and remedy

endemic problems in its handling of mortgage endowment complaints, MAL's conduct fell below the standard required of an authorised person.

- 6.2. In considering whether to issue public censure, the FSA has considered the need to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.
- 6.3. The FSA has had regard to the provisions of its policy on the issue of public censure set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP 6") in respect of conduct occurring after 28 August 2007. Regard has also been had to Chapter 12 of the Enforcement Manual ("ENF") which forms part of the FSA Handbook in relation to conduct occurring prior to 28 August 2007. Paragraphs 12.3.3 of ENF and 6.4.2 of DEPP set out a non-exhaustive list of factors of particular relevance in determining whether it is appropriate to issue a public censure.
- 6.4. The FSA considers that MAL's actions are serious and its failings:
  - (1) continued over a four year period and were endemic. MAL was aware that its complaint handling process would be likely to result in a low number of complaints being upheld. MAL acted to improperly avoid or delay having to finalise decisions and pay redress in respect of mis-sold endowment policies and in doing so, disregarded the interests of the complainants. Customers whose endowment mortgage complaints were rejected or delayed inappropriately were exposed to the risk that they would not receive compensation to which they may have been entitled, either at all or on a timely basis;
  - (2) exposed a large number of customers to potential financial loss. Between 1988 and 2000, MAL sold approximately 17,412 endowment mortgage policies. In the Relevant Period of the investigation, MAL received 2,127 complaints all in respect of policies which were sold during 1988 and 2000;

- (3) occurred at a time when there was a high level of awareness within the financial services industry of the importance of handling mortgage endowment complaints properly particularly in light of points raised in the Tiner letters setting out the FSA's concerns about mortgage endowment complaint handling;
- (4) also occurred in the Firm's knowledge of the risk that it was engaging in a course of conduct that undermined its ability to pay due regard to its customer's interests and thereby breached the requirements of the regulatory system, having regard to the Firm's previous dealings with the regulator; and
- (5) MAL has not reacted swiftly or robustly to rectify the defects in its complaint handling process

6.4 All of these factors would ordinarily merit the imposition of a substantial financial penalty. However the FSA considers that in accordance with DEPP 6.4.2(8)G as mirrored by ENF 12.3.3(6)G, there are exceptional circumstances under which the Firm's inability to pay the level of financial penalty which their conduct would ordinarily attract could be dealt with by way of a public censure. In this case there is evidence that MAL has insufficient resources to pay a financial penalty in addition to dealing with and paying the outstanding customer complaints.

6.5 On 28 March 2006, MAL voluntarily varied its permissions not to dispose of, deal with or diminish the value of any of its assets without the prior consent of the FSA. On 26 July 2006, MAL again applied to vary its permissions so that it could not undertake any regulated activities. The Firm has also committed to undertakings which include the following:

- (1) engage a suitably qualified and independent consultant to assess an ongoing sample of its mortgage endowment complaints decisions; and
- (2) resolve its current backlog of outstanding complaints within 12 months of the date of the settlement.

**7. DECISION MAKERS**

7.1. The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for the purposes of the FSA's Decision Procedures and Penalties manual (DEPP).

**8. IMPORTANT**

8.1. This Final Notice is given to MAL in accordance with section 390, of FSMA.

8.2 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.

**FSA contacts**

8.3 For more information concerning this matter generally, please contact Stephen Robinson (direct line: 020 7066 1338) of the Enforcement Division of the FSA.

Georgina Philippou .....

Project Sponsor, for and on behalf of the FSA