
FINAL NOTICE

To: **Mortgage Network Solutions**

Of: **C4/Broad oak Business Park
Ashburton Road West
Trafford Park
Manchester
M17 1RW**

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 publish a statement about Mortgage Network Solutions.

1. ACTION

- 1.1. The FSA gave Mortgage Network Solutions (“MNS”) a Decision Notice on 30 July which notified MNS that, pursuant to section 205 of the Financial Services and

Markets Act 2000 (“the Act”), the FSA had decided to publish a statement about the contravention by MNS of Principle 3 (Management and control) of the FSA’s Principles for Businesses, for record keeping failures between 31 October 2004 and 21 September 2006 (“the relevant period”).

1.2. The following rules are also relevant and MNS has not demonstrated compliance with them:

(1) FSA Handbook of rules and guidance (“FSA Handbook”) entitled Mortgages and Home Finance: Conduct of Business sourcebook (“MCOB”): MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.17R; and

(2) FSA Handbook entitled Training and Competence (“TC”): TC 2.5.1R and TC 2.8.1R.

1.3. MNS confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.4. Accordingly, for the reasons set out below, having agreed with MNS the facts and matters relied on, the FSA will publish a statement about the contravention by MNS of Principle 3 of the FSA’s Principles for Businesses for record keeping failures during the relevant period.

2. REASONS FOR THE ACTION

2.1. The FSA proposes to publish a statement about the contravention of Principle 3 for the following record keeping failures in relation to advising and arranging regulated mortgages.

Terms of the statement

- 2.2. MNS failed to make and retain appropriate records of information relating to customers' needs and circumstances, including affordability assessments which, in turn, limited the ability of its management, compliance consultants and regulatory bodies to assess whether suitable recommendations to enter into regulated mortgage contracts had been made.
- 2.3. MNS also failed to keep adequate records of its training and competence procedures and it could not, therefore, demonstrate how it assessed the training and competency of its advisers. Behind this record keeping failure, it failed to ensure that its mortgage advisers were appropriately qualified and that part-qualified advisers were being adequately supervised.
- 2.4. MNS also failed to fully understand the TC requirements in that, for example, it permitted an unqualified adviser (who had failed to complete the Certificate in Mortgage Advice and Practice ("CeMAP") qualifications within two years of becoming CeMAP qualified) to have client contact and it failed to ensure that between September 2006 and November 2006, two MNS advisers were adequately supervised.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

FSA's Principles for Businesses

- 3.1. Section 205 of the Act provides that:

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

- 3.2. The FSA's Principles for Business 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.

- 3.3. Principle 3 provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.
- 3.4. In considering the standards required under Principle 3, the FSA has also considered the specific requirements of MCOB 4.7.2R, MCOB 4.7.4R, MCOB 4.7.17R, and TC 2.5.1R and 2.8.1R.

MCOB

- 3.5. MCOB 4.7.2R provides 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.
- 3.6. MCOB 4.7.4R provides 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.
- 3.7. MCOB 4.7.17R provides that a firm must make and retain a record (1) 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 (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).

TC

- 3.8. TC 2.5.1R(1) provides that a firm must ensure that an employee under supervision passes an appropriate examination within the time specified in TC 2.5.1A R and, for this purpose, a firm must record the date on which the employee began engaging in or overseeing the relevant activity.
- 3.9. TC2.5.1R(3) provides that a firm must ensure that any employee who does not pass an appropriate examination within the specified time (a) ceases to engage in or oversee the activity and (b) does not resume the activity or oversee the activity without first passing an appropriate exam.
- 3.10. TC2.8.1R(1) provides that a firm must make appropriate records to demonstrate compliance with the TC rules.

4. FACTS AND MATTERS RELIED UPON

Background

- 4.1. MNS is a mortgage broker and a packager. A large part of MNS' business is the arrangement of sub-prime mortgage contracts for individuals who are not always able to obtain "high street" mortgages. Many of MNS' clients re-mortgage and consolidate debt.
- 4.2. The main regulated activities carried on by MNS are advising on and arranging regulated mortgage contracts.
- 4.3. MNS 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 ("Enforcement") from the project.
- 4.4. The FSA's Small Firms Division ("SFD") visited MNS in September 2006.

- 4.5. The matter was referred to Enforcement on 23 October 2006.

Investigation

- 4.6. Enforcement found evidence of widespread record keeping failures, a failure in some cases to complete affordability calculations, a failure to understand and implement appropriately certain TC requirements and a failure over a period of three months to supervise two advisers.

Customer sales and record keeping

- 4.7. Enforcement reviewed a sample of 15 client files, which were selected at random from MNS' business register. Conclusions from the review are summarised below.

- (1) The level of information contained on the client file was insufficient to demonstrate suitability for the purposes of MCOB Rule 4.7.2R.
- (2) The level of information gathered by MNS about the clients' personal and financial circumstances in certain cases was insufficient to satisfy the requirements of MCOB 4.7.4 R. The relevant information was missing from the files to demonstrate that the mortgage contract was appropriate to the needs and circumstances of the customer.
- (3) There was a lack of evidence retained on the client files to demonstrate what research had been undertaken by MNS' to support its recommendation (MCOB 4.7.13E and MCOB 4.7.14G).

- 4.8. These failures are serious in that they hindered the ability of MNS' senior management to check the suitability of recommendations to enter into regulated mortgage contracts. It also meant that lenders may have entered into mortgage contracts where all relevant information about the customers' financial position may

not have been made available. Furthermore, it had the potential of hindering any independent assessments carried out, as necessary, by third parties such as the FSA.

Recruitment, training, qualifications and oversight of mortgage advisers

- 4.9. MNS did not keep adequate records for its trainee and qualified advisers, and could not, therefore, demonstrate how it assessed and reviewed training needs and the training and competence of its advisers. If MNS had maintained adequate records, it might well have identified for itself its failure to comply with TC requirements relating to advisers' qualifications and supervision arrangements.
- 4.10. Nevertheless, it appears that MNS did organise training on a regular basis at MNS, and advisers had regular informal and undocumented meetings within MNS where current sales, career progress and training needs were discussed.
- 4.11. MNS has accepted that it failed to properly understand the relevant TC requirements, namely:
- (1) the need for advisers having direct contact with customers to hold the regulatory module of a relevant exam (and that three advisers had such client contact but were not appropriately qualified); and
 - (2) the need to ensure that advisers who take more than two years to become CeMAP qualified should not be involved in the advice process.
- 4.12. MNS incorrectly took the view that the two year time period began from 31 October 2004, when MNS became regulated. Due to this misunderstanding, MNS allowed an adviser to continue to have unsupervised client contact after he had failed to complete CeMAP qualifications within the two year period.
- 4.13. While the activities of advisers were ultimately supervised by a qualified mortgage adviser on a desk-based review basis, between September 2006 and November 2006 it

appears that two advisers may not have been adequately supervised because of changes to the management and oversight arrangements.

Conclusion

- 4.14. The FSA has concluded, and MNS accepts, that MNS failed to take reasonable care to organise and control its affairs responsibly and effectively by failing to keep adequate records of recommendations to customers and, in relation to training and competence of advisers, by misinterpreting and misunderstanding TC requirements, and by failing to ensure that advisers were, at all times, adequately supervised.
- 4.15. MNS has breached Principle 3 of the Principles for Businesses and MCOB 4.7.2R, 4.7.4R, 4.7.17R and TC 2.1.1R and 2.8.1R as detailed at paragraphs 4.7 to 4.13.

5. ANALYSIS OF THE SANCTION

- 5.1. The FSA's policy in deciding whether to take disciplinary action in general is set out in Chapter 11 of the Enforcement Manual ("ENF") and its policy in deciding to impose a public censure, in particular, is set out in Chapter 12 of ENF. The principal purpose of disciplinary action is 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.
- 5.2. ENF 11.4.1G provides that in determining whether to take disciplinary action, the criteria listed in ENF are not exhaustive and all relevant circumstances of the case will be taken into consideration.
- 5.3. ENF 12.3.3G provides that in determining whether it is appropriate to issue a public censure rather than impose a financial penalty, the starting point is that the FSA considers all the relevant circumstances of the case. The FSA has taken into account the potential and actual impact of MNS' record keeping failures and the mitigating

factors summarised below in deciding what regulatory enforcement, if any, is appropriate.

- (1) When interviewed, MNS' management demonstrated, despite the inadequacy of its records, a detailed knowledge of the business and of customers' personal and financial circumstances.
- (2) MNS promptly acknowledged the alleged record keeping failures, and agreed to undertake appropriate remedial action.
- (3) Enforcement found no particular evidence to suggest that the advice given by MNS was unsuitable, but MNS agreed to the appointment of a skilled person to report on whether, behind the record keeping failures, there was any risk that its customers were recommended unsuitable mortgage contracts.
- (4) MNS co-operated fully with the Enforcement investigation.

Remedial action taken by MNS

- 5.4. MNS has restructured and engaged a new compliance consultant to help ensure that it complies with regulatory requirements. Currently MNS has one sales adviser, who is appropriately qualified and who is now responsible for training and sales.

6. OTHER MATTERS

Disciplinary record and compliance history

- 6.1. MNS has not been subject to any previous disciplinary action.

7. DECISION MAKER

- 7.1. 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.

8. IMPORTANT

- 8.1. This Final Notice is given to MNS under section 205 of the Act and in accordance with section 390 of the Act. The following statutory rights are important.

Publicity

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

FSA contacts

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

Jonathan Phelan
Head of Department
FSA Enforcement Division