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## **FINAL NOTICE**

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**To:** Mr Peter Scott, trading as The Mortgage House

**Of:** 25 Freshwater Parade  
Bishopric  
Horsham  
West Sussex  
RH12 1QD

**Date:** 15 May 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 requirement to pay a financial penalty:

### **1. THE PENALTY**

- 1.1. The FSA gave you, Mr Peter Scott, trading as The Mortgage House, a Decision Notice on 15 May 2008 (“the Decision Notice”) which notified you that, for the reasons set out below and pursuant to section 206 of the Financial Services and

Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £11,900 on you in respect of breaches of Principles 3 and 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 the current date (“the relevant period”). The relevant Principles and rules are reproduced in Annex 1 to this Notice.

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

2.1. The FSA has concluded that, during the relevant period, you failed to take reasonable steps to ensure the suitability of advice given to customers and failed to take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems.

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 (Customers: relationships of trust) in that you:
  - (a) failed to satisfy the FSA that you obtained from customers and made records of sufficient information to demonstrate the suitability of your advice, including information about their particular needs and preferences, and personal and financial circumstances;
  - (b) did not in all cases verify income-related information provided by customers in circumstances where this information was inconsistent with other information provided by them during the sales process; and
  - (c) failed to record reasons why particular mortgage contracts were recommended, including details of product research.
- (2) You failed to take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3 (Management and control), in that:
  - (a) you failed to take reasonable steps to implement systems and controls to ensure compliance with the relevant regulatory requirements, in

- (b) you failed to ensure that you had a sufficiently clear understanding of the regulatory requirements imposed by the FSA aimed at ensuring that customers are treated fairly,

thereby failing to ensure that you conducted business in compliance with the FSA's requirements.

2.3. You agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this reduction the FSA would have imposed a financial penalty of £17,000 on you.

2.4. These failures are considered by the FSA to be serious for the following reasons.

- (1) The failure to 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 unsuitable mortgage contracts. Some customers may not therefore have been recommended the most appropriate or suitable mortgage contracts.
- (2) Lenders may have carried out their MCOB 11 "responsible lending" assessments in circumstances where the information regarding customers' financial positions made available by the mortgage broker 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 implement systems and controls to monitor the suitability of the advice given to customers means that there is a risk that customers have been recommended mortgage contracts that are unaffordable or inappropriate to their particular needs and circumstances, and therefore unsuitable.

- (5) Your failure to ensure that you had a sufficiently clear understanding of the regulatory requirements imposed by the FSA or to take steps to implement adequate systems of compliance control creates a risk that customers have not been treated fairly and may not have been provided with suitable advice in every case.

2.5. The FSA has taken into account the following mitigating factors.

- (1) You have co-operated fully with the FSA's investigation.
- (2) A skilled person will undertake a past business review with a view to identifying any unsuitable recommendations (identifying customer detriment with redress to customers where appropriate, the cost of which will be met by you.

### **3. STATUTORY PROVISIONS, GUIDANCE 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 206 of the Act, to impose a financial penalty of such amount as it considers appropriate 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 Principles breached are as follows:

- (1) Principle 3 (Management and control): A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

- (2) Principle 9 (Customers: relationships of trust): 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.

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

##### **Background**

4.1. You are a sole trader operating as a mortgage broker in the Horsham area. You employed one other adviser at another location. You became authorised on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:

- (1) advising on regulated mortgage contracts;
- (2) agreeing to carry on a regulated activity;
- (3) arranging (bringing about) regulated mortgage contracts; and
- (4) making arrangements with a view to regulated mortgage contracts.

4.2. On 14 January 2005, you were granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) arranging (bringing about) deals in investments;
- (3) dealing in investments as agent; and
- (4) making arrangements with a view to transactions in investments in respect of non-investment insurance contracts.

4.3. You have not been the subject of any previous disciplinary action by the FSA.

- 4.4. You were visited by the FSA in 2007 as part of its “self-certification” and “affordability of mortgage contracts” projects. You were one of seven mortgage brokers to be referred to the FSA’s Enforcement Division from these projects.
- 4.5. The FSA visited you on 17 August 2007. During the visit, the FSA reviewed a sample of 15 client files.
- 4.6. Based on the visit and reviews of your files, the FSA identified the following main issues of concern about your regulated business:
- (1) the lack of information obtained and recorded about customers’ needs and circumstances, such as details relating to credit history and status, anticipated retirement age, and savings and investments;
  - (2) the adequacy of affordability assessments and, in particular, the lack of information obtained and recorded about customers’ outgoings, incomes and occupations;
  - (3) the lack of information on client files as to why a particular product had been recommended, such as a lack of evidence of product research to demonstrate why the recommended mortgage contract was the most appropriate contract available;
  - (4) contradictory information found on client files in relation to incomes, such as inconsistent amounts stated on the fact find, the mortgage application forms and pay slips; and
  - (5) the absence of a training and competency programme.

#### **Analysis of breaches of Principles and rules**

- 4.7. You failed to gather and/or record sufficient information about customers' personal and financial circumstances to demonstrate the affordability, and therefore suitability, of the mortgage contracts recommended.
- 4.8. You did not always obtain and/or record information about customers' mortgage needs and preferences. In doing so this created the risk that mortgage contracts were

recommended without having reasonable grounds to conclude that the contracts were appropriate to the customers' needs and circumstances or were therefore suitable.

- 4.9. There was no evidence on files reviewed by the FSA that you took steps to verify the information provided by customers in circumstances where such information was inconsistent with documents such as payslips provided by customers in support of their mortgage applications, or with information recorded on fact find documents.
- 4.10. The FSA could see no evidence that you had undertaken any market research prior to recommending mortgage contracts, leading to a risk that, in some cases, mortgage contracts were recommended to customers without having reasonable grounds to conclude that the recommended contracts were the most suitable from those available. You failed to make and retain records to explain why particular products were recommended and therefore failed to demonstrate their suitability.
- 4.11. The failure to obtain and record information about customers' stated needs and preferences and the failures to undertake any market research prior to recommending mortgage contracts are breaches of MCOB 4.7.2R and MCOB4.7.4R (1).
- 4.12. The failure to gather and record on the customers' files the facts and matters supporting the assessment of suitability are breaches of MCOB4.7.17R.
- 4.13. As a result of the failings referred to above you did not have regard to customers' stated needs and preferences in breach of MCOB 4.7.2R and MCOB4.7.4R (1).
- 4.14. As a result of the failings referred to above at paragraphs 4.7 to 4.10 you failed to take reasonable steps to ensure the suitability of your advice for customers who were entitled to rely upon your judgement. This amounts to a breach of Principle 9.
- 4.15. You did not undertake any assessments of the quality of advice being given to customers and failed to identify whether your sales process ensured that customers were treated fairly in every case. You failed to conduct regular reviews of your business activities to enable you to identify and resolve any problems, and you had no training and competency programme. While you are a small business, such controls are particularly important because advice is also given through your business by another adviser who operated from an office in a different location to your offices.

- 4.16. You did not have a clear understanding of the FSA's regulatory requirements. By failing to ensure that you conducted business in a manner compliant with the FSA's requirements, you failed to mitigate the risk that customers were not being treated fairly in every case.
- 4.17. As a result of the failings referred to in paragraphs 4.15 and 4.16 above, you failed take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems. This amounts to a breach of Principle 3.

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

- 5.1. In imposing the financial penalty, the FSA has had regard to the guidance published in the FSA's Enforcement Guide ("EG") and Decision Procedures and Penalties Manual ("DEPP"). The FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during part of the relevant period in which the misconduct occurred. Details of the relevant guidance are set out in Annex 1.
- 5.2. The FSA considered the nature and seriousness of the contraventions by you, whether the breaches identified were deliberate or reckless, the number and duration of the breaches, and the number of customers placed at risk (278).
- 5.3. Although the FSA found no evidence that the conduct in issue was deliberate, we concluded from our review of 15 customer files that there was a risk in every case that the customer may have been given unsuitable advice.
- 5.4. The FSA has taken into account the fact that you have not previously been the subject of disciplinary action.
- 5.5. 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.
- 5.6. The FSA has taken into account your size and financial resources.



- 5.7. Having considered all the above circumstances, the FSA has determined that £17,000 (before any discount for early settlement) is the appropriate financial penalty.

## **6. DECISION MAKER**

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

## **7. IMPORTANT**

- 7.1. This Final Notice is given to you under section 206 and in accordance with section 390 of the Act.

### **Manner of and time for payment**

- 7.2. The financial penalty must be paid by you to the FSA in three instalments as follows: £3,900 to be received by the FSA on 2 June 2008, £4,000 to be received by the FSA on 1 July 2008, and £4,000 to be received by the FSA on 1 August 2008.

### **If the financial penalty is not paid**

- 7.3. If any of the instalments of the financial penalty are outstanding on the day after the due dates for payment, the FSA may recover the outstanding amounts as a debt owed by you 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 you 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.

### **Third party rights**

- 7.6. The FSA has not identified any third party to whom, in the opinion of the FSA, this matter is prejudicial.

### **FSA contacts**

- 7.7. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894, or fax: 020 7066 5895).

Jonathan Phelan  
Head of Department  
FSA Enforcement Division

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

### **MCOB 4.7 Advised sales**

**MCOB 4.7.2:** 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:** 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 4.7.5** In relation to MCOB 4.7.4 R(1)(a), a firm must explain to the customer that the assessment of whether he can afford to enter into a regulated mortgage contract is based on:

- (1) current interest rates, which might rise in the future; and
- (2) the customer's current circumstances, which might change in the future.

## **MCOB 4.7.17 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.

The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. Imposing financial penalties and public censures show that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.

The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP, which is a module of the FSA's Handbook of rules and guidance. The principal purpose of imposing a financial penalty 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 (DEPP6.1.2G).

The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which includes:

- DEPP6.2.1G(1): The nature, seriousness and impact of the suspected breach;

- DEPP6.2.1G(2): The conduct of the person after the breach;
- DEPP6.2.1G(3): The previous disciplinary record and compliance history of the person;
- DEPP6.2.1G(4): FSA guidance and other published materials; and
- DEPP6.2.1G(5): Action taken by the FSA in previous similar cases.

The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP6.5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which includes:

- DEPP6.5.2G(2): The nature, seriousness and impact of the breach in question
- DEPP6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
- DEPP6.5.2G(8): Conduct following the breach;
- DEPP6.5.2G(9): Disciplinary record and compliance history.