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**FINAL NOTICE**

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To: **Mortgages Remortgages Limited**  
Of: 4a Nether Hall Road  
Doncaster  
South Yorkshire  
DN1 2PW  
Date: **23 March 2009**

**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 Mortgages Remortgages Limited ("Mortgages Remortgages") a Decision Notice on 17 March 2009 which notified the Firm that pursuant to section 205 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to issue a public censure with regard to Mortgages Remortgages for breaches of Principle 9 (suitability of advice) of the FSA's Principles for Business ("Principles")

and related FSA Rules in relation to advised sales of regulated (self-certified) mortgage contracts between 1 January 2006 and 25 April 2008 (“the relevant period”)

- 1.2. The public censure takes into account the fact that Mortgages Remortgages has breached FSA Rules 4.7.2R, 4.7.4R, 4.7.6R and 4.7.17R in the part of the Handbook entitled Mortgages and Home Finance: Conduct of Business (“MCOB”). The details of these rules are set out in Annex 1 to this notice.
- 1.3. In taking this action, the FSA has had regard to the financial position of the firm. The misconduct identified by the FSA would ordinarily merit a fine of £20,000, however, the firm’s current resources are insufficient for it to pay such a fine and meet its regulatory requirements. Therefore, the FSA does not impose a financial penalty on the firm.
- 1.4. Mortgages Remortgages agreed to undertake a consumer contact and remediation exercise.
- 1.5. The public censure will be issued on 24 March 2009 and will take the form of this Final Notice, which will be published on the FSA’s website.

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

- 2.1. Based on the review of a sample of 20 out of 80 self-certified mortgages completed between January 2006 and April 2008 and a review of Mortgages Remortgages’ sales procedures and systems and controls during the relevant period, the FSA has concluded that Mortgages Remortgages failed to take reasonable care to ensure the suitability of advice given to customers. These breaches relate to the operation of Mortgages Remortgages’ self-certified mortgage sales process.
- 2.2. Mortgages Remortgages failed to take reasonable steps to ensure the suitability of its advice in accordance with Principle 9. In particular, Mortgages Remortgages could not demonstrate that it made appropriate enquiries about customers’ source of income, expenditure, credit history and debt position, so that it could properly assess the affordability of its recommendations; or demonstrate that it considered the plausibility of the income and expenditure declared.

2.3. The FSA considers that Mortgages Remortgages' failings are particularly serious due to the fact that a number of its customers were consolidating debts and/or appeared to have adverse credit histories. Mortgages Remortgages' conduct exposed its customers to potentially significant financial detriment by failing to give proper consideration to the long term implications of the products recommended, given their financial circumstances. Also the advice was based, in some instances, on inconsistent and incomplete information.

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

3.1. The FSA's statutory objectives are set out in section 2(2) of the Act. The relevant objectives for the purpose of this case are public awareness, the protection of consumers and the reduction of financial crime.

3.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purpose of protecting the interests of consumers.

3.3. 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".*

3.4. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. Breaching a Principle makes a firm liable to disciplinary action.

3.5. The Principles and Rules which are relevant to this matter are set out below.

#### **FSA's Principles for Businesses**

3.6. **Principle 9** (Suitability of advice) provides 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 on its judgement."*

## **FSA Rules and Guidance**

- 3.7. The relevant FSA Rules and Guidance are MCOB 4.7.2R, 4.7.4R, 4.7.6R, 4.7.8G and 4.7.17R. The details of these rules and relevant guidance and evidential provisions are set out in Annex 1 to this notice.

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

- 4.1. Mortgages Remortgages is a small firm of mortgage advisers based in Doncaster. It provides advice in relation to a range of mortgage products, including self-certified mortgages. It has been authorised and regulated by the FSA since 31 October 2004. Its authorised business also includes advising on insurance contracts.
- 4.2. Mortgages Remortgages has two directors. During the relevant period, there were five members of staff, three of whom were sales advisers selling mortgages for the firm.
- 4.3. The FSA visited Mortgages Remortgages in April 2006 and again in August 2007, as part of a thematic project looking at the sale of self-certified mortgage products.
- 4.4. During these visits, the FSA identified a number of deficiencies in relation to the recommendation of self-certified mortgages to customers. Following the August 2007 visit, the FSA commenced a formal investigation to ascertain the extent of the issues identified during the thematic project visit.
- 4.5. The FSA reviewed a sample of 20 customer files from a total of 80 self-certified mortgages completed during the relevant period as part of its investigation. The FSA was also provided with compliance manuals and file reviews conducted by an external compliance consultant engaged by Mortgages Remortgages.
- 4.6. The investigation covered Mortgages Remortgages' sales process, and focussed on the main consumer risk issues:
- (1) assessing whether a suitable recommendation could have been made from the information on file;
  - (2) establishing the adequacy of the information obtained from the customers; and

- (3) assessing the firm's procedures and systems and controls for ensuring the suitability of advice.

### **Summary of findings**

4.7. The file review revealed the following:

- (1) 10 of the 20 files (50%) reviewed related to customers who were in full-time PAYE employment and would not normally require a self-certified mortgage. Mortgages Remortgages did not appear to have raised questions about these cases;
- (2) none of the files (100%) reviewed contained sufficient evidence to demonstrate that Mortgages Remortgages properly assessed the plausibility of the income or expenditure stated;
- (3) 17 of the 20 files (85%) reviewed did not contain evidence of any assessment of plausibility of income;
- (4) 8 of the 20 files (40%) reviewed did not contain any evidence of research of options to be able to demonstrate why the particular mortgage was recommended;
- (5) 12 of the 20 files involved interest-only mortgages. In all of these, there was some evidence of discussions about, and/or disclosure of, a capital repayment vehicle or similar. However, on the basis of the evidence on file, those discussions were not adequate to enable Mortgages Remortgages to satisfy itself of the suitability of such mortgages for its clients and ensure that they were responsibly recommended;
- (6) 8 of the 20 files (40%) involved remortgaging for reasons of debt consolidation, but only 4 of those 8 files (50%) appeared to consider the appropriateness of debt consolidation and the implications of securing short term debts in this way.

## 5. ANALYSIS OF BREACHES

### Principle 9

#### *Suitability*

- 5.1. Mortgages Remortgages did not demonstrate that it took reasonable steps to ensure suitable advice was given to customers. In some instances, Mortgages Remortgages failed to demonstrate that the products it recommended were suitable for its customers.
- 5.2. Mortgages Remortgages could not demonstrate that it had made appropriate enquiries about customers' income, expenditure, credit history and debt position and so could not demonstrate that it had been able properly to assess the affordability of its recommendations. In addition, Mortgages Remortgages sometimes made recommendations on the basis of incomplete or inconsistent information and unsigned fact finds which suggests that the information relied on may have been incorrect:
- (1) None of the files contained a credit search despite apparent adverse credit histories in some files. For instance, in one case, the customer had 3 months' worth of mortgage arrears on his existing mortgage and a possession hearing was pending. In 15% of the cases, there were insufficient or no details given of the customer's monthly expenditure.
  - (2) In another case, the Fact Find stated that the customer received a Working Family Tax Credit ("WFTC") of £3,120 per year, notwithstanding the fact that the customer was stated to have no dependants. Although it is possible that an individual with no dependants might receive WFTC if their income is below a certain threshold, the individual involved appears to have been earning more than that threshold. There was no consideration of this issue on the file and there was also no evidence of the amount of credit he received.
- 5.3. Mortgages Remortgages could not demonstrate that it properly assessed the plausibility of income in relation to mortgages on a self-certification basis. In particular, Mortgages Remortgages could not demonstrate that it had conducted

checks where it would have been obvious to a reasonable person that checks were necessary. For example:

- (1) a self-employed plasterer based in Yorkshire stated that he earned £60,000 per year. This may have been high given that the average wage of an experienced plasterer is £26,000;
- (2) a self-employed shop fitter based in Doncaster stated that he had an annual income of £31,000. This may have been high given that the average wage of an experienced shop fitter is between £17,000 and £22,000; and
- (3) a car mechanic stated that he received £15,000 overtime on top of basic earnings of £27,500. Although there is conflicting information on the file as to whether the overtime was regular or guaranteed overtime, £15,000 may have been high given that it was over 50% of his basic salary.

There was nothing in these files to demonstrate that Mortgages Remortgages had sought and/or received adequate confirmation from the customer in order for Mortgages Remortgages to verify the nature of the customer's employment and assess the plausibility of the stated income.

- 5.4. Mortgages Remortgages failed to demonstrate why certain products were recommended. 40% of the cases reviewed contained no evidence of product research and/or no clear reason for the recommended product to demonstrate that it was the most suitable. For example, 8 of the 20 files (40%) reviewed did not include a list of the products sourced by the adviser and in 2 of the 20 files (10%), it was unclear why one product was picked over alternative products which offered a better rate.
- 5.5. On the basis of the matters above, Mortgages Remortgages could not demonstrate the suitability of its self-certified mortgage recommendations for its customers. Customers were therefore exposed to the risk of financial loss in the event that they had taken up unsuitable products.

### ***Monitoring***

- 5.6. Mortgages Remortgages retained an external compliance consultant ("the Consultant") throughout the relevant period. The Consultant appears to have carried

out a number of file checks and carried out 'one to one' sessions with the mortgage advisers at the firm.

- 5.7. During the relevant period, the Consultant checked 19 self-certification files (23%) and Mortgages Remortgages checked a smaller amount (one of seven (14%) self-certification files in the period August 2007 to April 2008).
- 5.8. Despite these checks and the extent of any feedback given to the advisers at Mortgages Remortgages, the failings identified at paragraphs 5.1 to 5.7 above indicate that the quality of the firm's recommendations did not improve over the period.
- 5.9. The facts and matters discussed in paragraphs 5.1 to 5.8 above demonstrate that Mortgages Remortgages breached Principle 9 of the FSA's Principles for Businesses. The FSA considers that the above paragraphs also demonstrate that Mortgages Remortgages breached MCOB 4.7.2R, 4.7.4R, 4.7.6R and 4.7.17R.

## **6. ANALYSIS OF THE SANCTION**

- 6.1. The FSA's policy on the issue of public censures and/or the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook and came into force on 28 August 2007. It was previously set out in Chapters 12 and 13 of the Enforcement Manual ("ENF"). As neither ENF nor DEPP were in force throughout the entirety of the relevant period of the investigation, the FSA considered both ENF and DEPP in deciding upon the outcome. Both ENF and DEPP set out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure or impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. The principal purpose of a public censure or financial penalty is to promote high standards of regulatory conduct by deterring firms who have committed breaches from committing further breaches and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of a compliant business.
- 6.2. The FSA considers that the following factors are relevant in this case.



## **Deterrence**

- 6.3. A public censure will deter Mortgages Remortgages from further breaches of regulatory rules and Principles. Equally, other firms will be deterred from following Mortgages Remortgages' practices and this will promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

## **The size, financial resources and other circumstances of the firm**

- 6.4. The FSA has taken into account the firm's size and financial resources and considers that the firm would be unable to pay any financial penalty imposed on it as well as complete the customer contact and remediation exercise and pay any resultant compensation.
- 6.5. Consideration of all of the factors set out below would ordinarily merit the imposition of a substantial financial penalty. However, the FSA considers that in accordance with DEPP 6.4.2G(8) and mirrored by ENF 12.3.3G(6), there are exceptional circumstances under which the firm's inability to pay the level of financial penalty should be dealt with by way of a public censure. This case falls within the exceptional circumstances category as there is evidence that Mortgages Remortgages has insufficient resources to pay a financial penalty. Further, if a financial penalty were imposed on Mortgages Remortgages, it would not be able to meet its regulatory requirements.

## **The nature, seriousness and impact of the breach in question**

- 6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious or systematic failings and the number of customers who were affected and/or placed at risk of loss. For the reasons set out below the FSA considers that the breaches in this case are of a serious nature:
- (1) the failings impacted customers who were financially vulnerable;
  - (2) failures in information gathering were widespread and systemic in nature;

- (3) due to deficiencies in fact finding, in recording of customers' personal and financial information (including evidence and reasons for recommendations) and verification of self-certified income, it was not possible for Mortgages Remortgages to demonstrate that it had considered the interests of its customers or that its customers had been treated fairly in terms of the affordability and suitability of recommendations; and
- (4) the failure to conduct adequate due diligence in respect of the evidence of income meant that Mortgages Remortgages could not adequately counter the risk that it might be used in connection with financial crime.

6.7. The FSA has taken into account the following matters which have served to mitigate the seriousness of its failings:

- (1) Mortgages Remortgages co-operated fully with the FSA investigation; and
- (2) Mortgages Remortgages agreed to undertake a customer contact and remediation exercise.

**The extent to which the breach was deliberate or reckless**

6.8. The FSA has found no evidence to show that Mortgages Remortgages acted in a deliberate or reckless manner.

**The amount of benefit gained or loss avoided**

6.9. The total fees and commissions from the total self-certified business written in the relevant period was £64,305.

**Disciplinary record and compliance history**

6.10. Mortgages Remortgages has not been the subject of previous disciplinary action.

**Other action taken by the FSA**

6.11. In determining whether to impose a public censure, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

**7. DECISION MAKERS**

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

**8. IMPORTANT**

8.1. This Final Notice is given to Mortgages Remortgages in accordance with section 390 of the Act.

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 Mortgages Remortgages or prejudicial to the interests of consumers.

**FSA contacts**

8.3. For more information concerning this matter generally, please contact Francesca Harte at the FSA (direct line: 020 7066 1482 / fax: 020 7066 1483).

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Jonathan Phelan

Head of Retail Enforcement, for and on behalf of the FSA