
FINAL NOTICE

To: **Park's of Hamilton (Holdings) Limited**

Of: **14 Bothwell Road
Hamilton
Lanarkshire
ML3 0AY**

Date: **20 August 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 Park's of Hamilton (Holdings) Limited ("Park's" or "the firm") a Decision Notice on 12 August 2008 which notified the firm that pursuant to Section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £61,600 on Park's. This penalty is in respect of breaches of Principles 9 and 6 of the FSA's Principles for Businesses ("the Principles") and associated rules between 14 January 2005 and 31 December 2007 ("the Relevant Period") in relation to advised sales of payment protection insurance ("PPI") from Park's car showrooms.
- 1.2. Park's confirmed on 8 August 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below and having agreed with Park's the facts and matters relied on, the FSA imposes a financial penalty on Park's in the amount of £61,600.
- 1.4. Park's agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £88,000 on Park's.

- 1.5. The level of penalty reflects the FSA's announcement in the PPI thematic update of 26 September 2007 that higher fines will be imposed where this is warranted by the nature, seriousness and impact of the breach in question, and by the likely impact on deterrence.

2. REASONS FOR THE ACTION

- 2.1. It is imperative that firms do not sell PPI unless they have appropriate systems and controls in place to ensure that their customers are treated fairly. An important part of this is that firms must properly consider information provided to them and its implications on whether their firm is complying with its regulatory obligations. Park's failed in both these respects and consequently breached the FSA's Principles and related rules in relation to its advised sale of PPI.
- 2.2. These breaches, which are described in more detail at sections 4 and 5 below, relate to Park's failure to:
 - (1) take reasonable care to ensure the suitability of its advice for any customer entitled to rely on its judgement (Principle 9); and
 - (2) pay due regard to the interests of its customers and treat them fairly (Principle 6).
- 2.3. In particular, the following failings in respect of Park's procedures for dealing with customers and its other systems and controls were identified:
 - (1) From January 2007 to December 2007, where Park's sales staff identified that a customer was eligible for a PPI product there was a significant risk that they recommended the highest level of cover available, rather than basing their recommendation on the suitability of the policy for the customer. The document used by the firm to monitor sales states that the largest highest level of cover should be recommended unless the customer is retired or a housewife. Completed monitoring checklists show that advisors were marked negatively if they did not recommend the highest level of cover. This meant that there was a significant risk that sales advisors were encouraged to recommend the highest level of cover without adequately investigating customers' circumstances to ascertain the suitability of the PPI product Park's recommended.
 - (2) From 14 January 2005 to May 2007 Park's did not require its sales staff to gather, and take account of, sufficient information about customers' personal circumstances and objectives when making recommendations, for example the importance of the cost of the policy to the customer, and information regarding any existing cover or pre-existing conditions the customer might have. Park's therefore did not take adequate steps to ensure that its recommendations were suitable.
 - (3) Throughout the relevant period, Park's did not provide its customers with adequate Statements of Demands and Needs ("SODANs") to explain why Park's had recommended a specific PPI policy.

- (4) From 14 January 2005 to early 2007 Park's did not provide its customers with a statement of price.
 - (5) Throughout the Relevant Period, Park's did not have effective systems to monitor its staff. In particular, the monitoring Park's undertook was a purely quantitative check, rather than assessing the quality of advice.
 - (6) Throughout the Relevant Period, where the firm's monitoring did identify failures to comply with regulatory requirements, Park's did not take adequate remedial action regarding those failures.
 - (7) Park's did not assess complaints received from customers at various times in the Relevant Period in a fair manner, and made unjustified and incorrect statements to complainants regarding the approach that the Financial Ombudsman Service ("FOS") would take in relation to their complaints.
- 2.4. The firm's failings exposed 714 customers to the unacceptable risk of buying PPI policies that were not suitable for them during the Relevant Period. As a result of this, and its complaints handling failures, Park's failed to treat its customers fairly.
- 2.5. The firm's failings are viewed as particularly serious because:
- (1) the failings arose against a background of a series of high profile communications by the FSA highlighting the need for firms to ensure that their PPI sales processes were meeting FSA requirements. In particular, the FSA published a report in November 2005 following its first phase of thematic work on PPI and a published a second report in October 2006 reporting on its second phase of thematic work;
 - (2) the breaches occurred over an extended period. Furthermore in early 2007 changes were made to monitoring which assessed staff against recommending the highest level of cover if the customer was eligible – three months after the publication of the second FSA thematic report on PPI, and after the firm had been regulated for two years; and
 - (3) Parks' amendments to the SODAN were not sufficient to ensure compliance with the FSA's Principles and rules.
- 2.6. Park's failings therefore merit the imposition of a substantial financial penalty. In deciding upon the level of disciplinary sanction, the FSA recognises that a factor which mitigates the seriousness of Park's failings is that it began issuing customers with a Statement of Price in early 2007, following the FSA's publication of the Final Notice with regards to Eastern Western Motor Group.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

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. Section 206 of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, ...it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate."

Principles for Businesses

3.3. The FSA's 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.

3.4. Principle 9 (customers: relationships of trust) states that:

"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement."

3.5. Principle 6 (customers' interests) states that:

"A firm must pay due regard to the interests of its customers and treat them fairly."

Rules and guidance

3.6. Relevant FSA rules and guidance are set out in Annex A to this Notice.

3.7. Details of the FSA's policy on imposing financial penalties are also set out in Annex A to this notice.

FSA communications regarding PPI during the Relevant Period

3.8. Prior to and during the Relevant Period, the FSA communicated to firms the importance of having in place robust systems and controls when selling PPI.

3.9. In November 2005, the FSA published on its website the results of the first phase of its thematic work on PPI, highlighting a number of key areas where firms were not treating their customers fairly. This report identified, amongst other things, that compliance monitoring was very poor in some cases. It also noted that in around two-thirds of firms selling on an advised basis, the SODAN was too generalised and lacking in customer-specific information to be of use to customers.

3.10. The November 2005 report also identified that if a firm gives advice it should review how the suitability assessment is made to ensure the adviser fully assesses the customer's need for PPI. Should it then go on to recommend a PPI policy to a

customer, a firm must clearly set out the reasons why it has concluded that a customer requires PPI and why it is recommending the policy.

- 3.11. The FSA reported on the second phase of PPI thematic work in October 2006. The FSA noted that for smaller firms, whose main business was not financial services, there was a risk of customer detriment from the lack of supervision of sales staff. The FSA also expressed its concern that some firms were still failing to establish that the PPI policies they recommended were suitable because they were not collecting sufficient information from the customer.
- 3.12. The report also stressed that the suitability assessment should take into account the relevance of any exclusions and limitations and that the SODAN must be tailored to the individual customer's circumstances.
- 3.13. The FSA visited Park's in April 2007 as part of a third phase of thematic work on PPI and identified a number of concerns relating to Park's sale of PPI.

4. FACTS AND MATTERS RELIED ON

Background

The firm

- 4.1. Park's main business is as a motor retailer. It also arranges loans and general insurance such as PPI, extended warranties or GAP (Guaranteed Asset Protection) policies in connection with customer's retail purchases.
- 4.2. The loans and PPI arranged by Park's are provided by third party loan and insurance companies. Park's used several different loan companies and associated PPI providers during the Relevant Period.
- 4.3. Park's has 15 branches across Scotland and approximately 19 branch advisers.
- 4.4. The FSA regulates Park's sales of PPI. Park's has been authorised to advise on and arrange non-investment insurance contracts since 14 January 2005.

The PPI products sold

- 4.5. Park's sold both regular and single premium PPI during the Relevant Period, from several different providers. The firm earned £153,035 in commission from these sales. The practice of selling single premium PPI ceased in May 2007.
- 4.6. Policies with different levels of cover were available. The most extensive policies covered, amongst other things, life, accident, sickness and involuntary unemployment. Other levels of cover available included life, accident and sickness only and life only.

The sales process

- 4.7. Park's sold PPI on an advised basis during the Relevant Period. Customers would visit a Park's branch and decide to purchase a car using finance. A Park's Business

Manager would then arrange the finance, discuss insurance options with the client, and make recommendations.

- 4.8. The FSA visited Park's on 25 April 2007 as part of its third phase of thematic work on PPI. The FSA identified a number of concerns about Park's PPI systems and controls.

The suitability assessment

- 4.9. From January 2007 to December 2007 the firm's monitoring procedure and documents stated that staff should recommend the highest (and therefore most expensive) level of cover unless the customer was retired or a housewife. This meant that there was a significant risk that recommendations were based upon the customer's eligibility for the product rather than on the product's suitability for the customer, and assumed that customers required full cover irrespective of their individual circumstances and without consideration of the difference in cost between the various types of cover available. This was despite staff receiving training on how to handle customer objections to the cover, including training for objections raised regarding the cost of the insurance.
- 4.10. From January 2005 to May 2007 the firm's documented procedures (including training, monitoring and sales documentation) did not require sufficient information to be collected and then properly used when recommending PPI.
- 4.11. The firm failed in particular to require advisers to gather and analyse sufficient information regarding either a customer's medical conditions or existing PPI cover. Following oral feedback from the FSA during the thematic visit in April 2007, Park's improved its documentation to request this information as part of the sales process.
- 4.12. In 2005 and 2006 Park's used a hard-copy SODAN with a free-text box to record the recommendation made. In 2007 Park's used an electronic SODAN with a similar free-text box. However, a review of 25 files by the FSA showed that in the 21 advised sales, none of the recommendations were adequately tailored to the needs of the customer.
- 4.13. The SODAN contained the wording "*based on the information you have given in your statement of demands, the advice that I now give you is based on a personal recommendation, and I recommend [the PPI policy] ... because:*". This was followed by reasons for the recommendation. Examples of inadequate reasons for recommendations from the files reviewed by the FSA include the following:
- (1) "*Advised*"
 - (2) "*Required*"
 - (3) "*Customer would benefit*"
 - (4) "*Covers payments if sick or off work*"
 - (5) "*Because who will pay for your [sic] car if you are off sick or made redundant?*"

- 4.14. Two of these statements are misleading – stating that the customer would benefit without mentioning exclusions does not give the customer an accurate impression of the actual nature of the policy.
- 4.15. None of the statements constitute a sufficiently tailored reason for the recommendation made. As a result of this failure Park’s failed to allow its customers to review the rationale for the recommendation, check its accuracy or give proper consideration to the recommendation. As a consequence, Park’s customers were unable to make an informed decision whether to purchase the recommended policy or to decide whether to keep or cancel the policy in the 30 day cancellation period which applied following the sale.
- 4.16. In 2005 and 2006 the firm did not issue a statement of price¹, but rather relied on the loan documentation to provide information to the customer regarding the cost of the insurance. Park’s began issuing a statement of price following the public censure imposed on Eastern Western Motor Group on 19 December 2006. This failing further undermined the customer’s ability to consider fully whether to accept the firm’s PPI recommendation and, following the sale, whether they should keep or cancel the policy in the 30 day cancellation period.

Monitoring

- 4.17. Throughout the Relevant Period the monitoring conducted by the firm was purely a quantitative check on the completion of the sales documents, rather than being an assessment of the quality of the advice given. For example in 2005 and 2006 the monitoring checked only whether the client file contained a completed SODAN.
- 4.18. In January 2007, on advice the monitoring was adapted to check that the recommendation made matched the demands and needs of the customer, but this was explained as the recommendation should be for the highest level of cover “unless the customer was retired or a housewife”.
- 4.19. The firm failed to provide FSA with any summaries of the monitoring conducted in 2005 and 2006, although communications from senior management during this period indicate that the monitoring which took place was consistently poor. This record keeping failure undermines the firm’s ability to effectively monitor its advisers, for example by noting consistent trends.

Action by senior management

- 4.20. Although the monthly monitoring of sales advisors was defective as described above, the results received by senior management did identify the level of compliance with regulatory requirements, in particular noting whether a SODAN was present in the client file and whether it had been completed . These results were consistently poor during 2005, 2006 and early 2007. The only action by senior management was to send emails in December 2005, March, November and December 2006 and February 2007

¹ Under ICOB a Statement of Price must include but is not limited to the following information: the total amount of the premium, details of the period for which the premium is valid, fees, administrative charges and taxes payable and the total price to be paid.

to all sales advisors telling them to become more compliant, and to engage the services of a compliance consultancy in January 2007.

- 4.21. On advice, Park's implemented changes to training (including new IT systems), sales documents, the monitoring regime and commission structure, however they did not take reasonable care to assess the proposed changes. These changes and other action taken were inadequate to remedy the issues at the firm.

Complaints

- 4.22. During the Relevant Period the firm received three complaints in relation to PPI, in which the complainants said that the firm's recommendation had been unsuitable. As a result of the deficiencies in the SODAN and advisors completion of the SODAN the firm would not have been able to reassess the suitability of the sale. However, in each case the firm responded to the complainant with a letter, which failed to deal with the substance of the complaint and contained inaccurate and misleading statements about the FOS not upholding the complaint when there was no evidence this would be the case.

5. ANALYSIS OF BREACHES

- 5.1. The FSA considers that Park's has breached Principle 9 of the FSA's Principles for Businesses in the following respects:

- (1) Park's failed to gather sufficient information about each individual customer, in that from January 2005 to May 2007 it failed to gather information regarding customers' pre-existing medical conditions and existing cover. As a result Park's was unable to provide a suitable level of advice to its customers, to take into account all relevant matters, or to ensure that any PPI policy it recommended to its customers was suitable for their needs.
- (2) There was a significant risk that Park's recommended the highest level of cover possible from January to December 2007 without obtaining information regarding the level of cover that customers required and without considering the relevance of the difference in cost to the customer.
- (3) Park's SODAN failed to explain the reasons for personally recommending the PPI cover. Consequently, Park's failed to demonstrate that it had taken reasonable care to consider the suitability of the PPI product recommended to its customers.
- (4) The firm's failure to issue a statement of price in 2005 and 2006 prevented the firm from suitably advising the customer on the price of the contract.
- (5) Senior management were repeatedly informed that monitoring results were consistently poor during 2005, 2006 and early 2007. Despite these warnings, senior management responses failed to remedy the highlighted issues in monitoring. The failure to take reasonable steps to improve the training provided to its sales staff, or to do so in a timely manner, led to a continued and unacceptable risk of unsuitable sales.

- (6) The firm did not train staff to obtain any, or any adequate, information regarding the importance of the cost of the cover to the customer, despite training staff to handle objections with regards to this issue. The firm's objection handling training was therefore inappropriate in light of the sales process in place.
- (7) The firm's monitoring procedures failed to ensure Park's assessed the quality of the advice given and, from January to December 2007, they required staff to sell PPI without considering the suitability of the product for the individual customer.

5.2. The FSA considers that Park's has breached Principle 6 of the FSA's Principles for Businesses in the following respects:

- (1) Park's failed to assess complaints in a fair manner and failed to treat customers fairly by sending similarly worded letters to complainants suggesting that their complaints were not genuine, and making unjustified and incorrect statements regarding the approach that FOS would take in relation to their complaints.
- (2) The failure to ensure that complainants were treated fairly is particularly serious due to the significant risk of unsuitable sales created by the other failings detailed in this notice.

5.3. Park's also breached the following provisions of ICOB:

- (1) ICOB 4.3.1 R (requirement for suitability);
- (2) ICOB 4.3.2 R (information about the customer's demands and needs);
- (3) ICOB 4.3.6 R (assessing the suitability of a contract against the customer's demands and needs)
- (4) ICOB 4.4.1 R (statement of demands and needs)
- (5) ICOB 5.3.1 R (Provision of information to retail customers - before the conclusion of a contract which is not a distance contract)

6. ANALYSIS OF THE SANCTION

Determining the level of the financial penalty

6.1. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP") which forms part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual ("ENF"), to which the FSA has had regard in addition to DEPP. DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Extracts from DEPP are set out in Annex A.

Deterrence

- 6.2. A financial penalty is required to strengthen the message to the industry that it is vital to take proper steps to ensure in advised sales that the advice a firm gives customers is suitable and that a firm has in place adequate systems and controls in relation to the sale of PPI.
- 6.3. As communicated to the market in the FSA's thematic update on the sale of PPI published on 26 September 2007, in line with its general approach, the FSA is seeking to increase the level of fines in cases where this is warranted by the nature, seriousness and impact of the breach in question, and by the likely impact on deterrence. Firms have been given due warning of their obligations to treat customers fairly, both generally and on PPI in particular. Consequently, the FSA will now seek to impose higher fines for firms in the PPI market where standards fall below required levels.

The seriousness of the breaches

- 6.4. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the extent to which the breaches revealed serious or systemic weakness of the management systems or internal controls and the number of customers who were exposed to risk of financial detriment.
- 6.5. The FSA considers that the breaches are serious, meriting the imposition of a substantial penalty because 714 customers purchased PPI from Park's during the Relevant Period. Furthermore, 21,570 customers were exposed to Park's flawed sales process and were therefore exposed to an unacceptable risk of buying unsuitable PPI.
- 6.6. Park's failings are significant because all they continued over a period of at least 12 months. Whilst the issues relating to Park's training, complaints handling and some of the suitability of advice continued for a period of 35 months. The fact that the failings are consistent with concerns previously identified in thematic reports and final notices published by the FSA indicates a general lack of regulatory awareness within the firm.

The extent to which the breaches were deliberate or reckless

- 6.7. The FSA does not believe that Park's acted in a deliberate or reckless manner.

The amount of profits accrued or the loss avoided

- 6.8. The FSA has taken into account Park's PPI profits during the Relevant Period. The sale of PPI is a tertiary activity of the firm (behind vehicle sales and arranging credit) and, in terms of total income made, it is a very small part of Park's business, averaging 0.02% of turnover during the Relevant Period. Park's nonetheless derived income of £153,035 through sales of PPI during the Relevant Period.

The size, financial resources and other circumstances of the firm

- 6.9. There is no evidence to suggest that Park's cannot pay the penalty.

Conduct following the breaches

- 6.10. Park's noted the importance of issuing a Statement of Price to customers following the publication of the Eastern Western Final Notice, and acted to incorporate this document into the sales process in place at the firm. Park's also revised their bonus structure.
- 6.11. Park's adopted a non-advised sales process, reducing the likelihood of sales staff making unsuitable recommendations. Park's has now ceased selling PPI.
- 6.12. Park's has committed to a remedial action plan under section 166 of the Act which includes a programme of customer contact and, if appropriate, steps to ensure that its customers have not been disadvantaged and review of Park's complaints procedures and handling.
- 6.13. Park's cooperated with the Enforcement action, and received full credit for settlement at an early stage. Without this level of cooperation the financial penalty would have been higher.

Disciplinary record and compliance history

- 6.14. Park's has been authorised to conduct insurance business by the FSA since 14 January 2005 and has not been the subject of previous FSA disciplinary action.

Previous action taken in relation to similar failings

- 6.15. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour. The FSA also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

FSA Guidance and other published materials

- 6.16. Park's failings arose against a background of a series of high profile communications by the FSA highlighting the need for firms to ensure their PPI sales processes were meeting FSA requirements as set out at paragraphs 3.9 to 3.13 above. Despite this, the problems in Park's sales process were identified by the FSA, and not by Park's own systems and procedures. As set out in paragraph 2.5(1) above, this significantly increases the seriousness with which the FSA has viewed the breaches.

7. CONCLUSION

- 7.1. Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, the FSA has decided to impose a financial penalty of £61,600 on Park's.

8. DECISION MAKERS

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

9. IMPORTANT

- 9.1. This Final Notice is given to Park's in accordance with section 390 of the Act.

Manner of and time for Payment

- 9.2. The financial penalty must be paid in full by Park's to the FSA by no later than 3 September 2008, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 9.3. If all or any of the financial penalty is outstanding on 4 September 2008, the FSA may recover the outstanding amount as a debt owed by Park's and due to the FSA.

Publicity

- 9.4. 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.

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

FSA contacts

- 9.6. For more information concerning this matter generally, you should contact Suzanne Burt (Tel: 020 7066 1062/Fax: 020 7066 1063) of the Enforcement Division of the FSA.

William Amos

**Head of Retail 1
FSA Enforcement Division**