
FINAL NOTICE

To: **PMSG Insurance Services Limited**

Of: 20 St Cuthbert's Way
Darlington
County Durham
DL1 1GB

And to: **Irene Hall**

Individual ref: IBH01007

Date: **10 July 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives PMSG Insurance Services Limited final notice about a requirement to pay a financial penalty and gives Irene Hall final notice about a decision to withdraw the approval granted to her to perform the controlled function to which her individual approval relates:

1. THE PENALTY

PMSG Insurance Services Limited

1.1. The FSA gave PMSG Insurance Services Limited ("PMSG") and Irene Hall a Decision Notice on 3 July 2008 ("the Decision Notice") which notified PMSG that for

the reasons given in this Notice, 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 £35,000 on PMSG. This penalty is imposed in respect of breaches of Principles 3 and 9 of the FSA's Principles for Businesses (“the Principles”), and of certain rules (specified below) in Chapter 4 of the part of the FSA’s Handbook entitled “Mortgages and Home Finance: Conduct of Business Sourcebook” (“MCOB”), between 14 January 2005 and 30 September 2007 (“the relevant period”).

- 1.2. PMSG 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 sought to impose on PMSG a financial penalty of £50,000.

WITHDRAWAL OF APPROVAL

Irene Hall

- 1.3. The Decision Notice also notified Irene Hall that for the reasons given in this Notice, and pursuant to section 63 of the Act, the FSA had decided to withdraw the approval granted to her, because she is not a fit and proper person, in terms of competence and capability, to perform the controlled function to which her individual approval relates.

2. REASONS FOR THE ACTION

Summary

PMSG

- 2.1. The FSA has concluded that, during the relevant period, PMSG failed to take reasonable steps to ensure the suitability of mortgage advice given to customers and failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.
- 2.2. The FSA has made the following findings:

- (1) PMSG failed to take reasonable steps to ensure that customers were recommended suitable regulated mortgage contracts, in breach of Principle 9 (Customers: relationships of trust) in that:
 - (a) It failed to ensure that customers' particular personal and financial circumstances were taken into account fully when making recommendations, in particular:
 - (i) Customers were re-mortgaged in their existing properties in circumstances where insufficient information about their circumstances had been obtained to show how they could afford the recommended contracts.
 - (ii) Customers were advised to re-mortgage their properties while they were in an Early Redemption Charge period ("ERC period") and therefore liable to incur substantial additional charges which may have reduced any benefit of re-mortgaging.
 - (iii) It did not verify income-related information provided by customers in circumstances where this new information was inconsistent with information provided by them earlier in the sales process or in relation to previous mortgage applications.
 - (b) It failed to make and retain records of sufficient information about customers to demonstrate the suitability of its advice. For example, its records were insufficient to be able to differentiate advised from non-advised sales.
- (2) PMSG failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3 (Management and control) in that:
 - (a) It did not have a sufficiently clear understanding of regulatory requirements aimed at ensuring that customers received suitable advice and are treated fairly.

- (b) It employed Irene Hall to ensure that it complied with regulatory requirements. However, Irene Hall did not meet the required standard, in terms of competence and capability, expected of an approved person performing the CF8 function (with responsibility for insurance mediation). Furthermore, Irene Hall was not able to exercise effective influence over PMSG's only adviser who was also its managing director and majority shareholder.

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

- (1) The failure to make adequate records of customers' personal and financial circumstances meant that it was not possible for the FSA to be satisfied that PMSG's recommendations were suitable. Of the 620 mortgages placed by PMSG during the relevant period, some customers may have been recommended unsuitable mortgage contracts.
- (2) PMSG's failure to implement effective systems and controls to monitor sales exposed at least 620 customers to the risk of being recommended mortgage contracts that were not affordable, or were inappropriate to their particular needs and circumstances and therefore unsuitable.
- (3) While PMSG took certain remedial steps it did not deal adequately with the concerns raised by the FSA in its first visit.

2.4. The FSA has taken into account that, from September 2007, PMSG took steps to improve its systems and controls and monitoring of the suitability of its advice, has put in place more robust compliance arrangements and co-operated fully with the FSA, agreeing the facts quickly to ensure efficient resolution of this matter.

2.5. A review of past business is being undertaken by a skilled person which may lead to redress to consumers where appropriate, the costs of which would be met by PMSG.

Irene Hall

2.6. The FSA has concluded, based on the facts and matters set out below, that Irene Hall lacks the competence and capability to perform the function to which her approval

relates, namely of ensuring that PMSG was organised and resourced so that it complied with regulatory requirements aimed at treating customers fairly.

3. STATUTORY PROVISIONS, GUIDANCE AND REGULATORY REQUIREMENTS

PMSG

- 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 following Principles are relevant to this matter:
 - (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.

Irene Hall

- 3.5. Under section 63 of the Act, the FSA may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

- 3.6. The FSA policy in relation to the withdrawal of an individual's approval is set out in Chapter 9 of the Enforcement Guide ("EG"), which is part of the FSA's Handbook of rules and guidance.
- 3.7. The guidance that the FSA considers to be most relevant to this case is set out below.

The Enforcement Guide ("EG")

- 3.8. EG 9.3 sets out the FSA's policy on withdrawal of individual approvals of approved persons. In deciding to withdraw Ms Hall's approval to perform the controlled function of CF8 (Apportionment and oversight) and her responsibility for insurance mediation, the FSA considered whether she was fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in the Fit and Proper Test for Approved Persons ("FIT"). The most relevant provision in FIT in this case is in relation to competence and capability (FIT 2.2), which includes an assessment of the individual's skills in carrying out the controlled function that she is performing.

The Statements of Principle and Code of Conduct for Approved Persons ("APER")

- 3.9. APER sets out the Statements of Principle in respect of approved persons and a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the Statements of Principle.
- 3.10. The guidance set out in APER 3.1.3G stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 3.11. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is, in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

3.12. In this case, the most relevant statement of principle is Statement of Principle 6 which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their controlled functions.

4. FACTS AND MATTERS RELIED ON

PMSG - Background

4.1. PMSG is a private limited company registered at Companies House (Company Number 04723820), operating as a mortgage broker and insurance intermediary in Darlington, County Durham. PMSG became authorised by the FSA on 14 January 2005 to carry on the following regulated activities in relation to non-investment insurance contracts:

- (1) agreeing to carry on a regulated activity;
- (2) advising on investments (excluding on Pension Transfers and Pension Opt Outs);
- (3) arranging (bringing about) deals in investments; and
- (4) making arrangements with a view to transactions in investments.

4.2. On 21 April 2005, PMSG was granted permission to carry on the following additional regulated activities in relation to regulated mortgage contracts:

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

4.3. PMSG has not been the subject of any previous disciplinary action by the FSA.

4.4. When the FSA visited PMSG in January 2007 it identified the following main issues of concern.

- (1) PMSG did not make and retain adequate records of customers' credit histories, credit commitments, and the reasons why the customers wished to raise additional capital.
- (2) It appeared that self-certification of customers' earnings was common practice when it was not clear from their circumstances why self certification was necessary.
- (3) There was insufficient evidence to demonstrate that for customers borrowing into retirement the recommended mortgage contracts were affordable beyond their normal retirement ages. Inappropriate reliance was placed on the customers to assess whether they considered the mortgage contracts to be affordable into retirement.
- (4) Interest-only mortgage contracts had been recommended, with little or no assessment of how the customers would repay the capital at the end of the loan periods. Assessments focussed only on what was affordable in the short term.
- (5) In cases where customers wished to consolidate debts, there was insufficient evidence on files to show that the amount of capital raised met the customers needs in terms of being sufficient to repay their debts.
- (6) In two files reviewed, it appeared that customers had been recommended sub prime mortgage contracts when they may have been eligible for "high street" mortgage contracts.
- (7) It was not clear that customers were being recommended the cheapest product overall or that all relevant cost implications of raising capital by re-mortgaging had been fully considered before recommending specific regulated mortgage contracts.
- (8) There was insufficient monitoring of PMSG's adviser.

4.5. The FSA visited PMSG again on 23 July 2007 and identified ongoing concerns.

- (1) A large proportion of the customer files reviewed showed that customers were advised to remortgage while they were within the ERC period for their existing mortgage, thereby incurring charges that may have been avoidable.
- (2) In all files reviewed, where the customer was looking to remortgage in order to raise capital, the customer had not received the amount they declared they required to meet their needs, which raised concerns as to suitability of the recommended mortgage contract.
- (3) There were questionable affordability assessments that quoted customers as having relatively large disposable incomes, when other information gathered demonstrated that they were struggling with their finances. Also, interest-only mortgage contracts were being recommended in circumstances where the fact finds indicated that the customers could afford repayment mortgages which may also have been appropriate to consider.
- (4) Records were inconsistent as to the reasons for the recommended contracts in that customers were recorded as saying that they wished to raise capital for home improvements but there was also evidence on files that debt consolidation was taking place.
- (5) As identified in the previous visit by the FSA, customers who could provide proof of income were being recommended self-certification mortgage contracts.
- (6) There was no assessment of management information and no proper assessment of the sales process.
- (7) Training and Competency measures had not been fully implemented since the FSA's previous visit.

Analysis of breaches of Principles

Suitability of advice – Principle 9

4.6. For the following reasons, with reference to the findings summarised at paragraph 2.2(1), there was a risk that customers may have received unsuitable advice from PMSG.

- (1) Many customer files reviewed by the FSA contained advice to apply for interest-only regulated mortgage contracts in circumstances where the customers had no demonstrable means of repaying the capital at the end of the mortgage terms, and where the onus appeared to have been placed on the customers to identify suitable repayment strategies to repay the capital at the end of the mortgage terms.
- (2) Customers were being advised to re-mortgage their properties whilst in ERC periods on their existing mortgage contracts. As a result of the advice given by PMSG's mortgage adviser, such customers appeared to have incurred avoidable charges. In one case, the customers had been advised by PMSG to re-mortgage their property three times in 30 months.
- (3) In some cases customers who self-certified their incomes may have been eligible for full status mortgage contracts.
- (4) In nearly all of the files reviewed by the FSA, no supporting evidence of customers' incomes was recorded except a note saying that PMSG's adviser had seen original payslips. Details about customers' expenditure and disposable incomes looked to be false and/or inaccurate, in that customers with poor credit histories from low-income households were shown as having large disposable incomes. In these circumstances, given the uncertainty around the customers' ability to afford the recommended mortgage contracts, if PMSG had retained the payslips on its files it would have been able to demonstrate categorically that it had taken steps to verify income.
- (5) Affordability calculations in numerous cases were incorrect. On any common sense analysis, anomalies in customers' recorded financial circumstances

could and should have been spotted. When the FSA checked customers' declared taxable earnings it was evident that they had been inflated. Consequently, many of the mortgage contracts did not appear to be affordable.

- 4.7. PMSG admitted that its priority was to give customers what they wanted and that affordability and suitability of the recommended mortgage contracts were secondary considerations.
- 4.8. Where PMSG knew, or ought to have known, that recommended regulated mortgage contracts were not suitable for its customers, it failed to advise customers of this fact, and/or where appropriate failed to deal with the customers on a non-advised basis.
- 4.9. PMSG therefore failed to take reasonable steps to ensure the suitability of its advice to customers who were entitled to rely upon its judgement, in breach of Principle 9.

Systems & Controls – Principle 3

- 4.10. With reference to the findings summarised at paragraph 2.2(2), as a result of poor systems and controls and monitoring of mortgage sales there is a risk that PMSG recommended mortgage contracts which were not affordable or suitable.
- 4.11. PMSG did not undertake any assessment of the quality of advice being given to customers and failed to identify whether its sales process ensured that customers were treated fairly in every case, even if in practice it was giving customers what they wanted. PMSG also failed to conduct regular reviews of its business activities to enable it to identify and resolve any issues around the suitability of its advice and compliance with regulatory requirements.
- 4.12. PMSG therefore failed to comply with Principle 3.

Irene Hall

- 4.13. Irene Hall is approved to perform the controlled function of Apportionment and Oversight (CF8), with responsibility for insurance mediation, at PMSG. However, on her own admission, she did not have sufficient knowledge of regulatory requirements, or the competence and capability, to oversee PMSG's regulated business, ensure

compliance with regulatory requirements, or exert influence over its adviser. As such, she failed to comply with Statement of Principle 6.

5. ANALYSIS OF THE SANCTION

PMSG

- 5.1. The FSA has had regard to the guidance published in the FSA's Enforcement Guide ("EG") and Decision Procedures and Penalties Manual ("DEPP"), and also 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 has considered the nature and seriousness of the contraventions by PMSG, whether the breaches identified were deliberate or reckless, the number and duration of the breaches, and the number of written mortgages placed through PMSG between 1 April 2005 and 30 September 2007 (620).
- 5.3. Although the FSA found no evidence that the conduct in issue was deliberate, it was reckless in that PMSG had been notified of the FSA's concerns in January 2007 but it had still failed to take appropriate steps to address them six months later. There was a risk in every case reviewed by the FSA that the customers had been recommended mortgage contracts which were not affordable or suitable.
- 5.4. The FSA has taken into account the fact that PMSG has 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 lesser penalties and private warnings were given to authorised persons for less serious conduct or more limited failures.
- 5.6. The FSA has taken into account PMSG's size and financial resources.
- 5.7. Having considered all the above circumstances, the FSA has determined that £50,000 (before any discount for early settlement) is the appropriate financial penalty to impose on PMSG.

Irene Hall

- 5.8. In deciding to withdraw Irene Hall's approval to perform the controlled function of Apportionment and Oversight (CF8) with responsibility for insurance mediation, the FSA had considered her conduct in this role to date. As the holder of CF8, Irene Hall was responsible for ensuring that the affairs of PMSG could be adequately controlled and monitored. Irene Hall was also responsible for overseeing the establishment and maintenance of systems and controls that were appropriate for the business of PMSG. Irene Hall's position within PMSG in relation to its adviser and her lack of competence and capability meant that she failed to ensure that PMSG's mortgage sales processes and recommendations complied with regulatory requirements. She failed to comply with Statement of Principle 6 and as a result the FSA considers that she is not a fit and proper person in terms of competence and capability to perform the controlled functions at PMSG for which she has approval.

PMSG's and Irene Hall's comments

- 5.9. The FSA has taken into consideration the following comments put forward by PMSG and Irene Hall:
- (1) During the relevant period Irene Hall and PMSG did seek external compliance advice and made every effort to comply with the advice received. As a result of the external advice Irene Hall sought to ensure that 100% client file checking was carried out and that she acted upon issues arising from those client file checks. However, although PMSG considers this to be a mitigating factor, it also accepts that the file checks were inadequate in that they failed to identify many of the concerns raised by the FSA in paragraphs 4.5 - 4.12 above. Irene Hall genuinely believed that she was fulfilling the role of CF8, Apportionment and Oversight but now accepts that she failed to recognise that the overall responsibility of ensuring proper compliance and administration of all systems and controls was a function that could not be delegated and that as the holder of the CF8 function she retained ultimate responsibility.

- (2) After the FSA raised its concerns, PMSG sought further compliance advice and has now implemented a series of changes to improve its practices and procedures.

6. DECISION MAKERS

- 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 PMSG under section 206 and to Ms Hall under section 63 of the Act, and in accordance with section 390 of the Act.

Third party rights

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

Publicity

- 7.3. 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.
- 7.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

7.5. 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

FSA PRINCIPLES FOR BUSINESSES

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 judgment.
3. **MCOB 4.7 Advised sales**
4. **MCOB 4.7.2R:** 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).
5. **MCOB 4.7.4R:** 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;

6. **MCOB 4.7.5R:** 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.

7. **MCOB 4.7.6R:** In relation to MCOB 4.7.4 R(1)(a) and (b), where a firm makes a personal recommendation to a customer to enter into a regulated mortgage contract where a main purpose is to consolidate existing debts it must also take account of the following, where relevant, in assessing whether the regulated mortgage contract is suitable for the customer:

(1) the costs associated with increasing the period over which a debt is to be repaid;

(2) whether it is appropriate for the customer to secure a previously unsecured loan;

and

(3) where the customer is known to have payment difficulties, whether it would be more appropriate for the customer to negotiate an arrangement with his creditors than to take out a regulated mortgage contract.

8. **MCOB 4.7.7E:**

(1) In assessing whether a customer can afford to enter into a particular regulated mortgage contract, a firm should give due regard to the following:

(a) information that the customer provides about his income and expenditure, and any other resources that he has available;

(b) any likely change to the customer's income, expenditure or resources;
and

(c) the costs that the customer will be required to meet once any discount period in relation to the regulated mortgage contract comes to an end (on the assumption that interest rates remain unchanged).

(2) Contravention of MCOB 4.7.7 E(1) may be relied upon as tending to show contravention of MCOB 4.7.4 R(1)(a).

9. **MCOB 4.7.8G:** A firm may generally rely on any information provided by the customer for the purposes of MCOB 4.7.4 R(1)(a) unless, taking a common-sense view of this information, it has reason to doubt it.

10. **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.

11. The FSA's approach to taking disciplinary action is set out in Chapter 2 of the Enforcement Guide. 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.

12. 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 (DEPP 6.1.2G).
13. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G 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:
 - DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach;
 - DEPP 6.2.1G(2): The conduct of the person after the breach;
 - DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person;
 - DEPP 6.2.1G(4): FSA guidance and other published materials; and
 - DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.
14. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G 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:
 - DEPP 6.5.2G(1): Deterrence
 - DEPP 6.5.2G(2): The nature, seriousness and impact of the breach in question

- DEPP 6.5.2G(5): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
- DEPP 6.5.2G(8): Conduct following the breach;
- DEPP 6.5.2G(9): Disciplinary record and compliance history.