
FINAL NOTICE

To: Robin David Knox

Reference: RDK01032

Date of birth: 8 October 1971

Dated: 3 July 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 decision to impose a financial penalty on you, to withdraw your approval and to make a prohibition order:

1. THE ACTION

1.1. The FSA gave you, Mr Robin David Knox (“Mr Knox”) a Decision Notice dated 3 July 2008 (“the Decision Notice”) which notified you that, for the reasons listed below, and having agreed with you the facts and matters set out below, the FSA had decided to:

- (1) impose on you a financial penalty of £17,500 for a failure to comply with Statement of Principle 7 of the FSA’s Statements of Principle for Approved Persons (“APER”) pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”); and

- (2) withdraw your individual approval pursuant to section 63 of the Act, and make a prohibition order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”), because you are not a fit and proper person.
- 1.2. Were it not for your current personal financial difficulties, the FSA would have sought to impose a more significant financial penalty on you as well as a financial penalty of £60,000 on Mortgage and Property Services Limited (“the Firm/MPSL”).
- 1.3. You agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30 percent (Stage 1) discount under the FSA’s executive settlement procedures. The FSA would otherwise have sought to impose a financial penalty of £25,000.
- 1.4. You agreed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.5. You also agreed to settle at an early stage of the FSA’s investigation.
- 1.6. Accordingly, for the reasons set out below, and having agreed with you the facts and matters relied on, the FSA hereby imposes a financial penalty on you, withdraws your individual approval and makes the Prohibition Order against you as of 3 July 2008.

2. REASONS FOR THE FINANCIAL PENALTY OF £17,500

- 2.1. The FSA imposed the financial penalty on you for failing to comply with Statement of Principle 7 while you performed the controlled functions of CF1 (Director) and (CF8) Apportionment and oversight at MPSL during the period from 31 October 2004 to 13 December 2007 (“the relevant period”).
- 2.2. In summary, while performing the controlled functions of CF1 and CF8, you failed:
- (1) to take reasonable care to organise and control the Firm's affairs responsibly and effectively; and

- (2) to take reasonable steps to ensure that in recommending regulated mortgage contracts the Firm complied with the relevant requirements and standards of the regulatory system.
- 2.3. More specifically, you failed to put in place adequate systems and controls to monitor and record the standard of advice provided by the Firm's advisers. Consequently, the Firm's advisers recommended mortgage contracts which were not suitable taking into account clients' needs and circumstances. For example, the FSA found instances in which sub-prime mortgage contracts had been recommended by the Firm in circumstances where it appeared that mortgage contracts from a high street lender may have been available.
- 2.4. You also failed to ensure that the Firm:
 - (1) adequately disclosed to customers the amounts of fees payable;
 - (2) communicated clearly to potential customers the distinction between the services provided by MPSL and services provided by a sister property company which is not authorised by the FSA;
 - (3) made and retained adequate records about why it considered that recommended mortgage contracts were affordable and suitable; and
 - (4) disclosed to the FSA a matter relating to MPSL which the FSA would have reasonably expected notice, namely, a change of controller in October 2006.
- 2.5. Your conduct is serious mainly because it exposed approximately 500 customers to the risk of receiving unsuitable advice and the FSA identified some specific cases for which there was evidence of unsuitable advice.

REASONS FOR THE WITHDRAWAL OF APPROVAL AND PROHIBITION ORDER

- 2.6. The FSA concluded that you are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm, and that you should be prohibited from doing so. You have failed to meet minimum regulatory standards in terms of competence and capability. As such, you are not a fit and proper person.

- 2.7. While acting in your capacity as the director of MPSL, you failed to demonstrate adequate levels of competence and capability through your failure to take appropriate steps to ensure that the Firm had appropriate systems and controls in place for the nature of the business. The FSA considers it proportionate to prohibit you because of the nature and range of failures and the impact on customers.
- 2.8. Also, the FSA had concerns about the quality of your advice to customers.
- (1) You recommended a sub prime mortgage contract to a client where there was no evidence of poor credit history on file.
 - (2) A trainee advisor under your supervision recommended a mortgage contract where the term of the mortgage exceeded the customer's retirement age and it was not possible to assess from the records whether the mortgage contract entered into was affordable into retirement. It was also not possible to determine from the file, whether you took any steps to ensure that client was aware of the risks associated with borrowing into retirement and if other options had been considered.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED UPON

Background

- 4.1. The Firm was a mortgage broker which was incorporated in 2000 and 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, MPSL was 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; and
 - (3) making arrangements with a view to transactions in investments.
- 4.3. The Firm advised principally on re-mortgages. The Firm's customer base for re-mortgages was typically sub-prime. Sub-prime mortgages are generally sold to customers with low or impaired credit ratings who may find it difficult to obtain finance from regular sources.
- 4.4. During the relevant period, the Firm retained seven mortgage advisers and made a total of 500 recommendations to enter into regulated mortgage contracts.
- 4.5. The Firm was also involved in arranging non-investment insurance contracts.
- 4.6. The Firm has not been the subject of any previous disciplinary action by the FSA.
- 4.7. The Firm was one of 65 mortgage brokers (78 firms on total) to be visited by the FSA in 2006 as part of its "mortgages quality of advice process" project. It was one of six firms referred to the FSA's Enforcement Division ("Enforcement") from this project.

Mr Knox's role at MPSL

- 4.8. You were the Managing Director of the Firm and, as such, you were solely responsible for the day to day running of the business. You were also responsible for ensuring that the Firm complied with regulatory requirements.
- 4.9. Given its serious concerns about the quality of advice given by MPSL, the FSA engaged an independent expert to review MPSL's client files. The findings, based on an initial review of 50 client files, are summarised below.
- 4.10. The FSA identified concerns about the suitability of advice in 54% of the files (27 cases).

- (1) In 12% of files (6 cases), the FSA considered there to be evidence that unsuitable recommendations had been made. A summary of the findings in these six cases is attached at Annex B to this Notice.
- (2) In 42% (21 cases) the FSA considered that there was some evidence that unsuitable advice may have been given. As the quality of records retained on files were poor it was not possible to confirm whether or not the advice was suitable.

4.11. The Firm failed to demonstrate to the FSA's satisfaction that it had paid any, or any adequate, regard to whether there was likely to be any change in clients' income and expenditure and whether they would be able to continue to afford the repayments throughout the term of the recommended mortgage contracts. This was a particular issue in cases where mortgage terms extended beyond customers' retirement age. In cases where clients were reliant on tax credits or other benefits to meet affordability criteria, there was no record on file as to how long these benefits were likely to continue to be claimed. No affordability assessments were undertaken in the majority of cases in relation to possible future increases in interest rates.

4.12. In cases where clients had self-certified their income, the Firm failed to undertake any assessment of income. There were circumstances in which self-certification appeared to the FSA to be inappropriate and/or where an objective assessment of the level of income would have cast doubt on the authenticity of information being provided by the clients. In one case, for example, the levels of income self-certified in a mortgage application did not match levels referred to in an accountant's certificate provided for the client.

4.13. In almost all cases where the purpose of the re-mortgage was debt consolidation the Firm failed to pay due regard to:

- (1) costs associated with increasing the period over which the debt was to be repaid;
- (2) whether it was appropriate to secure previously unsecured credit or whether it may have been more appropriate for certain clients to negotiate with existing creditors; and

- (3) the costs of repaying any existing secured loans, such as early repayment charges.
- 4.14. Also, the Firm could not demonstrate that it had explained to its clients the financial implications of consolidating debts by means of their mortgage.
- 4.15. The FSA concluded that you failed to exercise adequate management and control over the Firm's sales process.
- 4.16. You failed to implement a formal system to assess the affordability of recommended mortgage contracts. Instead, the Firm relied on the advisers' informal and undocumented knowledge of clients' circumstances. As such, the firm was not able to demonstrate whether its clients could afford to enter into the regulated mortgage contracts or whether the recommended mortgage contracts were suitable in terms of affordability.
- 4.17. You failed to ensure that the Firm had in place sufficient information gathering arrangements, in particular to record clients' personal and financial circumstances, to demonstrate whether the Firm had made suitable recommendations. Instead of taking steps to satisfy itself that recommended mortgage contracts were affordable, the Firm relied inappropriately on declarations which it asked clients to sign that in their view the recommended mortgage contracts would be affordable.
- 4.18. You failed to ensure that the Firm retained appropriate records to demonstrate how it carried out training, supervision and monitoring of advisers. Subsequently you failed prevent two trainee advisers from providing advice to clients before the trainee advisers completed the regulatory module of an approved mortgage advice examination. You also failed to adequately supervise, or provide adequate supervision of the trainee advisers.
- 4.19. You failed to ensure that the Firm made and maintained records as to why it considered the recommended mortgage contracts to be suitable.
- 4.20. The Firm charged clients an application fee. However, you failed to ensure that it adequately disclosed that if the fee was added to the loan this fee would accrue

interest rather than being paid at the point of application. Additionally, the application fees were not always disclosed in KFI's and offer letters.

- 4.21. The Firm and an associated unregulated company ran a series of advertisements in local newspapers referring to the range of services offered by both companies. The two companies advertised using an identical corporate logo. The advertisements for the associated company referred to MPSL's website and MPSL's FSA reference number wrongly implying that the company was authorised by the FSA and covered by the protection available from the regulatory system.

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTIONS

Statement of Principle 7

- 5.1. The FSA has concluded that the misconduct summarised above means that you failed to management and control the business of MPSL in a way which complied with regulatory requirements aimed at ensuring that authorised firms treat their customers fairly.
- 5.2. The FSA has therefore imposed a financial penalty of £17,500 on you.

Determining the level of the financial penalty

- 5.3. 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. The FSA will also have regard to the appropriate provisions of the FSA's Enforcement Manual, which applied during the relevant period in which your misconduct occurred.

Deterrence

- 5.4. The principal purpose of the imposition of this penalty is to promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 5.5. In determining the appropriate level of penalty, the FSA has had regard to the need to ensure those who are approved persons act with competence and capability and manage their business in accordance with FSA rules and regulations. The FSA

considers that a significant penalty should be imposed to demonstrate to you and others the seriousness with which the FSA regards such behaviour.

The nature, seriousness and impact of the breach

- 5.6. In deciding to take the action, the FSA has considered the seriousness of the misconduct, the nature of the requirements breached and the number and duration of the breaches as stated in DEPP 6.5.2(2)G.
- 5.7. Although the FSA found no evidence that the conduct in issue was deliberate, we have concluded from our analysis, that you exercised inadequate management and control over the running of business, which resulted in you failing to comply with regulatory requirements for a prolonged period of time, namely 36 months. Your failures affected approximately 500 clients who were at the risk of receiving unsuitable advice and consequently may have exposed them to possible financial loss. In some cases, it appeared that customers had received unsuitable advice.
- 5.8. You failed to ensure that the Firm had appropriate mortgage supervision and monitoring arrangements in place, you failed to undertake and document appropriate affordability assessments and you failed to take reasonable steps to retain appropriate records demonstrating the suitability of recommended mortgage contracts.

Whether the person on whom the penalty is to be imposed is an individual

- 5.9. The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 5.10. The FSA has taken into account your financial resources, which include your share of profits taken out of the Firm and the value of your personal assets. You satisfied the FSA that you could not pay a more significant penalty because of other debts and your inability to raise any additional funds.

Conduct following the breach

- 5.11. You agreed to write to all customers to alert them to the possibility that they received unsuitable advice from MPSL. You also agreed to the cancellation of MPSL's Part IV permission.

Disciplinary record and compliance history

- 5.12. The FSA has not previously taken any disciplinary action against you.

Previous action taken by the FSA

- 5.13. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has in the past taken action against persons for similar failings and these have been taken into consideration in setting the level of penalty against you for this misconduct.

Fit and proper test

- 5.14. The FSA has concluded that, given the nature and range of misconduct and its impact on customers, you failed to meet the minimum regulatory standards for approved persons in respect of competence and capability and that you are not therefore fit and proper to perform any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 5.15. The FSA therefore withdrew your approval and made the Prohibition Order against you.

6. CONCLUSION

- 6.1. Having regard to the seriousness of the breaches and the risk posed to consumers by your misconduct, the FSA imposed a financial penalty of £17,500 on you.
- 6.2. The severity of the risk you pose to consumers and lenders, and to confidence in the market generally is such that it is also necessary, in order to achieve its regulatory objectives, for the FSA to withdraw the approval given to you and to exercise its power to make the Prohibition Order.

7. DECISION MAKER

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

8. IMPORTANT

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

Manner of and time for payment

- 8.2. The financial penalty must be paid by you in accordance with the terms of the settlement agreement.

If the financial penalty is not paid

- 8.3. If the financial penalty is outstanding on the day after the due date for payment, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 8.4. 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.

FSA contacts

- 8.5. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894/fax 020 7066 5895) of the Enforcement Division of the FSA.

Jonathan Phelan
Head of Department
FSA Enforcement Division

1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime and maintaining confidence in the financial system.
- 1.2. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

FSA's policy for exercising its power to make a prohibition order

- 1.3. The FSA's approach to exercising its powers to withdraw approval and to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG"). EG9.1 states that the FSA's power under sections 56 and 63 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is necessary either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 1.4. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 1.5. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that

the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

1.6. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:

- (1) the matters set out in section 61(2) of the Act;
- (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in the module of the FSA Handbook entitled "the Fit and Proper Test for Approved Persons" ("FIT"), in particular in FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (3) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);...
- (5) the relevance and materiality of any matters indicating unfitness;
- (6) the length of time since the occurrence of any matters indicating unfitness;

- (7) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
- (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Regulatory Requirements

Fit and Proper Test for Approved Persons

- 1.7. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.8. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual in accordance with EG 9.9.
- 1.9. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's competence and capability.
- 1.10. In determining a person's competence and capability In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including but not limited to whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook (TC) in relation to the controlled function the person performs or is intended to perform, and whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

The Statements of Principle and Code of Practice for Approved Persons

- 1.11. The Statements of Principle and Code of Practice for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. They also describe

factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.

- 1.12. APER 3.1.3G states that, when establishing compliance with, or 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 expected in that function. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 1.13. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 7 which requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

ANNEX B: Client files in which the FSA has identified unsuitable advice

1. Mr and Mrs C – a remortgage case where the mortgage term extended into Mr C's retirement (Mr C would be 67 at the end of the mortgage term) with no explanation as to how the mortgage would continue to be paid post retirement. A sub-prime product was selected even though the file records no adverse credit history and there was no explanation on the file regarding the cost of repaying previously unsecured debts over the 25 year term of the mortgage.
2. Mr and Mrs B – re-mortgage failed to meet clients' stated need to raise enough capital to repay £12,000 of unsecured debt. The mortgage term extended into retirement (Mr B would be 73 at the end of the term and Mrs B would be 67) with no explanation on file as to how the mortgage would continue to be paid post retirement.
3. Mr and Mrs K - re-mortgage which extended into retirement, both Mr and Mrs K would be 74 at the end of the term. Mr K was already retired and in receipt of a small pension. No explanation on file as to how the mortgage would continue to be paid once Mrs K retired. The loan was on an interest only basis with no repayment vehicle in place. The clients had re-mortgaged to repay existing debts however there was no analysis on file of whether it would be cheaper to continue to maintain loan repayments rather than add the debt to a mortgage.
4. Mr and Mrs T – existing loan was a capital and repayment mortgage being replaced by an interest only self-certified mortgage with a sub-prime lender and a longer term. Due to re-mortgage the clients were paying an ERC of £3000 and the long term payments were set to increase from £283 to £489 (variable). No evidence that the clients' income had been verified and there were discrepancies between the fact find and mortgage application regarding the clients' credit history.
5. Miss B – a RTB case where no evidence that the implications of postponing the local authority discount charge had been explained to the client.

6. Mr and Mrs Y – re-mortgage which extended into retirement, Mr Y would be 93 at the end of the term and Mrs Y would be 74 at the end of the term. No evidence obtained of Mrs Y's retirement income. Unclear why clients required re-mortgage.