
FINAL NOTICE

To: **Mr Simon Poole**

Date of Birth: **20 March 1974**

Ref: **SXP 01383**

Dated: **9 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 requirement to pay a financial penalty:

1. THE PENALTY

- 1.1. The FSA gave you, Simon Poole, a Decision Notice on 9 July 2008 (“the Decision Notice”) which notified you that, for the reasons set out below and pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £7,000 on you, in respect of breaches of Statement of Principle 7 of the FSA's Statement of Principles for Approved Persons (“APER”).
- 1.2. 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 have otherwise sought to impose a financial penalty of £10,000 on you. You have since made an immediate payment of £7,000 to the FSA.

2. REASONS FOR THE ACTION

Summary

2.1. The FSA has concluded that you have breached Statement of Principle 7 of APER in your capacity as holder of Controlled Function 4 (Partner) (“CF4”) at Jones & Poole Independent Mortgage Specialists (“the Partnership”), during the period from 31 October 2004 to 26 June 2007 (“the relevant period”). You held CF4 at the Partnership during the relevant period, which is a governing function and also a significant influence function, and it enabled you to direct the affairs of the Partnership. While the Partnership remained authorised by the FSA until 25 April 2008, you ceased to work at and manage one of its two offices.

2.2. The FSA has made the following findings.

2.3. You failed to take reasonable steps to ensure that the business of the Partnership, of which you were a partner, complied with the relevant requirements and standards of the regulatory system in that:

- (1) the Partnership did not undertake and document appropriate affordability assessments, and thus ensure that personal recommendations to customers were suitable, despite being required to do so by Rules in the Mortgages and Home Finance: Conduct of Business sourcebook (“MCOB”), specifically 4.7.2R, MCOB 4.7.4R and MCOB 4.7.5R, and
- (2) the Partnership failed to take reasonable steps to make and retain appropriate records although it was obliged to do so by MCOB 4.7.17R.

2.4. In particular, the FSA identified the following failings:

- (1) you failed to undertake and document appropriate affordability assessments by using a standard fact find that did not include a section to collate and record a detailed breakdown of clients’ income and expenditure. Affordability was only assessed during a ‘general discussion’ with clients

and not, in the opinion of the FSA, in sufficient detail to demonstrate that the recommended contracts were suitable, in breach of Statement of Principle 7;

- (2) more generally you failed to make and retain appropriate records demonstrating why you had concluded that your mortgage recommendations were suitable. It was not possible for the FSA to determine whether your mortgage recommendations were suitable on the basis of the information recorded on client files, in breach of Statement of Principle 7; and
- (3) you unreasonably failed to implement recommendations of an external compliance consultant to ensure that the Partnership complied with relevant regulatory requirements. Nearly seven months later, when the FSA visited the Partnership, the advice from the consultant had not been fully or appropriately acted upon, in breach of Statement of Principle 7.

2.5. The FSA views your conduct as serious because your actions exposed approximately 750 customers who were recommended mortgage contracts to the risk that they may have been unsuitable for their needs and therefore to the risk of financial loss.

2.6. In deciding upon the appropriate sanction, the FSA recognises the following measures taken by you which have served to mitigate the seriousness of the failings:

- (1) Following the FSA's visit in June 2007, you recognised the seriousness of the issues and engaged an external compliance consultant to review and assist in the implementation of changes to the Partnership's compliance arrangements, sales processes, fact finds, suitability letters and training and competence regime.
- (2) You also arranged for the compliance consultant to visit the Partnership again in September 2007. The consultant's report was provided to the FSA and demonstrated that the Partnership had improved its systems and controls.
- (3) You co-operated with the FSA investigation.

3. STATUTORY PROVISIONS, GUIDANCE AND REGULATORY REQUIREMENTS

- 3.1. The FSA's statutory objectives, set out in section 2(2) of the Act include the protection of consumers.
- 3.2. The FSA has the power, pursuant to section 66 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 by or under the Act. The relevant statutory and regulatory provisions are attached as an Annex to this Notice.

4. FACTS AND MATTERS RELIED UPON

- 4.1. You were one of two partners in the Partnership. You were a partner from the formation of the Partnership in 2001 and you conducted mortgage business from the Partnership's Chester office. You worked on your own in the Chester office
- 4.2. The other partner conducted mortgage business from the Partnership's Rhyl offices.
- 4.3. The Partnership became authorised by the FSA on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:
- (a) advising on regulated mortgage contracts;
 - (b) agreeing to carry on a regulated activity;
 - (c) arranging (bringing about) regulated mortgage contracts, and
 - (d) making arrangements with a view to regulated mortgage contracts
- 4.4. On 14 January 2005, the Partnership was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:
- (a) arranging (bringing about) deals in investments;
 - (b) advising on investments (except on Pension Transfers and Pension Opt Outs); and
 - (c) making arrangements with a view to transactions in investments.

- 4.5. The geographical location and the business strategy of each partner had the effect of both partners operating independently of each other with each in practice responsible for their own clients, mortgage sales and day to day compliance arrangements. The Partnership operated in practice as two separate businesses, except that all general administration for both partners was carried out at the Rhyl offices.
- 4.6. In operating the Chester office, you did not take reasonable steps to ensure that you had in place appropriate systems and controls to enable mortgage sales to be compliant with relevant regulatory requirements. As a result, this may have resulted in unsuitable mortgages being recommended to clients. There was limited contact between the two partners to discuss the compliance arrangements within the Partnership. For example, you told the FSA that you and the other partner had not meet on a regular basis since the formation of the Partnership and the last time that regular meetings took place was before FSA mortgage regulation on 31 October 2004.
- 4.7. You stated that you would conduct checks of your own client files, but you did not use, for example, a standard checklist or pro-forma to ensure consistency, nor were there arrangements in place for the monitoring of your mortgage sales by the other partner, or vice versa.
- 4.8. You also stated that you were not aware that the Partnership needed to have in place an appropriate training and competence regime and that you only became aware of this requirement upon receipt of an external consultant's compliance audit report dated 6 December 2006.
- 4.9. You said that monitoring of mortgage sales took place on an annual basis by an external compliance consultant. You told the FSA that you had seen the most recent compliance audit report of 6 December 2006 (which did not cover any client file reviews) but that you could not recall seeing the 2005 and 2004 reports.
- 4.10. The business model employed by you and the other partner resulted in a dysfunctional Partnership, with you and the other partner operating under the umbrella of a Partnership but with only limited contact between you and the other partner.
- 4.11. Like other small firms, the Partnership used an external compliance consultant to help ensure that it complied with relevant FSA requirements.

4.12. An external compliance consultant visited the Partnership on 29 November 2006 as part of an annual visit and produced a formal Compliance Audit report on 6 December 2006. The report included an action plan and recommendations to ensure compliance with regulatory requirements. The recommendations included the following:

- (1) development of a compliance plan;
- (2) completion of an annual apportionment and oversight report;
- (3) development of job descriptions for all persons holding controlled functions;
- (4) development and implementation of a training and competence regime;
- (5) implementation of a Treating Customers Fairly regime at the Partnership;
- (6) the retention of mortgage product research on client files to evidence suitability; and
- (7) the need to address affordability fully in relation to self-certification mortgages.

4.13. You told the FSA that no meetings were held with the other partner to discuss the content of the report or a timetable for the implementation of the recommendations. The only contact between you and the other partner was a brief discussion over the telephone. Arrangements were made for the compliance consultant to return to the Partnership in February 2007 to review client files with a view to making further recommendations. The consultant cancelled the visit and the visit had to be re-scheduled. The re-arranged visit was approximately ten months after you first became aware of the content of the consultant's report.

4.14. You took little or no substantive action to implement recommendations in the report. If you had implemented the recommendations described above in a timely manner, it is likely that the matters described in paragraph 2.2 above would no longer have continued.

- 4.15. By the time of the FSA's visit to the Partnership on 26 June 2007, there was still no clear plan or timetable to implement the consultant's recommendations. The Partnership therefore posed an ongoing risk to customers and you failed to take appropriate steps to mitigate that risk.
- 4.16. You used a standard fact find to collate and record information obtained from clients. However, the fact find used by you did not include a section to collate and record a detailed breakdown of the clients' income and expenditure. Therefore the information recorded on the fact find could not be used to assess affordability and calculate an affordable monthly surplus amount and to ensure that the personal recommendations to customers were suitable, which is a breach of MCOB 4.7.2R and MCOB 4.7.4R. You told the FSA that you had assessed client affordability in this way for many years and had never completed or documented detailed affordability assessments on a fact find or any other document with clients.
- 4.17. You assessed affordability by having a general discussion with the client regarding whether they thought the recommended mortgage was affordable and you relied on the customer confirming that they could afford mortgage payments. Therefore you placed a disproportionate reliance on the client confirming that the mortgage was affordable rather than seeking documentary information from them. Where for example a mortgage term extended past a client's intended retirement age, you could not demonstrate how you concluded the recommended mortgage contract was affordable, in breach of MCOB 4.7.4R(1)(a).
- 4.18. You also failed to ensure that you made and retained appropriate records of the reasons why you concluded that the mortgages you recommended were suitable, in breach of MCOB 4.7.17R. For example, a sample of your mortgage files reviewed by the FSA identified:
- (1) incomplete fact finds, without it being recorded or sufficiently clear as to why sections of the fact find were incomplete or questions not answered;
 - (2) no product research retained on file, therefore not being able to demonstrate how the recommended mortgage was selected and whether it was the most suitable mortgage for the client;

- (3) clients being recommended self certification mortgages, without documenting that the differences and potential higher costs had been explained to clients;
- (4) differences in the mortgage term recorded on the fact find and the mortgage offer without the rationale for the changes being documented on file, and
- (5) brief and insufficiently detailed suitability letters which did not adequately reflect what was discussed with the client, their financial objectives or the reasons for the recommended mortgages.

4.19. You failed to take reasonable steps to retain appropriate records demonstrating why you concluded that your mortgage recommendations were suitable for clients. The FSA could not determine whether these sales were suitable on the basis of the information recorded on the client file.

5. ANALYSIS OF THE BREACHES

5.1. You failed to take reasonable steps to ensure that the business of the Partnership complied with the relevant requirements and standards of the regulatory system, in that, in the Chester office which you solely operated, you did not:

- (1) undertake and document appropriate affordability assessments by using a standard fact find that included a section to collate and record a detailed breakdown of clients' income and expenditure. Affordability was only assessed during a 'general discussion' with clients and not, in the opinion of the FSA, in sufficient detail to demonstrate that the recommended contracts were suitable, although the Partnership was obliged to do so under MCOB 4.7.2R, MCOB 4.7.4R and MCOB 4.7.5R;
- (2) make and retain appropriate records demonstrating why you had concluded that your mortgage recommendations were suitable. It was not possible for the FSA to determine whether your mortgage recommendations were suitable on the basis of the information recorded on client files, although the Partnership was required to do so by MCOB 4.7.1R;

- (3) implement recommendations of an external compliance consultant to ensure that the Partnership complied with relevant regulatory requirements. Ten months later, when the FSA visited the Partnership, the advice from the consultant had not been fully or appropriately acted upon;

which amounts to a breach by you of Statement of Principle 7.

- 5.2. Having regard to the facts and matters set out in this notice, the FSA considers it proportionate and appropriate in all the circumstances to take disciplinary action against you.

6. ANALYSIS OF THE SANCTION

- 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. DEPP 6.1.2G states that the principal purpose of the imposition of 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.
- 6.2. The FSA will also have regard to the appropriate provisions of the FSA's Enforcement Manual, which applied during the relevant period in which Mr Poole's misconduct occurred. Paragraph 6.5.2G of DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty for an approved person or a firm. Paragraph 6.5.1(1)G states that the criteria listed in DEPP 6.5.2G are not exhaustive and all relevant circumstances of the case will be taken into consideration.

7. DECISION MAKERS

- 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 FSA acknowledges that you made an immediate payment of the financial penalty in full.

Publicity

- 8.3. 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.
- 8.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.5. 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

RELEVANT STATUTORY AND REGULATORY PROVISIONS

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. In relation to this case, the most relevant statutory objectives are the protection of consumers and the reduction of financial crime.
2. Section 66 of the Act provides:
 - (1) "The Authority may take action against a person under this section if –
 - (a) it appears to the Authority that he is guilty of misconduct; and
 - (b) the Authority is satisfied that it is appropriate in the circumstances to take action against him."
 - (2) "A person is guilty of misconduct if, while an approved person –
 - (a) He has failed to comply with a statement of principle issued under section 64..."
 - (3) "If the Authority is entitled to take action under this section against a person, it may –
 - (a) impose a penalty on him of such amount as it considers appropriate..."
3. The Statements of Principle for Approved Persons, issued under section 64 of the Act, are contained in the part of the FSA Handbook entitled APER. Statement of Principle 7 is most relevant to the case. Under Statement of Principle 7, 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.

4. In determining whether your conduct amounts to a breach of the Statements of Principle, the FSA has had regard to the guidance and examples in APER 4.7. In particular, APER 4.7.2E says that in the opinion of the FSA, conduct of the type described below does not comply with Statement of Principle 7:

2.21.1.1. APER 4.7.3. Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2E.

2.21.1.2. APER 4.7.7E and APER 4.7.8E. Failing to take reasonable steps to ensure that procedures and systems of controls are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to the Partnership's regulated activities, which includes unreasonably failing to implement recommendations for improvements in systems and procedures, falls within APER 4.7.2E (see APER 4.7.13G and 4.17.14G).

5. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act.
6. Guidance on the FSA's exercise of its disciplinary powers is set out in section 6.2.1G and sections 6.2.4G to 6.2.9G of the FSA's Decision Procedure and Penalties manual (DEPP), which is part of the FSA's Handbook. DEPP 6.2.1G states that the FSA will consider the full circumstances of each case and that the criteria listed are not exhaustive. In particular, DEPP 6.2.4G states that the FSA will only take disciplinary action against an approved person where there is evidence of personal culpability on his part, which arises from his behaviour and, amongst others, the standard of behaviour fell below that which would be reasonable in all the circumstances.

7. The FSA has also had regard to its Enforcement Guide (“EG”). In particular, EG 2.2(2) states that the FSA will seek to exercise its enforcement power in a manner that is transparent, proportionate and consistent with its publicly stated policies. Though the references in this notice are to the EG, the FSA has also had regard to the appropriate provisions of the FSA’s Enforcement Manual (“ENF”), which applied during the period in which your misconduct occurred.

MCOB 4.7 Advised sales

MCOB 4.7.2: A firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer (see MCOB 4.3.4 R (2), MCOB 4.3.5 G and MCOB 4.3.6 G).

MCOB 4.7.4: For the purposes of MCOB 4.7.2 R:

- (1) a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that:
 - (a) the customer can afford to enter into the regulated mortgage contract;
 - (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
 - (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer;

MCOB 4.7.17 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.

MCOB 5.5.1 A firm must provide the customer with an illustration for a regulated mortgage contract before the customer submits an application for that particular regulated mortgage contract to a mortgage lender, unless an illustration for that particular regulated mortgage contract has already been provided.