Financial Services Authority

FINAL NOTICE

To:	Swift 1st Limited
FSA Reference Number:	304896
Address:	Arcadia House Warley Hill Business Park The Drive Great Warley Brentwood Essex, CM13 3BE
Date:	25 July 2011

TAKE NOTICE: The Financial Services Authority of 25, The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice of the following action:

1. THE ACTION

1.1. The FSA gave Swift 1st Limited ("Swift") a Decision Notice on 25 July 2011 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 £630,000 on

Swift for breaches of Principle 3 (Management and control) and Principle 6 (Customers' interests) of the FSA's Principles for Businesses ("the Principles") and Rules 12.3.1R, 12.4.1R, 12.5.1R, 13.3.1R, 13.4.1R and 13.5.1R of the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB") which occurred in the period between 1 June 2007 and 31 July 2009 ("the Relevant Period").

1.2. Swift confirmed on 19 July 2010 that it would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Swift in the amount of £630,000.

1.4. Swift agreed to settle at an early stage of the FSA's investigation and 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 £900,000 on Swift.

1.5. Swift will carry out a customer redress programme to provide redress to customers in arrears who were charged certain arrears fees and charges that were excessive in that they did not reflect a reasonable estimate of the cost of administering an account in arrears during the period from October 2004 to November 2009. This will also include repaying part of the early repayment charge which represented interest on arrears fees. The estimated total cost of this redress is £1.8 million excluding interest.

1.6. Swift will also provide redress to those customers who redeemed their mortgages early where it miscalculated the interest on the redemption balance during the period from October 2004 to August 2010. The total cost of this redress will be approximately £550,000 excluding interest.

2. SUMMARY OF REASONS

Introduction

2.1. The breaches of the Principles and MCOB Rules, which are described in more detail in section 4 below, relate to a number of serious and sustained failings by Swift in its treatment of customers in mortgage arrears.

Principle 3

2.2. Swift breached Principle 3 during the period from October 2004 to August 2010 in that it failed to have adequate systems and controls in place to ensure that its process for managing early redemptions was organised and controlled responsibly and effectively. During this period, Swift miscalculated the interest due on redemption balances in relation to both repayment mortgages and interest only mortgages with the result that some customers who redeemed their mortgages early (mainly those with repayment mortgages) are likely to have overpaid.

2.3. Swift also breached Principle 3 during the period from October 2004 to December 2009 in that it failed to have adequate systems and controls in place to ensure that it complied with the FSA's rules on communicating with customers in arrears. In particular:

(1) Swift breached MCOB 13.4.1R in that it failed to send to all of its customers who were in arrears certain prescribed documents, providing information on the options available to them; and

(2) Swift breached MCOB 13.5.1R by failing to send to its customers who were in arrears a quarterly statement of arrears.

Principle 6

2.4. Swift breached Principle 6 in that it failed to pay due regard to the interests of its customers and treat them fairly. In particular:

(1) during the Relevant Period, Swift focussed on the collection of arrears, without always proactively engaging with customers to establish an appropriate "Arrangement To Pay" based on their individual circumstances;

(2) during the period from October 2004 to November 2009, Swift applied certain charges to its customers' accounts that were in arrears which were excessive in that they did not reflect a reasonable estimate of the cost of administering an account in arrears; and

(3) during the period from October 2004 to July 2010, Swift included arrears fees and charges in the balance which formed the basis of the calculation of the early repayment charge.

2.5. Swift also breached MCOB 13.3.1R in relation to the facts described in paragraph 2.4(1) above, MCOB 12.4.1R and 12.5.1R in relation to the facts described in paragraph 2.4(2) above and MCOB 12.3.1R in relation to the facts described in 2.4(3) above.

Seriousness of conduct

2.6. The FSA considers Swift's failings to be serious as they created a significant risk that its customers who were in mortgage arrears were not treated fairly and/or were put at risk of financial loss. Accordingly, the failings merit the imposition of a substantial financial penalty.

2.7. The FSA recognises the following factors which mitigate the seriousness of Swift's failings:

(1) Swift has worked in an open and co-operative way with the FSA during the investigation;

(2) after the start of the FSA's investigation, Swift took steps to implement a new fee structure including appointing an external firm to provide independent advice regarding its arrears fees and charges. The new fee structure was implemented in November 2009;

(3) Swift notified the FSA of the failings that it had identified around early repayment charges and redemption balances when it became aware of them between June and August 2010; and

(4) Swift has agreed to a customer redress programme in response to its failings in relation to arrears fees and charges and early repayment charges and redemptions.

3. DEFINITIONS

Relevant Statutory Provisions

3.1. The FSA is authorised by the Act to exercise the following powers:

3.2. Section 206 of the Act provides that:

(1) *"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 in such amount as it considers appropriate."*

3.3. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.

3.4. Swift is an authorised person for the purpose of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purposes of protecting the interests of consumers.

Relevant Rules and Guidance

3.5. In deciding to take the action, the FSA has had regard to rules and guidance published in the FSA Handbook.

3.6. Principle 3 provides that:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

3.7. Principle 6 provides that:

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

3.8. MCOB 12.3.1R provides that:

"A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, an early repayment charge other than the one that is:

(1) *able to be expressed as a cash value; and*

(2) *A reasonable pre-estimate of the costs as a result of the customer repaying the amount due under the regulated mortgage contract before the contract has terminated."*

3.9. MCOB 12.4.1R provides that:

"A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, a charge for arrears on a customer except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the customer being in arrears."

3.10. MCOB 12.5.1R provides that:

"A firm must ensure that any regulated mortgage contract, home reversion plan or regulated sale and rent back agreement that it enters into does not impose, and cannot be used to impose, excessive charges upon a customer."

3.11. MCOB 13.3.1R provides that:

"(1) A firm must deal fairly with any customer who:

(a) is in arrears on a regulated mortgage contract or home purchase plan;

(b) has a sale shortfall; or

(c) is otherwise in breach of a home purchase plan.

(2) A firm must put in place, and operate in accordance with, a written policy (agreed by its respective governing body) and procedures for complying with (1)."

3.12. MCOB 13.4.1R provides that:

"If a customer falls into arrears on a regulated mortgage contract, a firm must as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following in a durable medium:

(1) the current FSA information sheet on mortgage arrears;

(2) a list of the due payments either missed or only paid in part;

(3) the total sum of the payment shortfall;

(4) the charges incurred as a result of the payment shortfall;

(5) the total outstanding debt, excluding charges that may be added on redemption; and

(6) an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared."

3.13. MCOB 13.5.1R provides that:

"Where an account is in arrears, and the payment shortfall or sale shortfall is attracting charges, a firm must provide the customer with a regular written statement (at least once a quarter) of the payments dues, the actual payment shortfall, the *charges incurred and the debt."*

4. FACTS AND MATTERS

4.1. Swift is a lender which specialises in sub-prime and non-conforming secured lending offering its products through a panel of brokers. It has been authorised since 31 October 2004 with permissions to arrange, administer and enter into regulated mortgage contracts.

4.2. As at 31 July 2009, Swift had approximately 2,500 regulated mortgage contracts under its administration with a total value of approximately £182 million. During the Relevant Period, Swift administered an average of approximately 3,000 regulated mortgage contracts per month with an average total value of approximately £211 million.

4.3. Swift was one of the firms that took part in the FSA's thematic work in connection with the Mortgage Effectiveness Review which started in 2008.

Arrears handling

4.4. Swift's arrears handling procedures stated that they should "*agree practical and realistic arrangements for the repayment of arrears from which both parties can expect fulfilment.*"

4.5. The FSA reviewed a random sample of 29 cases which had fallen into arrears. The FSA's findings in relation to these files are set out below:

(1) in 8 cases (28%), Swift's servicing staff did not proactively engage with the customer to establish an appropriate "Arrangement To Pay" based on the customer's individual circumstances. Instead, Swift relied on the customer's own suggestions, although these may not have been appropriate;

(2) in 6 cases (21%), Swift failed to provide the documents prescribed under MCOB 13.4.1R to the customer within 15 days of the customer being in arrears. In most of these cases, Swift had made contact with the customer by telephone within the 15 day period to discuss the arrears. The FSA prescribed information was withheld from these customers as an unintended consequence of this; and

(3) in 29 of the cases (100%), Swift failed to provide the customer with a quarterly statement of arrears. Instead, due to a systems error, Swift sent the information on a half-yearly basis.

Arrears fees and charges

4.6. During the Relevant Period, Swift failed to ensure that certain of its arrears fees and charges were based on a reasonable estimate of the cost of the additional administration required as a result of the customer being in arrears.

4.7. Swift began a review of its arrears fees and charges in November 2007 ("the Fee Review"). The decision to conduct the Fee Review was taken on the basis that

Swift's fee tariff had not been reviewed since 2005 and might need to be updated. The Fee Review was not resolved, although various proposals were submitted for consideration, until April 2009.

4.8. The Fee Review was centred on an activity-based model. Swift created a number of different versions of this model. During the Fee Review, Swift took the view that overall its fee tariff was fair to customers as the different versions of the model indicated that certain of Swift's charges resulted in an under-recovery of the costs of the specific underlying arrears activities, while others resulted in an over-recovery.

4.9. During the Fee Review, the following facts and matters were identified about the level of the arrears fees and charges which should have caused Swift to resolve the Fee Review and implement a revised fee structure more promptly:

(1) at the outset of the Fee Review, in November 2007, Swift conducted a benchmarking exercise which showed that certain of its arrears fees and charges were outliers in comparison to its competitors;

(2) a number of different versions of the activity-based model indicated that certain of Swift's charges resulted in an over-recovery of the costs of the specific underlying arrears-related activities; and

(3) during the Fee Review, Swift identified that there had been a 53% increase in the number of customer complaints received during 2008 from 2007 and that 39% of the complaints received in 2008 related to disputes over sums due, fees and charges.

4.10. Swift's failure to resolve the Fee Review and to change its structure in respect of certain fees over a two year period led to a risk of financial detriment to its customers who were in arrears. During the period over which the Fee Review was carried out, on a monthly average, approximately 900 of Swift's customers had arrears amounting to two or more missed payments.

4.11. It is estimated that, since 31 October 2004, approximately 4,300 of Swift's customers have paid fees and charges which were excessive in that they exceeded the reasonable costs of administration of arrears, as set out below.

4.12. In July 2009, Swift instigated a further review of its arrears fees and charges. This included the appointment of an external firm to provide independent advice. This resulted in a new fee structure being introduced in November 2009.

Excessive fees and charges

4.13. Swift's arrears fees and charges which were excessive in that they did not reflect a reasonable estimate of the cost of administering an account in arrears were:

(1) *Servicing fees*

(a) Arrears management: monthly fee applied to a customer in arrears where no "Arrangement To Pay" was in place.

(b) Default notice: default fee applied when a customer's account fell into arrears (i.e. two monthly payments missed).

(c) Unpaid mortgage payment fees: applied when a cheque, direct debit or standing order was not honoured by the customer's bank.

(2) *Litigation fees*

(a) Accepting instructions: fee applied for Swift to instruct solicitors.

(b) Issuing proceedings: fee applied by Swift for it to issue proceedings.

(c) Taking possession: fee applied by Swift when it repossessed a customer's property.

(d) Every 3 months in legal: fee applied for every 3 months for monitoring a customer's account whilst it remained in legal care.

Early repayment charges

4.14. In June 2010, Swift identified and informed the FSA that, during the period from October 2004 until its subsequent correction in July 2010, it had applied excessive early repayment charges to the redemption figures on mortgage accounts of customers who were, or had been, in arrears.

4.15. Swift applied an early repayment charge in respect of these customers that was based on an outstanding balance which included arrears fees and charges. This charge should have been calculated on the outstanding mortgage balance only.

4.16. Swift committed to repay the element of the early repayment charge based on the arrears fees and charges (together with interest) as part of its customer remediation package.

Miscalculation of the interest on redemption balances

4.17. During July 2010, Swift identified a systems error in its process for calculating redemptions balances. This had resulted in the interest on some redemption balances being mis-calculated and customers being wrongly charged during the period from October 2004 to August 2010. Swift informed the FSA of this matter in early August 2010.

4.18. Swift's terms and conditions in relation to repayment mortgages and interest only mortgages provided for the early redemption of mortgages as follows. When a customer requested to redeem a mortgage early, Swift could charge interest on the redemption balance:

(1) for the period up to the date of receiving a written redemption request; and

(2) for an additional 28 day period from that date.

4.19. However, as a result of this systems error, Swift's calculation of the interest due on redemption balances for customers with repayment mortgages mistakenly included the interest that would have been due had the loan continued until the next payment

date after the additional 28 days. These customers are likely to have been overcharged.

4.20. For customers with interest only mortgages, the calculation included (in line with Swift's terms and conditions) the interest that was due up to the date of receiving the written redemption request but did not (due to the systems error) include interest for an additional 28 day period. These customers are likely to have been undercharged.

4.21. Swift has determined that, between October 2004 and August 2010, 3,655 of its customers were potentially affected by this issue and estimate that, of these, 2,307 customers are likely to have been overcharged and 1,348 customers are likely to have been undercharged.

4.22. Swift notified the FSA of this matter and agreed to provide redress to the customers who had been overcharged. This is estimated to be in the region of £550,000 excluding interest.

5. ANALYSIS OF BREACHES

5.1. Principle 3 requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. Swift's failure to have in place adequate systems and controls to ensure that customers who redeemed their mortgages early were charged the correct redemption balances as per Swift's terms and conditions is a breach of Principle 3.

5.2. Swift's terms and conditions set out how additional interest would be added to a loan balance to determine the redemption balance due on that loan. However, due to a systems error, the formula for calculating the interest due on a loan balance when a customer sought to redeem their mortgage early was incorrect. Swift has confirmed that as a result of this error, certain customers were likely to have been overcharged.

5.3. Swift also breached Principle 3 by failing to have in place adequate systems and controls to ensure that it sent to its customers who were in arrears a quarterly statement of arrears, in breach of MCOB 13.5.1R, and certain other documents providing information on the options available to them in breach of MCOB 13.4.1R.

5.4. Principle 6 requires firms to pay due regard to the interests of their customers and treat them fairly. The failings below demonstrate that Swift failed to pay due regard to its customers who were in arrears and treat them fairly:

(1) Swift focussed on the collection of arrears, without always proactively engaging with customers to establish an appropriate "Arrangement To Pay" based on their individual circumstances, and in so doing breached MCOB 13.3.1R;

(2) Swift failed to complete in a timely manner an exercise to determine that its fees were a reasonable estimate of the cost of administering an account in arrears. As a consequence, Swift allowed certain arrears charges to be applied to customers' accounts that were excessive in that they did not reflect a reasonable estimate of the cost of administering accounts in arrears. The application of these charges was in breach of MCOB 12.4.1R and MCOB 12.5.1R; and

(3) Swift included arrears fees and charges in the balance which formed the basis of the calculation of the early repayment charge for its customers who were in arrears, which was in breach of MCOB 12.3.1R.

6. ANALYSIS OF SANCTION

6.1. When exercising its powers, the FSA seeks to act in a way which it considers most appropriate for the purpose of meeting its regulatory objectives as set out in section 2(2) of the Act. The FSA considers that imposing a financial penalty on Swift meets the regulatory objectives of maintaining market confidence and protection of consumers.

6.2. In deciding to take this action, the FSA has had regard to the guidance published in the FSA handbook, in particular as set out in Chapter 12 of the Enforcement Guide ("EG") and Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP") which form part of the FSA Handbook of Rules and Guidance. Prior to 28 August 2007, the relevant guidance was set out in Chapter 13 of the Enforcement Manual ("ENF"). The FSA has had regard to both DEPP and ENF as both manuals applied at separate times during the Relevant Period. The Manuals set out a non-exhaustive list

of criteria that may be of particular relevance in determining the appropriate level of financial penalty for an authorised person.

Deterrence

6.3. 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.

The nature, seriousness and impact of the breach

6.4. In determining the appropriate sanction, the FSA had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches and the number of customers who suffered a financial loss.

6.5. The FSA considers Swift's failings to be serious because:

(1) the failings persisted over a significant period of time and impacted around 2,500 customers; and

(2) arrears rates in the sub-prime sector are higher than those in the rest of the mortgage market and, as Swift specialised in the sub-prime sector, a number of customers who already had an adverse credit status were put at further risk of financial detriment.

The extent to which the breach was deliberate or reckless

6.6. The FSA has not determined that Swift deliberately or recklessly contravened regulatory requirements.

The size, financial resources and other circumstances of the Firm

6.7. There is no evidence to suggest that Swift is unable to pay the financial penalty.

The amount of benefit gained or loss avoided as a result of the breaches

6.8. The FSA has not determined that Swift deliberately set out to accrue additional profits or avoid a loss through the way in which it operated its systems and controls and

processes. Swift has agreed to provide customer redress in respect of the potential benefit it may have gained as a result of the breaches as detailed above.

Conduct following the breaches

6.9. As mentioned at paragraph 2.7 above, Swift has cooperated with the FSA since the commencement of the investigation. Swift promptly self-reported the systems error in relation to early repayment charges when discovered. Swift has also taken remedial steps to improve, for the purposes of governance, its processes, systems and controls. After the start of the FSA's investigation, Swift appointed an external firm to provide independent advice on its arrears fees and charges and to validate its proposed new fee structure, which was subsequently implemented. The firm has also agreed to provide redress to affected customers.

Disciplinary record and compliance

6.10. Swift has not been the subject of previous disciplinary action.

Conclusion

6.11. Taking into account the seriousness of the breaches and the risks they pose to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA imposes a financial penalty of £630,000 (£900,000 prior to the application of a 30% stage one settlement discount) on Swift.

7. DECISION MAKERS

7.1. 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.

8. IMPORTANT

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

Manner of and time for Payment

8.2. The financial penalty must be paid in full by Swift to the FSA by no later than 8 August 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 9 August 2011, the FSA may recover the outstanding amount as a debt owed by Swift 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.

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

FSA Contact

8.6. For more information concerning this matter generally, contact Anna Hynes at the FSA (direct line: 020 7066 9464 / fax 020 7066 9465) of the Enforcement and Financial Crime Division of the FSA.

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Georgina Philippou

Head of Department

FSA Enforcement and Financial Crime Division