

**Southern Pacific Mortgage Limited**  
**(FRN 302027)**

**APPLICATION TO REQUEST THAT REQUIREMENTS ARE IMPOSED ON  
SOUTHERN PACIFIC MORTGAGE LIMITED**

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**To: The Financial Conduct Authority**

**FAO: Ian Conway**

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Southern Pacific Mortgage Limited hereby applies, pursuant to Part 4A of the Financial Services and Markets Act 2000, for the requirements set out in the attached document.

Signed: .....  .....  
Lee Brandon – Chief Executive  
For and on behalf of Southern Pacific Mortgage Limited

Date: ..... *26 June 2015* .....

**Southern Pacific Mortgage Limited (FRN 302027)**

**Requirements included in the Firm's Permission at the request of the Firm under section 55L of the Financial Services and Markets Act 2000**

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**Introduction**

1. These Requirements come into effect immediately.
2. The terms used in these Requirements have the meanings ascribed to them in Annex A hereto and in the Authority's Handbook of rules and guidance, unless the context otherwise requires.
3. The Firm has applied to the Authority for these Requirements. The Authority has consulted with the Prudential Regulation Authority and the Authority has accepted the application.

**Background**

4. The Firm is an authorised person which imposed excessive Arrears Fees on Customers during the Material Time, either directly or through its third party administrator and agent Acenden which was directed by the Firm to apply such Arrears Fees in accordance with the Firm's arrears handling policy and tariffs.
5. Customers who have been charged excessive Arrears Fees during the Material Time are entitled to be refunded the difference between what it was reasonable to charge and what was actually charged, plus interest on that difference.
6. Supervisors at the Authority identified significant concerns with the Firm's mortgage arrears handling and raised these concerns with the Firm. As a result, the Firm has agreed to establish and operate a consumer redress scheme on a voluntary basis.
7. The method of calculating Redress in these Requirements takes into account:
  - 7.1 the amount of monies the Firm is able to make available for the purposes of Redress (which would not otherwise be available readily or at all);
  - 7.2 the large number of Customers, being approximately 17,271, who were subjected to Arrears Fees at the Material Time;
  - 7.3 the cost, difficulty and time it would take to investigate each case individually, meaning that it would in this matter be appropriate to adopt a proxy for an assessment of what reasonable charges would have been at the Material Time;
  - 7.4 representations by the Firm to the Authority that the payments and credits set out below are a fair reflection of the actual loss suffered by Customers in respect of the Arrears Fees at the Material Time.



8. The Firm acknowledges that this is a unique solution to this particular case. Nothing in these Requirements shall be regarded as establishing a precedent for the Authority's approach in the event of similar matters or issues arising in respect of other aspects of the Firm's business.
9. The Firm will establish and operate the Scheme jointly with Preferred Mortgages Limited (FRN 304343): but nothing in these Requirements imposes any obligation on the Firm to pay Redress under the Scheme in respect of any Mortgage to which it is not a party.

### **Requirements**

10. Under sections 55L and 404F(7) of FSMA, the following requirements are included in the Firm's Permission:
  - 10.1 the Firm must establish and operate the Scheme (with the assistance of Acenden if the Firm so wishes), under which it, either directly or through Acenden, will deal with matters falling within the Subject Matter of the Scheme, by:
    - 10.1.1 making a determination under the Scheme, by identifying and determining the Redress due to Customers, no later than 8 July 2015;
    - 10.1.2 paying Redress to Customers by making payments, setting off against sums otherwise due from the Customers to the Firm or not recovering or seeking to recover the amount that would be payable in Redress if there were no shortfall, as required by the Scheme, no later than 31 October 2015 unless paragraphs 14 and 15 apply;
    - 10.1.3 taking such other action as is required under the Scheme; and
  - 10.2 Scheme Complaints are to be dealt with by the Ombudsman as described in Annex B, on the basis that the Scheme corresponds to or is similar to a consumer redress scheme under section 404 of FSMA and such complaints fall to be dealt with (or have been dealt with) under the Scheme (unless the Firm and Customer agree on or after 1 July 2015 that the Scheme Complaint should not be dealt with by the Ombudsman in accordance with the Scheme).

### **Subject matter and duration of Scheme**

11. The Scheme applies to the level of Arrears Fees which the Firm, or on its behalf and at its direction Acenden, applied during the Material Time on Customers in respect of and in connection with Mortgages. More particularly, the Scheme applies to the Subject Matter of the Scheme. The imposition of the Arrears Fees formed part of the Firm's regulated mortgage activities since 31 October 2004 inclusive.
12. The Scheme starts on 1 July 2015 and has no end date.



## Customer identification

13. The Firm will carry out an investigation to identify each Customer by no later than 8 July 2015.
14. The Firm will use all reasonable endeavours to trace Former Customers for whom no current contact details are held. These endeavours will include a full review of the Firm's and Acenden's records and any other relevant records that the Firm properly has access to: matching closed account records with any held elsewhere in the Lehman's group of companies and in relation to which the Firm may properly seek or obtain access or information; and using an external tracing agency to access key external databases. If by 31 October 2015 such reasonable endeavours have failed to result in such Former Customers being traced then, subject to paragraph 15 below, the Firm will be under no further obligation in relation to the Scheme in respect of such Former Customers.
15. If the Firm subsequently makes contact with or is contacted by a Former Customer who was not traced under paragraph 14 - for example, if the Firm subsequently learns of or obtains the Former Customer's contact details - the Firm will then be bound to apply the Scheme to that Former Customer (insofar as and to the extent that the Scheme applies); and will pay or credit any Redress due to that Former Customer within 8 weeks of such contact, and (subject to paragraph 28) paragraph 27 (explanatory letter) or paragraph 33 (Redress Determination) will apply as appropriate.

## Redress

### Redress determination

16. The Firm agrees to determine, by no later than 8 July 2015, the Redress payable to, or otherwise due to the credit of, Existing Customers and Former Customers by adding:
  - 16.1 the difference between the AMF actually charged and £65, for each month during the period from 1 January 2010 to 2 April 2011 that the AMF exceeded £65, plus 8% simple interest per annum on such difference, by applying the following formula for each excessive fee payment:
$$(AMF - £65) + ((AMF - £65) \times 0.08 \times \text{Number of Days from the date on which the fee was paid or applied until the date of the refund}/365);$$
  - 16.2 the difference between the LMF actually charged and £80, for each month during the period 1 January 2009 to 31 August 2012 (inclusive) that the LMF exceeded £80, plus 8% simple interest per annum on such difference, by applying the following formula for each relevant excessive fee payment:
$$(LMF - £80) + ((LMF - £80) \times 0.08 \times \text{Number of Days from the date on which the fee was paid or applied until the date of the refund}/365);$$



16.3 the difference between the RMF actually charged and:

16.3.1 £500, for each month during 2009 where the RMF exceeded £500.

16.3.2 £525, for each month from January 2010 – April 2011 where the RMF exceeded £525, and

16.3.3 £546, for each month from April 2011 – August 2012 where the RMF exceeded £546.

plus 8% simple interest per annum on any such difference.

by applying the following formulae for each excessive fee payment:

(i) From 1 January 2009 to 31 December 2009:

$(\text{RMF} - £500) + ((\text{RMF} - £500) \times 0.08 \times \text{Number of Days from the date on which the fee was paid or applied until the date of the refund}/365)$ ;

(ii) From 1 January 2010 to 3 April 2011:

$(\text{RMF} - £525) + ((\text{RMF} - £525) \times 0.08 \times \text{Number of Days from the date on which the fee was paid or applied until the date of the refund}/365)$ ;

(iii) From 4 April 2011 to 31 August 2012:

$(\text{RMF} - £546) + ((\text{RMF} - £546) \times 0.08 \times \text{Number of Days from the date on which the fee was paid or applied until the date of the refund}/365)$ .

#### Former Customers and Shortfall Customers

17. Where a Former Customer has repaid in full all amounts due in respect of the Customer's Mortgage, the Redress shall be paid to the Customer by electronic transfer directly into the Customer's bank account or, where this is not possible, by cheque.

18. Where in relation to a Shortfall Customer the amount of Redress exceeds the amount of the relevant shortfall, the balance of the Redress shall be paid to the Former Customer by electronic transfer directly into the Customer's bank account or, where this is not possible, by cheque.

19. This paragraph applies where in relation to a Shortfall Customer:

19.1 the relevant shortfall exceeds the amount of Redress; and

19.2 the Firm takes any steps to recover the relevant shortfall from the Shortfall Customer.

20. The following provisions apply to a Shortfall Customer to whom paragraph 19 applies:



- 20.1 The Firm unconditionally and irrevocably agrees not to seek to recover or to recover (in either case, on its own or through a debt collection agent) an amount equal to the amount of Redress less the Interest Component. For the avoidance of doubt, where in relation to the Shortfall Customer the Firm has appointed a debt collection agent to recover the relevant shortfall, the Firm shall notify the agent of the revised shortfall amount.
- 20.2 If the Customer proposes to repay the relevant shortfall (as adjusted in accordance with paragraph 20.1), the Firm will, if the Customer so elects, reduce the amount of the relevant shortfall owed by that Customer by an amount equivalent to the Interest Component, save that interest will be calculated from the date on which the relevant excessive fee payment was paid or applied to the date on which the relevant shortfall is repaid by the Customer.

#### Existing Customers

21. For Existing Customers, the Redress shall be applied in the following order:
- 21.1 first, against any outstanding Other Amounts Due (if any); and
- 21.2 then, the balance will be refunded to the Customer.
22. This means that where an Existing Customer has no outstanding Other Amounts Due, the Redress shall be paid to the Existing Customer by electronic transfer directly into the Customer's bank account or, where this is not possible, by cheque.
23. Where an Existing Customer has outstanding Other Amounts Due, the Redress shall be first applied against the outstanding Other Amounts Due. If and to the extent that the Redress exceeds the outstanding Other Amounts Due, the balance shall be paid to the Existing Customer by cheque or by electronic transfer directly into a Customer's bank account.

#### Redress payments

24. Before making any payments to a Customer by electronic transfer, the Firm must verify that the bank account details are correct.
25. The Firm may arrange for a third party (such as Acenden) to facilitate the payment of the Redress to Customers on its behalf, but paragraph 26 will still apply.
26. The Firm will make all payments, credits and reductions pursuant to paragraphs 17 to 25 above on or before 31 October 2015, unless paragraphs 14 and 15 apply.



### **Explanatory letter to accompany Redress**

27. Before or at the same time as the Firm pays Redress to a Customer, the Firm will send an explanatory letter to the Customer in substantially the form of the appropriate template letter attached at Annex C. The explanatory letter will include the following:
  - 27.1 a brief summary of the Firm's obligations under the Scheme;
  - 27.2 an explanation that the payment or credit (as the case may be) has been calculated and made in accordance the Scheme.
28. For the avoidance of doubt, the Firm is not required to send an explanatory letter in accordance with paragraph 27 in relation to a Shortfall Customer where the Firm has determined that the relevant shortfall exceeds the amount of Redress.
29. If, after these Requirements come into effect, a Customer makes a Scheme Complaint before an explanatory letter is sent, the Firm does not need to send an explanatory letter. This is because, as set out below, the Firm will instead send the Customer a Redress Determination or final response.

### **Scheme Complaints about Mortgages made by a Customer to the Firm or Acenden**

30. From and including the date that these Requirements come into effect (being 1 July 2015), DISP 1.1.11AR shall apply in respect of any Scheme Complaint made by a Customer to the Firm or to Acenden.
31. If the Firm receives a Scheme Complaint, within five business days of receipt of the complaint or within five business days of the date that these Requirements come into effect, whichever is the later, the Firm will send the Customer a letter acknowledging the complaint and then:
  - 31.1 the Firm will send the Customer a Redress Determination within 8 weeks of receipt of the Scheme Complaint, if the Firm has not yet sent the complainant an explanatory letter under paragraph 27; and paragraph 27 will cease to apply in respect of that Customer;
  - 31.2 the Firm will send the Customer a Redress Determination and written communication in accordance with paragraph 33 within 4 weeks of receipt of the Scheme Complaint, if the complainant has already received an explanatory letter under paragraph 27.
32. If it has not already done so, the Firm will calculate Redress in accordance with paragraph 16 above and will make payment or credit in the manner set out in paragraphs 17 to 25 above at the same time as it sends a Redress Determination.



33. The written communication from the Firm containing the Redress Determination will be in substantially the form of the appropriate template letter attached at Annex D. The written communication from the Firm containing the Redress Determination will:
- 33.1 inform the complainant that the Firm has dealt with the subject matter of the complaint in accordance with the Scheme;
  - 33.2 set out the results of the Firm's determination under the Scheme;
  - 33.3 explain why the subject matter of the complaint falls within the Scheme;
  - 33.4 enclose a copy of the Ombudsman's standard explanatory leaflet;
  - 33.5 inform the complainant that, if the Customer remains dissatisfied with the Firm's response, he may refer his complaint to the Ombudsman, and subject to paragraph 34, must do so within six months from the date of the submission of the complaint by including the following statement:  
  

**“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge – but you must do so within six months of the date of this letter.**

If you do not refer your complaint in time, the Ombudsman will not be able to consider your complaint and so will only be able to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.”
  - 33.6 explain that the Ombudsman can only look at whether the matter was dealt with in accordance with the Scheme (unless paragraph 34 applies).
34. If on or after 1 July 2015 the Firm and the Customer agree that the Scheme Complaint should not be dealt with by the Ombudsman in accordance with the Scheme then—
- 34.1 neither paragraph 33.5 nor paragraph 33.6 will apply; and
  - 34.2 the written communication from the Firm containing the Redress Determination will—
    - 34.2.1 explain that if the Customer remains dissatisfied with the Firm's response, he may refer his complaint to the Ombudsman
    - 34.2.2 explain that the complaint will be dealt with by the Ombudsman by reference to what is fair and reasonable in all the circumstances of the case:



34.2.3 explain that the Firm may agree that the complaint can be dealt with by the Ombudsman even though the relevant time limits for referring the complaint to the Ombudsman may have expired; and

34.2.4 include the appropriate wording from DISP 1 Annex 3R.

#### **General provisions about all complaints**

35. The Firm must establish and maintain a fair and intelligent filtering of complaints to identify whether a complaint (or any part of a complaint) received (whether before or after the date that these Requirements come into effect) that has not yet been resolved is a Scheme Complaint.
36. If the Firm or Acenden (on behalf of the Firm) receive a complaint from a Customer that (in whole or in part) falls outside the Subject Matter of the Scheme, the Firm will resolve the complaint (or that part of the complaint) in accordance with their obligations under DISP 1. The Firm's final response will inform the complainant that, to the extent the complaint is not a Scheme Complaint, that the complainant may refer it to the Ombudsman to be determined in accordance with what is fair and reasonable in all the circumstances of the case.

#### **Transparency**

37. The FCA will publish these Requirements on its website.

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## **Annex A: defined terms**

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1. In these Requirements, the following terms have the following meanings:
  - a) **“Acenden”** means Acenden Limited, formerly trading as Capstone Mortgage Services and the Firm’s third party administrator and agent;
  - b) **“AMF”** means the monthly arrears management fee imposed in the period from 1 January 2010 and 2 April 2011, by or on behalf of the Firm, on Customers in respect of their Mortgage;
  - c) **“Arrears Fee”** means any or all of the AMF, LMF and or RMF;
  - d) **“Authority”** means the body corporate formerly known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
  - e) **“Customer”** means an Existing Customer and/or a Former Customer as the context requires;
  - f) **“Existing Customer”** means someone who is currently a customer (within the meaning of the Authority’s Handbook) of the Firm who has entered into and at the time of payment of Redress still has a Mortgage; and on whom Arrears Fees were imposed by or on behalf of the Firm during the Material Time;
  - g) **“Firm”** means Southern Pacific Mortgage Limited (FRN 302027);
  - h) **“Former Customer”** means a customer (within the meaning of the Authority’s Handbook) of the Firm and who had entered into a Mortgage but at the time of payment of Redress no longer has one, either because it has been repaid in full or because it has been enforced or amounts due have been written off and on whom Arrears Fees were imposed by or on behalf of the Firm during the Material Time;
  - i) **“FSMA”** means the Financial Services and Markets Act 2000 (as amended);
  - j) **“Interest Component”** means that amount of the Redress which represents interest of 8% simple interest per annum on the difference between what it was reasonable to charge in relation to the Arrears Fees and what was actually charged as calculated in accordance with paragraph 16;
  - k) **“LMF”** means the monthly litigation management fee imposed during the Material Time, by or on behalf of the Firm, on customers in respect of their Mortgage;
  - l) **“Material Time”** means 1 January 2009 to 31 August 2012 inclusive;



- m) **“Mortgage”** means a regulated mortgage contract (as defined in the Authority’s Handbook of rules and guidance) entered into on or after 31 October 2004, between the Firm and a Customer;
- n) **“Ombudsman”** means the Financial Ombudsman Service;
- o) **“Other Amounts Due”** means the balance showing on the Customer’s Mortgage account as ‘Other Amounts Due’ but only in so far as that balance is comprised of the AMF, LMF, RMF and late payment fees;
- p) **“Permission”** means the Firm’s permission under Part 4A of FSMA;
- q) **“Redress”** means the amount calculated in accordance with paragraph 16 above as payable to or otherwise due to the credit of a Customer;
- r) **“Redress Determination”** means a written communication from the Firm to a Customer in respect of a Scheme Complaint which:
- (i) sets out the results of the Firm’s determination under the Scheme;
  - (ii) encloses a copy of the Ombudsman’s standard explanatory leaflet; and
  - (iii) informs the complainant that if he is dissatisfied, he may make a complaint to the Ombudsman and must do so within six months;
- s) **“these Requirements”** means the requirements and provisions in this document including its annexes;
- t) **“RMF”** means the monthly repossession management fee imposed during the Material Time, by or on behalf of the Firm, on customers in respect of their Mortgage;
- u) **“Scheme”** means the redress scheme which the Firm is required to establish and operate under these Requirements, which is a consumer redress scheme for the purposes of DISP; which has as its subject matter the Subject Matter; and further details of which are set out in paragraphs 10 to 36 above;
- v) **“Scheme Complaint”** means a complaint made by a Customer to the Firm, or to Acenden (on behalf of the Firm):
- (i) which falls within the Subject Matter of the Scheme; and
  - (ii) was received by the Firm—
    - (1) after the date of these Requirements; or
    - (2) no more than 8 weeks before the date of these Requirements, where at the date of these Requirements, the Firm had not sent a final response to the complainant.



Where part of such a complaint falls within the Subject Matter of the Scheme, DISP 1.1.11AR shall apply in respect of that part:

- w) **“Shortfall Customer”** means a Customer in respect of whom all of the following conditions are met:
- (i) The Customer’s property has been repossessed by or on behalf of the Firm under the terms of a Mortgage;
  - (ii) The proceeds of sale of the Customer’s repossessed property were insufficient to discharge the amounts owing under the Mortgage, including any Arrears Fees;
- x) **“Subject Matter”** of the Scheme means any claim, action or other right of any description however arising:
- (i) in relation to, or in connection with, the level of Arrears Fees imposed (and specifically, the excessive nature of any Arrears Fees imposed) by or on behalf of the Firm during the Material Time on a Customer in respect of and in connection with a Mortgage; and
  - (ii) provided that the Customer has not already complained about the matter and the complaint has not already been resolved in accordance with DISP 1.4-1.6.

However, any claim, action or other right of any description however arising concerning any other aspect of Arrears Fees, for example whether it was appropriate to impose one, is outside the Subject Matter of the Scheme.

2. For the purposes of Annex A, paragraph 1(x), a complaint is resolved in accordance with DISP 1.4-1.6 (and therefore outside the Subject Matter of the Scheme) if:
- (i) the complaint (or part of the complaint) related to the level of one or more of the AMF, LMF or RMF charged by the Firm during the Material Time;
  - (ii) the Customer has accepted an offer of redress by the Firm in full and final settlement of the complaint; and
  - (iii) that redress has been paid by the Firm to the Customer, or an amount equal to the redress has been set-off against fees otherwise due from the Customer to the Firm.



## **Annex B: certain complaints to be dealt with by the Ombudsman**

- B.1 The provisions of this annex are included in the Firm's Part 4A Permission under section 404F(7) of FSMA.
- B.2 Subject to B.7 below, this Annex applies where—
- B2.1 a Scheme Complaint is referred to the Ombudsman on or after the date that these Requirements take effect;
- B2.2 within 14 days of the Ombudsman telling the Firm in writing that the complaint has been referred to the Ombudsman, the Firm tells the Ombudsman in writing that the complaint (or part of the complaint) is a Scheme Complaint.
- B.3 Subject to B.2 above and B.7 below, this Annex applies where—
- B3.1 a Customer makes a Scheme Complaint to the Ombudsman in respect of an act or omission of the Firm and, at the time the Scheme Complaint is made, it is to be dealt with (or has been dealt with) under the Scheme;
- B3.2 a Customer is not satisfied with a Redress Determination made by the Firm under the Scheme; or
- B3.3 a Customer considers that the Firm has failed to make a Redress Determination in accordance with the Scheme.
- B.4 Subject to B.7 below, the Ombudsman is required to determine the Scheme Complaint under section 404B of FSMA on the same basis as if the Scheme were a consumer redress scheme under section 404 of FSMA.
- B.5 Broadly (and subject to B.7 below), this means that the Ombudsman is required to decide the Scheme Complaint on the basis of what the determination under the Scheme should be, or should have been, instead of on the basis of what the Ombudsman considers to be fair and reasonable in all the circumstances of the case.
- B.6 Where a complaint is made to the Ombudsman in which only part of the complaint is a Scheme Complaint within paragraphs *B.2 and B.3* above, the Ombudsman will deal with that part of the complaint which is a Scheme Complaint in accordance with paragraphs *B.4 and B.5* above and will deal with the remainder of the complaint in the usual way in accordance with DISP.
- B.7 Where—
- B7.1 a Scheme Complaint is referred to the Ombudsman on or after 1 July 2015; and
- B7.2 the Firm and the Customer agree under section 404B(1A) or (2B) of the Financial Services and Markets Act 2000 that the Scheme Complaint should not be determined by reference to what, in the opinion of the Ombudsman, the determination under the Scheme should be or should have been.



the Ombudsman will determine the Scheme Complaint (or that part of the complaint which is a Scheme Complaint) on the basis of what the Ombudsman considers to be fair and reasonable in all the circumstances of the case.

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