

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 3rd to Friday 7th August 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage and Home Finance Advisers.



Final Notice - FSA bans Cornwall mortgage broker for fraud

Financial Services Authority

http://www.fsa.gov.uk/pubs/final/sanders_2907.pdf

The Financial Services Authority (FSA) has banned Cornwall mortgage broker Stephen Sanders for submitting at least three mortgage applications on behalf of customers which he knew contained false and misleading income information. Sanders also withheld information from a prospective employer relating to an investigation into him by his former employer which resulted in his suspension. Further, Sanders failed to disclose to the FSA that he was the subject of an ongoing disciplinary investigation into his conduct by his former employer when applying to the FSA to perform a controlled function.

For the first customer mortgage application, the income as stated in the mortgage application, was substantively higher than that declared by the customer to HMRC. In the second mortgage application the income stated in a mortgage application included some of the income of the customer's parents which was falsely described as his own. And in the third case there were discrepancies in the application about the income sources of the two customers who were making a joint application.

Margaret Cole, FSA director of enforcement, said: "Sanders submitted mortgage applications which he knew to be false and this posed a serious risk to lenders and confidence in the financial system. Our work on mortgage fraud continues as a priority in our campaign against financial crime. We have banned more than 60 mortgage brokers over the last three years and we will continue to ban such people to reinforce the message that knowingly giving false and misleading information to prospective lenders is dishonest. Approved Persons must also be open and honest with the FSA and prospective employers about their circumstances. Behaviour which shows lack of honesty and integrity will result in a ban."

Final Notice - Meridian Loan Consultants

Financial Services Authority

http://www.fsa.gov.uk/pubs/final/meridian_0730.pdf

The FSA has issued a Final Notice to the above cancelling their permissions. The Notice details that it appears to the FSA that they were failing to satisfy the threshold conditions because they failed to pay fees and levies of £1,078.35 owed to the FSA, despite repeated requests to do so. To view the Final Notice in full, click on the link above.

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Final Notices - FSA Fines & Bans Newcastle Home Loans & its Directors

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/107.shtml>

The Financial Services Authority (FSA) has banned Newcastle Home Loans (NHL), a mortgage broker based in Newcastle, from carrying out regulated mortgage activities. The FSA worked closely with Northumbria Police and the Solicitors Regulation Authority (SRA) in this investigation which involved a significant number of individuals across a range of financial, property and legal businesses in the Newcastle area. The ban of NHL was the final part of the FSA's action in relation to NHL and connected individuals. Earlier this year the FSA fined NHL £170,000 for submitting false information in mortgage applications and for allowing David Purdie to act as its chief executive without FSA approval. NHL failed to pay this fine.

The FSA has also banned NHL's directors Linda Patterson and Grace Darling Purdie, and fined Mrs Purdie £85,000. Other individuals involved have also been banned - David Purdie, the shadow CEO, and mortgage introducers Michael Foster and Kenneth Robinson. NHL was used by its principals and by the mortgage introducers knowingly to submit mortgage applications to a lender which contained false information. This resulted in the lender unsuspectingly advancing sums which, in some cases, were considerably higher than the purchase price of the property.

Margaret Cole, FSA director of enforcement, said: "The failures at NHL were serious, deliberate and occurred as a matter of routine. Its principals acted in a totally unacceptable fashion and their actions and the actions of those connected to the firm posed a serious risk to the lender and to market confidence generally. In the last three years we have banned 60 brokers and levied fines totalling more than £1 million in relation to mortgage fraud. We will continue to tackle mortgage fraud and perpetrators will find themselves facing bans and higher fines."

Northumbria Police recently arrested Grace Darling Purdie, David Purdie, Linda Patterson and Michael Foster, among others. Its investigation, and that of the SRA, continues. The FSA's investigation found that the individuals involved were not fit and proper and should be prohibited from any further involvement in regulated activities or authorised firms. In relation to Grace Darling Purdie, the FSA also found that she failed to exercise due skill, care and diligence in managing the business of NHL and took no steps to satisfy herself that the business was being conducted in accordance with regulatory requirements.

New Web Pages - Appointed Representatives

Financial Services Authority

http://www.fsa.gov.uk/smallfirms/regulatory_requirements/rmar/records.shtml

The FSA is reminding small firms of the need to keep records up to date for appointed representatives. Click on the link above to view the web pages.

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Statement - FSA's initial response to the Scottish Affairs Committee Report on Dunfermline Building Society

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/dunfermline.shtml>

The Financial Services Authority (FSA) firmly rejects the Scottish Affairs Committee's conclusion that the FSA failed in its supervision of Dunfermline Building Society and failed to issue specific warnings regarding the dangers of commercial lending and has issued the following statement.

"The Committee's report claims the FSA 'failed to provide the necessary level of supervision' but this statement has no basis of fact and the report contains no facts to substantiate this assertion. In respect of commercial lending, the FSA made specific warnings to the building society sector in March 2003, May 2004, May 2006, October 2007 and again in May 2008 regarding the importance of managing the quality of lending books. These warnings covered the risks of commercial property, buy-to-let, self-certification and sub-prime lending as well as mortgage book acquisitions.

In respect of the Dunfermline, an FSA supervisory 'ARROW' visit in November 2005 raised commercial lending as an issue with the Society's management, which resulted in an independent consultant being appointed by Dunfermline and controls being tightened. When liquidity problems became an issue in 2007, the FSA was in regular contact with the Society's management and was requesting liquidity data on a weekly basis. The FSA's supervisory team continued to work with the society on its capital and liquidity issues until the time the resolution process was triggered in March 2009 and strongly refutes any notion that it failed to adequately supervise the Dunfermline. The FSA has already published full details of the specific actions it took, in a letter to the Chancellor of the Exchequer on 17 April 2009."

Statement - FSA initial response to TSC report

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/tsc.shtml>

The Financial Services Authority (FSA) welcomes the Treasury Select Committee's contribution to the debate over the future of financial regulation and has issued the following statement.

"The report acknowledges that the FSA has proactively identified and rectified its historic mistakes and that the financial services sector has clearly felt this change in approach. The FSA has changed radically since it published an internal review in early 2008. A series of operational and philosophical reforms, including the supervisory enhancement programme, have created a sustainable approach to financial services regulation. This new approach is based on an integrated risk assessment of prudential and conduct risk and is designed to be effective in all economic circumstances.

The FSA's new intensive supervisory approach is about making judgements on what might happen in the future - boom or bust - rather than acting solely on observable facts. We are using these expert judgements to test the robustness of firms' business models, their governance framework and to assess whether individuals are fit to run them - regardless of their individual qualifications. The FSA will respond in full to the report in due course."

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From the Treasury - Treasury Committee urges FSA to take robust stance on unfair arrears charges

Treasury

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/766/766.pdf>

The Treasury Committee has released its Report entitled, Mortgage arrears and access to mortgage finance, focusing on households affected by the recession, struggling with mortgage arrears and/or at risk of repossession.

Lender forbearance - The Report notes that both mortgage arrears and repossession levels are on an upward trend and that both are expected to continue rising over the next few years as a result of the recession. The Committee acknowledges that many mainstream lenders are taking pro-active steps to support consumers in mortgage difficulties, but expresses concern at the lack of flexibility and forbearance shown by some lenders in the sub-prime, specialist and second charge sectors towards homeowners in arrears.

John McFall, Chairman of the Committee said: "Losing the family home is one of the most distressing experiences a family can go through. We have heard harrowing tales of households struggling to keep their heads above water in an attempt to avoid repossession. The next few years are likely to see the number of families in mortgage difficulties rise steeply. This is why it is so important to ensure that lenders are complying with the rules to only use repossession as a last resort and that the FSA is enforcing those rules properly. The Committee was extremely concerned by evidence that many sub-prime, specialist and second charge lenders are using repossession not as a tool of last resort, but instead of first resort. This is clearly unacceptable - the FSA and the OFT must get a grip on this problem and crack down on lenders who are breaking the rules and mistreating customers in arrears."

Mortgage arrears charges - The Committee shares the concern expressed by many of those who gave evidence to its inquiry that some lenders are charging high and excessive mortgage arrears fees to customers who fall into mortgage difficulties. The Report voices concern that in many instances such charges appear to go beyond the recovery of additional administrative costs and are being used instead as an alternative profit stream. The Report describes such practices as 'intolerable' and calls upon the FSA to take a much more robust stance towards tackling and eliminating unfair arrears charges. As a first step, the Committee recommends that lenders should be required to provide an itemised breakdown of the additional costs their arrears charges are supposed to cover. In the Committee's view this would help shed valuable light on whether such charges are reasonable and justifiable, as industry representatives claimed was the case amongst mainstream lenders. Alongside this, the FSA and OFT should review all mortgage arrears charges made by mortgage providers and secured lenders to determine whether they are reasonable.

John McFall, Chairman of the Committee said: "We have heard evidence of charges as high as 35 pounds from some lenders for simply sending a letter or making a phone call, and charges as high as 150 pounds for a visit from a so-called 'debt counsellor.' Such practices are intolerable and are placing additional financial as well as emotional strain on those already struggling to keep a roof over their head. We suspect that the small number of cases being brought against lenders making excessive arrears charges are merely the tip of the iceberg. This is why it is so important that lenders are compelled to open up their books and justify their charges, while the FSA must be prepared to take decisive action where it finds evidence of wrongdoing."

FSA enforcement and naming miscreant firms - The Report notes that in late 2007 the FSA first became concerned that some mortgage lenders were failing to treat their customers fairly when they fell into mortgage arrears, but that it was not until June 2009 that the FSA announced it was taking enforcement action against four firms. The Report criticises the seemingly leisurely approach of the FSA in terms of completing its mortgage arrears review and enforcing possible breaches in the mortgage arrears rules. It calls upon the FSA to spell out clearly in its forthcoming review how it will improve its performance in terms of bringing miscreant firms to book. The Report also deals with the naming of miscreant firms. Currently the FSA only publishes the names of firms it has found guilty of wrongdoing once enforcement action against the firm has been concluded. The Report notes with concern that the balance between disclosure to the public and the need to protect firms before they have been found guilty of wrongdoing may have tilted too far towards the interests of the industry.

John McFall, Chairman of the Committee said: "I am shocked at the length of time it is taking the FSA to complete enforcement action against firms it suspects are breaking the rules. During this time many thousands of consumers will have suffered detriment and some will have lost their homes. The FSA must raise its game on the enforcement front and demonstrate that it can take action speedily and decisively where wrong doing is taking place. I am concerned by the FSA's reluctance to name

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firms whom it is taking enforcement action against. It suggests that the FSA is more interested in protecting lenders who are treating their customers unfairly and that it is placing the interests of lenders above those of consumers. We call upon the FSA to shift this balance towards consumers and believe that a failure to do so would be taken as evidence of the FSA's cosy relationship with the industry."

Government support for homeowners in mortgage difficulties - The Committee welcomes the measures which the Government has introduced to support homeowners in mortgage difficulties. However, the need for the introduction of a large number of new initiatives as well as the amendment of schemes in place before the current crisis suggests that adequate safety nets for homeowners in mortgage arrears and/or at risk of repossession were not in place prior to the current recession. The Report recommends that the Government re-examine its longer-term strategy towards supporting homeowners in mortgage difficulties to ensure that adequate mechanisms to support homeowners are in place even once the current downturn has ended. The Report also notes that Mortgage Rescue Scheme has directly benefited just six households, despite being designed to assist upwards of 6,000. It calls upon the Treasury and the Department of Communities and Local Government to explain why their projections for participation in the scheme appear to be so out of step with the picture on the ground and requests analysis as to whether this reflects flaws in forecasting, poor design of the scheme or lack of consumer demand. John McFall, Chairman of the Committee said: "The Mortgage Rescue Scheme was designed to assist upwards of 6000 households, but thus far only six households have directly benefited from the scheme. I am looking for answers as to why this is the case and whether low take up reflects poor scheme design or an inability to forecast take-up."

Mortgage finance - The Report also discusses current difficulties faced by would be first-time buyers. The number of high loan-to-value mortgages has fallen sharply while lending criteria have become increasingly restrictive. The Committee emphasises that all lenders should improve their understanding of borrowers' ability to repay in order to correctly judge the affordability of a mortgage for every potential customer. John McFall, Chairman of the Committee said: "First-time buyers play an important role in any housing market recovery. It is vital that more is done to improve access to credit for all credit-worthy first time buyers."

Statement - FSA response to Treasury Select Committee report

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/mortgage_arrears.shtml

The Financial Services Authority (FSA) has issued the following statement in response to the Treasury Select Committee's report on mortgage arrears & access to mortgage finance. "The FSA is currently conducting a wide-ranging review of all aspects of its mortgage regulation and will be publishing proposals this autumn. The review of everything from securitisation to arrears is based on establishing precisely what went wrong in the mortgage market and fixing those problems - as well as ensuring there is a sustainable market for the long term. The FSA continues to take a robust position with firms as soon as we have evidence of wrong doing and also to ensure borrowers are treated fairly throughout the lifetime of their mortgage. With sale and rent back, and any new areas of scope, the FSA will bring its sanctions to bear against firms that break the rules as well as tackling unauthorised business. The FSA will respond in full to the Treasury Select Committee's report in due course."

From JMLSG - Proposed revision to Part I of the Guidance

Joint Money Laundering Steering Group

<http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754&a=16435>

Over the past few months, the JMLSG Board has carried out a review of its Money Laundering Guidance. The Board has approved a number of (mostly minor) amendments to the Guidance, and publishes the Part I text showing the amendments proposed. Amendments to the text of Part II (which may be separated into two parts) are still being considered, and proposed revised text will be published for comment in due course. Click on the link above to view the changes.

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From the FOS - Ombudsman News Issue 78

Financial Ombudsman Service

<http://www.financial-ombudsman.org/publications/ombudsman-news/78/78.pdf>

Inside this issue:

- claiming back payments made with plastic cards;
- complaints involving stockbroking, foreign currency exchange and spread-betting;
- work on "transparency and openness" at the ombudsman service; and
- Walter Merricks, chief ombudsman, on proposals for financial reform and redress

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