

Mortgage Strategy Article 3 Nov 2008

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FSAs recent enforcement action

We are starting to see a steady increase in the number of mortgage brokers being censured through FSA enforcement action and last week was no exception with two firms, Orchid and Abbey Mortgages, receiving their public punishment.

As an industry we may be disappointed that a significant minority of mortgage intermediaries have been found wanting by the FSA as this gives a poor impression of our industry at a time when it is in the spotlight of the credit crunch. Ultimately this will be to the benefit of the many firms who are compliant as they will no longer feel frustrated by customers who find less compliant firms to advise them. It can be very tempting for customers and their brokers to bend rules if others seem to be getting away with it, particularly when some rules are less than clear such as affordability for employed self-certification customers.

But, and this is a big but, what will happen next to these brokers, their customers and the chosen lenders, as we have never before been in a regulated market in recession? As with the other mortgage firms subject to FSA enforcement actions both of these firms have to carry out file reviews with a view to making redress where appropriate. Abbey Mortgages has been asked to use the services of a compliance consultant to review its sales of self certification mortgages, and whose real challenge comes in deciding if redress is due and how it would be calculated for mortgages of this type. The FSA and the FOS state that missold customers should be put back to the position they were in before they were missold. How is a customer to be compensated if they were both encouraged and allowed to borrow too much? Is there any complicity on behalf of the customer or lender?

We have yet to see any guidance from the FSA, FOS or FSCS on this point of redress but if complaints grow as mortgage arrears increase it will cause problems for many mortgage advisers. Further, the position of the professional indemnity insurers is unclear. Will they meet claims or will they consider the sales process to have breached the policy conditions?

It has not always been clear why the FSA has imposed different penalty action for the guilty firms and some decisions have been difficult to understand. Requests for file reviews may vary, from the use of statute under the Financial Services and Markets Act, Section 166, to the use of compliance consultants or in some cases the firm may be

allowed to review its own files. The level of customer detriment appears to be the deciding factor but this is difficult to assess before the file reviews are done. So there are still some fundamental questions that need answering. Do firms who have breached the sales process have the skills to properly review their files? Do firms who have received a reduced fine, due to their financial position, have the resources to make redress [if the PI provider does not pay]? Should the FSA be fining firms or should all the money go to customers? What role will the FSCS take if mortgage intermediaries, and sometimes the lender as well, cease to trade? How much will the FSCS levy be at the end of all this?

We at Telos Solutions (www.teloscompliance.co.uk) are working hard to come up with a suitable answer to these questions that can be adopted by firms, the trade bodies and the regulator alike, so that the compliant majority of mortgage firms can look forward to the end of the credit crunch.