
FINAL NOTICE

To: Mr Mohammad Rana (registered as Countrywide Management Consultancy and trading as Property Compass)

**Address: 18 Cherwell Drive
Marston, Oxford
Oxfordshire
OX3 0LY**

Date of Birth: 27 December 1971

Date: 21 May 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 Mr Mohammad Rana, registered as Countrywide Management Consultancy and trading as Property Compass (“Countrywide”) a Decision Notice on 12 May 2008, which notified Countrywide that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to

impose a financial penalty of £14,700 on Countrywide. This penalty is in respect of breaches of Principles 3 and 9 of the Principles for Businesses (“the Principles”), and of the rules in Chapter 4 of the section of the FSA’s Handbook entitled “Mortgages and Home Finance: Conduct of Business Sourcebook” (“MCOB”), between 16 February 2006 and 12 September 2007 (“the relevant period”).

1.2. Countrywide confirmed on 6 May 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below and having agreed with Countrywide the facts and matters relied on, the FSA hereby imposes a financial penalty on Countrywide of £14,700. Countrywide agreed to settle at an early stage of the proceedings and therefore qualified for a 30% reduction in penalty pursuant to the FSA's executive settlement procedures. Were it not for this reduction the FSA would have imposed a financial penalty of £21,000 on Countrywide.

2. REASONS FOR THE ACTION

2.1. The FSA has concluded that, during the relevant period, Countrywide failed to ensure that it made and retained records of all relevant personal and financial information about its clients to demonstrate how it assessed as suitable the regulated mortgage contracts that it recommended to its customers. Additionally, Mr Rana did not adequately supervise Countrywide's adviser. More specifically Countrywide's failings were as follows.

- (1) Countrywide did not have appropriate management systems and controls to:
 - (a) ensure that appropriate arrangements were in place for the supervision and ongoing monitoring of its one adviser;
 - (b) make and retain appropriate records to demonstrate how the Firm carried out training, supervision and monitoring of its one adviser; and
 - (c) act upon the remedial instructions given by the FSA in the post supervision visit letter dated 30 October 2006.

Countrywide therefore failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in breach of Principle 3.

- (2) Countrywide did not take reasonable steps to ensure the suitability of its advice in that it:
 - (a) failed to obtain and record from customers all the information likely to be relevant to ensure the suitability of its advice, including information regarding clients' particular needs, preferences and circumstances and their financial position in relation to income and expenditure; and
 - (b) failed to record how or why recommended mortgage contracts were selected; in particular, to record evidence of any market research being carried out, thereby failing to demonstrate that the recommended product was the most suitable of those available.

Countrywide therefore failed to take reasonable care to ensure the suitability of its advice for customers in breach of Principle 9.

2.2. Countrywide's failures are regarded by the FSA to be serious for the following reasons.

- (1) The Firm failed to act upon the remedial instructions given by the FSA in the post supervision visit letter dated 30 October 2006.
- (2) The failure to record sufficient personal and financial information and inadequate management and control of the sales process meant that the suitability of advice could not be demonstrated and exposed clients to the risk of purchasing an unaffordable and/or unsuitable product. These failings were systematic weaknesses in Countrywide's procedures.
- (3) The widespread record keeping failures identified by the FSA would hinder any independent assessments completed by a third party such as FSA's supervision staff and the Financial Ombudsman Service if any customer complaints needed to be investigated.

2.3. The FSA has taken into account the following steps taken by Countrywide which are regarded as mitigating factors.

- (1) Countrywide has co-operated fully with the FSA's investigation.
- (2) Since the FSA's visit in September 2007, Countrywide has improved its systems and controls and employed a third party compliance consultant to ensure that it operates compliantly going forward.
- (3) Countrywide has agreed that a third party compliance consultant will sign off future mortgage sales for a six month period.
- (4) Countrywide has also agreed to undertake a past business review with a view to identifying all unsuitable recommendations and assessing customer detriment (and to pay redress to customers where appropriate).

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

- 3.1. 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.
- 3.2. The FSA has the power, pursuant to section 206 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 imposed upon it by or under the Act.
- 3.3. The FSA's Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles breached are set out below.
 - (1) Principle 3 (Management and Control) requires that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
 - (2) Principle 9 (Customers: relationships of trust) requires that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

3.4. The MCOB rules which have been breached, and details of the guidance to which the FSA has had regard, are set out in Annex 1 to this Notice.

3.5. Details of the FSA's policy on imposing financial penalties are also set out in Annex 1 to this notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Mr Mohammad Rana, registered as Countrywide and trading as Property Compass, is a sole trader retail mortgage intermediary based in Oxford. Mr Rana is senior manager and principal of Countrywide, but provides no mortgage advice to customers. His role is to manage Countrywide's system and controls and supervise Countrywide's one mortgage adviser.

4.2. Countrywide is authorised by the FSA to carry on the following regulated activities:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;
- (4) arranging deals in investments;
- (5) arranging regulated mortgage contracts;
- (6) assisting in the administration and performance of a contract of insurance;
- (7) dealing in investments as agent;
- (8) making arrangements with a view to regulated mortgage contracts; and
- (9) making arrangements with a view to transactions in investments.

4.3. Countrywide advises principally on regulated mortgage business, although it also arranges buy to let mortgages (which are not regulated by the FSA). Its customer base is mainly from the Oxford area. Countrywide does not advertise its mortgage services, but rather derives new business through its existing customer base.

4.4. During the relevant period Countrywide arranged 113 regulated mortgages of which 44 were self certified.

- 4.5. Countrywide has not been the subject of any previous disciplinary action by the FSA. However, the FSA previously visited the Firm on 13 September 2006 and instructed Countrywide, in the post visit letter, that affordability issues existed due to Know Your Customer information not being sufficiently recorded. It was further stated at this time that it is not always evident why a particular product is chosen and therefore suitability of the recommendation made is not demonstrated. This letter concluded by informing the Firm that the FSA would expect the Firm to improve its systems and controls to ensure compliance with the Principles for Businesses.
- 4.6. Countrywide was one of 89 mortgage brokers visited by the FSA's Small Firms Division (“SFD”) in 2007 as part of its “self certification and affordability of mortgage contracts” project. Concerns about Countrywide's systems and controls were identified at a visit on 12 September 2007, similar to the concerns raised in the 2006 visit to the Firm. As a result Countrywide was one of a number of firms referred to the FSA's Enforcement Division (“Enforcement”) from this project.
- 4.7. The Enforcement investigation reviewed a sample of Countrywide’s mortgage sale files from the relevant period and reviewed the management systems the Firm had in place to control its business. Enforcement also interviewed Mr Rana and the adviser and obtained further information through requests for information answered by the Firm. The investigation found evidence of breaches in the areas detailed below.

Management systems and controls failings

- 4.8. A firm should ensure that it takes reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. There were inadequate systems and controls in place for ensuring that the Firm was compliant with the requirements and standards set out in the Principles and MCOB. Mr Rana accepts that he did not make and retain appropriate records to demonstrate how the Firm carried out training, supervision and monitoring of its one adviser. Mr Rana also accepts that he did not ensure that appropriate management and control arrangements were in place for the supervision and ongoing monitoring as instructed by the FSA in the post supervision visit letter dated 30 October 2006.

- 4.9. In all reviewed files Countrywide made incorrect and misleading references to the previous mortgage regulator, the Mortgage Code Compliance Board ("MCCB"). A generic template terms of business letter incorrectly referred to MCCB with reference to previous terminology no longer applicable. FSA statements and risk warnings were also incorrectly cited.
- 4.10. The failure to establish, implement and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system resulted in Countrywide failing to take reasonable care to organise and control its affairs responsibly and effectively in breach of Principle 3.

Failure to take reasonable care to ensure the suitability of its advice

- 4.11. 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 unless it will be suitable for that customer. This requires a firm to have regard to the facts disclosed by the customer and other facts about the customer of which the firm is or should reasonably be aware and to have reasonable grounds to conclude:
- (1) that the mortgage is the most suitable of those that the firm has available to it within the scope of the service provided to the customer;
 - (2) that customers can afford to enter into the mortgage, this would include obtaining and considering information about expenditure as well as income; and
 - (3) that the mortgage is appropriate to the needs and circumstances of the customer.
- 4.12. Countrywide's initial information gathering of customer information failed to demonstrate that the mortgages it recommended were affordable for customers. In all files reviewed, in assessing affordability the only expenditure taken into account was any existing mortgage and other secured debt and personal loans. Regular living expenses were not taken into account and as a consequence, sufficient information was not obtained in order to assess affordability in breach of MCOB 4.7.2R and 4.7.4 R. The customer fact find has now been altered to include regular living expenses.

- 4.13. A firm should (out of all the regulated mortgage contracts identified as being appropriate for the customer) recommend the one that is the least expensive for that customer taking into account the pricing elements identified by the customer as being the most important to them. Where the least expensive has not been recommended the firm should record the basis on which the recommendation has been made. Countrywide's files did not make this clear. In all of the cases reviewed there was no evidence of research to demonstrate the recommendation of the least expensive option.
- 4.14. The failures to set out and record on the customer files the facts and matters supporting the assessment of suitability and reasons for the recommendation are breaches of MCOB 4.7.17 R.
- 4.15. Many of these failures appear to have been systemic. Countrywide repeatedly failed to record a customer's ability to be able to continue to repay a mortgage and how or why recommended mortgage products were selected.
- 4.16. As a result of the failings detailed in paragraphs 4.11 to 4.15 Countrywide failed to take reasonable care to ensure the suitability of its advice to a customer to enter into a regulated mortgage contract in breach of Principle 9.

5. ANALYSIS OF THE PROPOSED SANCTION

- 5.1. The FSA considered the seriousness of the contraventions by Countrywide, including the nature of the requirements breached, whether the breaches identified were deliberate or reckless, the number and duration of the breaches and the number of customers placed at risk.
- 5.2. Although the FSA found no evidence that the conduct in issue was deliberate, we concluded from our review of customer files that due to the lack of evidence to support the assessment of suitability there was a risk in every case that the customer had been given unsuitable advice.
- 5.3. The FSA has taken into account Countrywide's co-operation with the FSA's investigation and its willingness to take all reasonable steps to satisfy the FSA that regulatory requirements will be met by Countrywide on an on-going basis. The FSA has also taken into account that Countrywide has not been the subject of previous disciplinary action by the FSA but that it was previously informed by the FSA that it should improve its systems and controls.

5.4. The FSA has taken into account penalties imposed on other authorised persons for similar and more serious conduct and to previous cases where private warnings were given to authorised persons for less serious conduct or more limited record-keeping failures.

5.5. The FSA, having regard to all circumstances, consider the appropriate level of financial penalty to be £21,000 before settlement discount.

6. DECISION MAKER

6.1. 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.

7. IMPORTANT

7.1. This Final Notice is given to Countrywide in accordance with section 390 of the Act.

Manner of and time for payment

7.2. The financial penalty must be paid by Countrywide to the FSA in two equal instalments of £7,350, with the first payment to be received by the FSA on 21 August 2008 and the second payment to be received by the FSA on 21 November 2008.

If the financial penalty is not paid

7.3. If any of the instalments of the financial penalty are outstanding on the day after the due dates for payment, the FSA may recover the outstanding amounts as a debt owed by Countrywide and due to the FSA.

Publicity

7.4. 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.

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

FSA contacts

7.6. For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240).

Jonathan Phelan
Head of Department
FSA Enforcement Division

ANNEX 1: Relevant rules and guidance

MCOB 4.7 Advised sales

MCOB 4.7.2 R: 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 R: 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 4.7.5 R In relation to MCOB 4.7.4 R (1)(a), a firm must explain to the customer that the assessment of whether he can afford to enter into a regulated mortgage contract is based on:

- (1) current interest rates, which might rise in the future; and
- (2) the customer's current circumstances, which might change in the future.

MCOB 4.7.17 R 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.

The FSA's policy on the imposition of financial penalties

- (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. It was previously set out in Chapter 13 of the Enforcement Manual (ENF). 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.
- (2) The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following.
 - DEPP6.2.1G(1): The nature, seriousness and impact of the suspected breach.

- DEPP6.2.1G(2): The conduct of the person after the breach.
- DEPP6.2.1G(3): The previous disciplinary record and compliance history of the person.
- DEPP6.2.1G(4): FSA guidance and other published materials.
- DEPP6.2.1G(5): Action taken by the FSA in previous similar cases.

Determining the level of the financial penalty

- (1) The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP6.5.2G, and previously ENF 13.3.3 G, sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.
- (2) Factors that may be relevant to determining the appropriate level of financial penalty include:
 - (a) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2 G (2) (b)); and
 - (b) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2 (9) (d)).
- (3) Corresponding provisions are set out in ENF 13.3.3 G, which sets out factors that may be relevant when determining the appropriate level of financial penalty for a firm including the following:
 - (a) whether the misconduct or contravention revealed serious or systematic weaknesses of the management systems or internal controls relating to all or part of the firm's business (ENF 13.3.3 G (1) (c)); and

(b) disciplinary record and compliance history. This will include whether the FSA has previously requested the firm to take remedial action, and the extent to which that action has been taken (ENF 13.3.3 G (6)).