
FINAL NOTICE

To: **PB Roberts Ltd**

Of: **10 Duke Street
Liverpool
Merseyside
L1 5AS**

Date: **18 December 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives final notice about a decision to publish a statement about PB Roberts Limited.

1. ACTION

1.1. The FSA gave PB Roberts Limited ("the Firm") a Decision Notice on 10 December 2007 which notified the Firm that pursuant to section 205 of the Financial Services

and Markets Act 2000 ("the Act"), the FSA had decided to publish a statement in respect of breaches by PB Roberts Ltd ("the Firm") of Principles 2 (Skill, care and diligence) and 7 (Communications with clients) of the FSA Principles for Businesses ("Principles") and the FSA rules ("FSA Rules") listed below during the period from 1 June 2005 to 31 October 2006 ("the relevant period").

- 1.2. The Firm confirmed on 29 November 2007 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 the Firm the facts and matters relied on, the FSA publishes a statement about the contravention by the Firm of Principles 2 and 7 of the Principles and the FSA Rules listed below during the relevant period.

2. REASONS FOR THE PROPOSED ACTION

Introduction

- 2.1. The FSA publishes a statement in respect of breaches by the Firm of Principles 2 and 7 and the FSA Rules listed below. These breaches relate to failings by the Firm arising from the sale of advised regulated mortgage contracts and the communication of mortgage related financial promotions.
- 2.2. The Firm breached Principle 2 during the relevant period in that it failed to conduct its business with due skill, care and diligence. In particular, the Firm:
 - (1) failed to make and retain adequate records to demonstrate that the regulated mortgage contract was the least expensive for customers, taking into account the pricing elements identified by customers as being most important to them, or where the recommendation was made other than on this basis, the reasons for the recommendation.
 - (2) failed to make and retain adequate records to demonstrate why sub-prime regulated mortgage contracts recommended to customers were suitable for those customers.

- (3) failed to make and retain adequate records to demonstrate why self-certified regulated mortgage contracts recommended to customers were suitable for those customers.
- (4) either failed to ensure that before it communicated mortgage related financial promotions it had confirmed that they complied with the rules in Mortgages and Home Finance: Conduct of Business sourcebook ("MCOB") Chapter 3 or failed to ensure that the required confirmation exercise was carried out by a person with appropriate expertise.

Communications with clients

2.3. The Firm breached Principle 7 in that it failed to pay due regard to the information needs of its clients, and communicate information to them in a way that was clear, fair and not misleading. During the relevant period the Firm issued three mortgage-related financial promotions that breached the provisions of MCOB 3:

- (1) In two financial promotions the APR figure advertised lacked prominence (see paragraphs 5.2(1) and 5.6(1)).
- (2) In two financial promotions the APR figure was stated without using the prescribed terminology (see paragraphs 5.2(2) and 5.4(1)).
- (3) In one financial promotion the Firm omitted the prescribed risk warnings (see paragraph 5.2(3)).
- (4) Three financial promotions indicated a fee range (see paragraphs 5.2(4), 5.4(2) and 5.6(3)).
- (5) One financial promotion contained insufficient risk warnings (see paragraph 5.4(3)).
- (6) In two financial promotions the risk warning lacked prominence (see paragraphs 5.4(4) and 5.6(2)).

Seriousness of the findings

2.4. The Firm's failings are considered to be serious due to:

- (1) the potential adverse affect on its customers, many of whom were recorded as having adverse credit histories and/or were consolidating debts.
- (2) the fact that some of the Firm's financial promotions failings were repeat breaches in that they occurred despite the Firm receiving correspondence from the Financial Promotions Department of the FSA identifying the same breaches in previous financial promotions communicated by the Firm.

2.5. The Firm's failings are mitigated by the following:

- (1) No determination has been made that the failings identified resulted in customers taking out unsuitable mortgages.
- (2) The Firm has received no complaints in relation to regulated mortgage business undertaken during the relevant period.
- (3) The Firm has confirmed that it ceased communicating mortgage related financial promotions around September 2006.
- (4) The Firm has agreed that if it communicates mortgage related financial promotions in the future an individual with appropriate expertise will conduct the required confirmation exercise.
- (5) The Firm has agreed to increase compliance monitoring over its mortgage sales advice process over the next 12 months.
- (6) The Firm had two mortgage advisors and due to low levels of mortgage business conducted by the Firm during the relevant period the potential impact of its failings was low.
- (7) The Firm has been open and co-operative with the FSA and agreed the facts quickly ensuring resolution of the matter.

3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE

Provisions of the Act

3.1. Section 205 of the Act provides that:

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect.

3.2. PB Roberts Ltd is an authorised person for the purposes of section 205 of the Act. A requirement imposed on a firm includes the Principles and Rules made under section 138 of Act. The relevant Principles and Rules are referred to below and the Rules are set out in Annex 1 to this notice.

Principles for Businesses

Principle 2 provides that:

A firm must conduct its business with due skill, care and diligence.

Principle 7 provides that:

A firm must pay due regard to the information needs of its clients, and communicate information to them in a manner which is clear, fair and not misleading.

4. FACTS AND MATTERS RELIED ON

Background

4.1. The Firm has been authorised by the FSA since 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:

- (1) advising on regulated mortgage contracts;
- (2) agreeing to carry on a regulated activity;
- (3) arranging regulated mortgage contracts; and
- (4) making arrangements.

The Firm's place of business is in Liverpool and it currently employs one mortgage advisor.

- 4.2. During the relevant period the Firm held itself out as a provider of independent advice on regulated mortgage contracts for the purposes of MCOB 4.3.7R and offered products from the whole of the regulated mortgage market. The Firm would charge a fee for advice that concluded in a customer entering into a regulated mortgage contract with a lender. The fees charged varied depending on the type of mortgage contract arranged and the customers' circumstances.
- 4.3. Part of the Firm's business was generated from the 'sub prime' market. The term 'sub prime' generally refers to regulated mortgage contracts targeted at consumers with an impaired or low credit rating as a result of an adverse credit history. Sub prime regulated mortgage contracts are generally more expensive than other regulated mortgage contracts available on the market as a higher interest rate is usually charged due to a perceived higher risk of default. In addition, the Firm offered the arrangement of regulated mortgage contracts based on customers self-certifying their income.

Background to the investigation

- 4.4. The Financial Promotions Department of the FSA ("FPD") wrote to the Firm four times between August 2005 and August 2006 identifying concerns in relation to four mortgage related financial promotions issued by the Firm during that period. FPD and Small Firms Division of the FSA conducted a visit to the Firm in October 2006. Additional concerns were identified in relation to (1) mortgage related financial promotions issued by the Firm and (2) its mortgage related sales processes and record keeping. As a result of these concerns the Firm was referred to the FSA's Enforcement Division and investigators were appointed on 13 December 2006.
- 4.5. The Enforcement investigation included, amongst other things, a review of ten of the Firm's mortgage sale files, four of its mortgage related financial promotions from the relevant period and information obtained by way of information requests answered by the Firm. Breaches of FSA Rules and Principles were identified in the areas detailed below.

5. BREACHES OF THE REGULATORY REQUIREMENTS

Principle 7

- 5.1. Failings were identified in relation to three financial promotions communicated by the Firm during the relevant period to market the services that it offered.

Financial Promotion 1

- 5.2. This financial promotion was placed in the *Manchester Evening News* on 15 June 2005 and was found to be non-compliant in several ways:

- (1) The APR figure advertised lacked prominence in breach of MCOB 3.6.17R(1).
- (2) The APR figure was stated without using the terminology prescribed by MCOB 3.6.17R(3).
- (3) It did not include the risk warning required by MCOB 3.6.13R(3).
- (4) It contained a fee range, whereas a precise amount of fee should have been indicated where known. If not known, a representative fee should have been used. The financial promotion therefore breached MCOB 3.6.27R.

- 5.3. The Firm has confirmed that the financial promotion generated no responses.

Financial Promotion 2

- 5.4. This financial promotion was placed twice in the *Champion* group of newspapers, twice in the *St Helens Star*, and twice in the *Leigh Journal* in January 2006. The financial promotion was found to be non-compliant in the following ways:

- (1) The APR figure was stated without using the terminology prescribed by MCOB 3.6.17R(3) and so breached that Rule.
- (2) It indicated a fee range. The financial promotion therefore breached MCOB 3.6.27R.
- (3) The risk warning was insufficient in breach of MCOB 3.6.13R(2).
- (4) The risk warning lacked prominence in breach of MCOB 3.6.13R.

- 5.5. The firm has confirmed that seven sales were generated from this promotion, with a gross sales value of £11,802.

Financial Promotion 3

- 5.6. This financial promotion was placed on www.wigantoday.net on 29 August 2006 and was found to be non-compliant as below:

- (1) The APR figure advertised lacked prominence and so breached MCOB 3.6.17R(1).
- (2) The risk warning lacked prominence in breach of MCOB 3.6.13R.
- (3) It contained a fee range and therefore breached MCOB 3.6.27R.

- 5.7. The Firm has confirmed that no responses were generated by this financial promotion.

Breach of Principle 7

- 5.8. The FSA considers that as a result of the failings relating to the financial promotions issued by PB Roberts Ltd set out in paragraphs 5.2 to 5.7 above, the Firm breached Principle 7 by failing to pay due regard to the information needs of its clients and failing to communicate information to its clients in a manner that was clear, fair and not misleading.

Principle 2

Confirmation exercise

- 5.9. MCOB 3.9.1R provides that a firm must arrange for a person with appropriate expertise to confirm that a financial promotion it intends to communicate complies with the Rules in Chapter 3 of MCOB. The Firm acknowledged that during the relevant period it had issued mortgage related financial promotions either (1) without the confirmation exercise required by MCOB 3.9.1R(1) being carried out or (2) without the confirmation exercise required by MCOB 3.9.1R(1) being carried out by an individual with appropriate expertise as required by MCOB 3.9.1R(2).

Breach of Principle 2

- 5.10. The FSA's considers that as a result of the Firm's failure to comply with the provisions of MCOB 3.9.1R, the Firm failed to conduct its business with due skill, care and diligence.

Failure to demonstrate suitability of advice and record keeping

- 5.11. Principle 2 requires a firm to conduct its business with due skill, care and diligence. Further, MCOB 4.7.2R requires a firm to take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract unless the contract is suitable for that customer. MCOB 4.7.4R(1) provides that 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:

- (1) the customer can afford to enter into the regulated mortgage contract;
- (2) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
- (3) the regulated mortgage is the most suitable of those the firm has available to it within the scope of service provided to the customer.

- 5.12. An important corollary to the requirement that personal recommendations made in the course of its business comply with the suitability requirements is record keeping. MCOB 4.7.17R requires a firm to make and retain a record:

- (1) 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
- (2) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2R satisfies the suitability requirements in MCOB 4.7.4R(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(1)E.

- 5.13. The FSA reviewed ten of the Firm's client files to assess the standard of its record keeping. Eight of the ten files reviewed related to sub prime regulated mortgage contracts. Six customers had also self-certified their income.
- 5.14. MCOB 4.7.13E(1) provides that a firm should, out of all the regulated mortgage contracts identified as being appropriate for that customer, recommend the one that is the least expensive for that customer taking into account those pricing elements identified by the customer as being most important to him. Compliance with MCOB 4.7.13E(1) may be relied upon as tending to show compliance with MCOB 4.7.4R(1)(c).
- 5.15. The FSA's review found that the ten client files reviewed did not record that the recommended regulated mortgage contract was the least expensive for the client taking into account the pricing elements most important to them, nor did they adequately explain why the personal recommendation had been made. For instance, the client files did not contain the results of research undertaken in selecting the mortgage contract recommended to the client.
- 5.16. The Firm actively targeted customers in the sub prime market (see paragraph 4.3 above). A sub prime regulated mortgage contract should only be recommended to customers whose credit history is such that they are not eligible for prime, less expensive types of regulated mortgage contracts. It is therefore important for firms to obtain sufficient information relating to a customer's credit history before recommending a sub prime regulated mortgage contract. A person's credit worthiness will depend on the facts and circumstances of that person's credit history.
- 5.17. The FSA's review of ten customer files found that the files of four customers who were recommended sub-prime or near-prime regulated mortgage contracts did not contain sufficient information regarding the clients' adverse credit history to demonstrate why a sub-prime or near-prime mortgage was recommended.
- 5.18. Of the ten client files reviewed, six customers had chosen to self-certify their incomes. Customers who self-certify their incomes generally pay a higher interest rate than customers who can prove their sources of incomes, and are therefore eligible for 'full status' regulated mortgage contracts. It is therefore important for firms to

establish whether a customer is able to provide sufficient proof of income to the lender and where a self-certification regulated mortgage contract has been recommended, record the reason for the recommendation.

- 5.19. The FSA found that three of the ten customer files did not contain sufficient information to justify and explain why a self-certification mortgage had been selected, especially given that the customers concerned were employed and therefore may have had the means of proving their income.
- 5.20. In eight of the client files reviewed the information recorded on the client files was insufficient to demonstrate that the recommended mortgage was affordable for the customer in that, for example, the customer's regular living expenses were not recorded.
- 5.21. 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 4.7.17R.

Breach of Principle 2

- 5.22. The record keeping requirements in MCOB enable firms to monitor and review personal recommendations made by its advisors to ensure compliance with the suitability requirements in Chapter 4.7 of MCOB and with other requirements of the regulatory system.
- 5.23. In failing to make and retain adequate records as identified in paragraphs 5.15 to 5.21 above, the Firm failed to conduct its business with due skill, care and diligence and undermined its ability to demonstrate the suitability of its personal recommendations and to ensure that its customers were treated fairly. This amounts to a breach of Principle 2.

6. RELEVANT GUIDANCE

- 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 publishing a statement in respect of the Firm meets the regulatory objectives of protection of consumers and public awareness.

- 6.2. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook, in particular as set out in Chapter 6 of the Decision Procedure and Penalties Guide ("DEPP"), which is part of the Handbook of Rules and Guidance. The principal purpose of issuing a public censure is to promote high standards of regulatory and/or market conduct by deterring firms and approved persons who have breached regulatory requirements from committing further breaches, helping to deter other firms and approved persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 6.3. Having regard to the matters summarised above, to the guidance set out in DEPP and to the FSA's statutory objectives of the protection of consumers and public awareness, the FSA considers it proportionate and appropriate in all the circumstances to take disciplinary action against the Firm for its failings in respect of its sale of advised regulated mortgage contracts.

Factors the FSA considers to be particularly relevant to this case

The nature, seriousness and impact of the breach

- 6.4. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached and the number and duration of the breaches. For the reasons set out below the FSA considers that the breaches are of a serious nature, although due to the low levels of business conducted by the Firm the potential impact was minimal.

The duration and frequency of the breaches

- 6.5. The breaches occurred in the period from 1 June 2005 to 31 October 2006.

The extent to which the breaches were deliberate or reckless

- 6.6. The FSA has not determined that PB Roberts Ltd deliberately or recklessly contravened regulatory requirements.

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

- 6.7. No determination has been made that the Firm deliberately set out to accrue additional profits or avoid a loss through the failings identified in this Notice.

Conduct following the breaches

- 6.8. The Firm was open and co-operative with the FSA during the course of its investigation and stopped communicating financial promotions around September 2006.

The disciplinary record and compliance history of the firm

- 6.9. The Firm has not previously been the subject of disciplinary action by the FSA.

The previous action taken by the FSA in relation to similar findings

- 6.10. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has in the past taken action against firms for similar failings and these have been taken into consideration.

7. CONCLUSION

- 7.1. Taking into account the seriousness of the breaches and the risk they posed to the FSA's statutory objectives, the FSA publishes a statement in relation to the Firm.

8. DECISION MAKER

- 8.1. 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.

9. IMPORTANT

- 9.1. This Final Notice is given to the Firm in accordance with section 390 of the Act.

10. Publicity

- 10.1. 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 the Firm or prejudicial to the interests of consumers.

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

FSA contacts

11. For more information concerning this matter generally, you should contact Jeremy La Niece at the FSA (direct line: 020 7066 1346 /fax: 020 7066 1347).

Georgina Philippou
FSA Enforcement Division

ANNEX 1 – Mortgages and Home Finance:
Conduct of Business Sourcebook Rules

MCOB 3.6.13 R - Required risk statements

A non-real time financial promotion must, unless the transient advertising rule applies, prominently contain one or more of the following statements in the circumstances described:

(1) where it relates to a lifetime mortgage: 'This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.' If the promotion also relates to a home reversion plan the statement may be adapted to the extent necessary to comply with the equivalent requirement for a home reversion plan (see MCOB 3.8A.3R (2)(a));

(2) where it refers to paying off unsecured debts (for example, credit cards, personal loans or overdrafts) by taking out qualifying credit: 'Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage.'

(3) in all cases except (1) and (2): 'Your home may be repossessed if you do not keep up repayments on your mortgage.' ; or if it refers in whole or in part to qualifying credit secured on property which is not the customer's home the statement may be amended but only to the extent necessary in order to reflect that fact.

(4) where the mortgage will be denominated in a currency other than sterling: 'Changes in the exchange rate may increase the sterling equivalent of your debt.'

(5) where more than one of the statements in (1) to (4) applies, each relevant statement should be included. In such cases, the statement set out in (1), (2) or (3) should precede that in (4).

(6) where a non-real time financial promotion relates to both qualifying credit and credit which is not qualifying credit the statements required by (2) or (3) may be modified by replacing 'your mortgage' with 'a mortgage or any other debt secured on it'.

MCOB 3.6.17 R

Annual Percentage Rate (APR)

(1) A firm must ensure that if a non-real time financial promotion contains either price information for specific qualifying credit, or makes reference (either explicitly or implicitly) to the availability of credit for customers who might otherwise consider their access to credit restricted, the promotion also:

(a) states the APR;

(b) gives the APR, and the accompanying statement in (3), with no less prominence than any price information or reference (either explicitly or implicitly) to the availability of credit for customers who might otherwise consider their access to credit restricted; and

(c) positions the APR after any other rate of charge relating to the qualifying credit, clearly distinguishing it from any such rate but without interjecting other information in between the APR and any other rate of charge.

(2) A firm must calculate the APR in accordance with MCOB 10(Annual percentage rate).

(3) The APR must be expressed as follows, with X being the APR calculated for the particular qualifying credit: 'The overall cost for comparison is X% APR'

MCOB 3.6.27 R - Fees for advice or arranging

If a non-real time financial promotion of qualifying credit relates to the controlled activities of advising on or arranging qualifying credit and a fee may be charged for these activities, a firm must ensure that a prominent indication is given of:

(1) the amount of the fee (if known); or (2) a representative fee based upon the business expected to arise from the promotion.

MCOB 3.9 Confirmation of compliance : financial promotions of qualifying credit or home reversion plans

MCOB 3.9.1 R

(1) Before a firm communicates or approves a non-real time financial promotion of qualifying credit or of a home reversion plan it must confirm that the financial promotion complies with the rules in this chapter.

(2) A firm must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.

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.
- (2) no recommendation must be made if there is no regulated mortgage contract from within the scope of the service provided to the customer which is appropriate to his needs and circumstances; and
- (3) if a firm is dealing with an existing customer in arrears and has concluded that there is no suitable regulated mortgage contract for the purposes of MCOB 4.7.2 R, the firm must nonetheless have regard to MCOB 13.3.2 E(1)(a), (e) and (f) (see also MCOB 13.3.4 G(1)(a) and (b)).

MCOB 4.7.13 E

- (1) A firm should, out of all the regulated mortgage contracts identified as being appropriate for that customer, recommend the one that is the least expensive for that customer taking into account those pricing elements identified by the customer as being most important to him.
- (2) Compliance with (1) may be relied upon as tending to show compliance with MCOB 4.7.4 R(1)(c).

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.