FINAL NOTICE

To:	**Anthony Peter Clare**
IRN:	**APC01155**
Date of Birth:	**26 March 1968**
Date:	**5 November 2014**

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby:

(a) imposes on Mr Clare a financial penalty of £208,600; and

(b) makes an order prohibiting Mr Clare from performing any significant influence function in relation to any regulated activities carried on by any authorised or exempt persons. This order takes effect from 5 November 2014.

1.2. Mr Clare agreed to settle at an early stage of the Authority's investigation. Mr Clare therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £298,100 on Mr Clare.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, the Authority has concluded that Mr Clare failed to comply with Statement of Principle 6 and Statement of Principle 7 of the Authority's Statements of Principle for Approved

Persons while performing the significant influence function of CF1 (Director) during the relevant period.

2.2. Mr Clare breached Statement of Principle 6 because he failed to exercise due skill, care and diligence in managing the business of Swinton for which he was responsible as a CF1 (Director). Mr Clare held a particular responsibility within Swinton's corporate governance structure for ensuring that Swinton was treating its customers fairly and had oversight of the Compliance Department of Swinton.

2.3. During the relevant period Mr Clare missed indications that there were compliance problems with the monthly add-on products and the risk that Swinton was not treating customers fairly in respect of these products. He was also involved in specific decisions concerning the way in which two of the monthly add-on products were developed and failed to realise that the impact of these decisions was to increase the risk that customers would be treated unfairly in purchasing a monthly add-on product.

2.4. The risk to customers was significant. During the period April 2010 to December 2011, Swinton sold approximately 1.9 million monthly add-on insurance policies. It launched three types of monthly add-on product: personal accident insurance, breakdown insurance and home emergency insurance. The launch of each monthly add-on product was followed by a sharp rise in sales compared to the previous annual or multi-year version of the product. Personal accident insurance sales alone increased from 6,000 (for the previous multi-year product) to around 55,000 policies per month. The increase in sales was not accompanied by a sufficient increase in the level of compliance monitoring. In its branch network, for most of the relevant period Swinton monitored an average of 19 telephone sales of personal accident insurance per month, representing only 0.04% of the average number of personal accident insurance policies sold per month.

2.5. Sales of the monthly add-on products had a significant impact on Swinton's profits. The firm's operating profit was at the core of an incentive scheme for Swinton's directors. The structure of the scheme meant that, in effect, for every £10 million of operating profit generated above £62.2 million in 2011, the total bonus payment to Swinton's participating directors would increase by approximately £15 million.

2.6. This scheme was designed to motivate the directors to increase the value of the firm. Mr Clare, as Swinton's finance director, was key to the successful delivery of that strategy. However, in delivering that increase in operating profit for 2011, he missed indications of the risk that a sales focussed culture was developing within the firm that could lead to the risk of unfair treatment of customers. Mr Clare also failed to understand that some of his actions in respect of the monthly add-on products were encouraging that culture. Mr Clare should have realised that risks to customers might stem from the culture of the firm itself, not just the customer transactions it entered into.

2.7. Mr Clare also breached Statement of Principle 7 in that he failed to take reasonable steps to ensure that the business of Swinton for which he was responsible in his significant influence function complied with the relevant requirements and standards of the regulatory system. As part of the compliance framework within Swinton Mr Clare had oversight of Swinton's Compliance Department, which produced MI for Swinton's Compliance Board and Audit Committee. Mr Clare failed to exercise adequate oversight and challenge over the Compliance Department and failed to identify that the compliance MI produced for the monthly add-on policies was unreliable and potentially misleading in a number of important elements.

2.8. As a consequence of these matters, the Authority considers that Mr Clare failed to take reasonable steps to perform his significant influence function in accordance with regulatory requirements; and failed to exercise due skill care and diligence in managing the business for which he was responsible in his accountable function. The lack of competence demonstrated by Mr Clare leads the Authority to conclude that he is not a fit and proper person to perform significant influence functions in relation to regulated activities carried on by any authorised or exempt persons, and that he should be prohibited from doing so.

2.9. The Authority has therefore decided to impose a financial penalty on Mr Clare in the amount of £208,600 pursuant to section 66 of the Act and make a prohibition order pursuant to section 56 of the Act.

2.10. This action supports the Authority's regulatory objective of securing an appropriate degree of protection for consumers and is consistent with the importance placed by the Authority on the accountability of senior management in the operation of their business.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice.

(a) the "Act" means the Financial Services and Markets Act 2000;

(b) the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

(c) the "Compliance Board" means the subsidiary board of Swinton's executive board responsible for identifying, reviewing and addressing the key compliance indicators of Swinton's business, identifying key compliance issues and deciding on appropriate corrective action;

(d) the "Compliance Department" means Swinton's Legal and Compliance Department, of which Mr Clare had executive oversight during the relevant period;

(e) the "core products" means motor or home insurance products;

(f) "DEPP" means the Decision Procedure and Penalties Manual section of the Handbook;

(g) the "DSS" means the directors' share scheme in operation during the relevant period;

(h) "EG" means the Enforcement Guide part of the Handbook;

(i) the "Handbook" means the Authority's Handbook of rules and guidance;

(j) "HEP" means Swinton's home emergency insurance;

(k) "LTV" means lifetime value, which was the method Swinton used to account for sales of the monthly add-on products;

(l) "MI" means management information;

(m) the "monthly add-on products" means the monthly add-on products sold by Swinton. These included HEP, PA and SBI;

(n) "PA" means Swinton's personal accident insurance;

(o) "PPG" means Swinton's Product and Pricing Group;

(p) "PPI" means payment protection insurance;

(q) the "relevant period" means the period 1 January 2010 to 12 December 2011;

(r) "SBI" means Swinton's breakdown insurance;

(s) the "Statements of Principle" means the Statements of Principle and Code of Practice for Approved Persons;

(t) "Swinton" means Swinton Group Limited;

(u) "TCF" means the Authority's Treating Customers Fairly initiative, which is based on Principle 6 of the Authority's Principles for Businesses. Principle 6 requires firms to pay due regard to the interests of their customers and treat them fairly;

(v) the "TCF risk" means the risk identified within Swinton's risk management framework that a failure to embed TCF principles throughout Swinton's business might lead to customers not being treated fairly; and

(w) the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

4.1. Swinton is a large general insurance intermediary which has been authorised by the Authority since 14 January 2005.

The monthly add-on products

4.2. During the relevant period, Swinton sold the monthly add-on products to existing customers with core products, being home insurance or motor insurance, and to new customers alongside these core products. It migrated existing customers from annual PA, SBI and HEP to the monthly add-on products as their annual policies came up for renewal. It also sold the monthly add-on products on a stand-alone basis to customers who had purchased core products through other brokers.

4.3. Customers were offered free cover for an initial period of three or four months before monthly premiums became payable and were automatically taken from their bank accounts if they did not cancel. Customers were not tied into annual or multi-year contracts and could cancel the monthly add-on products at any time without incurring charges.

4.4. Swinton launched PA as a monthly product in April 2010. PA was designed to provide cover for accidental physical injury or the disappearance of an insured person who was presumed dead as a result of accidental injury. PA offered three levels of cover, which could be extended to include the insured person's partner or unmarried dependent children. The monthly premiums for PA ranged from £7.98 to £17.99.

4.5. In February 2011 Swinton launched its SBI monthly policy. SBI was designed to provide cover for motor breakdown assistance. SBI offered four levels of cover for vehicle recovery within the UK and Europe. The monthly premiums for SBI were determined by the level of cover and specific product options selected.

4.6. Swinton launched its HEP monthly policy in July 2011. HEP was designed to provide cover in cases where a skilled tradesman was required to attend and repair a home emergency. HEP offered two levels of cover which provided different amounts of reimbursements for repairs. The monthly premiums for HEP were £4.99 or £6.99.

4.7. During the relevant period, Swinton sold the monthly add-on products on a non-advised basis to customers face to face in Swinton's high street branches and by telephone (from more than 500 branches and nine call centres). Swinton changed its sales processes from advised to non-advised over the course of November 2009 to February 2010.

4.8. Swinton used a computer software package for both telephone and face to face sales to capture customer details and search for quotes on the core products. The computer software package prompted sales executives to introduce the monthly add-on products during sales of the core products and provided links to the relevant sales scripts.

4.9. Sales of the monthly add-on products were particularly profitable for Swinton in the year the sale was made, due to the method Swinton used to account for

them. Swinton accounted for the monthly add-on products on a LTV basis. This meant that a notional value for the lifetime of the product was ascribed to its sale and accounted for in the month of sale. This value was based on an actuarial calculation arrived at by making various assumptions about the premium income and cancellation rates applicable to each product.

4.10. During the period April 2010 to December 2011, Swinton sold approximately 1.9 million monthly add-on products. Sales of the PA monthly policy alone averaged around 55,000 policies per month during this period. In September 2011 Swinton estimated that the monthly PA and SBI policies were due to generate approximately £43.5m of a forecast total operating profit figure of £110.4m in 2011.

4.11. On 16 July 2013, the Authority fined Swinton £7,380,400 for breaching its Principles for Businesses in respect of its sales of monthly add-on products between April 2010 and April 2012. The fine was reduced by 30% from £10,543,500 as Swinton agreed to settle at an early stage of the investigation.

4.12. Many of the Authority's findings about the mis-selling of the monthly add-on products reflected similar failings found at Swinton previously in relation to mis-selling PPI. On 28 October 2009, the Authority had fined Swinton £770,000 for breaching its Principles for Businesses during the period December 2006 to March 2008 in relation to its sale of PPI.

Mr Clare's roles and responsibilities

4.13. Mr Clare's role at Swinton was broad. As well as being Swinton's finance director, Mr Clare was the executive director with responsibility for running Swinton's commercial division and was involved in developing new products and pricing decisions as a member of Swinton's Product and Pricing Group which provided commercial input on these issues. Mr Clare also had oversight of Swinton's Compliance Department, sat on the Compliance Board and owned the risk identified in Swinton's risk management framework that a failure to embed TCF principles throughout Swinton's business might result in customers not being treated fairly. Whilst all of Swinton's directors were responsible for ensuring that Swinton treated its customers fairly, as a result of his combination of responsibilities, Mr Clare should have had a particular focus on TCF in Swinton's sales of the monthly add-on products.

Facts and matters going to Mr Clare's breach of Statement of Principle 7

Mr Clare's oversight of the Compliance Department's call monitoring and reporting

4.14. Swinton's Compliance Board relied upon several sources of MI, including Swinton's call monitoring programme, customer complaints, and individual staff monitoring (Swinton had a system whereby patterns indicating a risk of misconduct by sales executives could purportedly be identified whereupon the sales executive received more dedicated monitoring, referred to at Swinton as 'process controls').

4.15. During the relevant period, all three of these forms of MI were compromised by serious flaws in the data relating to sales of the monthly add-on products. Mr Clare failed to interrogate or challenge the MI produced by the Compliance Department and presented to the Compliance Board sufficiently. Had he done so, he would have identified its flaws. This meant that, throughout the relevant period, Swinton's Compliance Board placed undue weight upon MI that was inadequate to obtain proper assurance that the risks of mis-selling the monthly add-on products had been adequately mitigated.

Failure to address quantitative weaknesses in Swinton's call monitoring programme

4.16. For most of the relevant period, the aggregated call monitoring MI presented in the appendices to the Compliance Board Reports by the Compliance Department was based on an extremely small sample size. In the period from April 2010 to September 2011, the average number of monitored calls aggregated in the Compliance Board Reports was 130 per month, across all product lines (i.e. core and add-on insurance products). The Authority had highlighted concerns on this issue to Swinton during 2011.

4.17. The number of monitored sales of the monthly add-on products was even lower. During the same period, the average number of monitored PA sales calls aggregated in the appendices to the Compliance Board Reports was 19 per month. This represented only 0.04% of the average number of PA policies sold per month (52,000).

4.18. The solution proposed was to include in the Compliance Board Report (which, at that point, only presented call monitoring MI relating to Swinton's branch

network) the call monitoring MI relating to Swinton's call centres. This change was not implemented until October 2011.

4.19. Given his particular responsibility for TCF and oversight of Swinton's Compliance Department, Mr Clare should have ensured that the sampling undertaken by the Compliance Department was sufficient for the Compliance Board to judge whether customers were being treated fairly in the sales of the monthly add-on products. Mr Clare failed to do so, and as a result the sampling remained insufficient until the amalgamation of the call centre MI in October 2011.

4.20. Mr Clare was aware that after the introduction of the PA product as a monthly policy in April 2010, the volume of PA sales had increased significantly, from approximately 6,000 multi-year policies to approximately 50,000 monthly add-on policies per month. In light of this increase and his particular responsibility for ensuring that Swinton treated its customers fairly, he should have been more concerned about inadequate call monitoring and taken steps to address this.

Failure to address qualitative weaknesses in Swinton's call monitoring programme

4.21. Initially, the call monitoring scorecard for monthly PA consisted of only one question: whether the sales executive had followed the terms and conditions script for the product. A revised scorecard, which included 10 PA-related questions, was implemented in June 2010. Call monitoring MI based on the revised PA scorecard was included in the July 2010 Compliance Board Report. The revised PA scorecard did not include any assessment of whether the customer had been treated fairly during the call.

4.22. At no stage during the relevant period did the scorecards for monthly PA, monthly SBI or monthly HEP include questions to assess:

(a) the manner in which information was provided to customers;

(b) how far customers understood the product they were buying;

(c) the order in which information was given to customers (i.e. whether product exclusions were explained before customer authority to proceed with the sale was obtained);

(d) whether it was made clear to the customer that the monthly add-on product was a separate, optional policy; and

(e) the frequency with which sales executives employed techniques to handle customer objections (e.g. on the grounds of duplicate cover or the cost of the policies), or the nature of the objection handling.

4.23. In July 2007, the Authority had published a TCF guide to MI. The publication gave high level guidance about what constitutes good and poor practice in terms of disseminating, challenging, analysing, acting on and recording MI. In relation to challenging MI, the guide stated: "*As well as challenging the current content of MI, we would expect management to consider the substance and quality of the MI itself. Challenges might include* […] *Is the MI still relevant to what the firm is trying to do?*"

4.24. Mr Clare should have recognised that, what he perceived to be positive results from the PA call monitoring, did not necessarily mean customers were being treated fairly. The call monitoring MI presented to Swinton's Compliance Board contained no evaluation of TCF concerns and was not, therefore, a reliable measure of TCF. Mr Clare should have taken steps to check that the methods employed by Swinton's Compliance Department allowed Swinton's performance in treating its customers fairly to be reasonably assessed.

Change to the call monitoring MI

4.25. Initially, Swinton's call monitoring MI only reported telephone calls in which an actual sale of a monthly policy had been completed. In November 2010 the Compliance Board decided to restate PA call monitoring MI to include telephone calls in which the customer had declined, or was not eligible for, the product.

4.26. This change increased the population of telephone calls reported in the call monitoring MI that were graded "green" and therefore led to a fall in the proportion of calls rated "red". This was evident from the November 2010 call monitoring which, when prepared on the restated basis, indicated that 90% of monitored PA calls were rated "green", whereas on the basis of sales made, the number of "green" calls was only around 70%.

4.27. The revised presentation therefore gave the superficial impression that there was less cause for concern about the quality of the PA calls monitored. However, this

apparent improvement was only a result of the revised presentation and was not a result of an improvement in the quality of the sales that were actually made.

4.28. Call monitoring MI subsequently circulated to Mr Clare showed that the proportion of monitored PA calls rated 'red' or 'amber' where a sale had actually occurred, remained consistently between 20% and 40% throughout the rest of the relevant period. Therefore, Mr Clare should have appreciated that the revised reporting had the potential to mask concerning results and he should have taken steps to check the MI being presented by the Compliance Department gave an accurate picture.

Failure to address weaknesses in Swinton's complaints monitoring MI

4.29. During the relevant period, the volume of complaints relating to the monthly add-on products was low. However, there were a number of flaws in Swinton's monitoring of complaints which meant that the seemingly low number of complaints could not be relied upon to accurately measure whether Swinton was treating its customers fairly. This was because, throughout its business, Swinton failed to record complaints properly and as a result MI that was reviewed centrally understated the true level of complaints.

4.30. Complaints received in Swinton's branches and dealt with before the end of the next business day were not recorded centrally unless an *ex gratia* payment was made to the customer. Also, complaints that went to Swinton's SAVE team (a customer retention team) and that were dealt with without completing a complaints form were not recorded centrally. Further, Swinton offered a "no quibble" refund guarantee in respect of the monthly add-on products, and complaints resolved in this way were not always recorded centrally. Between April 2010 and December 2011, Swinton refunded 23,690 monthly PA customers which equated to approximately 2% of policy volume. Many of these refunds would have related to customer complaints and would have been given under the "no quibble" refund policy. However, the number of actual PA-related complaints recorded over the same period was only 3,780.

4.31. Mr Clare was aware of some of these practices but failed to appreciate their impact. Furthermore, he failed to take steps to better understand the complaints handling process. He should have done so, given his particular responsibility for TCF at Swinton. Instead, Mr Clare placed inappropriate reliance on the existence

of the "no quibble" guarantee and took erroneous comfort from the fact that Swinton's customers would be refunded. Had Mr Clare sought to understand the complaints monitoring process as he should, he would have identified fundamental flaws that resulted in Swinton's complaints figures being understated. He did not take reasonable steps to satisfy himself that Swinton's processes for recording complaints were fit for purpose.

4.32. Furthermore, the Compliance Department only presented analysis of complaints levels for PA and SBI to the Compliance Board. No such analysis was prepared for HEP during the relevant period despite the Compliance Board requesting it.

Failure to address weaknesses in Swinton's process control framework

4.33. Swinton implemented a 'process control' framework to monitor sales compliance in respect of the monthly add-on products. Under this framework, data from a range of sources was analysed to identify sales executives considered to be high risk from a compliance perspective. Where a staff member was identified by this process as high risk, Swinton's Compliance Department contacted up to six of his/her customers to conduct a telephone survey about their experience. Depending on the results of the survey, the sales executive might be subject to further action (including, in theory, disciplinary proceedings).

4.34. The telephone survey was designed to ensure that the customer was aware they had bought the product and to measure their satisfaction with Swinton's service. However, it did little to enable Swinton to assess TCF. As with the scorecards used in the call monitoring process, the survey did not include any questions to assess the manner in which sales executives gave information to customers, how far customers understood the product they had purchased, the order in which information was provided to customers, or customers' experience of objection handling.

4.35. In addition, from August 2010 the process was amended such that even where the process control identified that in one out of six cases the sales executive had failed to explain the cover provided or the cost of the policy after the initial free period, or if the customer had indicated that the policy was set up against their wishes, no further action would be taken in respect of that sales executive.

4.36. The PA process control framework, complete with the flaws described above, was replicated for SBI, which was launched in February 2011. There was no similar or alternative control for HEP, which was launched in July 2011.

4.37. Despite his particular responsibility for TCF, Mr Clare did not consider whether the process control framework for the monthly add-on products was adequate to assess TCF or sufficiently robust to ensure that sales executives posing a compliance risk were being identified appropriately.

Facts and matters going to Mr Clare's breach of Statement of Principle 6

4.38. Mr Clare received a number of indications that should have alerted him to the risk of widespread mis-selling of the monthly add-on products. Mr Clare failed to recognise the seriousness of these indications. Consequently, he failed to take reasonable steps to mitigate the risk of Swinton's customers not being treated fairly.

4.39. Mr Clare was also significantly involved in decisions made in respect of SBI and HEP that failed to pay due regard to the interests of customers. Further, he failed to identify that Swinton's business strategy for 2011 carried an inherent risk of developing a culture that acted to the detriment of Swinton's customers and he missed some specific indicators of this risk.

Call monitoring MI received outside the Compliance Board

4.40. In addition to the aggregated call monitoring MI presented in the monthly Compliance Board Reports, Mr Clare was also presented with spreadsheets showing the underlying call monitoring data which formed the basis of these reports. This MI was circulated to him and others by email regularly each month.

4.41. Following the launch of the monthly PA product, initial call monitoring MI received by Mr Clare suggested that there were serious compliance problems with the sale of the product. In response to these concerns, the Compliance Board decided on a number of measures to address what was described as an "*unsatisfactory position*". These included providing immediate feedback where mis-selling was identified, disciplining staff where necessary, introducing additional MI, reiterating correct sales procedures in staff communications, reinforcing the need to adhere to approved sales scripts, additional call monitoring, and conducting a customer telephone survey.

4.42. The measures taken failed to have any significant immediate impact. This was illustrated by subsequent call monitoring MI received by Mr Clare (and others), which pointed to persistent compliance failings in the sale of monthly PA. In particular, MI circulated in June and July 2010 indicated that over 85% of monitored PA telephone sales calls were rated 'red'. Mr Clare attempted to respond to these failings, but his response was inadequate.

4.43. As a result, by September 2010, the proportion of "'red" PA sales, though lower than the results circulated in June and July, ranged between 27% and 45% of PA sales monitored and was therefore unacceptably high. At that time, and in light of Swinton's history of mis-selling PPI, representatives of Swinton's parent company expressed concern about the regulatory implications of monthly PA. Despite having received poor call monitoring results that suggested potential widespread mis-selling, Mr Clare sought to reassure Swinton's parent company that sales of the monthly PA product were being made in a compliant fashion.

4.44. Mr Clare did so because he mistakenly took comfort from the cancellations MI described below and from the results of customer surveys conducted by Swinton which he took to indicate that initial concerns over the quality of PA sales had been resolved. Mr Clare believed that the results of these surveys suggested that the vast majority of customers had received a satisfactory service and were happy with the product. Mr Clare (and others) relied on these surveys despite the questions included in the surveys being limited in scope and despite guidance issued by the Authority in 2006 that stated "*it is essential that firms use measures that distinguish between customer satisfaction and fair treatment of customers*".

4.45. Call monitoring results received by Mr Clare in respect of monthly PA remained poor throughout the rest of 2010 and well into 2011, and deteriorated after the launch of the next monthly add-on product, SBI, in February 2011. Furthermore, call monitoring results for the SBI product in the four months following its launch were also extremely poor, with the proportion of monitored SBI telephone sales calls rated "red" ranging from 40% to 67%.

4.46. Mr Clare failed to appreciate the seriousness of these continuing poor call monitoring results. Instead Mr Clare continued to rely on flawed data and assurances from members of Swinton's Compliance Department that he received as a member of Swinton's Compliance Board that masked the risks of mis-selling.

Cancellations MI

4.47. In September 2010, Swinton's Audit Committee received a report from Swinton's Compliance Board that stated that the overall cancellation rate for monthly PA, at 11.5%, was below expectations and was not a cause for concern. In his role as finance director, Mr Clare was particularly cognisant of cancellation rates for the PA product and knew that policy maturity had a significant impact on cancellation rates. In particular, he was aware that the cancellation rate for PA policies sold in April 2010 that year (i.e. in the first month following launch) was running at 39%, compared to 4.6% for policies sold in August 2010.

4.48. The data indicated a spike in the cancellation rate for monthly PA after expiry of the initial free period. This pattern was potentially indicative of a failure to treat customers fairly. Given his particular TCF responsibility, Mr Clare should have been alert to the possibility that customers were cancelling because they did not have a genuine need for the product, and/or that they were not aware that they had purchased the product until Swinton began to take payment.

Claims Data

4.49. Mr Clare received information on the level of claims associated with monthly PA product in 2011. This information showed that claims levels for the monthly PA product were very low.

4.50. Mr Clare failed to recognise that the low claims levels associated with the monthly PA product may be a result of the product having been mis-sold to customers. This was despite advice Swinton received from external consultants highlighting this risk and the Authority's Final Notice to Swinton in respect of its PPI mis-selling highlighting that a low level of claims may indicate that customers do not want or need a particular product.

Levels of HEP

4.51. Swinton launched monthly HEP with two levels of cover: Gold and Standard. The original proposal was for HEP Standard to provide the same cover as the annual version of the product. In order, though, to tacitly migrate annual HEP customers to Gold HEP, rather than Standard HEP, Mr Clare and others decided to reduce the benefits of Standard HEP and increase its price so that it could not be considered a like for like product with the annual policy. Mr Clare failed to consider whether

Swinton's customers were being treated fairly by a decision that was motivated by the desire to push customers towards the more expensive (and therefore more profitable) Gold product.

4.52. Swinton sold significantly more Gold HEP than Standard HEP. Mr Clare received information indicating that approximately 90% of the initial HEP sales were at Gold level. This should have alerted Mr Clare to the risk that customers were being directed to the Gold level product in all circumstances, regardless of their needs.

SBI Duplicate cover

4.53. In June 2011, Swinton identified that the underwriter's terms and conditions for SBI contained a "'*dual cover' exclusion*" clause which prevented customers from recovering costs under the new SBI product where they had pre-existing breakdown insurance. The sale of SBI with the dual cover exclusion clause in place gave rise to the risk that customers who already had breakdown insurance with another provider would be precluded from recovering costs under Swinton's SBI product. In this situation, Swinton was selling customers a product they might not be able to use.

4.54. To resolve this issue, Swinton had the policy underwriter remove the exclusion clause from subsequent SBI policy documents. This enabled Swinton to continue to sell SBI to customers whom it knew had existing breakdown cover, without invalidating the cover. Mr Clare failed to adequately address the key disadvantage that this "solution" presented to customers, namely that they could potentially be paying for two policies to cover the same risk. He failed to ensure that adequate analysis was performed to confirm whether or not it was in fact appropriate for Swinton to continue to sell the SBI product to customers with pre-existing insurance where no checks were performed to ensure that customers made an informed choice about purchasing a second policy. He also failed to ensure that all of Swinton's sales scripts included questions to highlight instances where customers held pre-existing insurance and to ensure in those instances that the customer wanted two products.

4.55. Mr Clare also failed to ensure that, after the problem was identified, Swinton did not sell SBI until the dual exclusion clause was removed. Mr Clare knew that, in fact, Swinton continued to sell the product with the dual cover exclusion clause

present for more than a week after he was made aware of its existence. During this period of time, Swinton sold approximately 15,000 SBI policies.

4.56. Between February 2011 and the end of May 2011, Swinton sold approximately 200,000 SBI policies in total. After he was made aware of the TCF implications of the dual cover exclusion clause, Mr Clare made no efforts to establish how many of these policies were sold to customers who held a breakdown policy with another provider, and were therefore affected. Mr Clare also failed to ensure that customers who had purchased the SBI product containing the dual cover exclusion clause were issued with revised terms or received a refund in circumstances where they had not wanted two products.

Mr Clare's influence on Swinton's strategy and culture during the relevant period

4.57. Throughout the relevant period, Swinton's business strategy was to increase the value of its business by maximising profits in 2011 rather than achieving incremental levels of growth in 2009, 2010 and 2011. In his role as finance director, Mr Clare was central to the creation of this strategy.

4.58. The DSS incentivised Swinton's participating directors to increase the value of the business in this manner. The DSS provided that, where the operating profit as stated in Swinton's audited financial statements for the year ended 31 December 2011 exceeded the equivalent figure at 31 December 2008, the beneficiaries would be entitled to a payment of 15% of the difference between the 2011 and 2008 profit figure multiplied by a factor of 12 - the Threshold Excess. Where the 2011 operating profit figure exceeded £62.2 million, the percentage payable rose from 15% to 16.25% on the whole of the Threshold Excess. In essence, the terms of the DSS gave rise to a bonus for Mr Clare based on profits made in one specific year: 2011.

4.59. Swinton's strategy to grow the business by focussing on maximising 2011 profitability resulted in Swinton's profitability for 2011 being significantly higher than the prior two years. Swinton's operating profit for 2009 and 2010 was £39.1 million and £38.3 million respectively. However, by February 2011 Swinton was forecasting a pre-tax profit for 2011 of £89.4 million. By June 2011, Swinton was forecasting a pre-tax profit of £110 million. If 2011 pre-tax profits were to total £110 million, the DSS payment due to the scheme participants would be approximately £90 million.

4.60. Despite holding a primary role in designing and implementing this strategy, Mr Clare failed to appreciate that it gave rise to an inherent risk of engendering a culture at Swinton whereby profitability in 2011 was prioritised over the fair treatment of customers. He also missed indications that suggested that Swinton's culture was becoming one that acted to the detriment of the fair treatment of customers. For example, in relation to the monthly add-on policies, Mr Clare:

(a) gave inadequate weight to warnings that Swinton's sales staff were under increasing pressure and that this may result in compliance errors;

(b) failed to recognise that the huge increase in PA sales volumes combined with low levels of claims may indicate underlying problems; and

(c) encouraged and was involved in discussion amongst senior management about the positive impact the sales of PA would have to the business strategy at a time when he was receiving consistently poor compliance scores data.

4.61. Mr Clare personally missed opportunities to mitigate the risk of Swinton's culture becoming one whereby profitability in 2011 was prioritised over the fair treatment of customers. In his capacity as the individual with responsibility for Swinton's TCF risk, Mr Clare mistakenly relied on flawed controls to ensure TCF principles were embedded throughout Swinton's business when they were not.

5. FAILINGS

5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

5.2. Mr Clare breached Statement of Principle 6 and Statement of Principle 7 for the reasons set out below.

5.3. Mr Clare was the individual at Swinton with a particular responsibility for ensuring that Swinton treated its customers fairly. This responsibility arose principally from his position as a CF1, his place on Swinton's Compliance Board, his ownership of the TCF risk and his role as the executive director with oversight for Swinton's Compliance Department.

Statement of Principle 6 breaches

5.4. Mr Clare had a particular responsibility for ensuring that Swinton treated its customers fairly and he failed to appreciate the risk that the way that Swinton developed and sold its monthly add-on products could result in it not treating its customers fairly. He also failed to recognise the risk of a culture developing within Swinton such that the strategy to maximise 2011 profitability (driven by the DSS structure) put at risk the fair treatment of customers. In fact, Mr Clare's actions increased this risk. Mr Clare has cooperated fully with the Authority's investigation.

Failure adequately to address compliance risks and warnings

5.5. During the relevant period, Mr Clare received a number of indicators of significant compliance problems relating to the monthly add-on products. Poor call monitoring results suggested that there were widespread compliance failings in the sale of the products and that, in respect of monthly PA, efforts to address the problem had been unsuccessful. Mr Clare failed to appreciate the significance of the MI that he received and the potential implications for Swinton's business.

5.6. MI received by Mr Clare indicated that the levels of claims for monthly PA policies sold in 2010 and 2011 were very low. Mr Clare had the compliance risks associated with low claims levels highlighted to him in the Authority's PPI findings and by external consultants. However, Mr Clare failed to react adequately to the claims MI he received and failed to investigate whether the low claims levels associated with the PA product were as a result of the product having been mis-sold.

5.7. Cancellations data should also have caused Mr Clare concern given his particular TCF responsibility. After expiry of the initial free period for monthly PA, the cancellation rate soared. This indicated two potential compliance problems:

(a) Swinton was selling monthly PA to customers who had no real need for the product and who chose to cancel rather than pay for it; and

(b) Swinton was selling monthly PA to customers without their knowledge or authorisation. The taking of payment alerted customers to the existence of the policies and prompted them to cancel.

5.8. These indicators pointed to a risk of widespread mis-selling of the monthly add-on products. While Mr Clare took some steps to address some of these indicators following the launch of the PA product, he subsequently, erroneously, believed that these efforts had been sufficient to ensure that the monthly products were being sold in a compliant manner. Mr Clare failed to appreciate the significance of the compliance MI that he subsequently received and therefore failed to react adequately to address the widespread and persistent failings in Swinton's treatment of its monthly add-on customers.

Failure to treat customers fairly in the development of SBI and HEP

5.9. Mr Clare was significantly involved in specific decisions relating to the development of the monthly HEP and SBI products that were not fair to Swinton's customers. The impact of these decisions was such that Swinton's customers were sold the SBI product in circumstances where they may have been barred from claiming under it. Mr Clare took no action to establish how many customers may have been affected. Customers were also sold the Gold level of the HEP product without due consideration having been paid to their requirements. Customers who purchased the Standard level HEP product purchased a product where the level of cover had been reduced, without a corresponding reduction in price, to facilitate the migration of existing customers onto the more profitable Gold level product.

5.10. As a party to these decisions, Mr Clare failed to pay sufficient regard to his particular responsibility for TCF. Mr Clare failed to understand the fundamental TCF ramifications of these decisions and the negative outcomes for Swinton's customers.

Mr Clare's impact on Swinton's culture

5.11. Mr Clare's conduct had an impact on all levels of Swinton's business – from sales staff to senior management. Swinton's strategy, of which Mr Clare was responsible as Finance Director, of prioritising the maximisation of 2011 profitability led to an inherent risk that Swinton's commercial goals would be prioritised over and above compliance concerns. Mr Clare failed to appreciate this risk sufficiently, and his actions in the way he discharged his ownership of the TCF risk and his input into Swinton's incentive schemes further heightened the risk.

5.12. As a result, Swinton's culture during the relevant period was such that there was a significant risk of the monthly add-on products being mis-sold to customers. On

16 July 2013 the Authority found that Swinton had breached its Statement of Principles for Business in respect of its sales of the monthly add-on products between April 2010 and April 2012.

Breaches of Statement of Principle 7

5.13. Mr Clare failed to take reasonable steps to ensure that the business of Swinton for which he was responsible in his controlled function complied with the relevant requirements and standards of the regulatory system.

5.14. In particular, Mr Clare:

a) failed to take adequate steps to ensure that the Compliance Department, of which he had executive oversight, produced Compliance Board Reports that were reliable and contained sufficient information and data to allow the Compliance Board adequately to monitor and deal with compliance issues;

b) failed to ensure that the Compliance Department, of which he had executive oversight, produced call monitoring MI and complaints MI (for both the PA and SBI add-on products) that were fit for purpose and capable of being relied on by the Compliance Board and others responsible for monitoring compliance;

c) despite his particular responsibility for ensuring that Swinton treated its customers fairly, failed to ensure that the process controls put in place in relation to the PA and SBI add-on products, and the questions customers were asked as part of the process, were sufficiently robust to monitor whether customers were being treated fairly and to mitigate the risk of mis-selling; and

d) despite his particular responsibility for ensuring that Swinton treated its customers fairly, failed to ensure that the Compliance Board was presented with MI regarding the HEP product that allowed it to adequately monitor whether customers were being treated fairly in the sales of this product.

6. SANCTION

Financial penalty

6.1. The Authority imposes a financial penalty on Mr Clare for breaching Statements of Principle 6 and 7. Since the gravamen of Mr Clare's failings occurred after the change in regulatory provisions governing the determination of financial penalties and public censures on 6 March 2010, the Authority has applied the provisions that were in place after that date.

6.2. The principal purpose of 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 compliant behaviour.

6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the nature of the breach and the need to send out a deterrent message.

6.4. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

6.5. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.6. The Authority has not identified any financial benefit that Mr Clare derived directly from the breach.

6.7. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

6.8. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.9. The period of Mr Clare's breach was from 1 January 2010 to 12 December 2011. Mr Clare's relevant income for this period was £903,409.

6.10. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

(a) Level 1 – 0%

(b) Level 2 – 10%

(c) Level 3 – 20%

(d) Level 4 – 30%

(e) Level 5 – 40%

6.11. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.12. DEPP 6.5B.2G lists factors the Authority will consider in assessing the level of seriousness. Of these, the Authority considers the following factors to be relevant:

(a) whether the individual held a prominent position within the industry (DEPP 6.5B.2G(12)(f));

(b) whether the individual made significant financial gains indirectly from the breach (DEPP 6.5B.2G(8)(a));

(c) the risk of loss, as a whole, caused to consumers (DEPP 6.5B.2G(8)(b));

(d) whether the individual held a senior position at the firm (DEPP 6.5B.2G(9)(k));

(e) the extent of the responsibility of the individual for the product or business area affected by the breach, and for the particular matter that was the subject of the breach (DEPP 6.5B.2G(9)(l)); and

(f) whether the individual took at least some steps to comply with the Authority's rules (DEPP 6.5B.2G(9)(n)).

6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £903,409.

6.14. The Step 2 figure is therefore £271,023.

Step 3: mitigating and aggravating factors

6.15. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.16. The Authority considers that the following factors aggravate the breach:

(a) Mr Clare was aware of the Authority's concerns about mis-selling of PPI at Swinton, as he had oversight of Swinton's Legal and Compliance Department at the time Swinton was fined for mis-selling PPI. The Authority's Final Notice in relation to PPI mis-selling was published on 28 October 2009; and

(b) Mr Clare must have been aware of the Authority's wider emphasis on TCF. The Authority issued guidance about the importance of treating customers fairly on a number of occasions between July 2006 and November 2008. Mr Clare became a CF1 at Swinton in April 2006 and therefore can

reasonably be expected to have had regard to this guidance, in particular as he had executive oversight of Swinton's Compliance Department.

6.17. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 10%.

6.18. The Step 3 figure is therefore £298,125.

Step 4: adjustment for deterrence

6.19. Pursuant to DEPP 6.5B.4G, if the Authority considers that the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.20. The Authority considers that the Step 3 figure of £298,125 represents a sufficient deterrent to Mr Clare and others, and so has not increased the penalty at Step 4.

6.21. The Step 4 figure is therefore £298,125.

Step 5: settlement discount

6.22. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.23. The Authority and Mr Clare reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.24. The Step 5 figure is therefore £208,688.

Penalty

6.25. The Authority has therefore decided to impose a total financial penalty of £208,600 on Mr Clare for breaching Statements of Principle 6 and 7.

Prohibition

6.26. It is appropriate and proportionate in all the circumstances to prohibit Mr Clare from performing any significant influence function in relation to any regulated activities carried on by any authorised or exempt persons, because he is not a fit and proper person in terms of his competence and capability.

6.27. The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Clare be prohibited from performing functions involving the exercise of significant influence. The relevant provisions of EG are set out in the Annex to this Notice.

6.28. Given the nature and seriousness of the failures outlined above, Mr Clare's conduct demonstrated a serious lack of competence such that he is not fit and proper to perform any significant influence function in relation to any regulated activities carried on by any authorised or exempt persons. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose the Prohibition Order on Mr Clare in the terms set out above.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Mr Clare to the Authority by no later than 19 November 2014, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 20 November 2014, the Authority may recover the outstanding amount as a debt owed by Mr Clare and due to the Authority.

Publicity

7.5. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Clare or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.7. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142 / fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the Authority.

Bill Sillett

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1 The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective.

1.2 Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

1.3 Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act.

2.2. Statement of Principle 6 states:

> An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.

2.3. Statement of Principle 7 states:

> An approved person performing an accountable significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.

2.4. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

The Fit and Proper Test for Approved Persons

2.5. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" (FIT) sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

2.6. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

The Authority's policy for exercising its power to make a prohibition order

2.7. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

2.8. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

Financial penalty

2.9. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority

applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.