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## FINAL NOTICE

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To: **Nicholas Bowyer**  
IRN: **NXB01374**  
Date of Birth: **12 August 1961**  
Date: **5 November 2014**

### **1. ACTION**

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

- (a) imposes on Mr Bowyer a financial penalty of £306,700; and
- (b) makes an order prohibiting Mr Bowyer from performing any significant influence function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 5 November 2014.

1.2. Mr Bowyer agreed to settle at an early stage of the Authority's investigation. Mr Bowyer 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 £438,200 on Mr Bowyer.

### **2. SUMMARY OF REASONS**

2.1. On the basis of the facts and matters described below, the Authority has concluded that Mr Bowyer failed to comply with Statement of Principle 6 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 Bowyer 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 Bowyer drove forward the monthly add-on products and held particular responsibility within Swinton for their design, development and marketing. However, he failed to ensure this was achieved in a way that treated customers fairly. Mr Bowyer was involved in specific decisions about the monthly add-on products and failed to recognise that the impact of these decisions was to increase the risk that customers would be treated unfairly in purchasing such products.
- 2.3. 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 an 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.
- 2.4. 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. By September 2011, the estimated profit level for the year was expected to result in a total scheme bonus payment of approximately £90 million.
- 2.5. This incentive scheme was designed to motivate the directors to increase the value of the firm. Mr Bowyer was significantly motivated by the scheme and, as Marketing Director, was heavily involved in implementing a business strategy to maximise the operating profits of Swinton in 2011. Mr Bowyer's role in designing, developing and marketing the monthly add-on products was integral to the successful delivery of this strategy.

- 2.6. However, in delivering that strategy, Mr Bowyer encouraged a culture within the firm that prioritised sales and put at risk the fair treatment of consumers. Mr Bowyer failed to understand that the risk of unfair treatment of customers might stem from the culture of the firm itself, not just the customer transactions it entered into. He did not recognise that he had a personal responsibility to consider TCF in every element of his role as CF1.
- 2.7. As a consequence of these matters, the Authority has concluded that Mr Bowyer failed to exercise due skill, care and diligence in managing the business for which he was responsible in his accountable function (CF1). The lack of competence demonstrated by Mr Bowyer 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 an authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.
- 2.8. The Authority has therefore decided to impose a financial penalty on Mr Bowyer in the amount of £306,700 pursuant to section 66 of the Act and make an order prohibiting Mr Bowyer from performing any significant influence function pursuant to section 56 of the Act.
- 2.9. 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) "ADB" means Swinton's accidental death benefit insurance;
  - (b) the "Act" means the Financial Services and Markets Act 2000;
  - (c) the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
  - (d) 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;

- (e) the "Compliance Department" means Swinton's Legal and Compliance Department;
- (f) the "core products" means Swinton's motor or home insurance products;
- (g) "DEPP" means the Decision Procedure and Penalties Manual section of the Handbook;
- (h) the "DSS" means the directors' share scheme in operation at Swinton during the relevant period;
- (i) "EG" means the Enforcement Guide part of the Handbook;
- (j) the "Handbook" means the Authority's Handbook of rules and guidance;
- (k) "HEP" means Swinton's home emergency insurance;
- (l) "LTV" means lifetime value, which was the method Swinton used to account for sales of the monthly add-on products;
- (m) "MI" means management information;
- (n) the "monthly add-on products" means the monthly add-on products sold by Swinton. These included HEP, PA and SBI;
- (o) "PA" means Swinton's personal accident insurance;
- (p) the "PPG" means Swinton's Product and Pricing Group;
- (q) "PPI" means payment protection insurance;
- (r) the "relevant period" means the period between 1 January 2010 and 12 December 2011;
- (s) "SBI" means Swinton's breakdown insurance;
- (t) the "Statements of Principle" means the Statements of Principle and Code of Practice for Approved Persons;
- (u) "Swinton" means Swinton Group Limited;
- (v) "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; 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 or multi-year PA, SBI and HEP policies to the monthly add-on products as their existing 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 their policies at any time without incurring charges.

4.4. Swinton launched the monthly PA 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 add-on product. 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 according to the specific product options selected.

4.6. Swinton launched its monthly HEP add-on product 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 (Standard

and Gold) which provided different amounts of reimbursements for repairs. The monthly premiums for HEP were £4.99 or £6.99 respectively.

- 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 (which at that time numbered more than 500) and by telephone from its branches and nine call centres. Swinton changed its sales processes from advised to non-advised over the course of the period 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. Due to the method Swinton used to account for them, sales of the monthly add-on products were particularly profitable for Swinton in the year the sale was made. 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 PA, SBI and HEP monthly add-on products. Sales of the PA monthly add-on product alone averaged around 55,000 policies per month during this period. In September 2011, Swinton estimated that the monthly PA and SBI products were due to generate approximately £43.5million of a forecast total operating profit figure of £110.4million 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 the mis-selling of 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 Bowyer's roles and responsibilities***

- 4.13. Mr Bowyer joined Swinton as Marketing Director on 12 December 2005 and was approved to perform CF1 from 18 April 2006. On joining, he was told that his role was to generate profit for the business and "think the unthinkable" in terms of generating marketing ideas and initiatives. He was told he would be supported by a robust compliance framework. He was also told he needed to be an approved person and declared to the Authority he was competent as such. As one of Swinton's CF1 directors, Mr Bowyer was not required to sit on Swinton's Compliance Board nor was he allocated compliance oversight responsibilities. What he did not understand was that, as a CF1, he had a personal responsibility which he could not abrogate to ensure he considered and embedded TCF into every area of his work.
- 4.14. Mr Bowyer was Director of Marketing at Swinton during the relevant period and held a number of roles that gave him responsibility for ensuring the design, development and sales process of the monthly products complied with regulatory standards. As leader of the Product and Pricing Group, he was involved in the development of each of PA, SBI and HEP, including contributing to decisions on pricing and scripts. As a member of the PA/ADB subgroup, he was involved in managing the roll-out of PA (as well as ADB). Both these groups had responsibility for considering TCF and compliance issues in relation to the monthly add-on products and ensuring that there were final TCF/compliance sign-offs from the Compliance department.
- 4.15. Mr Bowyer was also the Project Sponsor for PA, SBI and HEP. As Project Sponsor, he was responsible for all aspects of the product development process, including those relating to compliance and TCF. He also shared responsibility with others for reviewing and approving sales scripts.

### ***Development and scripting of monthly add-on products***

- 4.16. Mr Bowyer played a central role in introducing the concept of the monthly add-on products to Swinton, and in guiding their development, launch and sales process.

#### Introduction of the monthly add-on policies

- 4.17. In January and February 2010, Mr Bowyer was requested by the Executive Board to investigate the benefits of changing the structure of Swinton's ADB and PA products from annual or multi-year products to monthly products. In doing so, Mr Bowyer received advice from Swinton's Compliance department that there would

be fewer compliance requirements for scripting and web presentation and he perceived advantages in this.

- 4.18. Mr Bowyer was also attracted to the accounting treatment which could be applied to the monthly add-on products and the benefits the LTV accounting method would have for maximising operating profits in 2011.
- 4.19. He presented the monthly products in a paper to Swinton's Audit Committee in March 2010 and drove forward the monthly add-on products.

Failure to identify risk of assumptive selling in PA script

- 4.20. Prior to the launch of PA, Mr Bowyer was involved in reviewing the proposed draft scripts. The draft sales scripts prompted sales executives to introduce the monthly add-on products at the end of the sale of a core product with a linking phrase, "*with that you are also entitled to three months free PA cover...*" The draft scripts did not require sales executives to clarify that the monthly PA product was separate from the core product and could be declined, nor did they prompt the sales executives to ask customers specifically whether they wanted the product.
- 4.21. Concerns were expressed within Swinton that the draft was insufficiently clear about the optionality of PA and that the offer of a free period might heighten the risk that Swinton was taking advantage of customer apathy. However, Mr Bowyer failed to identify that the draft script presented PA as a benefit of the core policy, rather than a separate, optional product and went on to approve this draft.
- 4.22. Mr Bowyer should have perceived that the draft scripts he approved gave rise to the risk that sales could be made without customers giving informed consent, making an informed choice to purchase the product and in circumstances where they did not understand that PA was optional. He should have been particularly alert to the risk associated with assumptive selling as a similar failing had been identified by the Authority in the Final Notice to Swinton in 2009 in relation to sales of PPI.
- 4.23. This risk crystallised. Soon after the product launch, Mr Bowyer was told that customers had said they had not known they were purchasing PA and did not always understand what they were purchasing. In some cases, the product had been set up for customers without it even being mentioned to them. The concern was raised with Mr Bowyer that customers might not be mentally engaged with the PA purchase because it was sold on the basis that it was free.

- 4.24. Mr Bowyer also received transcripts of PA telephone sales calls, details of very low claims and copies of the Compliance Board reports containing MI about PA sales, all of which ought to have highlighted to him that there were problems with sales of the PA product. He should have recognised PA was being sold as if it was part of the core product and was being presented as an added benefit rather than an additional product and taken steps to ensure this was not repeated in SBI or HEP sales scripts.
- 4.25. Over a year later, in November 2011, Swinton was still receiving complaints from customers that they were not aware they had purchased PA. Mr Bowyer's failure to recognise the problems with the way in which PA was being sold led to a heightened risk of customer detriment throughout the relevant period and a risk that similar problems would occur with sales of HEP and SBI.

PA payment reminder letters

- 4.26. In August 2010 Swinton started issuing letters to customers to remind them that the free period for PA was coming to an end and that the first monthly payment would soon be taken from their accounts. In the November 2010 PA/ADB group meeting, concerns were raised that cancellation rates were six times higher where the letter was sent. It ought therefore to have been clear to Mr Bowyer that the letters prompted customers to review their purchasing decision and encouraged them to make an informed choice about whether to continue with PA. This suggested there was a risk that customers were not aware they had bought the product until they received the payment reminder letters, or that customers may not want or need the product.
- 4.27. Swinton continued to send payment reminder letters until March 2011 but reduced the number of recipients to a restricted sub-set of customers. From June 2012 Swinton revised this decision and started sending reminder letters to all PA, HEP and SBI customers.
- 4.28. Having been told that cancellation was six times more likely with a letter, that customers had complained about not knowing they had purchased the product and about the risk the scripts were not making optionality clear, Mr Bowyer should have recognised that the PA sales process was at risk of causing customer detriment through assumptive selling. Mr Bowyer should have been particularly alive to the risks of assumptive selling from the Final Notice issued to Swinton in 2009 for PPI failings.

#### The development of HEP and SBI

- 4.29. Swinton launched its monthly SBI and HEP products in February 2011 and July 2011 respectively. Mr Bowyer played a key role in the development of both products. He was Project Sponsor for both products, was involved in scripting and shared responsibility for ensuring that Swinton treated customers fairly in the development of these products.

#### Failure to identify assumptive selling risks with HEP

- 4.30. HEP was launched in July 2011 with two levels of cover: Gold and Standard. Mr Bowyer was a key proponent of Swinton offering two levels of cover to offer customers as it increased customer choice. However, Mr Bowyer was also aware that being able to offer the cheaper "Standard" cover would mean Swinton had a second chance to make the sale, in the event that customers rejected the initial, more expensive "Gold" cover.
- 4.31. In the development of the two HEP levels, Mr Bowyer was told that Swinton's sales network was concerned about offering two levels of cover. In particular, that it might lead to sales executives failing to establish a customer need for the higher level cover. There was a risk of mis-selling where sales executives assumed customers would require Gold HEP and did not make it clear up front that they could choose Standard HEP.
- 4.32. Mr Bowyer took the view that, provided the Compliance Department signed off the two cover levels, he could be assured the product was compliant. However, as CF1, the Project Sponsor and leader of the PPG, his responsibility extended beyond this. He should have been aware that the risk of assumptively selling Gold HEP was likely to crystallise, in particular, because he was aware from information he had received from the business about this risk and his own knowledge of the Final Notice issued to Swinton in September 2009 for PPI failings which referred to the risks of assumptive selling.
- 4.33. Mr Bowyer, however, failed to address this risk in the scripts that he reviewed and the script that went live in July 2011 required sales executives to ask questions leading the customer towards Gold HEP and only sell Standard HEP if the customer objected to purchasing Gold.
- 4.34. Mr Bowyer therefore failed to recognise that there was a risk Swinton was assuming the customer would want Gold HEP, rather than permitting the customer to make an informed choice, and that this sales process might increase

the risk that Swinton was not treating its customers fairly. In focussing on sales of Gold HEP and the potential returns for the business, and in neglecting to consider the potential TCF impact, Mr Bowyer encouraged a culture which focussed on sales and put at risk the fair treatment of customers.

- 4.35. Swinton sold significantly more Gold HEP policies than Standard. By September 2011 sales of Gold level HEP accounted for 90% of all HEP sales.

Failure to identify risks with tacit migration of HEP customers

- 4.36. Prior to the launch of HEP, Swinton considered how to tacitly migrate existing customers with annual policies to the new monthly version of HEP. The Compliance Department was of the view that customers had to be migrated to Standard HEP as this product and its benefits more closely matched those of the existing annual cover.
- 4.37. Mr Bowyer was aware that tacitly migrating to customers to Gold HEP, rather than Standard HEP, would boost Swinton's 2011 profits by £2-3 million and he was in favour of tacitly transferring customers to Gold HEP. The Compliance Department raised concerns about this because Standard HEP best matched the cover annual HEP customers had bought and was significantly cheaper than Gold HEP.
- 4.38. In order to circumvent the compliance issue, Mr Bowyer endorsed a strategy to cut the benefits offered by Standard HEP, without reducing the price, so that Standard HEP offered a lower level of cover than the annual product. The Compliance Department subsequently agreed that the best option was to migrate customers to Gold HEP because this was now the most similar product.
- 4.39. Whilst Mr Bowyer did not himself suggest the strategy of reducing the cover offered by Standard HEP, he was integral to the design and pricing of the product. Had Mr Bowyer objected either to the reduction in Standard HEP or to the tacit migration to Gold HEP, it is unlikely it would have proceeded.
- 4.40. Mr Bowyer should have objected because Swinton was at risk of assumptively migrating customers to a product that offered more cover than the annual product they had previously selected, when there was a cheaper option available in the form of Standard HEP that customers might prefer. He failed to recognise that he had an obligation to consider whether this strategy was in customers' interests. He considered that it was for Swinton's Compliance Department and Compliance Board to ensure the preferred migration strategy was compliant.

However, he did not appreciate that as a CF1, as well as Project Sponsor and the director accountable for product development, he also bore a responsibility to ensure customers were being treated fairly.

- 4.41. Whilst overseeing the reduction in benefits of Standard HEP product, Mr Bowyer commented on the irony of making a product worse in order to meet TCF obligations. The changes to Standard HEP had absolutely nothing to do with TCF. The purpose was to create a way to generate additional profits without raising a red flag with the Compliance Department. His lack of attention or focus on TCF inadvertently encouraged others to deprioritise concerns that the sales process might be confusing for customers or might increase the risk of assumptive selling.

Failure to identify risks to customers in the development of SBI

- 4.42. Swinton launched SBI in February 2011. Mr Bowyer, as Project Sponsor, oversaw the development of SBI and intended for the product to be sold to a wide customer base, including those who already had breakdown cover with another provider.
- 4.43. Not all of the scripts used during the relevant period prompted sales executives to ask if the customer already had breakdown cover. There was a risk, therefore, that a customer might buy SBI without the chance to make an informed choice about whether to buy a second breakdown product.
- 4.44. Where scripts did include a question about existing cover, they prompted sales executives to push ahead with the sale even where the customer confirmed they had existing breakdown cover.
- 4.45. Mr Bowyer considered that SBI was an excellent proposition for customers but failed to recognise the potential detriment to customers arising from purchasing a policy covering the same risks as one they already owned.
- 4.46. In June 2011, Mr Bowyer was informed that the terms and conditions of Swinton's monthly SBI product contained an exclusion clause which prevented customers from recovering costs under the policy if they had pre-existing breakdown insurance.
- 4.47. The exclusion clause gave rise to the risk that customers who already had breakdown insurance with another provider would be precluded from recovering costs under SBI. Between February 2011 and the end of May 2011, Swinton sold approximately 200,000 policies with this exclusion clause. There was a risk

therefore that Swinton had been selling customers a product they might not be able to use.

- 4.48. Mr Bowyer had designed the product to be competitive with existing products on the market and to be sold to customers who had an existing product. As Project Sponsor and CF1, he should have ensured checks were made that the underwriter's policy would cover claims where a customer already had a similar product, before any sales of SBI were made. The exclusion clause had been in the annual SBI policy since it was first sold by Swinton in 2001.
- 4.49. The dual policy exclusion clause was brought to Mr Bowyer's attention in June 2011. His immediate response was to ensure sales were not disrupted and that no changes were made to SBI scripts or the sales process without his permission. His focus was on the impact that an interruption to sales could have on profits.
- 4.50. Mr Bowyer's reaction demonstrates that he had failed to recognise the TCF implications of the exclusion clause: consumers may have paid for a product they might not be able to use. In failing to recognise the potential detriment to consumers and focussing on sales, Mr Bowyer's reaction also encouraged those he dealt with to focus on the impact on profits, rather than on customers.
- 4.51. The policy underwriter was subsequently asked by Swinton's Compliance Department to remove the exclusion clause from SBI policy documents and policies sold subsequently did not contain the clause. Swinton continued to sell the product to customers with existing breakdown cover, without the risk of invalidating the cover. Having been told about the dual exclusion clause Mr Bowyer took no steps to identify how many customers might have been affected or to issue revised policy terms to existing customers.

#### **Mr Bowyer's influence on culture at Swinton**

- 4.52. Mr Bowyer, as Swinton's Marketing Director, was integral to the successful delivery of the agreed strategy to maximise Swinton's 2011 profits. The aim was to increase the value of the company and to deliver significant operating profits in 2011. The DSS in operation during the relevant period meant that high operating profits in 2011 would lead to a significant bonus for Mr Bowyer.
- 4.53. The incentive offered by the DSS was effective. Mr Bowyer was motivated by the bonus he potentially stood to earn as a result of maximising these profits. However, the way in which Mr Bowyer contributed to the successful delivery of

high profits in 2011 encouraged and fostered a culture at the firm in which profits were given precedence over the fair treatment of customers.

- 4.54. Examples of where his drive impacted on decisions taken by Swinton in developing the monthly add-on products are set out in the preceding paragraphs. However, there were other suggestions, ideas and innovations made by Mr Bowyer which did not result in an impact on sales or process but which nevertheless influenced culture at the firm.
- 4.55. For example, in October 2010, Mr Bowyer proposed tacitly moving all customers holding annual PA policies to the monthly PA product prior to their annual contract coming to an end. He proposed that Swinton do this without seeking customers' express permission to change to a monthly add-on product. He described the advantages of this idea to a colleague as being "*worth millions and potentially therefore a huge sum to each of us... [the participating directors]*".
- 4.56. Mr Bowyer failed to recognise that this would not only be a breach of the existing contract Swinton had with its PA customers, but would also be assumptively selling PA to customers who might not have wanted an open-ended policy, and might not even have been aware they had purchased a new policy. Either position would have given rise to a serious risk of customers not being treated fairly.
- 4.57. Mr Bowyer's proposal was not implemented. Swinton did not transfer customers to monthly PA until the point of renewal, i.e. when their annual policy was due to expire. Mr Bowyer's proposal, however, demonstrates his focus on 2011 profits and the DSS bonus and his lack of understanding about treating customers fairly. In presenting and seeking to persuade others with proposals such as this one, he inadvertently encouraged a culture whereby profits could be pursued at the expense of treating customers fairly.

#### Mr Bowyer's influence outside his immediate sphere of responsibility

- 4.58. Mr Bowyer was perceived within Swinton as one of the key individuals driving Swinton's business strategy for maximising profits in 2011. He had no specific responsibility for driving volumes, setting sales executives' targets or designing incentive schemes in Swinton. However, in practice Mr Bowyer used his position as the Marketing Director and CF1, and his involvement in the design and development of the monthly products, to exercise influence over these areas.
- 4.59. For example, Mr Bowyer used his role as leader of the PPG to emphasise the importance of sales volumes and targets, but without engendering any positive

regard for TCF amongst the group. The PPG was very influential in the commercial input it had into Swinton's business strategy and was involved in all aspects of the development of the monthly add-on products.

4.60. It was particularly important for a TCF culture to be embedded at Swinton after it was fined in 2009 for a failure to treat customers fairly over PPI policies. The combination of Mr Bowyer's lack of understanding of what treating customers fairly meant and his drive for profit resulted in him encouraging a culture in which sales were perceived to be the overriding priority, to the potential detriment of the fair treatment of customers.

4.61. Examples of Mr Bowyer seeking to influence those around him in this way include the following:

(a) in January 2010 Mr Bowyer pushed for annual PA sales targets to be increased. Then in March 2010, he sought to have sales targets increased for the monthly PA product. He was subsequently warned that sales teams were overloaded with new initiatives and concerns were raised about mis-selling. Despite this, Mr Bowyer pushed forward with launching the monthly PA product. This risk crystallised and Mr Bowyer (together with the other directors) were subsequently told about significant numbers of non-compliant PA sales;

(b) as Project Sponsor, Mr Bowyer sponsored a competition to win a trip to New York for those individuals who achieved the highest penetration percentage of PA sales. He told those sales managers who thanked him for the trip that PA should be a mandatory conversation with every customer;

(c) soon after the launch of PA, Mr Bowyer proposed introducing a joint PA product. Again, concerns were raised about overloading sales teams. The pilot for joint PA was subsequently delayed as a result of these concerns. Mr Bowyer was angry about the delay, expressing in an email to a colleague, *"Next year's just too important to us not to be taking these opportunities"*. This exemplifies his focus on 2011 operating profits and demonstrated that he had not understood the potential consequences for customers of too much pressure being applied to sales teams;

(d) in September 2010, he sought higher targets for sales of PA and suggested sales executives should be asked to sell PA 100% of the time. In response to concerns that increasing targets would encourage mis-selling he

responded, "*the financial benefits of getting more PA volume outweigh the disadvantages of losing some of the other stuff*", by which he meant that PA sales should be focused on at the expense of other initiatives; and

(e) in November 2010, he again encouraged sales executives to target one PA sale per sales executive per day and asked for higher sales in 2011.

4.62. The pressure created by the culture manifested itself at all levels of the organisation. Sales executives leaving the firm reported that they felt pressurised to sell a product the customer did not want, that sales targets were unrealistic, that they were suffering overload and that the situation was another PPI waiting to happen. Senior management also expressed concern about the pressure on staff, the risk of mis-selling where too many new initiatives and increased targets were imposed and had reservations about the risk presented by working to the very tight timescales set for the monthly product launch by Mr Bowyer.

4.63. Mr Bowyer relied on the compliance framework to identify any risks in his proposals, approach or initiatives. As a CF1 and executive director, he too held responsibility for ensuring that his behaviour did not over-emphasise sales to the detriment of customers.

## **5. FAILINGS**

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

### Statement of Principle 6

5.2. Mr Bowyer 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 by virtue of his accountable function.

5.3. Mr Bowyer, as CF1 and Project Sponsor for PA, HEP and SBI, was responsible for designing, developing and marketing of the monthly add-on products in a way that treated customers fairly. Mr Bowyer did not do this because he failed to recognise that he shared responsibility for ensuring Swinton treated customers fairly. Further, he did not understand that treating customers fairly went beyond offering a competitive customer proposition.

5.4. In performing his role, he encouraged a culture at Swinton in which the fair treatment of customers was put at risk by the drive for profits.

5.5. In designing and developing the monthly products, Mr Bowyer was involved in a number of decisions which maximised the opportunity for profit and put at risk Swinton's fair treatment of customers. Mr Bowyer:

- a) failed to address the risk that Swinton was selling PA to customers without their knowledge, as the draft scripts approved by Mr Bowyer failed to make clear that PA was a separate, optional product;
- b) failed to act on another indication that PA customers were not clear about what they had purchased, when he was told they were six times more likely to cancel if they received a payment reminder letter;
- c) in relation to HEP, was heavily involved developing a sales process that was designed to steer customers to take out the most expensive level of cover, without taking into account customers' needs;
- d) encouraged Swinton to sell SBI to customers who had cover elsewhere, in circumstances where an exclusion clause was in place that prevented customers recovering costs if they had pre-existing breakdown insurance;
- e) when the exclusion clause was removed from the policy documents, Mr Bowyer continued to encourage Swinton to sell SBI to customers who had existing breakdown cover; and
- f) failed to learn lessons from Swinton's mis-selling of PPI, and failed to take greater care to mitigate risks that the monthly add-on products might be similarly mis-sold.

5.6. Mr Bowyer was clearly motivated by the DSS and integral to the successful delivery of the business strategy to maximise profits in 2011. However, he failed to understand that his drive to make the strategy a success contributed to the development of a culture within the firm that was overly focussed on sales and put at risk the fair treatment of consumers. Mr Bowyer failed to understand that the risk of unfair treatment of customers might stem from the culture of the firm itself, not just the transactions it entered into with its customers.

5.7. As Swinton's Marketing Director, he sought to promote a culture that prioritised sales volumes through proposals he made, decisions he took, his communications with others in the firm, without paying proper attention to the fair treatment of customers. Mr Bowyer's proposals were not always adopted, however his

influence on culture was felt at all levels of the organisation - from sales staff to senior management.

- 5.8. Mr Bowyer did not recognise that he had any role in embedding a culture in which regulatory requirements and the fair treatment of customers were given due priority. As a CF1 he should not have disregarded this important element of his role.

## **6. SANCTION**

### ***Financial penalty***

- 6.1. The Authority imposes a financial penalty on Mr Bowyer for breaching Statement of Principle 6. Since the gravamen of Mr Bowyer's failings occurred after the changes 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 Bowyer 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 Bowyer's breach was from 1 January 2010 to 12 December 2011. Mr Bowyer's relevant income for this period was £1,992,197

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(8) and (9) list factors relating to the impact and nature of the breach by an individual. Of these, the Authority considers the following factors to be relevant:

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

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

- (c) whether the individual held a senior position at the firm (DEPP 6.5B.2G(9)(k));
- (d) 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
- (e) whether the individual took at least some steps to comply with the Authority's rules (DEPP 6.5B.2G(9)(n)).

6.13. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2, or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- (f) the breach was committed negligently or inadvertently (DEPP 6.5B.2G(13)(d)).

6.14. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £1,992,197.

6.15. The Step 2 figure is therefore £398,439.

#### Step 3: mitigating and aggravating factors

6.16. 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.

6.17. Mr Bowyer was aware of the Authority's concerns about mis-selling of PPI at Swinton, as he held the position of Marketing Director 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.

6.18. Having taken into account this aggravating factor, the Authority considers that the Step 2 figure should be increased by 10%.

6.19. The Step 3 figure is therefore £438,282.

#### Step 4: adjustment for deterrence

6.20. 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.

- 6.21. The Authority considers that the Step 3 figure of £438,282 represents a sufficient deterrent to Mr Bowyer and others, and so has not increased the penalty at Step 4.
- 6.22. The Step 4 figure is therefore £438,282.

#### Step 5: settlement discount

- 6.23. 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.
- 6.24. The Authority and Mr Bowyer reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.25. The Step 5 figure is therefore £306,797.

#### Penalty

- 6.26. The Authority has therefore decided to impose a total financial penalty of £306,700 on Mr Bowyer for breaching Statement of Principle 6.

#### ***Prohibition***

- 6.27. It is appropriate and proportionate in all the circumstances to prohibit Mr Bowyer from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, because he is not a fit and proper person in terms of his competence and capability.
- 6.28. The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Bowyer 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.
- 6.29. Given the nature and seriousness of the failures outlined above, Mr Bowyer'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 regulated activities carried on at any authorised person, exempt person or exempt professional firm. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose the Prohibition Order on Mr Bowyer 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 four instalments by Mr Bowyer to the Authority, as follows:
  - (a) £76,675 to be paid by no later than 19 November 2014, 14 days from the date of the Final Notice; and
  - (b) £76,675 to be paid on each of 5 November 2015, 5 November 2016 and 5 November 2017.

### **If the financial penalty is not paid**

- 7.4. If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 7.3 above), the Authority may recover the full outstanding amount of the financial penalty as a debt owed by Mr Bowyer 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 Bowyer 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.

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**Bill Sillett**  
**Head of Department, Enforcement and Financial Crime Division**  
**for and on behalf of the Authority**

## 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. 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***

- 2.4. 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.
- 2.5. 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***

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

- 2.8. 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.