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FINAL NOTICE

To: **Colette Marie Chiesa**

Individual Reference Number: **CMC00009**

Date of Birth: **11 September 1963**

Date: **12 October 2017**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority has decided to:

- (1) make an order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mrs Colette Chiesa from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm;

- (2) withdraw, pursuant to section 63 of the Act, the approval given to Mrs Chiesa to perform the CF4 (Partner) controlled function; and
 - (3) impose, pursuant to section 66 of the Act, a financial penalty of £50,000 on Mrs Chiesa.
- 1.2. On 26 October 2016 the Authority gave Mrs Chiesa a Decision Notice which notified her that it had decided to take the actions referred to in paragraphs 1.1 (1) to (3). On 23 November 2016 Mrs Chiesa referred the Authority's Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). On 19 September 2017, Mrs Chiesa applied to withdraw her reference and on 28 September 2017 the Tribunal gave its consent to this withdrawal. A Further Decision Notice was given to her, pursuant to section 388(3) of the Act, in respect of the same matter as the Decision Notice dated 26 October 2016.
- 1.3. Following withdrawal of the reference to the Tribunal, the Authority has issued this Final Notice.

2. SUMMARY OF REASONS

- 2.1. The Authority has decided to take the actions set out in paragraph 1.1(1) and (2) because it has concluded that Mrs Chiesa is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority has concluded that Mrs Chiesa lacks fitness and propriety on account of the lack of integrity that she showed in her dealings with her trustee in sequestration. Paragraphs 2.2 to 2.11 summarise the reasons why the Authority has reached that conclusion.
- 2.2. Mrs Chiesa, together with Mr Chiesa, was a founding partner of Planners, an authorised firm which provided personal investment advice. Planners became insolvent and went into sequestration in October 2011 as a consequence of which, because they were partners at the firm (an unlimited liability partnership formed under Scots law), Mr and Mrs Chiesa were at the same time also placed in sequestration.
- 2.3. At the time of their sequestration Planners, and Mr and Mrs Chiesa as partners with unlimited liability for Planners' debts, had significant liabilities due to the need to pay compensation in respect of numerous valid complaints relating to the advice Planners gave on GTEP sales. These liabilities began to accrue about

three years prior to their sequestration, and during those three years Mr and Mrs Chiesa took steps to protect their assets and money from tax and from creditors' claims. These steps included:

- (1) the establishment of the WIFAR Trust, an off-shore remuneration trust, into which the profits of Planners were directed, and from which Mr and Mrs Chiesa received, between them, about £991,000 between December 2008 and March 2011, with the payments being made in the form of loans. The Authority's view is that those loans were never intended to be repaid during their lifetimes and that if they were ever repaid the funds would remain available to Mr and/or Mrs Chiesa;
- (2) the rearrangement of their personal expense payments, so that from June 2011 onwards they were met from the bank accounts of Westwood Trustees, a successful non-authorized business, founded by Mr and Mrs Chiesa, which specialised in establishing off-shore remuneration trusts for its clients. From June 2011, Mr and Mrs Chiesa also received funds directly from Westwood Trustees for their own spending; and
- (3) making changes to their ownership and control of Westwood Trustees. In March 2011, when they each owned 50% of Westwood Trustees, Mr and Mrs Chiesa decided that Westwood Trustees should issue new shares in itself directly to the WIFAR Fiduciary Management Company, an off-shore company which they owned and were the only directors of, which had the effect of transferring ownership of 98% of Westwood Trustees to the WIFAR Fiduciary Management Company. In August 2011, they then resigned as directors of Westwood Trustees and of the WIFAR Fiduciary Management Company, and transferred legal ownership of the WIFAR Fiduciary Management Company to the director of the off-shore corporate trustee of the WIFAR Trust, who also became its sole director. In fact, notwithstanding these actions, after August 2011 they each retained beneficial ownership of 50% of the WIFAR Fiduciary Management Company (and therefore of Westwood Trustees) and Mr Chiesa retained de facto control of Westwood Trustees.

2.4. As a result of these actions, Mr and Mrs Chiesa were able to access significant funds at a time when Planners was accruing significant liabilities (and therefore Mr and Mrs Chiesa were too). Mr and Mrs Chiesa have continued to have access to significant funds throughout their sequestration, including from the WTR

Trust, an off-shore remuneration trust established by Westwood Trustees' directors in February 2012, and into which the profits of Westwood Trustees were directed from that time onwards. Between August 2011 and December 2014, Mr and Mrs Chiesa jointly received, either directly or indirectly, a net benefit of around £2.6 million from the profits of Westwood Trustees.

2.5. In November 2011, a trustee in sequestration was appointed, whose role was to establish the value of Mr and Mrs Chiesa's assets and the level of their personal liabilities, realise those assets for the benefit of their creditors, and assess whether Mr and Mrs Chiesa were in the position to pay a regular financial contribution to the sequestrated estate for the benefit of their creditors during their sequestration. The Trustee's role was also to review any transactions at an undervalue that Mr and Mrs Chiesa had made in the five year period prior to the commencement of their sequestration. In the weeks following his appointment, the Trustee asked Mr and Mrs Chiesa to provide him with details of their financial circumstances, including at a meeting in December 2011. Mrs Chiesa permitted Mr Chiesa to take the lead in disclosing details of their financial circumstances to the Trustee. However, Mr Chiesa misled the Trustee by making inadequate, incomplete and/or misleading disclosures, thereby failing adequately to disclose the true position, in respect of their financial circumstances, including:

- (1) the changes they had made to their ownership and control of Westwood Trustees in order to protect their assets and money;
- (2) the scale of the funds they were receiving directly from Westwood Trustees;
- (3) Westwood Trustees' payment of significant personal expenses on their behalf;
- (4) the full extent of their high level of personal expenditure immediately before and around the time of their sequestration;
- (5) valuable assets that they still owned or had disposed of at an undervalue in the previous five years; and
- (6) their interest in any funds repaid under, and their control over, a £991,000 debt secured against two properties that they jointly owned.

- 2.6. Mrs Chiesa was aware that she and Mr Chiesa had a duty to disclose fully and accurately all of their financial circumstances to the Trustee. However, Mrs Chiesa acquiesced with Mr Chiesa's misleading of the Trustee by failing to challenge, correct or complete the account given by Mr Chiesa of their financial circumstances at the meeting in December 2011 and assisted Mr Chiesa in misleading the Trustee by signing forms at that meeting which she must have known contained inadequate, incomplete and/or misleading information in respect of her financial circumstances.
- 2.7. Mrs Chiesa was also aware that she and Mr Chiesa had a duty to disclose fully and accurately to the Trustee any change in their financial circumstances during their sequestration. However, during their sequestration Mrs Chiesa continued to acquiesce and assist with Mr Chiesa's misleading of the Trustee by failing to disclose material information regarding their financial circumstances and by signing a form which she must have known contained inadequate, incomplete and/or misleading information in respect of their financial circumstances. As a result, the Trustee was unaware that during their sequestration:
- (1) Mr and Mrs Chiesa had access to significant funds from Westwood Trustees, including via the WTR Trust;
 - (2) Westwood Trustees was continuing to pay significant personal expenses on their behalf;
 - (3) the level of their personal expenditure was significantly higher than indicated; and
 - (4) Mrs Chiesa continued to own valuable jewellery that had not been disclosed to the Trustee.
- 2.8. Mrs Chiesa acquiesced and assisted in Mr Chiesa's misleading of the Trustee in order to avoid the Trustee inquiring into – and possibly recovering for the benefit of their and Planners' creditors - assets which they legally or beneficially owned or in which they had some form of interest and/or control either directly or indirectly.
- 2.9. In contrast to his disclosures to the Trustee, which gave the Trustee the impression that Mrs Chiesa had no material assets, Mr Chiesa had disclosed to one of his banks, a few months before they were placed in sequestration, that she owned assets, including her share of assets that they jointly owned, with a

total value of around £620,000. Further, during her sequestration, when the Trustee was under the impression that she had limited income, Mrs Chiesa made a loan application to a bank in which she disclosed that she was receiving income of £100,000 per annum. In the Authority's view, Mr and Mrs Chiesa knowingly disclosed fundamentally different and contradictory information to their banks and to the Trustee, and in both cases the information they disclosed was that which would best support their objectives in supplying that information. The Authority considers the fact that Mrs Chiesa must have been aware that her disclosure to the bank that she was receiving income of £100,000 per annum conflicted with the Trustee's understanding that she had limited income, yet failed to correct the Trustee's understanding, is evidence of her lack of integrity.

- 2.10. As a consequence of Mrs Chiesa's deliberate acquiescence and assistance with Mr Chiesa's misleading disclosures to the Trustee regarding their financial circumstances, the Trustee was misled as to the true value of the assets in their estates, transactions at an undervalue that Mr and/or Mrs Chiesa had made in the five year period prior to the commencement of their sequestration, their access to funds and the level of financial contributions to their sequestrated estates for the benefit of their creditors that Mr and Mrs Chiesa were able to make. Planners, and therefore Mr and Mrs Chiesa, had over £5 million of liabilities, mainly arising from customer claims in respect of mis-sales of GTEPs by Planners. The FSCS has to date paid out over £3.8 million to former customers of Planners; the FSCS's cap of £50,000 per claim has, however, meant that many of Planners' former customers have been unable to recover the full amount they were entitled to recover.
- 2.11. Mrs Chiesa's lack of integrity in her dealings with the Trustee demonstrates that she is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Further, she poses a risk to consumers, as is demonstrated by her actions which had the effect of misleading of the Trustee in order to avoid paying her creditors, including former customers of Planners who were owed compensation.
- 2.12. The Authority has therefore decided to make an order, pursuant to section 56 of the Act, prohibiting Mrs Chiesa from performing any such function and has decided, pursuant to section 63 of the Act, to withdraw the approval given to

Mrs Chiesa under section 61 of the Act to perform the CF4 (Partner) controlled function.

- 2.13. The Authority has also decided to impose a financial penalty under section 66 of the Act because Mrs Chiesa has breached Statement of Principle 4 (relations with regulator) of the Statements of Principle. Mrs Chiesa failed to deal with the Authority in an open and cooperative way by making misleading statements during a compelled interview with the Authority, which was held in order to gather information about Mr and Mrs Chiesa's conduct prior to and during their sequestration relevant to their fitness and propriety.
- 2.14. Mrs Chiesa attempted to mislead the Authority by making statements which were designed to give the Authority the impression that she lacked capability and knowledge and understanding of the business and financial arrangements of Planners and Westwood Trustees, whereas in fact she understood and had an important role in both businesses. She also attempted to mislead the Authority about her failure to disclose her ownership of valuable jewellery.
- 2.15. The Authority's actions support its operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

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

"the Act" means the Financial Services and Markets Act 2000;

"APER" means the Statements of Principle and Code of Practice for Approved Persons section of the Handbook;

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

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

"EG" means the Enforcement Guide part of the Handbook;

"FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

"FOS" means the Financial Ombudsman Service;

"FSCS" means the Financial Services Compensation Scheme;

"GTEP" means geared traded endowment policy;

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

"Mr Chiesa" refers to John Andrew Gerard Chiesa, Mrs Chiesa's husband, also approved to perform the CF4 (Partner) controlled function at Planners, and formerly a director of Westwood Trustees;

"Planners" means the authorised firm called Westwood, which also traded as Westwood Independent Financial Planners and Westwood Independent Financial Advisers, which was formed with unlimited liability under Scots law;

"Statements of Principle" means the Statements of Principle issued by the Authority under section 64 of the Act and set out in APER;

"TEP" means traded endowment policy;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"the Trustee" means the trustee in sequestration appointed on 16 November 2011 in respect of Mr and Mrs Chiesa's sequestration;

"Westwood Trustees" means Asset House Piccadilly Limited (company number SC182931), which until 15 September 2016 was known as Westwood Trustees Limited;

"WIFAR Fiduciary Management Company" has the definition set out in paragraph 4.7 of this Notice;

"WIFAR Trust" means the Westwood Independent Financial Advisers off-shore remuneration trust;

"WTR Fiduciary Management Company" has the definition set out in paragraph 4.39 of this Notice; and

"WTR Trust" means the Westwood Trustees off-shore remuneration trust.

4. FACTS AND MATTERS

Planners

- 4.1. Mr and Mrs Chiesa founded Planners in 1994. They were both partners at the firm, which traded principally as Westwood Independent Financial Planners and Westwood Independent Financial Advisers. Until its sequestration on 18 October 2011, Planners provided personal investment advice from its office in Motherwell, Scotland. Mr and Mrs Chiesa opened a second Planners office in London in or around 2006.
- 4.2. In or around 2005, Planners began advising customers to invest in GTEPs. The nature of the sales of GTEPs by Planners formed the basis of later regulatory action taken by the Authority that resulted in a financial penalty of £100,000 being imposed on Planners on 17 December 2013 after the Tribunal upheld the Authority's decision to impose such a penalty. GTEPs involve an initial investment to buy a selection of TEPs and then the borrowing of a further amount to purchase additional TEPs (i.e. gearing, hence GTEP). The portfolio of TEPs acquired was used as security for a loan facility to buy the additional TEPs and to fund the various payments throughout the life of the GTEP plan. The Tribunal concluded that the GTEP plan sold by Planners was high-risk because of the gearing and other factors which, when taken together, raise the level of risk inherent in the plan. The Tribunal also held that, as the GTEP plan was high-risk, it was not suitable for those customers with a lower risk tolerance who were advised by Planners to invest in GTEPs.

Mr and Mrs Chiesa's financial affairs prior to their sequestration

- 4.3. Between 2008 and their sequestration on 18 October 2011, Planners, and Mr and Mrs Chiesa in their capacity as partners with unlimited liability for Planners' debts, began to accrue significant liabilities due to the need to pay compensation in respect of numerous valid complaints relating to the advice they gave on GTEP sales. During this period Mr and Mrs Chiesa began to take steps to protect their assets and money from tax and from creditors' claims.
- 4.4. In April 2008, the Authority commenced an investigation into Planners' sales of GTEPs. The investigation into Planners coincided with five other investigations by the Authority into firms selling GTEPs, which resulted in financial penalties of £10,500 and £35,000 being imposed on two firms in October 2008. In May 2010, the Authority publicly censured another firm and stated in the final notice

that it would have imposed a financial penalty of £350,000 on that firm but for its insolvency.

- 4.5. In December 2008, the Authority advised Mr and Mrs Chiesa that it proposed to impose a significant financial penalty on Planners on the basis that Planners had failed to ensure it gave suitable advice in relation to GTEPs. Therefore, no later than December 2008, Mr and Mrs Chiesa were aware that it was possible Planners would be subject to a financial penalty imposed upon it by the Authority in addition to potential compensation payments to customers.

Mr and Mrs Chiesa's first off-shore remuneration trust

- 4.6. In November 2008, Mr and Mrs Chiesa, in their capacity as unlimited liability partners at Planners, together established the WIFAR Trust, an off-shore remuneration trust incorporated in Belize. Their purpose in establishing the trust was to reduce Planners' profits and therefore their tax liabilities, whilst permitting them to continue to gain access to the funds generated from Planners' trading activities, and whilst also protecting those funds from the claims of any future creditors.
- 4.7. Between December 2008 and November 2011, Mr and Mrs Chiesa directed the profits of Planners, as well as other assets of Mr and Mrs Chiesa or parties connected to them, into the WIFAR Trust. The WIFAR Trust was administered by an off-shore trustee company, which delegated control of the trust property to another off-shore company that Mr and Mrs Chiesa had themselves specifically incorporated (the "WIFAR Fiduciary Management Company"). Until August 2011, Mr and Mrs Chiesa were the only directors and shareholders of the WIFAR Fiduciary Management Company.
- 4.8. When Mr and/or Mrs Chiesa wished to access money, they requested it from the WIFAR Trust via the WIFAR Fiduciary Management Company. Mr and Mrs Chiesa received, between them, around £991,000 from the WIFAR Trust between December 2008 and March 2011, of which Mrs Chiesa's share was around £662,200. The payments were made in the form of loans (with interest accruing), however, the Authority's view is that, in reality, those loans were never intended to be repaid during their lifetimes because:

- (1) the WIFAR Trust property comprised assets that would otherwise have accrued to Mr and Mrs Chiesa, including the profits from Planners;

- (2) Mr and Mrs Chiesa had effective control over the actions of the off-shore trustee, due to their power under the WIFAR Trust deed to remove and replace that trustee. This meant the off-shore trustee was unlikely ever to recall the loans made to Mr or Mrs Chiesa from the WIFAR Trust;
- (3) the off-shore trustee had in any event delegated total control of the WIFAR Trust property to the WIFAR Fiduciary Management Company that Mr and Mrs Chiesa had incorporated and legally owned until August 2011 and beneficially thereafter (see paragraph 4.20(3) below); and
- (4) the business of Westwood Trustees, developed by Mr and Mrs Chiesa, involved introducing clients to off-shore remuneration trusts from which the clients were intended to receive financial benefits, in particular the reduction in their tax liabilities, the continued ability to access the funds generated from their trading activities and the protection of those funds from any creditors (see paragraphs 4.11 to 4.12 below for an explanation of Westwood Trustees' business).

GTEP complaints

- 4.9. From around February 2011, the FOS began to receive an increasing number of complaints from customers of Planners who had been advised to buy GTEPs. In May 2011, the Authority issued a Decision Notice to Planners, which set out the Authority's decision to impose a financial penalty of £100,000 on the firm for its failure to give suitable advice in relation to its GTEP sales. Mr and Mrs Chiesa referred that Decision Notice to the Tribunal and in November 2013 the Tribunal upheld the Authority's decision.
- 4.10. In June 2011, four months before their sequestration, Mr and Mrs Chiesa sold Planners' business book to a colleague's company, which received a list of existing and potential customers and did not assume any of Planners' liabilities. At that time, in addition to being aware that significant liabilities were arising to past customers of Planners, Mr and Mrs Chiesa were also aware that the Authority had decided to impose a £100,000 financial penalty on Planners and that an increasing number of GTEP customers were making complaints.

Mr and Mrs Chiesa's off-shore remuneration trusts business

- 4.11. From around 2010, Mr and Mrs Chiesa began to focus on another business, Westwood Trustees, a small non-authorized firm which they had founded in

1998. Although that business had been secondary to Planners (it originally provided a will-writing service to Planners' customers), Mr and Mrs Chiesa began to develop the Westwood Trustees business, by acting as an introducer for a firm which established off-shore remuneration trusts. The purpose of these off-shore remuneration trusts, like the WIFAR Trust, was to reduce their client's profits and therefore their client's tax liabilities, whilst permitting their client to continue to gain access to the funds generated from their trading activities, and whilst also protecting those funds from the claims of any future creditors.

- 4.12. Westwood Trustees began to build a network of other introducers and earned commission on every new client introduced, calculated as a percentage of the total value of assets that each new client placed into their own off-shore remuneration trust. Westwood Trustees was a successful introducer and, around 2006, developed its business model so that it included establishing off-shore remuneration trusts itself for its own clients. Westwood Trustees promoted the financial benefits of these off-shore remuneration trusts on its website under headings such as "Protect your Assets from Tax", "Shield your Assets from Creditors" and "You've worked hard for your money, now learn how to keep it".
- 4.13. By 2011, Westwood Trustees had built a large network of its own introducers and was turning over around £1 million per annum, while liabilities from the Planners business continued to mount.
- 4.14. In June 2011, four months before their sequestration, Mr Chiesa declared to his bank that Mrs Chiesa's interest in two properties that they jointly owned totalled £270,000, and that the value of his (and therefore her) share of the Westwood Trustees business was £350,000. He also declared that he owned assets with a net value of £942,600 and that he had an annual income of £325,000.

Mrs Chiesa's capability and understanding of financial matters

- 4.15. Mrs Chiesa has been involved in financial services since she and Mr Chiesa founded Planners in 1994. She was approved to perform the CF4 (Partner) controlled function at Planners on 1 December 2001. She also held the CF21 (Investment Adviser) controlled function from 11 December 2001 to October 2003. She occupied an operational management role at Planners and shared responsibility for the strategic direction of the partnership with Mr Chiesa, who occupied the lead advisory and customer-facing role. It was Mrs Chiesa who

was responsible for authorising and executing Planners' transactions, including commission payments to Planners' advisers and salaries to staff. While at Planners she obtained the Chartered Insurance Institute's Certificate in Financial Planning and she told the Authority that by taking the FPC exams, she understood the products that Planners was selling.

- 4.16. Mrs Chiesa was a director of Westwood Trustees from 12 February 1998 to 1 September 2004 and from 16 March 2009 to 17 August 2011, and a secretary of the company from 1 September 2004 to 17 August 2011. While her role at Westwood Trustees was more limited than that of Mr Chiesa, who was the driving force behind its growth, Mrs Chiesa was involved in managing and promoting the business and aware of the services that it offered. Westwood Trustees' website in 2009 described her previous business development experience and input as "*invaluable to the growth and development of Westwood*", and she, together with Mr Chiesa, was marketed as the public face of Westwood Trustees, including in press releases and on its website. After they resigned as directors of Westwood Trustees in August 2011 (see paragraph 4.20(2) below), Mr and Mrs Chiesa continued until July 2014 to be featured prominently as the most senior staff on Westwood Trustees' website.
- 4.17. The Authority concludes that, while Mr Chiesa was the driving force behind Planners and Westwood Trustees, Mrs Chiesa was a competent and experienced manager, capable of understanding and dealing with complex documentation.

The debt giving rise to Planners' and Mr and Mrs Chiesa's sequestration, and Mr and Mrs Chiesa's rearrangement of their financial affairs

- 4.18. In the first half of 2011, Planners was overdue in paying commission to two of Planners' advisers, despite having already received the commission payments from the relevant product providers.
- 4.19. On 16 March 2011, at which time Mr and Mrs Chiesa each owned 50% of Westwood Trustees and were two of the four directors of the company, at Mr Chiesa's instigation, Mr and Mrs Chiesa changed their ownership of Westwood Trustees. They did this by deciding that Westwood Trustees should issue 4,900 new shares in itself directly to the WIFAR Fiduciary Management Company, at a cost of £1 per share, which had the effect of transferring ownership of 98% of Westwood Trustees to the WIFAR Fiduciary Management Company (of which Mr and Mrs Chiesa were the sole directors and shareholders).

4.20. Between June and August 2011, while the commission Planners owed to the two advisers remained unpaid and for which they had joint and several liability as partners in that firm, at Mr Chiesa's instigation, Mr and Mrs Chiesa further rearranged their financial affairs in connection with their more profitable business, Westwood Trustees. They did so in three key ways:

- (1) First, from June 2011, they rearranged their personal expense payments so that they were met from Westwood Trustees' bank accounts, rather than from their own personal bank accounts, and also received funds directly from Westwood Trustees' accounts for their own spending:
 - (i) Mrs Chiesa arranged for Westwood Trustees to pay the premiums on three of her life assurance policies and costs associated with the Mercedes and Porsche vehicles she drove; and
 - (ii) Mr and Mrs Chiesa together arranged for Westwood Trustees to pay significant joint expenses such as their rental of residential properties in London, travel expenses and investments.
- (2) Secondly, having become the sole directors of Westwood Trustees on 25 July 2011, Mr and Mrs Chiesa resigned as directors on 11 August 2011. By mid-November 2011 two previous members of its administrative staff constituted the board of directors of Westwood Trustees, and they were joined by two other previous members of its administrative staff in February 2012. None of those individuals had any prior experience in being a director of a company.
- (3) Thirdly, Mr and Mrs Chiesa made changes to their ownership of Westwood Trustees. Previously they had owned 100% of Westwood Trustees, 98% of which they had held, since 16 March 2011, indirectly via the off-shore WIFAR Fiduciary Management Company. In August 2011 they resigned as directors of the WIFAR Fiduciary Management Company and transferred legal ownership of that company to the director of an off-shore company, which was also the trustee of the WIFAR Trust, and who also became its sole director. The shares they transferred in the WIFAR Fiduciary Management Company were held in trust for Mr and Mrs Chiesa by the director of the off-shore company, so that Mr and Mrs Chiesa continued to wholly own that company beneficially. This left Mr and Mrs Chiesa each holding only 1% of Westwood Trustees' shares, whereas in fact through the

trust each continued beneficially to own, directly and indirectly, 50% of Westwood Trustees' shares.

- 4.21. During the month of August 2011 alone, Mr and Mrs Chiesa received the benefit of £116,370 paid out on their behalf by Westwood Trustees. By the end of 2011, they had received a further £109,000, and in 2012 they received a further £426,000. By the end of 2014, they had received a total benefit of approximately £1.39 million, of which £1.17 million was expenses paid on their behalf, which is a monthly average of over £34,000, paid by Westwood Trustees to cover Mr and Mrs Chiesa's combined personal expenditure. Until December 2013, the minimum benefit they received in any one month was over £20,000. The £1.39 million that they received in total included, in relation to Mrs Chiesa, spending of a minimum of £28,000 on clothes and jewellery, £10,000 on cosmetic dental treatment, £15,000 on travel costs plus at least £30,000 in foreign currency, £36,000 on interior design, and £36,000 on party and catering costs.
- 4.22. By the end of August 2011, the commission owed to two of Planners' advisers remained unpaid, even though Mr and Mrs Chiesa had rearranged their finances to continue receiving the benefit of Westwood Trustees' profits, and Mr Chiesa had recently declared to his bank that he and Mrs Chiesa had substantial personal assets and financial resources. Funds were therefore available to Mrs Chiesa personally to pay these debts.

Sequestrations

- 4.23. Planners and Mr and Mrs Chiesa failed to comply with requests by the advisers to pay them their commission and, on 18 October 2011, one of the advisers petitioned for the sequestration of Planners and Mr and Mrs Chiesa on the basis of the debt owed to him, which amounted to £40,443. The petition was unchallenged and their sequestration was awarded on 16 November 2011. Mr and Mrs Chiesa were discharged from their debts 12 months after being placed in sequestration, on 18 October 2012.
- 4.24. The sequestration of Planners meant that all claims against the firm filed with the FOS at that date were referred to the FSCS, because of Planners' default. Since Planners' sequestration, the FSCS has received over 100 claims against Mr and Mrs Chiesa trading as Planners. As at 19 September 2016, the FSCS had paid out a total of £3,856,618 in compensation. It is likely that these customers

would have been entitled to total compensation of over £5 million, however a number of the claims to the FSCS were subject to the FSCS cap of £50,000 per individual.

Mr and Mrs Chiesa's disclosures to the Trustee

- 4.25. On 16 November 2011, a trustee in sequestration was appointed, whose role was to establish the value of Mr and Mrs Chiesa's assets and income and the level of their liabilities and expenses, realise those assets for the benefit of their creditors and assess whether Mr and Mrs Chiesa were in the position to pay a regular financial contribution to their creditors during their sequestration. The Trustee's role was also to review any transactions at an undervalue that Mr and Mrs Chiesa had made in the five year period prior to the commencement of their sequestration.
- 4.26. In the weeks following his appointment, until early January 2012, the Trustee asked Mr and Mrs Chiesa to provide him with details of their financial circumstances, including at a meeting on 20 December 2011. It was Mr Chiesa who responded to the Trustee's requests and provided the Trustee with details of both his and Mrs Chiesa's financial circumstances, including at the 20 December 2011 meeting. It was also Mr Chiesa who responded to any queries that the Trustee raised about their financial circumstances during their sequestration.
- 4.27. At the meeting on 20 December 2011, the Trustee reminded Mr and Mrs Chiesa that they had an obligation to disclose fully and accurately all of their financial circumstances, and explained in detail the nature of this obligation. During the meeting, the Trustee asked Mr and Mrs Chiesa questions about their financial circumstances, including about any income that they had access to, the size of their monthly personal expenditure, and whether they possessed any assets of value, or had disposed of any at an undervalue in the previous five years, or had liabilities. Mr Chiesa answered these questions on behalf of Mrs Chiesa, who was present throughout the meeting.
- 4.28. The Trustee filled in two forms on the basis of the information provided by Mr Chiesa about Mrs Chiesa's financial circumstances: a Statement of Assets and Liabilities (Form 3) and a Supplementary Questionnaire. The Statement of Assets and Liabilities included the following statements: *"I have stated in this statement details of all my assets, liabilities and income as at the date of my*

bankruptcy on 16 Nov 2011” and “I certify that the information I have supplied in Form 3 is true, complete and accurate to the best of my knowledge and belief.” The Supplementary Questionnaire included a similar declaration and both forms included warnings that it was an offence for Mrs Chiesa to make false statements in relation to her assets, liabilities and financial affairs. Mrs Chiesa signed both of these forms at the 20 December 2011 meeting. She also signed a Statement of Undertakings, dated 16 December 2011, in which she confirmed, among other things, that:

- (1) She had a legal obligation to co-operate with the Trustee and to provide any financial information or documents which the Trustee may require;
- (2) She had made a full disclosure of all assets which she owned or in which she had an interest as at the date of her sequestration, and that she would notify the Trustee if she acquired any further assets during the period of her sequestration; and
- (3) She would immediately inform the Trustee of any change in her financial circumstances during the period of her sequestration.

4.29. The Trustee also filled in a Statement of Assets and Liabilities and a Supplementary Questionnaire on the basis of the information provided by Mr Chiesa about his own financial circumstances. Mr Chiesa signed these forms at the meeting on 20 December 2011 and signed a Statement of Undertakings on 16 December 2011.

4.30. Mr Chiesa did not inform the Trustee of the changes that he and Mrs Chiesa had made to their ownership and control of Westwood Trustees which had the effect of protecting their assets and money, or that they had access to significant funds. Instead, the information Mr Chiesa provided to the Trustee was designed to give the impression that they did not have access to significant funds, had no net assets, and had limited income and relatively modest expenditure, to the extent that they each could only afford to contribute £200 per month to the sequestrated estate for the benefit of their creditors. In particular, Mr Chiesa misled the Trustee by telling him (or by omission leading him to believe) that:

- (1) they were receiving very limited income and were therefore dependent on loans from third parties to cover their monthly expenses (see (2) below);

- (2) their combined monthly expenses were relatively modest: around £2,745 per month to cover their mortgage payments, bills, and very limited personal expenses;
- (3) they had no valuable assets: in particular, Mr Chiesa did not disclose details of their continued beneficial ownership of Westwood Trustees and the WIFAR Fiduciary Management Company, or that Mrs Chiesa owned valuable jewellery;
- (4) they had not transferred any valuable assets to third parties at an undervalue in the previous five years; and
- (5) they owed a debt of £991,000 to the WIFAR Trust, for which two of their properties were charged as security.

4.31. Despite being aware that she had a duty to disclose fully and accurately all of her financial circumstances to the Trustee, Mrs Chiesa acquiesced with Mr Chiesa's misleading of the Trustee by failing to challenge, correct or complete the account given by Mr Chiesa of their financial circumstances at the 20 December 2011 and assisted Mr Chiesa in misleading the Trustee by signing forms at that meeting which she knew contained incomplete, inaccurate and misleading information in respect of her financial circumstances.

Mr and Mrs Chiesa's failure to disclose their access to Westwood Trustees' profits

- 4.32. Contrary to Mr Chiesa's representations to the Trustee that he and Mrs Chiesa were reliant on loans from a third party, had limited income and expenditure and no net assets, in reality, they had access to ample funds to sustain a luxurious lifestyle.
- 4.33. Mrs Chiesa was aware when Mr Chiesa told the Trustee (or by omission led the Trustee to understand) that they were reliant on loans and had limited income and expenditure and no net assets, that her husband's relationship with Westwood Trustees had not changed in any material sense upon their sequestration, and that in fact he continued to drive the business forward and retained de facto control of it, and that they both had access to its significant profits.
- 4.34. Mr Chiesa remained the principal sales consultant at Westwood Trustees after he and Mrs Chiesa were placed in sequestration, bringing in the majority of new

business. He also continued to provide advice to, and exercise influence over, the previous members of Westwood Trustees' administrative staff who, during their sequestration, were the only appointed directors of Westwood Trustees. One of these directors resigned in June 2013 but the other three directors remain in place. Mrs Chiesa knowingly continued to receive the financial benefit of Mr Chiesa's continued de facto control over Westwood Trustees.

- 4.35. As set out at paragraphs 4.20(1) and 4.21 above, from June 2011 Mr and Mrs Chiesa had their expenses paid from Westwood Trustees' accounts and received further funds into their personal bank accounts directly from Westwood Trustees. Although Mr Chiesa provided the Trustee with bank statements which showed that Westwood Trustees had made three payments of either £1,000 or £2,000 to Mr and Mrs Chiesa's personal joint bank account between 23 November 2011 and 4 January 2012, neither he nor Mrs Chiesa disclosed to the Trustee the scale of the funds that they were receiving directly from Westwood Trustees, nor that Westwood Trustees was paying significant personal expenses on their behalf on a regular basis.
- 4.36. These expenses included £166,000 of legal costs incurred by Mr and Mrs Chiesa during the Tribunal proceedings relating to their reference of the Decision Notice given to Planners by the Authority in May 2011. In February 2012 Mr and Mrs Chiesa's legal representatives drew up the documentation to enable the new directors of Westwood Trustees to continue to make these payments, and that documentation described the expense to Westwood Trustees as a reflection of the continued "fundamental commercial importance" of both Mr and Mrs Chiesa to the business.
- 4.37. From April 2012, six months into their sequestration, Mr and Mrs Chiesa also began to receive funds from Westwood Trustees via an off-shore remuneration trust, the WTR Trust. The WTR Trust was established by Westwood Trustees' directors on 7 February 2012 and is similar in structure to the WIFAR Trust that Mr and Mrs Chiesa had used to direct the profits of Planners.
- 4.38. The WTR Trust is structured so that Mr and Mrs Chiesa, or parties closely connected to them, can retain access to the trust property, which comprises funds derived from the profits of Westwood Trustees. Those profits are intended to be protected in the WTR Trust from tax liabilities and from creditor claims.

- 4.39. The WTR Trust is administered by an off-shore trustee, which was also the trustee of the WIFAR Trust, but also by another company, based in the UK, which was specifically incorporated for the purpose of the WTR Trust (the "WTR Fiduciary Management Company") and which acts on behalf of the off-shore trustee.
- 4.40. When Mr and/or Mrs Chiesa wished to access the WTR Trust funds from April 2012 onwards, they made a request to the WTR Fiduciary Management Company. The directors and controllers of the WTR Fiduciary Management Company have always been the directors of Westwood Trustees and therefore closely connected to Mr and Mrs Chiesa.
- 4.41. Payments are made from the WTR Trust in the form of loans (with interest accruing). However, the Authority's view is that, in reality, those loans are never intended to be repaid by Mr or Mrs Chiesa during their lifetimes because:
- (1) the business of Westwood Trustees, developed by Mr and Mrs Chiesa, involved introducing clients to off-shore remuneration trusts from which the clients were intended to receive financial benefits, in particular the reduction in their tax liabilities, the continued ability to access the funds generated from their trading activities and the protection of those funds from any creditors.
 - (2) monies in the WTR Trust were derived from the profits of Westwood Trustees, which Mr and Mrs Chiesa continued, directly and indirectly, to wholly beneficially own;
 - (3) Mr Chiesa, by remaining the primary driver of new business and exercising influence over the firm's directors, continued throughout their sequestration to exercise de facto control over the business of Westwood Trustees, and sought to gain the benefit of the profits generated in that period;
 - (4) Mr and Mrs Chiesa, or parties closely connected to them, have had effective control over the off-shore trustee, due to their power under the WTR Trust deed to remove and replace that trustee. This means the off-shore trustee is unlikely ever to recall the loans made to Mr or Mrs Chiesa from the WTR Trust; and

- (5) the off-shore trustee has in any event delegated total control of the WTR Trust property to the WTR Fiduciary Management Company, of which the directors and controllers are individuals closely connected to Mr and Mrs Chiesa.
- 4.42. As much as 97% of Westwood Trustees' profits were paid into the WTR Trust in the 12 months up to August 2014. These profits were paid into a designated UK bank account held in the name of the WTR Fiduciary Management Company. Together, Mr and Mrs Chiesa received approximately £780,000 of Westwood Trustees' profits via the WTR Trust in 2012, and a total of approximately £2.6 million between April 2012 and December 2014, at an average of over £84,000 per month. Of this, they used £1.42 million to regularly 'repay' the money they had either received directly from Westwood Trustees or had been paid in the form of expenses (as per paragraph 4.35 above). In total, Mr and Mrs Chiesa received approximately 53% of the funds derived from the profits of Westwood Trustees paid into the WTR Trust between February 2012 and December 2014. In contrast, the Westwood Trustees directors during that period received between them approximately £420,000 from the WTR Trust, which is approximately 8.6% of Westwood Trustees' profits.
- 4.43. In July 2013, Mrs Chiesa declared in a banking application that she was receiving income of £100,000 per annum and income after tax of £5,000 per month, in connection with her employment at a company called "Westwood".
- 4.44. Until November 2014, although her involvement with Westwood Trustees appears to have been limited after sequestration, Mrs Chiesa continued to be marketed as a senior manager of the business, including having her role described as "Client Relationships" on the company's new website, which was launched around early 2012.
- 4.45. Mr and Mrs Chiesa were aware, having each signed a Statement of Undertakings, that they had a duty to declare material changes in their financial circumstances during the period of their sequestration to the Trustee. In May 2012, October 2012 and November 2012, the Trustee wrote to each of Mr and Mrs Chiesa, reminding them of their duty to provide any information that the Trustee may require regarding their assets and financial affairs, and asking them to complete a form detailing the current state of their affairs. Mr and Mrs Chiesa did not respond to the May 2012 and November 2012 letters. In response to the October 2012 letter, Mr Chiesa sent the Trustee two completed

forms, one signed by him and the other by Mrs Chiesa. Both of these forms stated that Mr and Mrs Chiesa were receiving monthly income from consultancy work of £2,000 and £1,700 respectively and that their monthly expenditure was £1,980 and £1,612 respectively (including the £200 they were each contributing to the sequestrated estate). Neither Mr Chiesa nor Mrs Chiesa informed the Trustee of the funds they were receiving from the WTR Trust, or that Westwood Trustees was paying significant personal expenses on their behalf. The Trustee therefore continued to administer Mr and Mrs Chiesa's sequestrated estate on the basis that their financial position had not materially changed since December 2011.

Mr and Mrs Chiesa's failure to disclose their high personal spending

- 4.46. Contrary to Mr Chiesa's disclosure to the Trustee in December 2011 that his and Mrs Chiesa's joint living expenses amounted to around £2,745 per month, and his and Mrs Chiesa's disclosure to the Trustee in October 2012 that their combined living expenditure was about £3,600 per month (including their £400 contribution to the sequestrated estate), in reality, they continued to enjoy a much higher standard of living. Their joint living expenses at these times were, in fact, at least £9,000 per month, and they had significant additional expenses.
- 4.47. In June 2011, four months before their sequestration, Mr Chiesa declared to a bank that he and Mrs Chiesa had combined living expenses of £9,425 per month. This included monthly rental/mortgage costs of £6,000.
- 4.48. In July 2013, nine months after they had been discharged from their debts, but while they were still in sequestration and therefore continued to have a duty to disclose changes in their financial circumstances to the Trustee, Mr and Mrs Chiesa declared to a bank combined total monthly expenses of £9,300 and a combined monthly disposable income after expenses of £10,700.
- 4.49. From May 2011 until at least October 2012, Mr and Mrs Chiesa's monthly rental on their London address was around £5,000. This was paid for them out of a Westwood Trustees account, which had the effect of concealing this expense from the Trustee. Neither Mr Chiesa nor Mrs Chiesa notified the Trustee of this rental liability.
- 4.50. In addition to their monthly living expenses, Mr and Mrs Chiesa's other monthly spending was high, and of a nature which conflicted with Mr Chiesa's representations to the Trustee, which Mrs Chiesa had not challenged or

corrected, that they had limited income and expenditure and no net assets, and with the minimal contribution of £200 per month that they were each paying to their sequestrated estate. By way of example, between October 2011 and July 2013 Mrs Chiesa spent an average monthly amount of £6,000 on clothing and jewellery, interior design, cosmetic dental treatment, travel and foreign currency and her Porsche car. Neither Mr Chiesa nor Mrs Chiesa disclosed either the level or the nature of this spending to the Trustee at any time during their sequestration.

- 4.51. Mrs Chiesa did not disclose the true level and nature of her personal spending, and did not challenge or correct the information Mr Chiesa provided to the Trustee about the level of her personal expenditure, and the effect of this was to minimise the chance of further investigation into the source of the funds they were receiving. She deliberately acquiesced and assisted with Mr Chiesa's misleading of the Trustee, which led the Trustee to believe that the loans they were living off were relatively modest and designed to cover relatively modest day-to-day living expenses.
- 4.52. Mrs Chiesa continued to enjoy a lifestyle throughout her sequestration that was in conflict with her declared status as a bankrupt who could afford to pay only £200 per month to her creditors.

Mr and Mrs Chiesa's failure to disclose valuable assets and/or the transfer of valuable assets at an undervalue in the five years before sequestration

- 4.53. Mr Chiesa's disclosure to the Trustee, which Mrs Chiesa did not correct or challenge, that he and Mrs Chiesa owned no valuable assets at the time they were placed in sequestration, and had not transferred any valuable assets to third parties at an undervalue in the five years before sequestration, was inaccurate and misleading.
- 4.54. In fact, they each had legal ownership of 1% of Westwood Trustees and beneficial ownership of 50% of the WIFAR Fiduciary Management Company, which owned 98% of Westwood Trustees (see paragraph 4.20(3) above). Although Mr Chiesa informed the Trustee that he and Mrs Chiesa each had legal ownership of 1% of Westwood Trustees, neither he nor Mrs Chiesa disclosed to the Trustee that Westwood Trustees was a valuable company capable of paying over £1 million per annum into an off-shore remuneration trust for the benefit of

Mr and Mrs Chiesa and others connected with Westwood Trustees. They also did not disclose their beneficial ownership of the WIFAR Fiduciary Management Company, and therefore of the remaining 98% of Westwood Trustees, nor the transfers of ownership that had taken place in March 2011 and August 2011 which resulted in them no longer having 100% legal ownership of both companies (see paragraphs 4.19 and 4.20(3) above). The Authority considers that these transfers were made as part of the steps taken by Mr and Mrs Chiesa to protect their assets and money from creditors, and that they did not disclose these transfers, their beneficial ownership of the companies or that Westwood Trustees was a valuable company for the same reason.

- 4.55. In addition, neither Mr Chiesa nor Mrs Chiesa disclosed to the Trustee valuable jewellery that Mrs Chiesa either owned or had disposed of in the previous five years. In a June 2008 bank application, Mr and Mrs Chiesa had disclosed that Mrs Chiesa owned jewellery with a total value of over £100,000. At an interview with the Authority on 18 February 2015, Mrs Chiesa disclosed that she still owned jewellery which, in the June 2008 bank application, they had valued at over £50,000, including a £17,000 Cartier diamond watch and a £15,000 diamond ring, and informed the Authority that she had lost, given away, traded in or sold the other items of jewellery.
- 4.56. Further, neither Mr Chiesa nor Mrs Chiesa disclosed to the Trustee unidentified valuable assets which Mr Chiesa had disclosed to a bank in December 2010 as being owned by them. These assets included a £136,000 investment, which was mentioned in the "Other Significant assets" section of the bank application form. In June 2011, Mr Chiesa informed his bank that there had been no material change in respect of the information he had provided in December 2010. Mr and Mrs Chiesa did not provide the Trustee with details of these assets or of any disposal or loss of value of any such assets in the four months prior to their sequestration, or respond to the Authority's requirement that they provide the Authority with details of the assets.

Mr and Mrs Chiesa's misleading disclosures about a debt secured against their properties

- 4.57. Mr Chiesa disclosed to the Trustee that there were charges against two properties he owned jointly with Mrs Chiesa, as security for a £991,000 debt they owed to the off-shore trustee of the WIFAR Trust. However, Mr Chiesa failed to explain the nature of the apparent debt and the charges against those

two properties and, by failing to challenge, correct or complete Mr Chiesa's disclosure, Mrs Chiesa acquiesced in his misleading of the Trustee.

- 4.58. The Authority's view is that, in reality, those loans were never intended to be repaid during their lifetimes because, for the reasons explained at paragraph 4.8 above, Mr and Mrs Chiesa retained effective control over the WIFAR Trust property at all times, and that Mrs Chiesa was aware of this. Had the loans been repaid, Mr and Mrs Chiesa would have retained access to such funds.
- 4.59. The two properties to which the charges applied were presented as having little or no value to Mr and Mrs Chiesa due to the loan arrangement described in paragraph 4.57 above. By placing charges against them in favour of the trustee of the WIFAR Trust, Mr and Mrs Chiesa were acting to ensure that any future realisable equity in those properties would be paid to the WIFAR Trust for their use, rather than to their creditors. Such information was relevant to the Trustee's understanding of their financial circumstances and should have been disclosed when the loans and charges were made known to the Trustee.

Misleading the Authority

- 4.60. On 18 February 2015, as part of its investigation, the Authority conducted a compelled interview with Mrs Chiesa during which she attempted to mislead the Authority in relation to:
- (1) the extent of her capability and her knowledge and understanding of Planners' and Westwood Trustees' business and financial arrangements; and
 - (2) her ownership of valuable jewellery.

Misleading statements to the Authority about her capability and her knowledge and understanding of Planners' and Westwood Trustees' business and financial arrangements

- 4.61. Mrs Chiesa attempted to mislead the Authority at interview by making statements which were designed to give the Authority the impression that she lacked capability and knowledge and understanding of the business and financial arrangements of Planners or Westwood Trustees, including in relation to any off-shore remuneration trusts, whereas in fact she understood and had an important role in both businesses. She made statements which gave the false impression that:

- (1) she had only had limited administrative involvement in those businesses; and
- (2) she was reliant on Mr Chiesa to make her financial arrangements.

Limited administrative involvement in the business of Planners and Westwood Trustees

- 4.62. Mrs Chiesa told the Authority that she had had a limited administrative role at Planners and Westwood Trustees, which involved filing, making drinks for clients, record keeping, preparing commission statements for advisers, and making staffing decisions. She said she did not understand the workings of trusts, did not know from which trust or trusts Mr Chiesa obtained loans, and was specifically not aware of the WIFAR Trust or any company connected to it.
- 4.63. In fact, Mrs Chiesa was aware of and had been actively involved in certain fundamental business and financial arrangements at Planners and Westwood Trustees, including in relation to trusts, and specifically the WIFAR Trust. In particular, Mrs Chiesa:
- (1) was a joint owner and, until August 2011, a director and secretary of Westwood Trustees, and in those capacities was present at, and on at least one occasion chaired, board meetings when resolutions were passed effecting important actions such as changes of control and the termination and appointment of directors;
 - (2) in those same capacities as a director, secretary and joint owner of Westwood Trustees, prepared and executed financial documentation without Mr Chiesa's involvement, relating to banking applications and a share issue that changed the control of Westwood Trustees;
 - (3) was a director and joint owner of a company incorporated by her and Mr Chiesa for the purposes of another off-shore trust they had established, as the umbrella trust for Westwood Trustees' client remuneration trusts. In her capacity as a director, Mrs Chiesa executed banking applications and Companies House documentation in relation to this company, without Mr Chiesa's involvement, and was a signatory to its bank account;
 - (4) was a joint owner and, until August 2011, a director of the WIFAR Fiduciary Management Company, which she and Mr Chiesa incorporated specifically for the purpose of the WIFAR Trust, and in those capacities she prepared

and executed share transfer documentation without Mr Chiesa's involvement; and

- (5) was a director and joint owner with Mr Chiesa of at least one other company incorporated by them for other business purposes, and in those capacities executed banking applications, share transfers and Companies House documentation without Mr Chiesa's involvement.

4.64. Further, Mrs Chiesa occupied a senior operational management role at Planners and Westwood Trustees. In particular, she was:

- (1) regarded by members of staff at Planners and Westwood Trustees who carried out administrative work as the senior manager, from whom they took direction;
- (2) responsible for staffing decisions such as recruitment and pay;
- (3) responsible for preparing commission statements and payment to Planners' advisers, including those which she failed to pay, and which resulted in Planners', and her own, sequestration;
- (4) a signatory to all of Planners' and Westwood Trustees' business accounts;
- (5) consistently presented in Planners' and Westwood Trustees' marketing material as a partner or managing director; and
- (6) described in documentation drawn up by Mr and Mrs Chiesa's legal representatives in February 2012 to enable the directors of Westwood Trustees to pay Mr and Mrs Chiesa's legal costs as being of "fundamental commercial importance" to Westwood Trustees (see paragraph 4.36 above).

Reliance on Mr Chiesa to make her financial arrangements

4.65. Mrs Chiesa said she was reliant on Mr Chiesa to make her financial arrangements, of which she was largely ignorant and did not take any active involvement in, and that this included relying on him to prepare documentation for her to sign, and which she did not seek to understand.

4.66. In fact, Mrs Chiesa was aware of and was actively involved in her own financial arrangements. In particular, Mrs Chiesa:

- (1) in her capacities as a director and secretary of Westwood Trustees, was present at the board meeting in March 2011 in which she and Mr Chiesa resolved to issue 4,900 new shares in the company directly to the WIFAR Fiduciary Management Company, which they owned and were the only directors of. Mrs Chiesa, rather than Mr Chiesa, prepared the paperwork for this change of control, which had the effect of transferring 98% of their 100% share in Westwood Trustees into the protection of that off-shore company, which was incorporated by Mr and Mrs Chiesa specifically for the purpose of the WIFAR Trust;
- (2) was one of two signatories, with Mr Chiesa, on the UK bank account of the WIFAR Fiduciary Management Company, through which she and Mr Chiesa retained complete control of Planners' profits once they had been paid over to the WIFAR Trust. Mrs Chiesa received payments of £20,000 and £45,000 from that off-shore company's UK bank account, into her personal bank account, with her name as the payment reference.
- (3) authorised changes to the payment arrangements for valuable insurance policies held by her and Mr Chiesa, and did so without Mr Chiesa's involvement;
- (4) demonstrated at interview a sophisticated understanding of the technical difference between the life assurance policies she and Mr Chiesa held;
- (5) authorised payments out of her personal bank account to a Westwood Trustees account, including payments totalling £166,000 on a single day; and
- (6) as shown at 4.63(1) to (5) above, and 4.66(1) and (3) above, prepared and executed important financial and legal documents herself, without Mr Chiesa's involvement.

4.67. In summary, Mrs Chiesa attempted to mislead the Authority about her capability and her actual involvement in the businesses of Planners and Westwood Trustees and her own financial arrangements, in an attempt to avoid responsibility for the inaccurate, incomplete and/or misleading disclosures that were made to the Trustee either by Mrs Chiesa or by Mr Chiesa on her behalf.

Misleading statement to the Authority about her ownership of valuable jewellery

- 4.68. Mrs Chiesa attempted to mislead the Authority at interview by stating that she did not own any jewellery of substantial value at the time of her sequestration. However, at the time of her interview Mrs Chiesa still owned jewellery which, in June 2008, she and Mr Chiesa had stated to be worth over £50,000, including a £17,000 Cartier diamond watch and a £15,000 diamond ring, which she knew she had not disclosed to the Trustee.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out in this Notice, the Authority considers that Mrs Chiesa is not a fit and proper person as she lacks integrity.
- 5.3. Mrs Chiesa misled the Trustee in order to protect her and Mr Chiesa's wealth from the liabilities in Planners which, as partners in that firm, they were jointly and severally liable for.
- 5.4. Specifically, Mrs Chiesa acquiesced with Mr Chiesa's misleading of the Trustee by failing to challenge, correct or complete the account given by Mr Chiesa of their financial circumstances at a meeting with the Trustee on 20 December 2011 and assisted Mr Chiesa in misleading the Trustee by signing forms at that meeting which she must have known contained inaccurate, incomplete and/or misleading information in respect of her financial circumstances. Mr Chiesa misled the Trustee by making misleading disclosures, and/or failing adequately to disclose the true position, in respect of their financial circumstances, including:
- (1) the changes they had made to their ownership and control of Westwood Trustees in order to protect their assets and money;
 - (2) the scale of the funds they were receiving directly from the successful non-authorised business of Westwood Trustees;
 - (3) Westwood Trustees' payment of significant personal expenses on their behalf;

- (4) the full extent of their high level of personal expenditure immediately before and around the time of their sequestration;
- (5) valuable assets that they still owned or had disposed of at an undervalue in the previous five years; and
- (6) their interest in any funds repaid under, and their control over, a £991,000 debt secured against two properties that they jointly owned.

5.5. Further, Mrs Chiesa continued to acquiesce and assist with Mr Chiesa's misleading of the Trustee during their sequestration by failing to disclose material information regarding their financial circumstances and by signing a form which she must have known contained incorrect and misleading information in respect of their financial circumstances. As a result, the Trustee was misled in relation to:

- (1) Mr and Mrs Chiesa's access to significant funds from Westwood Trustees, including via the WTR Trust;
- (2) Westwood Trustees' continuing payment of significant personal expenses on their behalf;
- (3) the very high level of their personal expenditure during their sequestration; and
- (4) Mrs Chiesa's continued ownership of valuable jewellery that had not been disclosed to the Trustee.

5.6. Mr and Mrs Chiesa must have known that Planners would face significant customer claims and regulatory action. They therefore, from November 2008, started to take active steps to protect their assets and business interests from potential claims. Whilst Mr and Mrs Chiesa made declarations to banks which indicated that they had a high level of income and assets, and whilst they lived a luxurious lifestyle, they made it appear to the Trustee that they had limited income and expenditure and no net assets. Mrs Chiesa had the capability and experience to understand the obvious disparity between her lifestyle, wealth and expenditure and her status as a bankrupt unable to pay her creditors, and the relevance that this would have to the Trustee during the period of her sequestration.

- 5.7. Mrs Chiesa was aware that the effect of the misleading and inadequate disclosure of her and Mr Chiesa's financial circumstances to the Trustee was to increase the prospect that the steps that they had taken, both before and after they were placed in sequestration, to protect their assets and money from creditors' claims would succeed. She failed to act with integrity in order to preserve her and Mr Chiesa's wealth.
- 5.8. Save for £200 per month, Mrs Chiesa did not apply any of the wealth that Mr Chiesa declared to one bank in 2011, and which she declared to another bank in June 2013, towards paying any of her creditors. Instead, around £3.8 million of Planners' liability for over £5 million of customer claims in respect of mis-sales of GTEPs was ultimately borne by the FSCS following Planners' default.
- 5.9. By reason of the facts and matters set out in this Notice, the Authority also considers that Mrs Chiesa has breached Statement of Principle 4 of the Statements of Principle because she attempted to mislead the Authority during her compelled interview about:
- (1) the extent of her capability and her knowledge and understanding of Planners' and Westwood Trustees' business and financial arrangements, by giving the false impression that she had only had limited administrative involvement in those businesses and was reliant on Mr Chiesa to make her financial arrangements. In fact, she was a senior manager at both firms, and was aware of and actively involved in certain of their business and financial arrangements. These arrangements related directly to her own financial affairs, of which she had significantly greater knowledge and understanding than she claimed at interview; and
 - (2) her ownership of valuable jewellery.

6. SANCTIONS

- 6.1. The Authority has decided to:
- (1) impose a financial penalty on Mrs Chiesa for her failure to comply with Statement of Principle 4; and
 - (2) withdraw her approval to perform the CF4 (Partner) controlled function and impose an order prohibiting her from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, by reason of her lack of fitness and propriety.

Financial penalty

- 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 the benefits of 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. In this case, the Authority has not identified any financial benefit that Mrs Chiesa derived directly from attempting to mislead the Authority in interview.
- 6.7. The Step 1 figure is therefore nil.

Step 2: the seriousness of the breach

- 6.8. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines the 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. Mrs Chiesa obtained substantial sums, totalling at least £270,000, during the 12 months prior to the breach, from Westwood Trustees via her husband.

However, the Authority has not concluded that these sums constitute “relevant income” as, due to the degree of obfuscation and complexity that Mrs Chiesa has created around her financial circumstances, the Authority cannot be certain whether Mrs Chiesa received this money in connection with any employment with a regulated firm.

6.10. The Step 2 figure is therefore nil. Nonetheless, the Authority has determined the seriousness of Mrs Chiesa’s breaches to be level 4 for the purposes of Step 2 having taking into account:

(1) Mrs Chiesa attempted to mislead the Authority in an attempt to protect her wealth, and so intended to financially benefit from the breach (DEPP 6.5B.2G(10)(b)); and

(2) the breach was committed deliberately (DEPP 6.5B.2G(12)(g)).

Step 3: mitigating and aggravating factors

6.11. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease, by way of a percentage adjustment, 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.

6.12. As the Step 2 figure is nil, the Step 3 figure is also nil. Nonetheless, the Authority considers that the following aggravating factor is relevant:

(1) Mrs Chiesa has a poor compliance history, being a partner in Planners which received a £100,000 financial penalty from the Authority in November 2013 for its failure to give suitable advice in relation to its GTEP sales (DEPP 6.5B.3G(2)(i)).

Step 4: adjustment for deterrence

6.13. Pursuant to DEPP 6.5B.4G, if the Authority considers 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.

6.14. In this case, the Step 3 figure of £0 is not sufficient to deter Mrs Chiesa or others from committing similar breaches.

6.15. Mrs Chiesa's attempt to mislead the Authority during her compelled interview is serious. She clearly understood her duty to give truthful answers, and the importance of doing so.

6.16. In this particular case, having regard to:

(1) her wealth, and the financial gain that motivated her actions in attempting to mislead the Authority;

(2) the seriousness of her misconduct, which the Authority has assessed at Step 2 as level 4; and

(3) her poor compliance history, as mentioned at Step 3;

the Authority considers that a penalty of £50,000 is appropriate.

6.17. The Step 4 figure is therefore £50,000.

Step 5: settlement discount

6.18. No settlement discount applies. The penalty figure after Step 5 is therefore £50,000.

Penalty

6.19. The Authority has therefore decided to impose a financial penalty of £50,000 on Mrs Chiesa for breaching Statement of Principle 4.

Withdrawal of approval and prohibition

6.20. The Authority has had regard to the guidance in Chapter 9 of EG and considers it is appropriate and proportionate in all the circumstances to withdraw Mrs Chiesa's CF4 (Partner) controlled function at Planners and to prohibit Mrs Chiesa from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, because she is not a fit and proper person.

6.21. The Authority considers that Mrs Chiesa is not a fit and proper person as she lacks integrity. Further, she poses a risk to consumers and to confidence in the financial system. First, because of the serious and prolonged nature of her misleading of the Trustee, which began with her acquiescence and assistance with Mr Chiesa's misleading of the Trustee at the 20 December 2011 meeting

and which continued during her sequestration, in particular when she signed a form in October 2012 which contained information about her financial position which she must have known to be inaccurate. Secondly, because Mrs Chiesa misled the Trustee in order to reduce the risk of having to make payments to creditors, which she knew would include Planners' former customers, which demonstrates that she is willing to put her own interests above those of consumers and regulated firms and individuals. Thirdly, because Mrs Chiesa has close ties to the regulated community due to her continued connection to Westwood Trustees, which has a network of introducers including approximately 30 approved persons. The Authority considers there is a significant risk that Mrs Chiesa's involvement with Westwood Trustees and those approved persons could continue and/or increase in future. Fourthly, because of the misleading statements which Mrs Chiesa made to the Authority during her compelled interview.

- 6.22. In the circumstances, the Authority considers that it is appropriate and proportionate to prohibit Mrs Chiesa from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 6.23. These sanctions support the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

7. PROCEDURAL MATTERS

Decision maker

- 7.1. The decision which gave rise to the obligation to give this Final 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 Mrs Chiesa to the Authority by no later than 26 October 2017, 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 26 October 2017, the Authority may recover the outstanding amount as a debt owed by Mrs Chiesa 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 these 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 you 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.

Contacts

- 7.7. For more information concerning this matter generally, contact Rachel West of the Enforcement and Market Oversight Division of the Authority (direct line: 020 7066 0142).

Bill Sillett

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. 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. The Authority has the power, pursuant to section 63 of the Act, to withdraw an approval given under section 59 of the Act – to perform the CF4 (Partner) controlled function - if it considers that the person is not a fit and proper person to perform the function.
3. Section 66 of the Act provides that the Authority may take action against a person (whether or not it has given its approval in relation to the person) if it appears to the Authority that they are guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against them. Misconduct includes failure, while an approved person, to comply with a Statement of Principle. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

RELEVANT HANDBOOK PROVISIONS

4. The FIT and EG handbook provisions set out below are the versions in force at the date of this Notice. The APER and DEPP handbook provisions set out below are the versions that were in force on 18 February 2015 (i.e. the date of Mrs Chiesa's interview with the Authority).

Fit and Proper Test for Approved Persons (FIT)

5. FIT sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for 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.

6. FIT 1.3 provides 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.
7. FIT 2.1.1G provides that in determining a person's honesty and integrity the Authority will have regard to all relevant matters.

Statements of Principle and Code of Practice for Approved Persons (APER)

8. APER sets out the fundamental obligations of approved persons and sets out descriptions of conduct, which, in the opinion of the Authority, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
9. APER 2.1A.3P sets out Statement of Principle 4. This states that an approved person must deal with the Authority and other regulators in an open and cooperative way and must disclose appropriately any information of which the Authority would reasonably expect notice.
10. APER 3.1.3G provides that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
11. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable; that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
12. APER 4.4 sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 4. An example of such conduct is failing without good reason to inform the Authority of information of which the approved person was aware, in response to questions from the Authority (APER 4.4.9E).

The Authority's policy on the imposition of financial penalties

13. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook.

14. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.
15. The Authority will consider the full circumstances of each case when determining whether or not to impose a financial penalty. DEPP 6.2.1G sets out a non-exhaustive list of factors that may be of relevance in determining *whether* to impose a financial penalty, which include the following:-
 - (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, the loss or risk of loss caused to consumers or other market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
 - (2) DEPP 6.2.1G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the attention of the Authority or another relevant regulatory authority, the degree of co-operation the person showed during the investigation of the breach, any remedial steps the person has taken in respect of the breach, the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken, and the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the Authority; and
 - (3) DEPP 6.2.1G(5): Action taken by the Authority in previous similar cases.
16. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
17. DEPP 6.5B sets out the five steps for calculation of financial penalties to be imposed on individuals.

The Authority's policy for exercising its powers to make prohibition orders and to withdraw approvals

18. EG 9.1.1G provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to work towards achieving its regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those 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.
19. EG 9.1.2G provides that the Authority's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
20. EG 9.2.2G sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
21. EG 9.2.3G provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
22. EG 9.3.2G provides that, when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);

- (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
- (3) the relevance and materiality of any matters indicating unfitness;
- (4) the length of time since the occurrence of any matters indicating unfitness;
- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (7) the previous disciplinary record and general compliance history of the individual.

23. EG 9.7.1G provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order including the use of its power to impose a financial penalty.